

# CRAVATH, SWAINE & MOORE LLP

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December 14, 2020

International Business Machines Corporation  
Shareholder Proposal of John Chevedden  
Securities Exchange Act of 1934—Rule 14a-8

Ladies and Gentlemen:

I am writing on behalf of our client, International Business Machines Corporation, a New York corporation (“IBM” or the “Company”), in accordance with Rule 14a-8(j) of the Securities Exchange Act of 1934, as amended, to respectfully request that the Staff of the Division of Corporation Finance (the “Staff”) of the Securities and Exchange Commission (the “Commission”) concur with our view that IBM may exclude a shareholder proposal and supporting statement (the “Proposal”) submitted by Mr. John Chevedden (“Mr. Chevedden” or the “Proponent”) from the proxy materials to be distributed by IBM in connection with its 2021 annual meeting of shareholders (the “2021 proxy materials”). A copy of the Proposal is attached to this letter as Exhibit A. IBM has advised us as to the factual matters set forth below.

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

- filed this letter with the Commission no later than eighty (80) calendar days before the Company intends to file its definitive 2021 proxy materials with the Commission; and
- concurrently sent copies of this correspondence to the Proponent.

Rule 14a-8(k) and Staff Legal Bulletin No. 14D (Nov. 7, 2008) provide that shareholder proponents are required to send companies a copy of any correspondence that the proponents elect to submit to the Commission or the Staff. Accordingly, the Company is 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 and to Natalie Wilmore, Counsel of the Company.

## THE PROPOSAL

The text of the Proponent's Proposal is set forth in [Exhibit A](#).

### BASES FOR EXCLUSION

On behalf of the Company, we hereby respectfully request that the Staff concur in the Company's view that it may exclude the Proposal from the 2020 proxy materials pursuant to Rule 14a-8(i)(3) because substantial portions of the Proposal are materially false and misleading and, therefore, violate Rule 14a-9.

#### **Background**

The Proponent submitted an initial proposal to the Company in a letter via e-mail on September 29, 2020 (the "Initial Submission"); a copy of which is attached as [Exhibit B](#). The Proponent had submitted substantially the same proposal on the same topic in each of the prior two years. On November 2, 2020, the Proponent submitted the Proposal via e-mail, which revised the Initial Submission. According to Staff Legal Bulletin No. 14F (Oct. 18, 2011), a revised proposal effectively withdraws the initial proposal, and any no-action request submitted by the Company must be done so with respect to the revised proposal. Therefore, the Proponent's submission of the Proposal effectively withdrew his Initial Submission.

Upon reading the Proposal, the Company determined that substantial portions of the Proposal were materially false and misleading. The Company subsequently contacted the Proponent via email on November 20, 2020, November 24, 2020, November 25, 2020 and December 1, 2020 and in each case pointed out the factual inaccuracies contained in the Proposal; a copy of all such e-mail correspondence is attached as [Exhibit C](#) (the "Resolution Correspondence"). Additionally, the Company offered on multiple occasions throughout the Resolution Correspondence to revise the Proposal in order to correct the false and misleading statements set forth in the discussion below (primarily the reference to a voting requirement that does not exist); the Proponent rejected the Company's attempts to correct the false and misleading statements, as well as the Company's multiple offers to resolve the issue over a phone call.

#### **Analysis**

### **THE PROPOSAL MAY BE EXCLUDED PURSUANT TO RULE 14a-8(i)(3) BECAUSE SUBSTANTIAL PORTIONS OF THE PROPOSAL ARE MATERIALLY FALSE AND MISLEADING, IN VIOLATION OF RULE 14A-9.**

Rule 14a-8(i)(3) permits the exclusion of a shareholder proposal if the proposal or supporting statement is contrary to any of the Commission's proxy rules or regulations, including Rule 14a-9, which prohibits materially false or misleading statements in proxy soliciting materials. The Staff recognized in Staff Legal Bulletin No. 14B (Sept. 15, 2004) ("SLB 14B") that the exclusion of all or a part of a proposal or supporting statement may be appropriate where, among other circumstances, the company demonstrates objectively that a factual statement is materially false or misleading. Since publication of SLB 14B, the Staff has allowed the exclusion of proposals, supporting statements, or portions thereof, on the basis that such proposals or supporting statements included materially false or misleading statements.<sup>1</sup>

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<sup>1</sup> See, e.g., [Ferro Corp.](#) (Mar. 17, 2015) (concurring in the exclusion of a proposal requesting that the company take steps to change the company's jurisdiction of incorporation to Delaware based on misstatements of Ohio law, which improperly suggested that the shareholders would have increased rights if the Delaware law governed the company instead of Ohio law); [Rite Aid Corp.](#) (Mar. 13, 2015) (permitting exclusion of a sentence included in the supporting statement falsely claiming, among other things, that the Commission supported the proposal); [General Electric Co.](#) (Jan. 6, 2009) (concurring in the exclusion of a proposal under which a director who receives greater than 25% withheld votes will not serve on key board committees for two years after the annual meeting).

