



DIVISION OF
CORPORATION FINANCE

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

April 4, 2019

Viktor Sapezhnikov
Wachtell, Lipton, Rosen & Katz
vsapezhnikov@wlrk.com

Re: XPO Logistics, Inc.
Incoming letter dated January 29, 2019

Dear Mr. Sapezhnikov:

This letter is in response to your correspondence dated January 29, 2019 concerning the shareholder proposal (the "Proposal") submitted to XPO Logistics, Inc. (the "Company") by the Service Employees International Union Pension Plans Master Trust (the "Proponent") for inclusion in the Company's proxy materials for its upcoming annual meeting of security holders. 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,

M. Hughes Bates
Special Counsel

Enclosure

cc: Maureen O'Brien
Segal Marco Advisors
mobrien@segalmarco.com

April 4, 2019

Response of the Office of Chief Counsel
Division of Corporation Finance

Re: XPO Logistics, Inc.
Incoming letter dated January 29, 2019

The Proposal urges the board to strengthen the Company's prevention of workplace sexual harassment by formalizing the board's oversight responsibility, aligning senior executive compensation incentives, reviewing (and if necessary overseeing revision of) company policies, and reporting to shareholders by December 31, 2019 on actions taken.

We are unable to concur in your view that the Company may exclude the Proposal under rules 14a-8(b) and 14a-8(f). Accordingly, we do not believe that the Company may omit the Proposal from its proxy materials in reliance on rules 14a-8(b) and 14a-8(f).

We are unable to conclude that the Company has met its burden of demonstrating that it may exclude the Proposal under rule 14a-8(h)(3). Accordingly, we do not believe that the Company may omit the Proposal from its proxy materials in reliance on rule 14a-8(h)(3).

We are unable to concur in your view that the Company may exclude the Proposal under rule 14a-8(i)(3). We are unable to conclude that the Proposal, taken as a whole, is so vague or indefinite that it is rendered materially misleading. Accordingly, we do not believe that the Company may omit the Proposal from its proxy materials in reliance on rule 14a-8(i)(3).

We are unable to concur in 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 do not compare favorably with the guidelines of the Proposal and that the Company has not, therefore, substantially implemented the Proposal. Accordingly, we do not believe that the Company may omit the Proposal from its proxy materials in reliance on rule 14a-8(i)(10).

Sincerely,

Kasey L. Robinson
Special Counsel

DIVISION OF CORPORATION FINANCE
INFORMAL PROCEDURES REGARDING SHAREHOLDER PROPOSALS

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

Although Rule 14a-8(k) does not require any communications from shareholders to the Commission's staff, the staff will always consider information concerning alleged violations of the statutes and rules administered by the Commission, including arguments as to whether or not activities proposed to be taken would violate the statute or rule involved. The receipt by the staff of such information, however, should not be construed as changing the staff's informal procedures and proxy review into a formal or adversarial procedure.

It is important to note that the staff's no-action responses to Rule 14a-8(j) submissions reflect only informal views. The determinations reached in these no-action letters do not and cannot adjudicate the merits of a company's position with respect to the proposal. Only a court such as a U.S. District Court can decide whether a company is obligated to include shareholder proposals in its proxy materials. Accordingly, a discretionary determination not to recommend or take Commission enforcement action does not preclude a proponent, or any shareholder of a company, from pursuing any rights he or she may have against the company in court, should the company's management omit the proposal from the company's proxy materials.

WACHTELL, LIPTON, ROSEN & KATZ

51 WEST 52ND STREET
NEW YORK, N.Y. 10019-6150
TELEPHONE: (212) 403-1000
FACSIMILE: (212) 403-2000

GEORGE A. KATZ (1965-1989)
JAMES H. FOGELSON (1967-1991)
LEONARD M. ROSEN (1965-2014)

OF COUNSEL

WILLIAM T. ALLEN	HAROLD S. NOVIKOFF
MARTIN J.E. ARMS	LAWRENCE B. PEDOWITZ
MICHAEL H. BYOWITZ	ERIC S. ROBINSON
GEORGE T. CONWAY III	PATRICIA A. ROBINSON*
KENNETH B. FORREST	ERIC M. ROTH
SELWYN B. GOLDBERG	PAUL K. ROWE
PETER C. HEIN	DAVID A. SCHWARTZ
MEYER G. KOPLOW	MICHAEL J. SEGAL
LAWRENCE S. MAKOW	ELLIOTT V. STEIN
DOUGLAS K. MAYER	WARREN R. STERN
MARSHALL L. MILLER	PAUL VIZCARRONDO, JR.
PHILIP MINDLIN	PATRICIA A. VLAHAKIS
ROBERT M. MORGENTHAU	AMY R. WOLF
DAVID S. NEILL	

* ADMITTED IN THE DISTRICT OF COLUMBIA

COUNSEL

DAVID M. ADLERSTEIN	NANCY B. GREENBAUM
AMANDA K. ALLEXON	MARK A. KOENIG
LOUIS J. BARASH	LAUREN M. KOFKE
FRANCO CASTELLI	J. AUSTIN LYONS
DIANNA CHEN	ALICIA C. MCCARTHY
ANDREW J.H. CHEUNG	PAULA N. RAMOS
PAMELA EHRENKRANZ	NEIL M. SNYDER
KATHRYN GETTLES-ATWA	S. CHRISTOPHER SZCZERBAN
ADAM M. GOGOLAK	JEFFREY A. WATIKER

MARTIN LIPTON
HERBERT M. WACHTELL
THEODORE N. MIRVIS
EDWARD D. HERLIHY
DANIEL A. NEFF
ANDREW R. BROWNSTEIN
MARC WOLINSKY
STEVEN A. ROSENBLUM
JOHN F. SAVARESE
SCOTT K. CHARLES
JODI J. SCHWARTZ
ADAM O. EMMERICH
RALPH M. LEVENE
RICHARD G. MASON
DAVID M. SILK
ROBIN PANOVA
DAVID A. KATZ
ILENE KNABLE GOTTS
JEFFREY M. WINTNER
TREVOR S. NORWITZ
BEN M. GERMANA
ANDREW J. NUSSBAUM

RACHELLE SILVERBERG
STEVEN A. COHEN
DEBORAH L. PAUL
DAVID C. KARP
RICHARD K. KIM
JOSHUA R. CAMMAKER
MARK GORDON
JOSEPH D. LARSON
JEANNEMARIE O'BRIEN
WAYNE M. CARLIN
STEPHEN R. DIPRIMA
NICHOLAS G. DEMMO
IGOR KIRMAN
JONATHAN M. MOSES
T. EIKO STANGE
JOHN F. LYNCH
WILLIAM SAVITT
ERIC M. ROSOF
GREGORY E. OSTLING
DAVID B. ANDERS
ANDREA K. WAHLQUIST

ADAM J. SHAPIRO
NELSON O. FITTS
JOSHUA M. HOLMES
DAVID E. SHAPIRO
DAMIAN G. DIDDEN
IAN BOCZKO
MATTHEW M. GUEST
DAVID E. KAHAN
DAVID K. LAM
BENJAMIN M. ROTH
JOSHUA A. FELTMAN
ELAINE P. GOLIN
EMIL A. KLEINHAUS
KARESSA L. CAIN
RONALD C. CHEN
GORDON S. MOODIE
DONGJU SONG
BRADLEY R. WILSON
GRAHAM W. MELI
GREGORY E. PESSIN
CARRIE M. REILLY

MARK F. VEBLEN
VICTOR GOLDFELD
EDWARD J. LEE
BRANDON C. PRICE
KEVIN S. SCHWARTZ
MICHAEL S. BENN
SABASTIAN V. NILES
ALISON ZIESKE PREISS
TIJANA J. DVORNIC
JENNA E. LEVINE
RYAN A. MCLEOD
ANITHA REDDY
JOHN L. ROBINSON
JOHN R. SOBOLEWSKI
STEVEN WINTER
EMILY D. JOHNSON
JACOB A. KLING
RAAJ S. NARAYAN
VIKTOR SAPEZHNIKOV
MICHAEL J. SCHOBEL
ELINA TETELBAUM

January 29, 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: *Stockholder Proposal to XPO Logistics, Inc. by the Service Employees
International Union Pension Plans Master Trust*

Ladies and 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, XPO Logistics, Inc., a Delaware corporation ("XPO" or 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 XPO's view that, for the reasons stated below, it may exclude the stockholder proposal (the "Proposal") and the statement in support thereof (the "Supporting

Office of Chief Counsel
Division of Corporation Finance
U.S. Securities and Exchange Commission
January 29, 2019
Page 2

Statement”) received from the Service Employees International Union Pension Plans Master Trust (the “Proponent”) from XPO’s proxy statement and form of proxy for its 2019 Annual General Meeting of Stockholders (collectively, the “2019 Proxy Materials”).

Pursuant to Rule 14a-8(j) under the Exchange Act and Staff Legal Bulletin No. 14D (Nov. 7, 2008) (“SLB 14D”), we have:

- transmitted this letter by email to the Staff at shareholderproposals@sec.gov no later than eighty (80) calendar days before the Company intends to file its definitive 2019 Proxy Materials with the Commission; and
- concurrently sent copies of this letter, together with its attachments, to the Proponent at the email addresses it has provided as notice of the Company’s intent to exclude the Proposal and the Supporting Statement from the 2019 Proxy Materials.

Rule 14a-8(k) and SLB 14D provide that stockholder proponents are required to send companies a copy of any correspondence that the proponents elect to submit to the Commission or the Staff. Accordingly, we are taking this opportunity to inform the Proponent that if the Proponent elects to submit additional correspondence to the Commission or the Staff with respect to the Proposal, a copy of that correspondence should be furnished concurrently to the undersigned on behalf of the Company pursuant to Rule 14a-8(k) and SLB 14D.

THE PROPOSAL

The Proposal, dated December 18, 2018, sets forth the following proposed resolution for the vote of the Company’s stockholders at the Annual General Meeting of Stockholders in 2019:

RESOLVED that shareholders of XPO Logistics (“XPO”) urge the Board of Directors to strengthen XPO’s prevention of workplace sexual harassment by formalizing the Board’s oversight responsibility, aligning senior executive compensation incentives, reviewing (and if necessary overseeing revision of) company policies, and reporting to shareholders by December 31, 2019 on actions taken (omitting confidential and proprietary information, as well as facts relevant to claims against XPO of which XPO has notice).

Office of Chief Counsel
Division of Corporation Finance
U.S. Securities and Exchange Commission
January 29, 2019
Page 3

Copies of the Proposal and the Supporting Statement are attached to this letter as Exhibit A.

