



DIVISION OF  
CORPORATION FINANCE

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

April 10, 2019

Gary Gerstman  
Sidley Austin LLP  
ggerstman@sidley.com

Re: eBay Inc.  
Incoming letter dated January 25, 2019

Dear Mr. Gerstman:

This letter is in response to your correspondence dated January 25, 2019 concerning the shareholder proposal (the "Proposal") submitted to eBay Inc. (the "Company") by Jing Zhao (the "Proponent") for inclusion in the Company's proxy materials for its upcoming annual meeting of security holders. We also have received correspondence from the Proponent dated January 25, 2019. Copies of all of the correspondence on which this response is based will be made available on our website at <http://www.sec.gov/divisions/corpfin/cf-noaction/14a-8.shtml>. 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: Jing Zhao  
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April 10, 2019

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

Re: eBay Inc.  
Incoming letter dated January 25, 2019

The Proposal recommends that the Company “reform [its] executive compensation committee.”

There appears to be some basis for your view that the Company may exclude the Proposal under rule 14a-8(i)(3), as vague and indefinite. We note in particular your view that neither shareholders nor the Company would be able to determine with any reasonable certainty the nature of the “reform” the Proposal is requesting. Thus, the Proposal, taken as a whole, is so vague and indefinite that it is rendered materially misleading. Accordingly, we will not recommend enforcement action to the Commission if the Company omits the Proposal from its proxy materials in reliance on rule 14a-8(i)(3).

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.

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January 25, 2019

Via email [shareholderproposals@sec.gov](mailto:shareholderproposals@sec.gov)  
U.S. Securities and Exchange Commission  
Office of Chief Counsel  
Division of Corporation Finance  
100 F Street, NE, Washington, DC 20549-2736

Re: Shareholder Proposal to eBay 2019 Meeting

Ladies and Gentlemen:

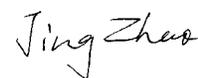
This is to rebut eBay (the Company)/Sidley Austin LLP letter of January 25, 2019. My proposal is not “impermissibly vague and indefinite” nor “inherently misleading”.

The letter indicates that the Company does not know the meaning of “reform.” While it raises the qualification issue of the board (even though most of them have higher degree than B.A.), I firmly believe that 99% of our shareholders know the meaning of reform. Specifically, in my proposal’s supporting statement, I listed that the CEO pay ratio to the median of the annual total compensation of all employees 144 to 1 is too high, and the trick to match much bigger companies should be reformed. There are many measures the Company can take to reform, including but not limited to the nine points listed in the letter. However, since I am not a board member, my proposal does not micro-manage the Company’s ordinary business operations. The board has the full flexibility to implement my proposal with applicable law and regulations.

While the other cases listed in the letter are irrelevant to my proposal, I know the case of Yahoo! Inc. (Mar. 26, 2008) because Yahoo! cheated the Congress, the SEC, and shareholders. While the abuses of the so-called Yahoo Human Rights Fund against our Chinese human rights movement are widely known, Yahoo! refused to disclose how much (in fact, how less) of the \$17.2 million fund was used for the claimed purpose.

Should you have any questions, please contact me at \*\*\* or \*\*\* .

Respectfully,



Jing Zhao

Cc: “Duque, Christine” [cduque@sidley.com](mailto:cduque@sidley.com), "Koehler, Allison" <[alkoehler@ebay.com](mailto:alkoehler@ebay.com)>, "Rome, Marc" <[mrome@ebay.com](mailto:mrome@ebay.com)>, "Gerstman, Gary D." <[ggerstman@sidley.com](mailto:ggerstman@sidley.com)>, "Reed, Andrea" <[andrea.reed@sidley.com](mailto:andrea.reed@sidley.com)>



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January 25, 2019

***Via Electronic Mail***

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

Re: eBay Inc. – Stockholder Proposal submitted by Jing Zhao

This letter is submitted on behalf of eBay Inc., a Delaware corporation (“eBay” or the “Company”), pursuant to Rule 14a-8 of the Securities Exchange Act of 1934 (the “Exchange Act”), to notify the Securities and Exchange Commission (the “Commission”) of eBay’s intention to exclude from its proxy materials for its 2019 Annual Meeting of Stockholders (the “2019 Annual Meeting”) a stockholder proposal (the “Proposal”) and statement in support thereof received from Jing Zhao (the “Proponent”). This letter is being submitted with the Commission within the time period required under Rule 14a-8(j).