The topic of the Proposal is the shareholder right to act by written consent. The Proponent's Initial Submission, as well as the proposal the Proponent submitted for the 2020 annual meeting on the same topic, contained the following sentence in the accompanying supporting statements (emphasis added):

- “Our company requires 25% of shares to combine their holdings to call a special meeting — a higher level than the 10% of shares permitted by many states of incorporation.”

This statement, as presented in the proposal the Proponent submitted for the 2020 annual meeting and in his Initial Submission for this year, is an accurate statement. However, the Proponent revised this sentence in the Proposal to read as follows (emphasis added):

- “IBM now requires 40% of shares that cast ballots at the annual meeting to call a special shareholder meeting — a higher level than the 10% of shares outstanding permitted by many states of incorporation.”

In addition, in the Proposal the Proponent revised the “25%” references to “40%”. These references and the revised sentence above (the “Revised Text”) are materially false and misleading because the Company has no such 40% requirement. The only relevant voting requirement the Company has is contained in Article II Section 3 of the Company’s by-laws, which states (emphasis added):

- “Special meetings of the stockholders, unless otherwise provided by law, may be called at any time by the Chairman of the Board or by the Board, and shall be called by the Board upon written request delivered to the Secretary of the Corporation by the holder(s) with the power to vote and dispose of at least 25% of the outstanding shares of the Corporation.” An excerpted copy of the Company’s by-laws containing this provision is attached as Exhibit D.

This provision requires holders of at least 25% of the Company’s outstanding shares (not 40% of shares that cast ballots at the annual meeting) to call a special meeting of the shareholders. The Proponent is creating a false and misleading impression that the 25% voting requirement in the Company’s by-laws is actually a 40% voting requirement because of the approximate number of shares that happened to vote at the Company’s 2020 annual meeting. The Company does not impose a limit on the number of shares that may be voted at an annual meeting of shareholders, nor does it determine how many shareholders attend the annual meeting. The number of shares that vote in the Company’s annual meeting is not within the Company’s control, and is entirely irrelevant to the number of outstanding shares that are required to call a special meeting of the shareholders. Furthermore, the number of shares that vote in the Company’s annual meeting varies by year and is only determinable after a meeting has concluded, and therefore is a historical number that should not be relied upon as a forward-looking projection of a future annual meeting.

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because the company had majority voting and did not typically allow shareholders to withhold votes in director elections); Entergy Corp. (Feb. 14, 2007) (permitting exclusion of a proposal regarding a requested shareholder vote on the compensation committee report where the supporting statement made objectively false statements regarding executive compensation, director committee membership, and director stock ownership); Johnson & Johnson (Jan. 31, 2007) (concurring in the exclusion of a proposal to provide shareholders a vote on an advisory management resolution . . . to approve the report of the Compensation Committee in the proxy statement because the proposal would create the false implication that shareholders would be voting on executive compensation); State Street Corp. (Mar. 1, 2005) (concurring in the exclusion of a proposal requesting that the board of directors be exempt from a section of state law that had been recodified and was thus no longer applicable); General Magic, Inc. (May 1, 2000) (concurring in the exclusion of a proposal requesting that the company make “no more false statements” to its shareholders because the proposal created the false impression that the company tolerated dishonest behavior by its employees when in fact the company’s corporate policies had specific guidelines addressing dishonest behavior).

Additionally, the Proponent's attempt to then create a comparison of "40% of shares that cast ballots at the annual meeting" to "10% of shares outstanding permitted by many states of incorporation" is a purposefully misleading comparison because it does not make the comparison on an "apples-to-apples" basis. As outlined above, the voting requirement in the Company's by-laws is "25% of outstanding shares", which is the analogous comparison to the Proponent's reference to various states' "10% of outstanding shares" statutory thresholds. It is materially misleading to compare a requirement relating to total outstanding shares to a historical statistic relating to the number of shareholders that chose to participate in a given year's annual meeting.

In each of the prior two years, the Proponent's submission of a substantially identical proposal failed to receive the requisite number of passing votes. We would note again that the Proponent properly cited the correct 25% requirement from the Company's by-laws in both the substantially identical proposal he submitted for the Company's 2020 annual meeting of shareholders as well as his Initial Submission for this year. Accordingly, the Company suspects that the Proponent is now attempting to present false and misleading information in the Proposal in order to gain the favorable outcome he has been unable to achieve when citing the correct 25% voting requirement in the past.