BASES FOR EXCLUSION

The Company respectfully requests that the Staff concur in its view that the Proposal and the Supporting Statement may be excluded from the 2019 Proxy Materials pursuant to (i) Rule 14a-8(h)(3), because neither the Proponent nor its qualified representative presented the 2018 Proposal (as defined below) at the Company's 2018 Annual General Meeting of Stockholders (the "2018 Annual Meeting"), (ii) Rule 14a-8(b) and Rule 14a-8(f)(1), because the Proponent failed to provide the requisite proof of continuous ownership in response to the Company's proper request for that information, (iii) Rule 14a-8(i)(10), because the Company has already substantially implemented the Proposal, and (iv) Rule 14a-8(i)(3), because the Proposal is impermissibly vague and indefinite.

ANALYSIS

I. The Company May Exclude the Proposal Pursuant to Rule 14a-8(h)(3) Because Neither the Proponent nor Its Qualified Representative Presented the 2018 Proposal at the 2018 Annual Meeting

Rule 14a-8(h)(1) provides that either a stockholder proponent or its qualified representative must attend the stockholders meeting to present its stockholder proposal. Rule 14a-8(h)(3) further states that "[i]f [a stockholder proponent] or [its] qualified representative fail[s] to appear and present the proposal, without good cause, the company will be permitted to exclude all of [the proponent's] proposals from its proxy materials for any [stockholders] meetings held in the following two calendar years."

On December 15, 2017, the Company received a stockholder proposal (the "2018 Proposal") from the Proponent requesting that the Compensation Committee of the Board of Directors of the Company (the "Board") amend the Company's executive compensation clawback policy. The Company included the 2018 Proposal in its Proxy Statement for its 2018 Annual Meeting of Stockholders as "Proposal 6: Stockholder Proposal Regarding the Company's Executive Compensation Clawback Policy." See XPO Logistics, Inc., Definitive Proxy Statement on Schedule 14A, filed Apr. 18, 2018 (the "2018 Proxy Statement"), Page 56. The Company gave timely notice of the 2018 Annual Meeting to its stockholders. In accordance with the Rules of the Commission and the Delaware General Corporation Law, the notice clearly stated the date, time and location of the 2018 Annual Meeting as 10:00 a.m. EDT on May 17,

Office of Chief Counsel
Division of Corporation Finance
U.S. Securities and Exchange Commission
January 29, 2019
Page 4

2018, at the Doral Arrowwood. In the 2018 Proxy Statement, another stockholder proposal, which was submitted by the International Brotherhood of Teamsters General Fund (the “IBT”), was also included as “Proposal 5: Stockholder Proposal Regarding an Annual Sustainability Report” (the “IBT 2018 Proposal”). *Id.* page 54.

In a letter dated May 8, 2018, the Proponent informed the Company that Christian Cottaz would be the representative of the Proponent at the 2018 Annual Meeting. *See Exhibit B.* In a letter dated May 9, 2018, the SEIU General Fund, an affiliate of the Proponent and holder of 78 shares of the Company, notified the Company that Thierry Mayer would be its representative. *Id.* Separately, the IBT advised the Company in a letter dated May 8, 2018 that its designated representative was Louis Malizia at the 2018 Annual Meeting (the “IBT Representative”). *Id.*

At the 2018 Annual Meeting, immediately after the IBT 2018 Proposal was presented by the IBT Representative, Karlis Kirsis, Senior Vice President and Corporate Counsel of the Company, asked whether a representative of the Proponent was present and called upon that person to present the 2018 Proposal. The Proponent’s representative, Christian Cottaz, did not answer to Mr. Kirsis; nor did the SEIU General Fund’s representative. Instead, the IBT Representative responded to Mr. Kirsis and proceeded to present the 2018 Proposal, without presenting any evidence to demonstrate his authority to act as a representative of the Proponent. Neither the Proponent’s representative, Christian Cottaz, nor the SEIU General Fund’s representative, Thierry Mayer, made any remarks in response to the statement made by the IBT Representative, although each did later make unrelated remarks based on prepared statements during the Company’s question and answer period with stockholders. Nonetheless, the Company allowed the stockholders to vote on the 2018 Proposal as a courtesy to the stockholders. *See Exhibit C.* To date, none of the Proponent, the Proponent’s representative or the SEIU General Fund’s representative has presented any good cause or other reason for the failure to present the 2018 Proposal in accordance with SEC rules at the 2018 Annual Meeting.

The Staff has previously permitted the exclusion of stockholder proposals on the ground that a proponent or its qualified representative failed to appear and present the proposal at either of the company’s previous two year’s annual stockholders meetings, without good cause, under Rule 14a-8(h)(3). *See, e.g., Atena Inc.* (Feb. 1, 2017); *The Dow Chemical Co.* (Jan 24, 2017); *Expeditors Int’l of Washington, Inc.* (Dec. 29, 2016); *DTE Energy Co.* (Dec. 14, 2016); *Verizon Commc’ns Inc.* (Nov. 6, 2014); *State Street Corp.* (Feb 3, 2010); *Entergy Corp.* (Jan. 12, 2010). The Staff has also permitted exclusion where a proponent or its representative failed to properly present its proposal, even if the proponent or its representative was in attendance at the meeting. *See, e.g., Southwest Airlines Co.* (Feb. 23, 2012) (a representative of the proponent who was present at the meeting failed to present the proposal); *Hubbell Inc.* (Jan. 7, 2004)

Office of Chief Counsel
Division of Corporation Finance
U.S. Securities and Exchange Commission
January 29, 2019
Page 5

(same); *PACCAR Inc.* (Feb. 11, 2000) (same); *Plymouth Rubber Co., Inc.* (Feb. 16, 1995) (the proponent unilaterally withdrew the proposal at the meeting). Regardless of whether the Proponent's representative was present at the 2018 Annual Meeting, the Proponent's representative did not present the 2018 Proposal at the 2018 Annual Meeting. Rather, the IBT Representative, who did not show any evidence to demonstrate his authority to act as a representative of the Proponent, presented the 2018 Proposal.

XPO believes that the IBT Representative had no authority to act on behalf of the Proponent and was not a qualified representative of the Proponent. Prior to the 2018 Annual Meeting, the Proponent clearly communicated to the Company that Christian Cottaz was designated as a representative of the Proponent. Further, the SEIU General Fund also identified Thierry Mayer as its representative. However, neither of these individuals presented the 2018 Proposal or spoke on behalf of the 2018 Proposal, although each did later make unrelated remarks based on prepared statements during the Company's question and answer period with stockholders. Further the IBT Representative did not present any evidence to demonstrate his authority to act as a representative of the Proponent at the 2018 Annual Meeting, and, to date, the Proponent has never indicated that the IBT Representative was authorized to act as a representative of the Proponent at the 2018 Annual Meeting. The Staff has permitted exclusion where a proponent or its representative fail to appear and present the proposal at the meeting, even if the proposal was taken to a vote. *See, e.g., McDonald's Corp.* (Mar. 3, 2105); *Providence and Worcester Railroad Co.* (Jan. 17, 2013); *Ameron Int'l Corp.* (Jan. 12, 2011, recon. denied Feb.14, 2011, recon. denied Feb. 23, 2011); *E.I. du Pont de Nemours and Co.* (Jan. 16, 2009); *Intel Corp.* (Jan. 22, 2008); *Safeway Inc.* (Mar. 7, 2002); *Eastman Chemical Co.* (Feb. 27, 2001); *Entergy Corp.* (Feb. 9, 2001) (in each instance, exclusion was permitted on the ground that the proponent or its qualified representative failed to appear and present the proposal at the meeting even though the proposal was taken to a vote). Similarly, the fact that the 2018 Proposal was presented by the IBT Representative does not cure a defect caused by the failure to present the 2018 Proposal by the Proponent's authorized representative.

This case is different from *Sprint-Nextel Corp.* (Mar. 18, 2013) or *Marriott Int'l, Inc.* (Jan. 10, 2017) where exclusion was not permitted under Rule 14a-8(h)(3). In *Sprint-Nextel Corp.*, a representative of the proponent, although appearing somewhat perplexed, made a brief statement in support of the proposal submitted by the proponent.¹ In *Marriott International*,

¹ In *Sprint-Nextel Corp.*, the representative of the proponent was also a representative of another shareholder proponent, which submitted a different shareholder proposal. At first he denied that he was a representative of the proponent. After being corrected by the chairman of the company, he admitted that he was a representative of the proponent and stated: "... [the other shareholder he represented] urges you to support this proposal."

Office of Chief Counsel
Division of Corporation Finance
U.S. Securities and Exchange Commission
January 29, 2019
Page 6

Inc., although a representative of the proponent showed his lack of understanding of the proposal, he offered his support for the proposal he was authorized to present.² Unlike *Sprint-Nextel Corp.* and *Marriott International, Inc.*, neither the Proponent's representative nor the SEIU General Fund's representative made any remarks with respect to the 2018 Proposal.

Accordingly, Rule 14a-8(h)(3) permits the Company to exclude the Proposal from the 2019 Proxy Materials, and, further, to exclude any proposal to be made by the Proponent for the 2020 Annual Meeting of the Company's stockholders.

II. The Company May Exclude the Proposal Pursuant to Rule 14a-8(b) and Rule 14a-8(f)(1) Because the Proponent Failed to Provide the Requisite Proof of Continuous Ownership in Response to the Company's Proper Request for That Information

Rule 14a-8(b)(1) provides, in part, that "[i]n order to be eligible to submit a proposal, [a stockholder] must have continuously held at least \$2,000 in market value, or 1%, of the company's securities entitled to be voted on the proposal at the meeting for at least one year by the date [the stockholder] submit[s] the proposal." Staff Legal Bulletin No. 14 (July 13, 2001) ("SLB 14") provides that when the stockholder is not the registered holder of a company's securities—and the Company's review of its stock records has indicated that the Proponent is not—the stockholder "is responsible for proving his or her eligibility to submit a proposal to the company," by one of the two ways provided under Rule 14a-8(b)(2).

Rule 14a-8(b)(2) in turn states, in relevant part, that a stockholder can "submit to the company a written statement from the 'record' holder of [its] securities (usually a broker or bank) verifying that, at the time [it] submitted [its] proposal, [it] continuously held the securities for at least one year." (The second way to prove ownership, by making use of Section 13(d) or Section 16 filings, is not applicable to this situation.). The Staff has noted that "many proof of ownership letters do not satisfy this requirement because they do not verify the shareholder's beneficial ownership for the entire one-year period preceding and including the date the proposal is submitted." Staff Legal Bulletin No. 14F (Oct. 18, 2011).

Rule 14a-8(f) provides that a company may exclude a stockholder proposal if the proponent fails to provide evidence of eligibility under Rule 14a-8, including the beneficial

² In *Marriott International, Inc.*, the representative of the proponent made a statement regarding the adoption of a majority voting requirement for director elections, even though the proposal at issue was about replacing supermajority voting provisions with a simple majority vote.

Office of Chief Counsel
Division of Corporation Finance
U.S. Securities and Exchange Commission
January 29, 2019
Page 7

ownership requirements of Rule 14a-8(b), where the company timely notifies the proponent of the problem and the proponent fails to correct the deficiencies within the required time.