Pursuant to Staff Legal Bulletin No. 14D (November 7, 2008), this letter and its exhibits are being submitted via email to *shareholderproposals@sec.gov*. A copy of this letter and its exhibits will also be sent to the Proponent.

The Company hereby respectfully requests confirmation that the staff of the Division of Corporation Finance (the “Staff”) will not recommend to the Commission that enforcement action be taken if eBay excludes the Proposal from its 2019 Annual Meeting proxy materials for the reasons set forth below.

**THE PROPOSAL**

The Proposal sets forth the following resolution to be voted on by stockholders at the 2019 Annual Meeting:

Resolved: stockholders recommend that eBay Inc. reform the company’s executive compensation committee.

The supporting statement (the “Supporting Statement”) submitted by the Proponent is set forth below:

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According to the Wall Street Journal report “Better Ways to Measure Your Boss’s Pay” (July 4, 2017): “Summary compensation tables massively understate what executives earn and don’t tell investors what they need to know.” “In 2015—the last year for which full data is available—the average pay of the 500 highest-paid U.S. executives was \$17.1 million according to fair-value estimates, but \$32.6 million according to realized pay.” Although the disclosure is not based on the CEO’s realized pay, eBay’s CEO pay ratio to the median of the annual total compensation of all employees 144 to 1 (2018 Proxy Statement p. 86) is still too high. “The median CEO salary at Japanese companies with revenue of more than ¥1 trillion is one-tenth of counterparts in the U.S., and incentive pay makes up just 14 percent of the total,... Most CEOs in the Nikkei 225 stock average get less than ¥100 million a year.” (<https://www.japantimes.co.jp/news/2016/01/06/business/japans-ceos-underpaid-underwhelming/#.W7QaovZFyas>)

One trick for the ballooning CEO pays is to match to much bigger companies. With eBay’s market value 32.220B (as of October 2, 2018), the Compensation Committee chose Adobe Systems (132.772B), Alphabet (838.981B), Amazon.com (961.489B), Cisco Systems (224.041B), facebook (460.021B), Intel (221.789B), Microsoft (882.996B), Netflix (164.229B), Paypal Holdings (102.601B), and salesforce.com (118.999B) as peer companies (Ibid. p.65).

The American economy in general, eBay in particular, cannot sustain such a high CEO pay ratio.

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A copy of the Proposal and the Supporting Statement, as well as related correspondence with the Proponent, is set forth in Exhibit A.

### **BASIS FOR EXCLUSION OF THE PROPOSAL PURSUANT TO RULE 14a-8(i)(3)**

The Company believes that it may omit the Proposal from its proxy materials for the 2019 Annual Meeting in reliance on Rule 14a-8(i)(3) because it is impermissibly vague and indefinite such that it is inherently misleading in violation of Rule 14a-9 under the Exchange Act.

#### *A. Background*

Rule 14a-8(i)(3) provides that a company may exclude a stockholder proposal from its proxy materials if the proposal or supporting statement is contrary to any of the Commission’s proxy rules. The Staff has consistently taken the position that vague and indefinite stockholder proposals are inherently misleading and therefore excludable under Rule 14a-8(i)(3) because

“neither the shareholders 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.” Staff Legal Bulletin No. 14B (September 15, 2004). The Staff has further explained that a stockholder proposal can be sufficiently misleading and therefore excludable under Rule 14a-8(i)(3) when the company and its stockholders might interpret the proposal differently such that “any action ultimately taken by the [c]ompany upon implementation [of the proposal] could be significantly different from the actions envisioned by the shareholders voting on the proposal.” *Fuqua Industries, Inc.* (Mar. 12, 1991). Such stockholder disagreement would further complicate the task of the Board in taking action to implement a proposal.