The Proponent submitted the Proposal via courier on December 19, 2018 (as evidenced by the UPS shipping label attached hereto as Exhibit D) and via email on December 19, 2018 (as evidenced by the time stamp of the email attached hereto as Exhibit E), which the Company received on December 19, 2018. That submission included a letter from Amalgamated Bank, the record holder of the Company's shares, dated December 19, 2018 (the "Amalgamated Bank Letter"). The Amalgamated Bank Letter certifies the Proponent's continuous ownership of the requisite number of Company shares for at least one year from December 18, 2018, but does not address the Proponent's ownership as of December 19, 2018, the date the Proposal was actually submitted.

On December 28, 2018, the Company sent the Proponent a letter, via email (and a courtesy copy via mail), notifying it of the procedural deficiency as described above (the "Deficiency Notice"). The Deficiency Notice is attached hereto as Exhibit F.³ In the Deficiency Notice, in accordance with SLB 14, Staff Legal Bulletin No. 14B (Sep. 15, 2004) ("SLB 14B") and Staff Legal Bulletin No. 14G (Oct. 16, 2012), the Company, among other things, (i) identified the submission date of the Proposal, (ii) described the ownership requirements of Rule 14a-8(b) and the type of documentation necessary to demonstrate beneficial ownership under Rule 14a-8(b), (iii) explained why the Proponent's submission was deficient and how the Proponent could satisfy Rule 14a-8(b)'s requirements and (iv) informed the Proponent that its response correcting the deficiency had to be postmarked or electronically transmitted to the Company within 14 days of its receipt of the Deficiency Notice in accordance with Rule 14a-8. To date, the Company has received no further correspondence from the Proponent regarding the procedural deficiency of the Proposal.⁴

The Staff has previously permitted the exclusion of stockholder proposals based on a proponent's failure to provide satisfactory evidence of eligibility under Rule 14a-8(b) and Rule 14a-8(f)(1), particularly when the purported proof of continuous ownership is as of a date different than the date of the proposal's submission. *See, e.g., McDonald's Corp.* (Feb. 26, 2018) (concurring in the exclusion where the proposal was submitted December 7, 2017 and the record holder's verification certified the proponent's ownership as of December 6, 2017); *Devon Energy Corp.* (Mar. 13, 2015) (concurring in the exclusion where the proposal was submitted

³ Email records confirm that the Deficiency Notice was transmitted electronically to the Proponent at 11:00 a.m. EST on December 28, 2018. A hard copy of the Deficiency Notice was also mailed to the Proponent. *See Exhibit G.*

⁴ Other relevant correspondence exchanged with the Proponent is attached as Exhibit H hereto.

Office of Chief Counsel
Division of Corporation Finance
U.S. Securities and Exchange Commission
January 29, 2019
Page 8

November 28, 2014 and the record holder's one-year verification was as of November 17, 2014); *3M Co.* (Dec. 31, 2014) (concurring in the exclusion where the proposal was submitted October 30, 2014 and the record holder's one-year verification was as of October 29, 2014); *PepsiCo, Inc.* (Jan. 10, 2013) (concurring in the exclusion where letter from the proponent's bank verified continuous ownership for one year "as of November 19, 2012," but did not verify ownership as of November 20, 2012, the date the proposal was submitted); *Verizon Commc'ns Inc.* (Dec. 23, 2009) (concurring in the exclusion where the proposal was submitted November 20, 2009 and the record holder's one-year verification was as of November 23, 2009). For the foregoing reasons, the Company may exclude the Proposal under Rule 14a-8(b) and Rule 14a-8(f)(1).

III. The Company May Exclude the Proposal Pursuant to 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 stockholder proposal from its proxy materials "[i]f the company has already substantially implemented the proposal." In its adopting release, the Commission explained that the Rule was "designed to avoid the possibility of shareholders having to consider matters which have already been favorably acted upon by the management . . ." Exchange Act Release No. 12,598, 9 SEC Dock. 1030, 1035 (1976). In determining whether a proposal has been "substantially implemented," the Staff has held that the determination "depends upon whether [the company's] particular policies, practices and procedures compare favorably with the guidelines of the proposal." *Texaco, Inc.* (Mar. 28, 1991); *see also The Goldman Sachs Group, Inc.* (Feb. 12, 2014) (concurring in the exclusion of a proposal because the company's policies, procedures and practices related to an existing committee compared favorably to the committee requested to be formed by the proposal); *Commercial Metals Co.* (Nov. 5, 2009) (concurring in the exclusion of a proposal requesting an amendment to the company's equal employment opportunity policy to explicitly prohibit discrimination based on sexual orientation and gender identity, where the policy was accordingly amended); *The Talbots, Inc.* (Apr. 5, 2002) (concurring in the exclusion of a proposal requesting that the company implement a code of conduct based on International Labor Organization human rights standards where the company had established its own business practice standards). The Staff has also permitted exclusion under Rule 14a-8(i)(10) where a company already addressed the underlying concerns and satisfied the essential objective of the proposal, even if the proposal had not been implemented exactly as proposed by the proponent. *See, e.g., Apple Inc.* (Nov. 19, 2018) (concurring in the exclusion of a proposal recommending that the company establish an international policy committee to oversee human rights and other issues identified in the proposal, where the company board committees already oversee these matters); *The Goodyear Tire & Rubber Co.* (Jan. 19, 2018) (concurring in the exclusion of a proposal requesting the elimination of provisions requiring "a greater than simple majority vote," where none of the

Office of Chief Counsel
Division of Corporation Finance
U.S. Securities and Exchange Commission
January 29, 2019
Page 9

company's governing documents contain any express provisions that require the affirmative vote of more than a majority of the voting power); *CVS Caremark Corp.* (Feb. 27, 2014) (concurring in the exclusion of a proposal requesting the elimination of provisions requiring "a greater than simple majority vote," where none of the company's governing documents contain any express provisions that require the affirmative vote of more than a majority of the voting power, other than those relating to preferred stock that may be issued in the future); *MGM Resorts Int'l* (Feb. 28, 2012) (concurring in the exclusion of a proposal requesting the issuance of a report on, among others, the company's sustainability policies and performance, where the company's sustainability report and other documents already address the subject matter of the requested report).

The Proposal urges the Board to prevent workplace sexual harassment by formalizing the Board's oversight responsibility, aligning senior executive compensation incentives, reviewing and revising, if necessary, company policies and reporting to shareholders on its actions. XPO is a global logistics company with an intricate network of people, technology and physical assets that it leverages to help its customers manage their goods more efficiently throughout their supply chains. As XPO explained in its Proxy Statement for its 2018 Annual Meeting of Stockholders, its business model relies on its strong customer service culture, which is deeply interconnected with the engagement and satisfaction of all of its employees. *See* 2018 Proxy Statement, page 19. XPO is committed to maintaining its superior work environment, and the Board and all levels of management prioritize human capital management. XPO's Board and management have already identified prevention of workplace sexual harassment as a priority, and have implemented various strategies to reduce this threat to the well-being of its employees. Therefore, as described further below, XPO has already substantially implemented every aspect of the Proposal.

The Proposal requests that the Board "formaliz[e] [its] oversight responsibility" regarding the prevention of workplace sexual harassment. The Board has already defined its oversight role in the Company's policies and public disclosures in a clear and sufficient manner. The Board has adopted Corporate Governance Guidelines, which provide that the Board, which is the ultimate decision-making body of the Company, establishes overall corporate policies. In exercising its authority, the Board has established the Company's Code of Business Ethics and other Business Ethics Policies (including the No Discrimination, Harassment or Retaliation Policy), which are applicable to all employees, officers and directors of the Company and embody the highest standards of conduct, including the prevention of sexual harassment, expected at the Company. In addition, as disclosed in the 2018 Proxy Statement, the Board provides overall risk oversight with a focus on the most significant risks facing the Company. *See* 2018 Proxy Statement, page 14. The Company's business, strategy, operations, policies,

Office of Chief Counsel
Division of Corporation Finance
U.S. Securities and Exchange Commission
January 29, 2019
Page 10

controls and prospects are regularly discussed by the Board, including discussions as to current and potential risks and approaches for assessing, monitoring, mitigating and controlling risk exposure. *Id.* To assist the Board's risk oversight function, the Board has also established four committees (Audit Committee, Compensation Committee, Nominating and Corporate Governance Committee and Acquisition Committee). Among these committees, the Audit Committee is specifically responsible for supporting the Board's oversight of the Company's compliance with legal and regulatory requirements, including the prevention of sexual harassment. As described above and below, the Company already has various conduct policies that are expressly focused on preventing sexual harassment and discrimination, and the Audit Committee Charter specifically provides that the Audit Committee will "regularly receive reports from management regarding compliance with the Company's codes of business conduct and ethics for directors, officers and employees and the procedures established to monitor compliance"

Additionally, the Board has addressed the second request of the Proposal—"aligning senior executive compensation incentives." Putting aside the Proposal's critical flaw discussed below of not providing clarity on what kind of alignment is expected, the Company has already adopted a compensation structure that strikes an appropriate balance in motivating senior executives to deliver long-term results for the stockholders, while simultaneously holding its senior leadership team accountable. As disclosed in the 2018 Proxy Statement, the Company's executive compensation consists of fixed base salaries and variable incentive compensation in the form of annual cash incentives and equity grants that emphasize pay for performance and, in the case of equity-based grants, achievement of long-term performance goals. *See* 2018 Proxy Statement, page 25. The total reward package for each of the Company's executive officers named in the 2018 Proxy Statement (collectively the "NEOs") reflects assessments of individual responsibilities, contributions to corporate performance, the company's trend on total stockholder return and overall company success in reaching strategic goals. *Id.* The Company has also established a broad clawback policy, under which the Company may recoup executive compensation in the event of certain misconduct that violates Company policies. Under employment agreements entered into by the Company and each of the NEOs (effective as of February 9, 2016), each of the NEOs is subject to clawback provisions in the event of: (1) a breach of the restrictive covenants, (2) termination of his employment by the Company for cause, or (3) his engagement in fraud or willful misconduct that contributes materially to any financial restatement or material loss to the Company, which enable the Company to require the NEOs to forfeit or repay all or a portion of his or her long-term incentive compensation and/or annual bonus under certain conditions *Id.* Page 45. Accordingly, the Company has already aligned its senior executive compensation incentives with the interests of

Office of Chief Counsel
Division of Corporation Finance
U.S. Securities and Exchange Commission
January 29, 2019
Page 11

the Company's stockholders, which is the underlying concern and essential objective of this portion of the Proposal.

The third request of the Proposal calls for the Board to review the Company's policies and revise them "if necessary." The Company has already established policies and procedures to prevent any kind of workplace harassment, including sexual harassment. The Company's Code of Business Ethics makes it clear that the Company does not tolerate harassment or discrimination on the basis of any protected category or class and that the Company's employees, officers and directors must not engage in any abusive, harassing or offensive conduct, whether verbal, physical or visual. The Company has further adopted a No Discrimination, Harassment or Retaliation Policy (the "Policy") to specifically address the prevention of workplace harassment. Not only does the Policy prohibit discrimination, harassment or retaliation in the workplace, it contains a detailed definition of "Prohibited Harassment," to provide meaningful guidance to all the Company's employees, officers and directors as to what kind of behavior constitutes unpermitted harassment at the Company.⁵ The Policy further specifies that the Company will thoroughly and promptly investigate all claims of discrimination, harassment or retaliation and will take effective remedial action, if the Company determines that improper conduct has occurred. The Policy, together with the Company's Code of Business Ethics, also sets forth reporting procedures that include the Ethics Hotline, where concerns can be reported anonymously if desired by employees. Accordingly, the Code of Business Ethics, the Policy and the Ethics Hotline provide a robust framework to address sexual harassment throughout the Company. To ensure that all employees of the Company understand and comply with the Company's values and rules of conduct, the Company distributes an Employee Handbook to each employee, which explains in detail internal policies of the Company, including the Code of Business Ethics and the Policy. The Company also provides training on the Code of Business Ethics and Employee Handbook and provides refresher training on Sexual Harassment, Discrimination and Retaliations policies as needed. Management of the Company reviews this Employee Handbook annually. The Company also regularly reviews and supplements its policies as needed, and the Board participates in various reviews and advises

⁵ The Policy provides that Prohibited Harassment refers to conduct including, but not limited to, the following: (i) "[v]erbal statements such as epithets, derogatory jokes or comments, slurs or unwanted sexual advances, invitations or comments"; (ii) "[v]isual displays such as derogatory and/or sexually-oriented posters, photography, cartoons, drawings or gestures"; (iii) "[p]hysical conduct including assault, unwanted touching, intentionally blocking normal movement or interfering with work because of sex, race or any other [p]rotected [c]ategory"; (iv) "[t]hreats and demands to submit to sexual requests as a condition of continued employment, or to avoid some other loss and offers of employment benefits in return for sexual favors"; and (v) "[c]ommunication via electronic media of any type that includes any conduct that is prohibited by state and/or federal law, or by company policy. Company systems shall not be used to transmit vulgar, profane, insulting, obscene or harassing messages."

Office of Chief Counsel
Division of Corporation Finance
U.S. Securities and Exchange Commission
January 29, 2019
Page 12

management regarding these topics. For example, on May 10, 2018, the Company engaged Tina Tchen, former Chief of Staff to First Lady Michelle Obama and Executive Director of the White House Council on Women and Girls, to conduct a review and advise the Company on workplace culture and policies. While Ms. Tchen's review was initially intended to independently identify areas of potential improvement, when allegations related to pregnancy accommodation were raised, the Company immediately expanded the scope of her retention to include an independent investigation into these allegations. The Company is committed to implementing the recommendations Ms. Tchen makes at the conclusion of her investigation into that matter. Further, as another example of the Company's culture of continuous improvement, the Company implemented a new Pregnancy Care Policy, effective as of January 1, 2019, which provides a set of progressive benefits that go well beyond industry standards and the requirements of existing law, including certain automatic accommodations and paid leave. The Pregnancy Care Policy is part of a suite of additional benefits XPO implemented on January 1, 2019 that were in progress well before the allegations arose.

The Proposal also requests that the Board report the actions taken by the Company in connection with the prevention of workplace sexual harassment. A proposal requesting a report has been "substantially implemented" when the company has made the subject matter of the requested report available publicly, such as on its website. *See, e.g., Walgreens Boots Alliance, Inc.* (Nov. 13, 2018) (concurring in the exclusion of a proposal requesting that the company issue a report on the company's implementation plans ensuring how its policies and practices are advancing and not undermining sustainable development goals, where the company published on its website a corporate social responsibility report containing relevant information); *PNM Resources, Inc.* (Mar. 30, 2018) (concurring in the exclusion of a proposal requesting that the company prepare a report identifying assets that might become stranded due to global climate change within the next fifteen years, where the company made publicly available a climate change report and other documents that address the referenced topics); *Anthem, Inc.* (Mar. 19, 2018) (concurring in the exclusion of a proposal requesting that the company issue a sustainability report on the company's ESG performance, including "GHG reduction targets and goals," where the company published a corporate responsibility report addressing its ESG initiatives including the GHG reduction targets and goals); *Mondelez Int'l, Inc.* (Mar. 7, 2014) (concurring in the exclusion of a proposal requesting the board to report on the company's process for identifying and analyzing potential and actual human rights risks of its operations and supply chain, where the company made relevant information available on its website). As discussed above, the Company has already addressed the other items requested in the Proposal and the relevant information is already disclosed publicly, including on the news page of its website. Therefore, the reporting requirement of the Proposal has been already substantially implemented.

Office of Chief Counsel
Division of Corporation Finance
U.S. Securities and Exchange Commission
January 29, 2019
Page 13

In sum, the Company has already addressed the underlying concerns and satisfied the essential objectives of the Proposal. Accordingly, the Company believes that the Proposal may be excluded under Rule 14a-8(i)(10).

IV. The Company May Exclude the Proposal Pursuant to Rule 14a-8(i)(3) Because the Proposal Is Impermissibly Vague and Indefinite.

A. Rule 14a-8(i)(3) Background.

Rule 14a-8(i)(3) permits a company to exclude a shareholder proposal if such proposal is contrary to the Commission's proxy rules, including Rule 14a-9, which prohibits materially false or misleading statements in proxy solicitation materials. Rule 14a-9 provides: "No solicitation subject to this regulation shall be made by means of any proxy statement, form of proxy, notice of meeting or other communication, written or oral, containing any statement which, at the time and in the light of the circumstances under which it is made, is false or misleading with respect to any material fact, or which omits to state any material fact necessary in order to correct any statement in any earlier communication with respect to the solicitation of a proxy for the same meeting or subject matter which has become false or misleading."

B. The Proposal Is Impermissibly Vague and Indefinite in Violation of Rule 14a-8(i)(3).

The Staff has consistently found that a stockholder proposal is excludable under Rule 14a-8(i)(3) when it is vague and indefinite so that "neither the stockholders voting on the proposal, nor the company in implementing the proposal (if adopted), would be able to determine with any reasonable certainty exactly what actions or measures the proposal requires." SLB 14B. Additionally, the Staff has determined that a stockholder proposal may be excludable as materially misleading where "any action ultimately taken by the Company upon implementation could be significantly different from the actions envisioned by shareholders voting on the proposal." *Fuqua Industries, Inc.* (Mar. 12, 1991) (concurring in the exclusion of a proposal requesting that the board prohibit "any major shareholder . . . which currently owns 25% of the [c]ompany and has three [b]oard seats from compromising the ownership of the other stockholders"); *see also Walgreens Boots Alliance, Inc.* (Oct. 7, 2016) (concurring in the exclusion of a proposal requesting that before the board takes any action "whose primary purpose is to prevent the effectiveness of shareholder vote," it will determine whether there is a "compelling justification"); *Morgan Stanley* (Mar. 12, 2013) (concurring in the exclusion of a proposal that requested the appointment of a committee to explore "extraordinary transactions" as vague and indefinite); *NYC Employees' Retirement System v. Brunswick Corporation*, 789 F.

Office of Chief Counsel
Division of Corporation Finance
U.S. Securities and Exchange Commission
January 29, 2019
Page 14

Supp. 144, 146 (S.D.N.Y. 1992) (“NYCERS”) (finding that a proposal was rightfully excluded because “the [p]roposal as drafted lacks the clarity required of a proper shareholder proposal. Shareholders are entitled to know precisely the breadth of the proposal on which they are asked to vote.”).

The Staff has permitted the exclusion of a stockholder proposal where the proposal failed to define key terms or otherwise failed to provide necessary guidance on its implementation. In these circumstances, because neither the company nor its stockholders would be able to determine with any reasonable certainty what actions or measures the proposal would require, the Staff concurred that such proposals were impermissibly vague, indefinite and therefore excludable under Rule 14a-8(i)(3). *See, e.g., AT&T Inc.* (Feb. 21, 2014) (concurring in the exclusion of a proposal requesting that the board review the company’s policies and procedures relating to the “directors’ moral, ethical and legal fiduciary duties and opportunities” to ensure the protection of privacy rights, where the proposal did not describe or define the meaning of “moral, ethical and legal fiduciary”); *Moody’s Corp.* (Feb. 10, 2014) (concurring in the exclusion of a proposal requesting that the board report on its assessment of the feasibility and relevance of incorporating “ESG risk assessments” into all of the company’s credit rating methodologies, where the proposal did not define “ESG risk assessments”); and *Morgan Stanley* (Mar. 12, 2013) (concurring in the exclusion of a proposal that requested the appointment of a committee to explore “extraordinary transactions” as vague and indefinite).

The Proposal suffers from a similar defect. While the Proposal broadly requests the Board to “strengthen [the Company’s] prevention of workplace sexual harassment,” it contains an additional four items: (i) formalizing the Board’s responsibility, (ii) aligning senior executive compensation incentives, (iii) reviewing the Company’s policies, and (iv) reporting to stockholders on the Company’s actions. Each of these items (including what it means to “strengthen”) is vague, indefinite and subject to multiple interpretations, such that it is impossible for stockholders to determine the precise board actions that they are voting to approve.

One of the key aspects of the Proposal is to “strengthen” the prevention of workplace sexual harassment. The Proposal, however, fails to specify what it means to “strengthen” and what ways should the Company’s existing policies and practices be updated or replaced to comply with the Proposal. As discussed above, the Company already has in place robust policies and promotes best practices to prevent workplace harassment. The Proposal does not explain to what extent the Company needs to take action to “strengthen” the prevention of workplace sexual harassment. Given the lack of guidance, it would be impossible for the Company or its stockholders to comprehend the precise scope of the Proposal.

Office of Chief Counsel
Division of Corporation Finance
U.S. Securities and Exchange Commission
January 29, 2019
Page 15

The Proposal also requests that the Board “formaliz[e] [its] oversight responsibility” regarding the prevention of workplace sexual harassment. As discussed above, the Board has already defined its oversight role in its internal policies and public disclosures. The Board has specifically assigned to the Audit Committee responsibility for the oversight of compliance and ethics matters. The Proposal does not provide any meaningful guidance as to what additional steps the Board should take to “formalize” its oversight role.

While the Proposal calls for “aligning senior executive compensation incentives,” the Proposal fails to specify with what senior executive compensation incentives should be aligned. As discussed above, executive compensation at the Company is designed to align its senior executive incentives with the Company’s stockholders’ interests. The Company’s executive compensation is designed to promote stockholder value creation in the long term, while discouraging excessive risk-taking at the same time. Without knowing what kind of alignment (or additional alignment) is expected by the Proposal, neither the Company nor its stockholders would be able to determine, with reasonable certainty, what supplementary measures the Company should implement.