The Staff has, on many occasions, allowed the exclusion as vague and indefinite of proposals requesting certain actions but containing only general or uninformative references regarding the steps to be taken, or a set of general standards, principles or criteria that lack a precise definition or ascertainable scope. For instance, in *Alaska Air Group, Inc.* (Apr. 11, 2007), the Staff agreed that a proposal requesting the board of directors to amend the governing documents of the company to “assert, affirm and define the right of the owners of the company to set standards of corporate governance” could be excluded as vague and indefinite. In its letter to the Staff, the company argued that “standards of corporate governance” are a concept that is “sweeping in its scope,” making it impossible for the company, its board of directors or the stockholders to determine with any certainty what must be addressed to comply with the proposal. In *Johnson & Johnson* (Feb. 7, 2003), the Staff concurred that the company could exclude as vague and indefinite a proposal requesting a report on the company’s progress concerning “the Glass Ceiling Commission’s business recommendations.” In its letter to the Staff, the company noted that the proposal and supporting statement did not provide sufficient context and background information to allow stockholders and the company to understand the scope of the requested report. Also, in *Alcoa, Inc.* (Dec. 24, 2002), the Staff concurred that the company could exclude as vague and indefinite a proposal calling for the full implementation of “human rights standards.” In its letter to the Staff, the company pointed out that, although the supporting statement referenced a variety of International Labor Organization human rights goals, the reference to “standards” did not clarify for either stockholders or the company what standards were being referenced or precisely what actions were contemplated under the proposal. Similarly, in *Puget Energy, Inc.* (Mar. 7, 2002), the Staff concurred in the exclusion of a stockholder proposal under Rule 14a-8(i)(3) where the proposal requested that the company’s board implement “a policy of improved corporate governance” and included a broad array of unrelated topics that could be covered by such a policy. *See also Microsoft Corp.* (Oct. 7, 2016) (concurring in the exclusion of a stockholder proposal under Rule 14a-8(i)(3) where the proposal requested that the board make a determination that there is a “compelling justification” before taking any action preventing “the effectiveness of a shareholder vote”); *Yahoo! Inc.* (Mar. 26, 2008) (concurring with the exclusion under Rule 14a-8(i)(3) of a proposal requesting that the board establish “a new policy doing business in China, with the help from China’s democratic activists and human/civil rights movement”); *Bank of America Corp.* (June 18, 2007)

(concurring with the exclusion under Rule 14a-8(i)(3) of a proposal requesting that the board compile a report “concerning the thinking of the [d]irectors concerning representative payees”); *Kroger Co.* (Mar. 19, 2004) (concurring with the exclusion under Rule 14a-8(i)(3) of a proposal requesting that the company prepare a sustainability report based on the Global Reporting Initiative’s sustainability reporting guidelines, where the company argued that the proposal’s “extremely brief and basic description of the voluminous and highly complex Guidelines” did not adequately inform the company of the actions necessary to implement the proposal).

The courts have also ruled on cases involving similar proposals, finding that “shareholders are entitled to know precisely the breadth of the proposal on which they are asked to vote” and that a proposal should be excluded when “it [would be] impossible for the board of directors or the stockholders at large to comprehend precisely what the proposal would entail.” *New York City Employees’ Retirement System v. Brunswick Corp.*, 789 F. Supp. 144, 146 (S.D.N.Y. 1992); *Dyer v. SEC*, 287 F.2d 773, 781 (8th Cir. 1961).

Under these standards, the Proposal is so vague and indefinite as to be materially misleading, and therefore excludable under Rule 14a-8(i)(3) for the reasons discussed below.