The Proposal also calls for the Board to “review[] (and if necessary oversee[] revision of) company policies.” The Audit Committee regularly reviews the Company’s internal policies including the Code of Business Ethics and the Policy and makes amendments to these policies if the Audit Committee determines that any updates or reinforcements are appropriate for the Company, considering the circumstances surrounding the Company. The Proposal does not give any guidance on the following points, among others: (i) whether the Company’s regular review of its policies suffice; (ii) if not, how the Board should conduct additional review; and (iii) what criteria the Board should use to decide whether it is “necessary” to revise the Company’s policies. These are key information the Company needs to implement the Proposal, if adopted.

The last item in the Proposal is to “report[] to shareholders by December 31, 2019 on actions taken.” This item fails to specify how far the Board should look back when reporting the actions taken by the Company. In addition, as discussed above, the Company has already disclosed information related to the prevention of sexual harassment. The Proposal lacks guidance on the scope of the report, and, therefore, it is not clear what the Company is expected to report in addition to the information that has been already disclosed publicly.

In sum, each component of the Proposal fails to provide meaningful guidance as to what steps or actions the Company should take to comply with the Proposal, which in turn renders the Proposal, as a whole, vague, indefinite and subject to multiple interpretations to the

Office of Chief Counsel
Division of Corporation Finance
U.S. Securities and Exchange Commission
January 29, 2019
Page 16

extent that the Company's stockholders would not be able to discern what exactly they would be voting on or what would be required to implement it. Accordingly, the Company believes that the Proposal may be excluded under Rule 14a-8(i)(3).

CONCLUSION

Based on the foregoing analyses, we are of the view that (1) neither the Proponent nor its qualified representative presented the 2018 Proposal at the Company's 2018 Annual Meeting, (2) the Proponent failed to provide the requisite proof of continuous ownership in response to the Company's proper request for that information, (3) the Company has already substantially implemented the Proposal, and (4) the Proposal is impermissibly vague and indefinite in violation of Rule 14a-9. Therefore, on behalf of the Company, we respectfully request that the Staff confirm that it will not recommend any enforcement action if the Company excludes the Proposal and the Supporting Statement from the 2019 Proxy Materials.

If we can be of any further assistance in this matter, please do not hesitate to call the undersigned at (212) 403-1122. If the Staff is unable to concur with the Company's conclusions without additional information or discussions, the Company respectfully requests the opportunity to confer with members of the Staff prior to the issuance of any written response to this letter. In accordance with Staff Legal Bulletin No. 14F, Part F (Oct. 18, 2011), please send your response to this letter by email to VSapezhnikov@wlrk.com.

Very truly yours,



Viktor Sapezhnikov

Enclosures

cc: Stephen Abrecht, the Service Employees International Union Pension Plans Master Trust

Maureen O'Brien, Segal Marco Advisors

Karlis Kirsis, XPO Logistics, Inc.

Exhibit A



December 18, 2018

By overnight delivery and email: [Email Redacted]

[Email Redacted]

Secretary
XPO Logistics, Inc.
Five American Lane
Greenwich, CT 06831

RE: Service Employees International Union Pension Plans Master Trust
Shareholder Proposal

Dear Corporate Secretary:

In my capacity as Chair of the Service Employees International Union Pension Plans Master Trust (the "Fund"), I write to give notice that pursuant to the 2018 proxy statement of XPO Logistics, Inc. (the "Company"), the Fund intends to present the attached proposal (the "Proposal") at the 2019 annual meeting of shareholders (the "Annual Meeting"). The Fund requests that the Company include the Proposal in the Company's proxy statement for the Annual Meeting.

A letter from the Fund's custodian documenting the Fund's continuous ownership of the requisite amount of the Company's stock for at least one year prior to the date of this letter is being sent separately. The Fund also intends to continue its ownership of at least the minimum number of shares required by the SEC regulations through the date of the Annual Meeting. I represent that the Fund or its agent intends to appear in person or by proxy at the Annual Meeting to present the attached Proposal. I declare the Fund has no "material interest" other than that believed to be shared by stockholders of the Company generally.

We welcome the opportunity to discuss this proposal with you in more detail. Please reach out to Maureen O'Brien, Vice President and Corporate Governance Director at Segal Marco Advisors. Ms. O'Brien can be reached [Telephone # Redacted] or mobrien@segalmarco.com.

Sincerely,

A handwritten signature in blue ink, appearing to read "Stephen Abrecht".

Stephen Abrecht
Chair, SEIU Pension Plans Master Trust

cc: Renaye Manley
Maureen O'Brien

1800 Massachusetts Ave NW
Suite 301

Washington DC 20036-1202

[Telephone # Redacted]

[Telephone # Redacted]

RESOLVED that shareholders of XPO Logistics (“XPO”) urge the Board of Directors to strengthen XPO’s prevention of workplace sexual harassment by formalizing the Board’s oversight responsibility, aligning senior executive compensation incentives, reviewing (and if necessary overseeing revision of) company policies, and reporting to shareholders by December 31, 2019 on actions taken (omitting confidential and proprietary information, as well as facts relevant to claims against XPO of which XPO has notice).

SUPPORTING STATEMENT

Recently, workplace sexual harassment has generated substantial attention from the media and policy makers and has spurred significant public debate. The high-profile #metoo social media hashtag, and sexual harassment claims involving public figures like Bill O’Reilly, Steve Wynn, and Les Moonves, have highlighted the prevalence and impact of harassment. The proportion of Americans who believe workplace sexual harassment is a serious problem increased from 47% in 2011 to 64% in 2017. (Cornerstone)

Workplace sexual harassment can damage companies in several ways. First, it may harm corporate reputation, alienating consumers. A recent study reported in the Harvard Business Review found that a single sexual harassment claim makes a company seem less equitable and that sexual harassment, more than financial misconduct, is perceived as evincing a problematic corporate culture. (https://hbr.org/2018/06/research-how-sexual-harassment-affects-a-companys-public-image?utm_source=twitter&utm_campaign=hbr&utm_medium=social)

As well, a company whose corporate culture tolerates sexual harassment tends to have higher turnover and less productive employees. The Center for American Progress estimates median turnover costs at 21% of an employee’s annual salary. Productivity can fall due to absenteeism, lower motivation, greater conflict and avoiding interaction with harassers.

(https://law.vanderbilt.edu/phd/faculty/joni-hersch/2015_Hersch_Sexual_Harassment_in_the_Workplace_IZAWOL_Oct15.pdf)

Sexual harassment allegations can also lead to declines in share value. For example, the market capitalization of Wynn Resorts dropped by \$3 billion over two days after sexual harassment allegations against CEO Steve Wynn surfaced.

(<https://www.marketwatch.com/story/wynn-resorts-shares-tank-after-report-of-sexual-misconduct-by-owner-steve-wynn-2018-01-26>)

In our view, the board can play a key role in preventing and remedying sexual harassment. Law firm Wachtell, Lipton, Rosen & Katz, which counsels XPO, has noted workplace sexual misconduct “relates to key areas of board-level governance” such as “tone-at-the-top” and risk management.

<https://www.conference-board.org/retrievefile.cfm?filename=Topic-I---Board-Harassment-and-Gender-Diversity.pdf&type=subsite>).

Robust board oversight is especially important at XPO following multiple reports of sexual harassment, as well as gender and pregnancy discrimination – prompting calls for an investigation by 97 U.S. House Representatives. In 2018, at least 12 women at three XPO warehouses filed charges with the Equal Employment Opportunity Commission alleging sexual harassment and discrimination by supervisors, and in certain cases retaliation. In September, the New York Times published a front-page investigation into a spate of miscarriages at a Memphis warehouse currently operated by XPO. The report, which prompted inquiries from nine U.S. Senators into pregnancy discrimination at XPO, asserts that many of the women involved were denied doctor requests for modified work. Accounts of sexual harassment, gender bias, and pregnancy discrimination have also arisen at an XPO run warehouse in Guadalajara, Spain.

We urge shareholders to support this proposal.



December 19, 2018

By overnight delivery and email [Email Redacted]
[Email Redacted]

Secretary
XPO Logistics, Inc.
Five American Lane
Greenwich, CT 06831

RE: Service Employees International Union Pension Plans Master Trust

Dear Corporate Secretary:

As of December 18, 2018, Service Employees International Union Pension Plans Master Trust (the "Trust") held shares of XPO Logistics, Inc. ("XPO"). As of Dec. 18, 2018, Amalgamated Bank is the record owner of 3,965 shares of common stock (the "Shares") of XPO, beneficially owned by the Trust. The shares are held by Amalgamated Bank at the Depository Trust Company in our participant account #2352. The Trust has held in excess of \$2,000 worth of shares in your Company continuously since December 18, 2017.

Sincerely,

A handwritten signature in black ink that reads "Chuck Hutton".

Chuck Hutton
1st Vice President

Exhibit B



Broadridge™

51 Mercedes Way
Edgewood, New York 11717

[Telephone # Redacted]

**REQUEST FOR ADMITTANCE
TO XPO LOGISTICS INC.
ANNUAL MEETING
TO BE HELD ON 05/17/2018
RECORD DATE 04/06/2018**

KNOW ALL PERSONS BY THESE PRESENTS; AMALGAMATED BANK is the record holder of XPO LOGISTICS INC.

Further know that we hereby confirm that:

**CHRISTIAN COTTAZ
IS A REPRESENTATIVE OF
SERVICE EMPLOYEES INTERNATIONAL UNION PENSION PLANS
MASTER TRUST**

who is a holder of 3,865 shares of XPO LOGISTICS INC. Said shares have previously been voted.

DATE: 5/8/2018

This request does not guarantee admittance to the meeting. Please check the meeting materials to determine if other documentation is required, and follow the instructions to obtain such documentation AND /OR contact the Investor Relations department of said issuer for any special admittance requirements. In the event a representative has been named in this admission ticket, said representative was requested by the shareholder. Said shareholder is confirmed as the beneficial holder of record by the bank or brokerage firm.



Broadridge™

51 Mercedes Way
Edgewood, New York 11717
[Telephone # Redacted]

**REQUEST FOR ADMITTANCE
TO XPO LOGISTICS INC.
ANNUAL MEETING
TO BE HELD ON 05/17/2018
RECORD DATE 04/06/2018**

KNOW ALL PERSONS BY THESE PRESENTS; AMALGAMATED BANK is the record holder of XPO LOGISTICS INC.

Further know that we hereby confirm that:

**THIERRY MAYER
IS A REPRESENTATIVE OF
SEIU GENERAL FUND**

who is a holder of **78** shares of **XPO LOGISTICS INC.** Said shares have previously been voted.

DATE: 5/9/2018

This request does not guarantee admittance to the meeting. Please check the meeting materials to determine if other documentation is required, and follow the instructions to obtain such documentation AND /OR contact the investor Relations department of said issuer for any special admittance requirements. In the event a representative has been named in this admission ticket, said representative was requested by the shareholder. Said shareholder is confirmed as the beneficial holder of record by the bank or brokerage firm.

INTERNATIONAL BROTHERHOOD OF TEAMSTERS

JAMES P. HOFFA
General President

25 Louisiana Avenue, NW
Washington, DC 20001



KEN HALL
General Secretary-Treasurer

[Telephone # Redacted]
www.teamster.org

May 7, 2018

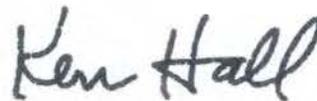
BY Email: [Email Redacted]
BY UPS GROUND

Karlis P. Kirsis, Esq., Senior Vice President
and Corporate Counsel
XPO Logistics, Inc.
5 American Lane
Greenwich, CT 06831

Dear Mr. Kirsis:

On behalf of the International Brotherhood of Teamsters General Fund, I hereby designate Louis Malizia to present the Fund's Shareholder Proposal at the Company's 2018 Annual Meeting of Shareholders.

Sincerely,



Ken Hall
General Secretary-Treasurer

KH/lm



May 7, 2018

Mr. Karlis Kirsis, Esq
Senior Vice President, Corporate Council
XPO Logistics, Inc.
Five American Lane
Greenwich, CT 06831

Re: XPO Logistics, Inc. - Cusip # 983793100

Dear Mr. Kirsis:

Amalgamated Bank is the record owner of 160 shares of common stock (the "Shares") of XPO Logistics, Inc, beneficially owned by the International Brotherhood of Teamsters General Fund. The shares are held by Amalgamated Bank at the Depository Trust Company in our participant account # 2352. The International Brotherhood of Teamsters General Fund has held the Shares as of record date of April 6, 2018 and will continue to hold the shares through the date of the shareholders annual meeting.

If you have any questions or need anything further, please do not hesitate to call me at
[Telephone # Redacted]

Very truly yours,

A handwritten signature in blue ink that reads "Jerry Marchese".

Jerry Marchese
Vice President

CC: Louis Maliza



2018 ANNUAL MEETING OF STOCKHOLDERS

DORAL ARROWWOOD
975 ANDERSON HILL ROAD, RYE BROOK, NY 10573

THURSDAY, MAY 17, 2018
10:00 A.M. EDT

ADMISSION TICKET

Name of Stockholder(s):	Service Employees International Union Pension Plans Master Trust
Shares held in the name(s) of:	Amalgamated Bank
Number of shares held:	3,865
Name(s) of persons attending:	Christian Cottaz and Larry Hernandez, translator

**Stockholders must present
a form of personal photo identification
in order to be admitted to the meeting.**



2018 ANNUAL MEETING OF STOCKHOLDERS

DORAL ARROWWOOD
975 ANDERSON HILL ROAD, RYE BROOK, NY 10573

THURSDAY, MAY 17, 2018
10:00 A.M. EDT

ADMISSION TICKET

Name of Stockholder(s):	SEIU General Fund
Shares held in the name(s) of:	Amalgamated Bank
Number of shares held:	78
Name(s) of persons attending:	Thierry Mayer

Stockholders must present
a form of personal photo identification
in order to be admitted to the meeting.



2018 ANNUAL MEETING OF STOCKHOLDERS

DORAL ARROWWOOD
975 ANDERSON HILL ROAD, RYE BROOK, NY 10573

THURSDAY, MAY 17, 2018
10:00 A.M.

ADMISSION TICKET

Name of Stockholder(s):	International Brotherhood of Teamsters General Fund
Shares held in the name(s) of:	Amalgamated Bank
Number of shares held:	160
Name(s) of persons attending:	Louis Malizia

Stockholders must present
a form of personal photo identification
in order to be admitted to the meeting.

Exhibit C

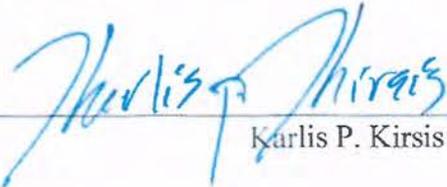
AFFIDAVIT OF KARLIS P. KIRSIS

I, Karlis P. Kirsis, being first duly sworn, deposes and says:

1. I am Senior Vice President, Corporate Counsel of XPO Logistics, Inc., a Delaware corporation (the "Company").
2. At the Company's Annual Meeting of Stockholders held on May 17, 2018 (the "2018 Annual Meeting"), I acted as secretary of the meeting.
3. In December 2017, the Company received a stockholder proposal (the "2018 Proposal") from the Service Employees International Union Pension Plans Master Trust (the "Proponent"). Another stockholder, the International Brotherhood of Teamsters General Fund (the "IBT"), also submitted a different stockholder proposal (the "IBT Proposal"). Both proposals were included in the Company's Proxy Statement for the 2018 Annual Meeting.
4. Prior to the 2018 Annual Meeting, the Proponent notified the Company that it designated Christian Cottaz as its representative at the Annual Meeting. The SEIU General Fund, an affiliate of the Proponent, also informed the Company that it designated Thierry Mayer as its representative at the 2018 Annual Meeting.
5. The IBT notified the Company that Louis Malizia would attend as the representative of the IBT at the 2018 Annual Meeting. The Company has never received documentation or other evidence that Mr. Malizia was also an authorized representative of the Proponent at the 2018 Annual Meeting.
6. At the 2018 Annual Meeting, after Bradley S. Jacobs, Chairman and Chief Executive Officer of the Company made a motion to approve the Company's proposals, Mr. Jacobs asked me to proceed to the presentation of stockholder proposals. I first asked the IBT representative, Mr. Malizia, to present the IBT Proposal. In response, Mr. Malizia presented the IBT Proposal.
7. Shortly after that, I moved on to the next proposal on the agenda, the 2018 Proposal. I asked whether the Proponent's representative was present and, if so, if he would present the 2018 Proposal. Neither the Proponent's representative, Mr. Cottaz, nor the SEIU General Fund's representative, Thierry Mayer, made any remarks in response to my announcement, although each did later make unrelated remarks based on prepared statements during the Company's question and answer period with stockholders. Instead, the IBT representative, Mr. Malizia, responded again and proceeded to present the 2018 Proposal. When Mr. Malizia presented the 2018 Proposal, he did not present any evidence to demonstrate his authority to act as a representative of the Proponent.

8. Although I was aware that Mr. Malizia was not a representative of the Proponent, I decided to submit the 2018 Proposal to a vote for the convenience of the Company's stockholders. The 2018 Proposal was not approved by the stockholders of the Company.

This 28th day of January, 2019.


Karlis P. Kirsis



NOTARY PUBLIC



Exhibit D

Segal Shipping: View/Print Label

Print the label(s): Select the Print button on the print dialog box that appears. Note: If your browser does not support this function select Print from the File menu to print the label.

Fold the printed label at the dotted line. Place the label in a UPS Shipping Pouch. If you do not have a pouch, affix the folded label using clear plastic shipping tape over the entire label.

GETTING YOUR SHIPMENT TO UPS

Customers without a Daily Pickup

Schedule a same day or future day Pickup to have a UPS driver pickup all your Segal Shipping packages.

Hand the package to any UPS driver in your area.

Take your package to any location of The UPS Store®, UPS Drop Box, UPS Customer Center, UPS Alliances (Office Depot® or Staples®) or Authorized Shipping Outlet near you. Items sent via UPS Return ServicesSM (including via Ground) are accepted at Drop Boxes.

Customers with a Daily Pickup

Your driver will pickup your shipment(s) as usual.

FOLD HERE

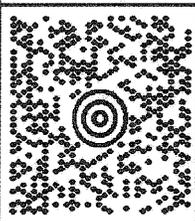
CHANELLE FOWLER <small>Telephone # Redacted</small> SEGAL MARCO ADVISORS 550 WEST WASHINGTON BLVD CHICAGO IL 60661	0.0 LBS LTR 1 OF 1	SHIP TO: SECRETARY XPO LOGISTICS INC FIVE AMERICAN LANE GREENWICH CT 06831		CT 069 9-01 <small>***</small>	UPS NEXT DAY AIR <small>***</small> 1 <small>***</small> TRACKING #:	BILLING: P/P Dept No.: 300	 <small>XCL 18.11.08 NV45 06.0A 10/2018</small>
--	---------------------------	---	---	--	--	-----------------------------------	---

Exhibit E

From: "O'Brien, Maureen" <mobrien@segalmarco.com>
Date: Wednesday, December 19, 2018 at 10:23 AM
To: Karlis Kirsis [Email Redacted], #Investors [Email Redacted]
Cc: "Cao, Anh" <ACao@segalmarco.com>, Renaye Manley <renaye.manley@seiu.org>
Subject: Shareholder Proposal Submission

[Caution: External sender, beware of phishing]

Please find attached a shareholder proposal submitted for inclusion in the 2019 proxy statement. We look forward to discussing the proposal.

Best regards,
Maureen

Maureen O'Brien
Vice President and Corporate Governance Director
Segal Marco Advisors
550 W. Washington Blvd., Suite 900
Chicago, IL 60661
[Telephone # Redacted]
mobrien@segalmarco.com

THIS MESSAGE IS INTENDED ONLY FOR THE USE OF THE ADDRESSEE. IT MAY CONTAIN PRIVILEGED OR CONFIDENTIAL INFORMATION THAT IS EXEMPT FROM DISCLOSURE. Dissemination, distribution or copying of this message by anyone other than the addressee is strictly prohibited. If you received this message in error, please notify us immediately by replying: "Received in error" and delete the message. Thank you.

[Do not open attachments or click links unless you can verify the sender. Never give anyone your XPO login password.]

Exhibit F



Karl P. Kirsis
Senior Vice President,
Corporate Counsel
XPO Logistics, Inc.
Five American Lane
Greenwich, CT 06831

December 28, 2018

VIA E-MAIL & MAIL

Service Employees International Union Pension Plans Master Trust
1800 Massachusetts Ave NW, Suite 301
Washington, D.C. 20036
Attention: Mr. Stephen Abrecht, Chair

Re: Shareholder Proposal for XPO Logistics, Inc.'s
2019 Annual Meeting of Stockholders

Dear Mr. Abrecht:

We received Service Employees International Union Pension Plans Master Trust's ("you" or "your") shareholder proposal (the "Proposal"), submitted on December 19, 2018 for inclusion in XPO Logistics, Inc.'s (the "Company") proxy materials for its 2019 Annual Meeting of Stockholders.

As you know, the Proposal is governed by Rule 14a-8 under the Securities Exchange Act of 1934, as amended ("Rule 14a-8"), which sets forth the eligibility and procedural requirements for submitting stockholder proposals, as well as various substantive bases under which companies may exclude such proposals. To assist you in complying with Rule 14a-8 requirements, we have included a complete copy of Rule 14a-8 (addressing, among other things, eligibility and procedural requirements) as well as excerpts from Staff Legal Bulletin No. 14 (addressing, among other things, proof of ownership procedures) with this letter for your reference which includes the requirements and materials that are required in order to demonstrate procedural compliance, including as to the concern raised in this letter.