### *B. Analysis*

The Proposal requests stockholders to recommend that the Company “reform [its] executive compensation committee.”<sup>1</sup> “Reform” is an extensive, multifaceted undertaking, and based only upon the little guidance contained in the Proposal and Supporting Statement as to the nature of the requested “reform,” the Company and its stockholders will not be able to determine with any certainty the nature of the “reform” the Proposal is requesting. In fact, the Company and each of its stockholders could have a varying range of views on whether any “reform” is warranted and envision different strategies for reform, and any “reform” implemented by the Company could be significantly different from the actions envisioned by the stockholders voting on the Proposal. For example:

(1) Does Proposal seek changes to the organizational or structural aspects of the Compensation Committee?

(2) Does the desired “reform” encompass a change(s) to the composition of the Compensation Committee?

(3) Does the Proposal contemplate changing the size or leadership of the

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<sup>1</sup> Note that the Company does not have an “executive compensation committee.” Rather, the Company has a Compensation Committee which fulfills the compensation-related responsibilities required by the rules of the Commission and The Nasdaq Stock Market—where the Company’s common stock is listed and traded.

Compensation Committee?

(4) Does the Proposal seek to change how members are selected for appointment to the Compensation Committee?

(5) Should the Proposal be understood to require the Company to implement changes to the procedural aspects of the Compensation Committee?

(6) Would changes with respect to the Compensation Committee's approach to agenda-setting, quorum requirements, voting procedures or items with respect to meetings be responsive to the Proposal?

(7) Is the desired reform related to any specific aspect of the Compensation Committee charter or the duties or responsibilities of the Compensation Committee as set forth therein?

(8) Is the desired reform related to any substantive changes to the Company's executive compensation program, peer groups, methodologies for determining compensation awards or one of the many other areas involved in executive compensation matters?

(9) Taking into account the Supporting Statement, is the Proposal intended to seek changes designed to change the Company's disclosed pay ratio, and if so, what specific actions would be contemplated by the Proposal?

The above is a non-exhaustive (and speculative) list of possible interpretations of the Proposal. Thus, even under a fair and charitable reading of the Proposal, numerous different actions arguably could be required if the Proposal were to be implemented, and neither the Company nor stockholders are able to discern the intended scope or content of the particular actions sought by the Proposal.

The Supporting Statement further creates confusion as to the meaning of the Proposal. The Supporting Statement references summary compensation tables, CEO realized pay, pay ratios, the selection of peer companies used as a reference by the Compensation Committee, as well as median CEO salaries and comparisons to Japanese companies. Accordingly, the Supporting Statement does not provide any clarity regarding the nature of the reform that the Proposal is requesting the Company to implement. It is not clear how these references support or explain the Proposal. Without further information, it is unclear what changes the Proponent is seeking in order to "reform the company's executive compensation committee," as stated in the Proposal.

"Reform" is a concept that is sweeping in scope, making it impossible for the Company

and its stockholders to determine with any certainty what must be addressed in order to comply with the Proposal, similar to the vague reference to “standards of corporate governance” in the proposal excluded in *Alaska Air*. As in *Johnson & Johnson*, the Proposal and Supporting Statement failed to provide any context and background information to allow the Company and its stockholders to understand the scope of the reform being requested. Similar to the proposal in *Alcoa*, the references in the Supporting Statement do nothing to clarify the Proposal; in fact, they create further confusion as to the nature of the action that the Proposal contemplates.

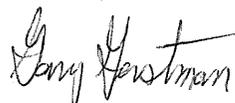
The lack of guidance in the Proposal and Supporting Statement as to the nature and scope of the “reform” requested and the inherent diversity of views regarding what may constitute compliance with the Proposal make it inevitable that the stockholders would not know what they were voting upon. As with the stockholder proposals cited above, the Proposal is materially vague and indefinite. As a result, the Company believes that the Proposal may be excluded from the proxy materials for the 2019 Annual Meeting in its entirety pursuant to Rule 14a-8(i)(3).