Based on our review of the information provided, our records and regulatory materials, we are unable to conclude that the Proposal meets the requirements of Rule 14a-8, and we wanted to alert you to the procedural deficiencies that were identified in case you wish to provide us with additional information for us to consider within the required timeframe for doing so (and without waiving any of the Company's rights or remedies in any regards), which timeframe is no later than 14 days from the date you receive this notification.

The Proposal appears to fail to properly demonstrate your eligibility to submit a shareholder proposal under Rule 14a-8. Rule 14a-8(b) requires shareholder proponents to submit sufficient proof of their continuous ownership of the requisite amount of company securities (at least \$2,000 in market value, or 1%, of the company's shares entitled to vote on the proposal) for at least one year as of the date on which the proposal was submitted. The

Company's stock records do not indicate that you are a record owner who satisfies this requirement. In addition, to date we have not received adequate proof that you have satisfied Rule 14a-8's ownership requirements as of the date that the Proposal was submitted to the Company. The December 19, 2018 letter from Amalgamated Bank you provided is insufficient because it verifies ownership for at least one year from December 18, 2018, but the letter does not address your ownership as of December 19, 2018, the date the Proposal was actually submitted to the Company.

To remedy this defect, you must obtain, and provide to the Company, a new proof of ownership letter verifying your continuous ownership of the requisite number of Company securities for the one-year period preceding and including December 19, 2019, the date the Proposal was submitted to the Company. As explained in Rule 14a-8(b) and in SEC staff guidance, sufficient proof must be in the form of:

- (1) a written statement from the "record" holder of your shares verifying that you continuously held the requisite number of Company securities for the one-year period preceding and including the date the Proposal was submitted; or
- (2) if you have filed with the SEC a Schedule 13D, Schedule 13G, Form 3, Form 4 or Form 5, or amendments to those documents or updated forms, reflecting your ownership of the requisite number of Company shares as of or before the date on which the one-year eligibility period begins, a copy of the schedule and/or form, and any subsequent amendments reporting a change in the ownership level and a written statement that you continuously held the requisite number of Company securities for the one-year period.

Since you have not made the requisite Schedule 13D, Schedule 13G, Form 3, Form 4 or Form 5 filings (or amendments to those documents or updated forms) as of or before the date on which the one-year eligibility period began, you must obtain, and provide to the Company, proof of ownership from the DTC participant through which the securities are held, as follows:

- (1) if your broker or bank is a DTC participant, then you must submit a written statement from your broker or bank verifying that you continuously held the requisite number of Company securities for the one-year period preceding and including the date the Proposal was submitted; or
- (2) if your broker or bank is not a DTC participant, then you must submit proof of ownership from the DTC participant through which the shares are held, verifying that you continuously held the requisite number of Company securities for the one-year period preceding and including the date the Proposal was submitted.

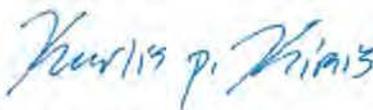
In short, if you hold shares through a bank, broker or other securities intermediary that is not a DTC participant, you will need to obtain proof of ownership from the DTC participant (or an affiliate thereof) through which the bank, broker or other securities intermediary holds the shares. This may require you to provide two proofs of ownership statements: (1) from your bank, broker or other securities intermediary confirming your ownership, and (2) the other from the DTC participant (or affiliate thereof) confirming the bank's, broker's or other securities intermediary's ownership, in each case for the requisite one-year period and in sufficient amount.

Pursuant to Rule 14a-8(f), if you wish to cure this deficiency, you are required to provide the Company with the responsive materials and other information requested hereby no later than 14 calendar days from the date that you receive this letter.

This letter does not waive or nullify any rights the Company may have regarding this matter, all of which the Company hereby expressly reserves as a matter of course. Additionally, the Company does not relinquish legal rights to later object to including any proposal of yours, including the Proposal, on related or different grounds pursuant to applicable SEC rules, and the Company continues to consider all of its available options.

If you have any comments or questions, you may send your response to me at the address on the letterhead of this letter and by e-mail to Karlis Kirsis [Email Redacted]. We thank you for your interest in the Company.

Sincerely,



Karlis Kirsis

Senior Vice President, Corporate
Counsel

Cc: Segal Marco Advisors
Maureen O'Brien
Vice President and Corporate Governance Director
mobrien@segalmarco.com

Rule 14a-8 - Proposals of Security Holders

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: I appear personally at the shareholders' meeting to present the proposal?

- (1) Either you, or your representative who is qualified under state law to present the proposal on your behalf, must attend the meeting to present the proposal. Whether you attend the meeting yourself or send a qualified representative to the meeting in your place, you should make sure that you, or your representative, follow the proper state law procedures for attending the meeting and/or presenting your proposal.
- (2) If the company holds its shareholder meeting in whole or in part via electronic media, and the company permits you or your representative to present your proposal via such media, then you may appear through electronic media rather than traveling to the meeting to appear in person.
- (3) If you or your qualified representative fail to appear and present the proposal, without good cause, the company will be permitted to exclude all of your proposals from its proxy materials for any meetings held in the following two calendar years.

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

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

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

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

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

- (3) *Violation of proxy rules:* If the proposal or supporting statement is contrary to any of the Commission's proxy rules, including § 240.14a-9, which prohibits materially false or misleading statements in proxy soliciting materials;
- (4) *Personal grievance; special interest:* If the proposal relates to the redress of a personal claim or grievance against the company or any other person, or if it is designed to result in a benefit to you, or to further a personal interest, which is not shared by the other shareholders at large;
- (5) *Relevance:* If the proposal relates to operations which account for less than 5 percent of the company's total assets at the end of its most recent fiscal year, and for less than 5 percent of its net earnings and gross sales for its most recent fiscal year, and is not otherwise significantly related to the company's business;
- (6) *Absence of power/authority:* If the company would lack the power or authority to implement the proposal;
- (7) *Management functions:* If the proposal deals with a matter relating to the company's ordinary business operations;
- (8) *Director elections:* If the proposal:
 - (i) Would disqualify a nominee who is standing for election;
 - (ii) Would remove a director from office before his or her term expired;
 - (iii) Questions the competence, business judgment, or character of one or more nominees or directors;
 - (iv) Seeks to include a specific individual in the company's proxy materials for election to the board of directors; or
 - (v) Otherwise could affect the outcome of the upcoming election of directors.

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

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

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

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

- (11) *Duplication:* If the proposal substantially duplicates another proposal previously submitted to the company by another proponent that will be included in the company's proxy materials for the same meeting;
- (12) *Resubmissions:* If the proposal deals with substantially the same subject matter as another proposal or proposals that has or have been previously included in the company's proxy materials within the preceding 5 calendar years, a company may exclude it from its proxy materials for any meeting held within 3 calendar years of the last time it was included if the proposal received:
- (i) Less than 3% of the vote if proposed once within the preceding 5 calendar years;
 - (ii) Less than 6% of the vote on its last submission to shareholders if proposed twice previously within the preceding 5 calendar years; or
 - (iii) Less than 10% of the vote on its last submission to shareholders if proposed three times or more previously within the preceding 5 calendar years; and
- (13) *Specific amount of dividends:* If the proposal relates to specific amounts of cash or stock dividends.

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

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

than 80 days before the company files its definitive proxy statement and form of proxy, if the company demonstrates good cause for missing the deadline.

- (2) The company must file six paper copies of the following:
 - (i) The proposal;
 - (ii) An explanation of why the company believes that it may exclude the proposal, which should, if possible, refer to the most recent applicable authority, such as prior Division letters issued under the rule; and
 - (iii) A supporting opinion of counsel when such reasons are based on matters of state or foreign law.

(k) Question 11: May I submit my own statement to the Commission responding to the company's arguments?

Yes, you may submit a response, but it is not required. You should try to submit any response to us, with a copy to the company, as soon as possible after the company makes its submission. This way, the Commission staff will have time to consider fully your submission before it issues its response. You should submit six paper copies of your response.

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

- (1) The company's proxy statement must include your name and address, as well as the number of the company's voting securities that you hold. However, instead of providing that information, the company may instead include a statement that it will provide the information to shareholders promptly upon receiving an oral or written request.
- (2) The company is not responsible for the contents of your proposal or supporting statement.

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

- (1) The company may elect to include in its proxy statement reasons why it believes shareholders should vote against your proposal. The company is allowed to make arguments reflecting its own point of view, just as you may express your own point of view in your proposal's supporting statement.
- (2) However, if you believe that the company's opposition to your proposal contains materially false or misleading statements that may violate our anti-fraud rule, § 240.14a-9, you should promptly send to the Commission staff and the company a letter explaining the reasons for your view, along with a copy of the company's statements opposing your proposal. To the extent possible, your letter should include specific factual information demonstrating the inaccuracy of the company's claims. Time permitting, you may wish to

try to work out your differences with the company by yourself before contacting the Commission staff.

- (3) We require the company to send you a copy of its statements opposing your proposal before it sends its proxy materials, so that you may bring to our attention any materially false or misleading statements, under the following timeframes:
- (i) If our no-action response requires that you make revisions to your proposal or supporting statement as a condition to requiring the company to include it in its proxy materials, then the company must provide you with a copy of its opposition statements no later than 5 calendar days after the company receives a copy of your revised proposal; or
 - (ii) In all other cases, the company must provide you with a copy of its opposition statements no later than 30 calendar days before its files definitive copies of its proxy statement and form of proxy under § 240.14a-6.

* * *

Division of Corporation Finance: Staff Legal Bulletin No. 14

Shareholder Proposals

Action: Publication of CF Staff Legal Bulletin

Date: July 13, 2001

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

[EXCERPT]

Rule 14a-8 contains eligibility and procedural requirements for shareholders who wish to include a proposal in a company's proxy materials. Below, we address some of the common questions that arise regarding these requirements.

1. To be eligible to submit a proposal, rule 14a-8(b) requires the shareholder to 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 of submitting the proposal. Also, the shareholder must continue to hold those securities through the date of the meeting. The following questions and answers address issues regarding shareholder eligibility.

a. How do you calculate the market value of the shareholder's securities?

Due to market fluctuations, the value of a shareholder's investment in the company may vary throughout the year before he or she submits the proposal. In order to determine whether the shareholder satisfies the \$2,000 threshold, we look at whether, on any date within the 60 calendar days before the date the shareholder submits the proposal, the shareholder's investment is valued at \$2,000 or greater, based on the average of the bid and ask prices. Depending on where the company is listed, bid and ask prices may not always be available. For example, bid and ask prices are not provided for companies listed on the New York Stock Exchange. Under these circumstances, companies and shareholders should determine the market value by multiplying the number of securities the shareholder held for the one-year period by the highest *selling* price during the 60 calendar days before the shareholder submitted the proposal. For purposes of this calculation, it is important to note that a security's highest selling price is not necessarily the same as its highest closing price.

...

c. How should a shareholder's ownership be substantiated?