### CONCLUSION

Based upon the foregoing analysis, we respectfully request that the Staff confirm that it will take no action if the Company excludes the Proposal from its proxy materials for the 2019 Annual Meeting.

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

Sincerely,



Gary Gerstman

### Attachments

cc: Marie Oh Huber, eBay Inc.  
Marc Rome, eBay Inc.  
Allison Koehler, eBay Inc.  
Jing Zhao

**Exhibit A**  
(see attached)

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October 4, 2018

eBay Inc.  
Corporate Secretary  
2025 Hamilton Avenue, San Jose,  
California 95125  
(via certified mail & [ir@ebay.com](mailto:ir@ebay.com))

Re: Proposal to 2019 Stockholders Meeting

Dear Secretary:

Enclosed please find my stockholder proposal for inclusion in our company's proxy materials for the 2019 annual meeting of stockholders and a letter confirming my eBay shares. I will continuously hold these shares until the 2019 annual meeting of stockholders.

Furthermore, I would suggest that you provide an email (rather than [ir@ebay.com](mailto:ir@ebay.com)) to receive proposals from stockholders.

Should you have any questions, please contact me at

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or

Yours truly,



Jing Zhao

Enclosure: Stockholder proposal  
Letter of shares

## **Stockholder Proposal on Executive Compensation Reform**

Resolved: stockholders recommend that eBay Inc. reform the company's executive compensation committee.

### **Supporting Statement**

According to the Wall Street Journal report "Better Ways to Measure Your Boss's Pay" (July 4, 2017): "Summary compensation tables massively understate what executives earn and don't tell investors what they need to know." "In 2015—the last year for which full data is available—the average pay of the 500 highest-paid U.S. executives was \$17.1 million according to fair-value estimates, but \$32.6 million according to realized pay." Although the disclosure is not based on the CEO's realized pay, eBay's CEO pay ratio to the median of the annual total compensation of all employees 144 to 1 (2018 Proxy Statement p. 86) is still too high. "The median CEO salary at Japanese companies with revenue of more than ¥1 trillion is one-tenth of counterparts in the U.S., and incentive pay makes up just 14 percent of the total,... Most CEOs in the Nikkei 225 stock average get less than ¥100 million a year."

(<https://www.japantimes.co.jp/news/2016/01/06/business/japans-ceos-underpaid-underwhelming/#.W7QaovZFyas>)

One trick for the ballooning CEO pays is to match to much bigger companies. With eBay's market value 32.220B (as of October 2, 2018), the Compensation Committee chose Adobe Systems (132.772B), Alphabet (838.981B), Amazon.com (961.489B), Cisco Systems (224.041B), facebook (460.021B), Intel (221.789B), Microsoft (882.996B), Netflix (164.229B), Paypal Holdings (102.601B), and salesforce.com (118.999B) as peer companies (Ibid. p.65).

The American economy in general, eBay in particular, cannot sustain such a high CEO pay ratio.



October 4, 2018

Jing Zhao

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Re: Your TD Ameritrade account ending in \*\*\*

Dear Jing Zhao,

Thank you for allowing me to assist you today. As you requested, this letter serves as confirmation that you have continuously held 100 shares of Ebay Inc. Com (EBAY) in the above referenced TD Ameritrade account since October 28, 2016, until today.

If we can be of any further assistance, please let us know. Just log in to your account and go to Client Services > Message Center to write us. You can also call Client Services at 800-669-3900. We're available 24 hours a day, seven days a week.

Sincerely,

A handwritten signature in black ink that reads 'Veronica Tucker-Bernard'.

Veronica Tucker-Bernard  
Resource Specialist  
TD Ameritrade

This information is furnished as part of a general information service and TD Ameritrade shall not be liable for any damages arising out of any inaccuracy in the information. Because this information may differ from your TD Ameritrade monthly statement, you should rely only on the TD Ameritrade monthly statement as the official record of your TD Ameritrade account.

Market volatility, volume, and system availability may delay account access and trade executions.

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