Under rule 14a-8(b), there are several ways to determine whether a shareholder has owned the minimum amount of company securities entitled to be voted on the proposal at the meeting for the required time period. If the shareholder appears in the company's records as a registered holder, the company can verify the shareholder's eligibility independently. However, many shareholders hold their securities indirectly through a broker or bank. In the event that the shareholder is not the registered holder, the shareholder is responsible for proving his or her eligibility to submit a proposal to the company. To do so, the shareholder must do one of two things. He or she can submit a written statement from the record holder of the securities verifying that the shareholder has owned the securities continuously for one

year as of the time the shareholder submits the proposal. Alternatively, a shareholder who has filed a Schedule 13D, Schedule 13G, Form 4 or Form 5 reflecting ownership of the securities as of or before the date on which the one-year eligibility period begins may submit copies of these forms and any subsequent amendments reporting a change in ownership level, along with a written statement that he or she has owned the required number of securities continuously for one year as of the time the shareholder submits the proposal.

(1) Does a written statement from the shareholder's investment adviser verifying that the shareholder held the securities continuously for at least one year before submitting the proposal demonstrate sufficiently continuous ownership of the securities?

The written statement must be from the record holder of the shareholder's securities, which is usually a broker or bank. Therefore, unless the investment adviser is also the record holder, the statement would be insufficient under the rule.

(2) Do a shareholder's monthly, quarterly or other periodic investment statements demonstrate sufficiently continuous ownership of the securities?

No. A shareholder must submit an affirmative written statement from the record holder of his or her securities that specifically verifies that the shareholder owned the securities *continuously* for a period of one year as of the time of submitting the proposal.

(3) If a shareholder submits his or her proposal to the company on June 1, does a statement from the record holder verifying that the shareholder owned the securities continuously for one year as of May 30 of the same year demonstrate sufficiently continuous ownership of the securities as of the time he or she submitted the proposal?

No. A shareholder must submit proof from the record holder that the shareholder continuously owned the securities for a period of one year as of the time the shareholder submits the proposal.

d. Should a shareholder provide the company with a written statement that he or she intends to continue holding the securities through the date of the shareholder meeting?

Yes. The shareholder must provide this written statement regardless of the method the shareholder uses to prove that he or she continuously owned the securities for a period of one year as of the time the shareholder submits the proposal.

....

c. Are there any circumstances under which a company does not have to provide the shareholder with a notice of defect(s)? For example, what should the company do if the shareholder indicates that he or she does not own at least \$2,000 in market value, or 1%, of the company's securities?

The company does not need to provide the shareholder with a notice of defect(s) if the defect(s) cannot be remedied. In the example provided in the question, because the shareholder cannot remedy this defect after the fact, no notice of the defect would be required. The same would apply, for example, if

- the shareholder indicated that he or she had owned securities entitled to be voted on the proposal for a period of less than one year before submitting the proposal;
- the shareholder indicated that he or she did not own securities entitled to be voted on the proposal at the meeting;
- the shareholder failed to submit a proposal by the company's properly determined deadline; or
- the shareholder, or his or her qualified representative, failed to attend the meeting or present one of the shareholder's proposals that was included in the company's proxy materials during the past two calendar years.

In all of these circumstances, the company must still submit its reasons regarding exclusion of the proposal to us and the shareholder. The shareholder may, but is not required to, submit a reply to us with a copy to the company.

Exhibit G

From: Karlis Kirsis [Email Redacted]

Date: Friday, December 28, 2018 at 11:00 AM

To: "O'Brien, Maureen" <mobrien@segalmarco.com>

Cc: "Cao, Anh" <ACao@segalmarco.com>, Renaye Manley <renaye.manley@seiu.org>

Subject: Re: Shareholder Proposal Submission

Dear Maureen,

Thank you for reaching out.

Please find attached correspondence from the Company in connection with your proposal.

Best,

Karlis Kirsis

Senior Vice President, Corporate Counsel

XPOLogistics

Five American Lane

Greenwich, CT 06831 USA

O: [Telephone # Redacted] M: [Telephone # Redacted]

From: "O'Brien, Maureen" <mobrien@segalmarco.com>
Date: Wednesday, December 19, 2018 at 10:23 AM
To: Karlis Kirsis [Email Redacted], #Investors [Email Redacted]
Cc: "Cao, Anh" <ACao@segalmarco.com>, Renaye Manley <renaye.manley@seiu.org>
Subject: Shareholder Proposal Submission

[Caution: External sender, beware of phishing]

Please find attached a shareholder proposal submitted for inclusion in the 2019 proxy statement. We look forward to discussing the proposal.

Best regards,
Maureen

Maureen O'Brien
Vice President and Corporate Governance Director
Segal Marco Advisors
550 W. Washington Blvd., Suite 900
Chicago, IL 60661
[Telephone # Redacted]
mobrien@segalmarco.com

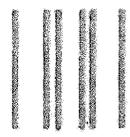
THIS MESSAGE IS INTENDED ONLY FOR THE USE OF THE ADDRESSEE. IT MAY CONTAIN PRIVILEGED OR CONFIDENTIAL INFORMATION THAT IS EXEMPT FROM DISCLOSURE. Dissemination, distribution or copying of this message by anyone other than the addressee is strictly prohibited. If you received this message in error, please notify us immediately by replying: "Received in error" and delete the message. Thank you.

[Do not open attachments or click links unless you can verify the sender. Never give anyone your XPO login password.]

SENDER: COMPLETE THIS SECTION	COMPLETE THIS SECTION ON DELIVERY
<ul style="list-style-type: none"> Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired. Print your name and address on the reverse so that we can return the card to you. Attach this card to the back of the mailpiece, or on the front if space permits. 	<p>A. Signature <input checked="" type="checkbox"/> Agent <input checked="" type="checkbox"/> Addressee</p> <p>B. Received by (Printed Name) C. Date of Delivery</p>
<p>1. Article Addressed to:</p> <p>Stephen Abrecht Service Emps. Int'l Union Pension Plans 1800 Massachusetts Ave. NW Suite 301 Washington, DC 20036</p>	<p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input type="checkbox"/> No</p> <p>3. Service Type <input type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail <input type="checkbox"/> Registered <input type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.</p> <p>4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes</p>
<p>2. Article Number (Transfer from service label)</p>	<p>***</p>

PS Form 3811, February 2004 Domestic Return Receipt 102595-02-M-1540

UNITED STATES POSTAL SERVICE
MD 207
03 JAN '19



First-Class Mail
Postage & Fees Paid
USPS
Permit No. G-10

• Sender: Please print your name, address, and ZIP+4 in this box •

Karl's P. Kirsis
XPO Logistics, Inc.
Five American Lane
Greenwich, CT 06831



Exhibit H

From: Karlis Kirsis [Email Redacted]
Sent: Tuesday, January 22, 2019 7:32 PM
To: O'Brien, Maureen (Segal Marco Advisors)
Cc: Cao, Anh; Manley, Renaye (Service Employees International Union)
Subject: Re: Shareholder Proposal Submission

Sounds good, Maureen.

Next Friday, Feb 1 would be best for us. If we could target 2 PM EST that would be ideal, but we are flexible.

Please note that we are planning to submit a no-action request to the SEC in connection with this proposal at the end of this week. We will, of course, provide a copy once submitted.

Please let me know if you would like to connect in advance of our submission. I am available.

Best regards,

Karlis Kirsis

Senior Vice President, Corporate Counsel

XPOLogistics

Five American Lane

Greenwich, CT 06831 USA

O: [Telephone # Redacted] M: [Telephone # Redacted]

From: "O'Brien, Maureen" <mobrien@segalmarco.com>
Date: Tuesday, January 22, 2019 at 8:40 AM
To: Karlis Kirsis [Email Redacted]
Cc: "Cao, Anh" <ACao@segalmarco.com>, Renaye Manley <renaye.manley@seiu.org>
Subject: RE: Shareholder Proposal Submission

[Caution: External sender, beware of phishing]

Thank you Karlis, we would appreciate discussing the proposal.

I'm available most of Jan 31 (except 12:30 – 1:30 CT) and Feb 1 (after 9:30 CT).

Renaye, do you have availability in those slots?

Maureen O'Brien

Vice President and Corporate Governance Director

Segal Marco Advisors

550 W. Washington Blvd., Suite 900

Chicago, IL 60661

[Telephone # Redacted]

mobrien@segalmarco.com

From: Karlis Kirsis [Email Redacted]
Sent: Monday, January 21, 2019 5:17 PM
To: O'Brien, Maureen <mobrien@segalmarco.com>
Cc: Cao, Anh <ACao@segalmarco.com>; Renaye Manley <renaye.manley@seiu.org>
Subject: Re: Shareholder Proposal Submission

CAUTION: This email originated from outside of The Segal Group. Do not respond, click links, or open attachments unless you recognize the sender and know the content is safe. Do not forward or reply to this email unless you know it does not contain confidential information. If you require further assistance, contact the IT Help Desk.

Dear Maureen,

Thank you for your interest in XPO.

If there is interest on your side to discuss your proposal, I would be happy to organize a call.

Please let me know if there are any particular dates or times that would suit and I can make the relevant arrangements.

Best regards,

Karlis Kirsis

Senior Vice President, Corporate Counsel

XPOLogistics

Five American Lane

Greenwich, CT 06831 USA

O: [Telephone # Redacted] M: [Telephone # Redacted]

From: "O'Brien, Maureen" <mobrien@segalmarco.com>
Date: Wednesday, December 19, 2018 at 10:23 AM
To: Karlis Kirsis [Email Redacted], #Investors [Email Redacted]
Cc: "Cao, Anh" <ACao@segalmarco.com>, Renaye Manley <renaye.manley@seiu.org>
Subject: Shareholder Proposal Submission

[Caution: External sender, beware of phishing]

Please find attached a shareholder proposal submitted for inclusion in the 2019 proxy statement. We look forward to discussing the proposal.

Best regards,
Maureen

Maureen O'Brien

Vice President and Corporate Governance Director

Segal Marco Advisors

550 W. Washington Blvd., Suite 900

Chicago, IL 60661

[Telephone # Redacted]

mobrien@segalmarco.com

THIS MESSAGE IS INTENDED ONLY FOR THE USE OF THE ADDRESSEE. IT MAY CONTAIN PRIVILEGED OR CONFIDENTIAL INFORMATION THAT IS EXEMPT FROM DISCLOSURE. Dissemination, distribution or copying of this message by anyone other than the addressee is strictly prohibited. If you received this message in error, please notify us immediately by replying: "Received in error" and delete the message. Thank you.

[Do not open attachments or click links unless you can verify the sender. Never give anyone your XPO login password.]

THIS MESSAGE IS INTENDED ONLY FOR THE USE OF THE ADDRESSEE. IT MAY CONTAIN PRIVILEGED OR CONFIDENTIAL INFORMATION THAT IS EXEMPT FROM DISCLOSURE. Dissemination, distribution or copying of this message by anyone other than the addressee is strictly prohibited. If you received this message in error, please notify us immediately by replying: "Received in error" and delete the message. Thank you.