As is evident in the Resolution Correspondence, the Company made numerous attempts to resolve this issue amicably with the Proponent. Rather than asking the Proponent to withdraw the Proposal altogether, the Company directed the Proponent to the correct voting requirement in the IBM by-laws and proposed minor edits to the Proposal in order to correct the false and misleading portions (including by allowing the Proponent to revert back to the language of his Initial Submission). The Proponent rejected each of the Company's attempts to revise the Proposal, as well as the Company's offers to discuss the issue over the phone. Accordingly, we ask that the Staff concur that the Proposal may be excluded in its entirety pursuant to Rule 14a-8(i)(3) because substantial portions of the Proposal are materially false and misleading, in violation of Rule 14a-9.

## CONCLUSION

Based on the foregoing analysis, the Company respectfully requests that the Staff confirm that it will take no enforcement action if IBM excludes the Proponent's entire submission from its 2021 proxy materials for the reasons set forth above. To the extent the Staff does not concur that the Proposal may be excluded in its entirety, the Company requests that the Staff concur with the Company's view and not recommend enforcement action to the Commission if the Company reverts the Revised Text of the Proposal to the corresponding language contained in the Proponent's Initial Submission. We would be pleased to provide the Staff with any additional information, and answer any questions that you may have regarding this letter. I can be reached at (212) 474-1146 or [sburns@cravath.com](mailto:sburns@cravath.com). Please copy Natalie Wilmore, Counsel of the Company, on any related correspondence at [natalie.wilmore@ibm.com](mailto:natalie.wilmore@ibm.com).

We are sending the Proponent a copy of this submission. Rule 14a-8(k) provides that a shareholder proponent is required to send a company a copy of any correspondence that the proponent elects to submit to the Commission or the Staff. As such, the Proponent is respectfully reminded that if he elects to submit additional correspondence to the Staff with respect to this matter, a copy of that

correspondence should concurrently be furnished directly to my attention and to the attention of Natalie Wilmore, Counsel of the Company, at the addresses set forth below in accordance with Rule 14a-8(k).

Thank you for your attention to this matter.

Sincerely yours,

Stephen L. Burns

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

VIA EMAIL: shareholderproposals@sec.gov

Encls.

Copies w/encls. to:

Natalie Wilmore  
Counsel  
International Business Machines Corporation  
Corporate Law Department  
One New Orchard Road, Mail Drop 301  
Armonk, New York 10504

VIA EMAIL: [natalie.wilmore@ibm.com](mailto:natalie.wilmore@ibm.com)

Mr. John Chevedden  
\*\*\*

VIA EMAIL: \*\*\*

Exhibit A  
to IBM's No-Action Letter Request

Shareholder Proposal of **Mr. John Chevedden**

International Business Machines Corporation

2021 Proxy Statement

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**JOHN CHEVEDDEN**

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Mr. Frank Sedlarcik  
Corporate Secretary  
International Business Machines Corporation (IBM)  
One New Orchard Road  
Armonk NY 10504  
PH: 914 499-1900  
FX: 914-765-6021

*REVIEWED 01 NOV 2020*

Dear Mr. Sedlarcik,

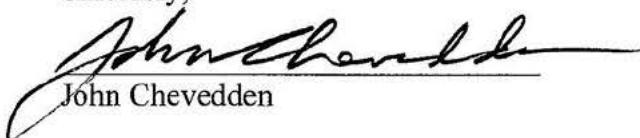
This Rule 14a-8 proposal is respectfully submitted in support of the long-term performance of our company.

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

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

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

Sincerely,

  
John Chevedden

*September 29, 2020*  
Date

cc: Stuart S. Moskowitz <smoskowi@us.ibm.com>  
Senior Counsel, IBM Legal Department  
FX: 845-491-3203  
Evan Barth <barthe@us.ibm.com>  
Natalie Wilmore <Natalie.Wilmore@ibm.com>

#### **Proposal 4 – Shareholder Right to Act by Written Consent**

Shareholders request that our board of directors undertake such steps as may be necessary to permit written consent by shareholders entitled to cast the minimum number of votes that would be necessary to authorize the action at a meeting at which all shareholders entitled to vote thereon were present and voting. This includes shareholder ability to initiate any appropriate topic for written consent.

IBM now requires 40% of shares that cast ballots at the annual meeting to call a special shareholder meeting – a higher level than the 10% of shares outstanding permitted by many states of incorporation. Dozens of Fortune 500 companies provide for both shareholder rights – to act by written consent and to call a special meeting.

Our higher 40% threshold for shareholders to call a special meeting is one more reason that we should have the right to act by written consent. Plus our higher 40% threshold has bureaucratic pitfalls that trigger minor shareholder errors that could mean that 60% of shares would need to ask for a special meeting in order to be sure of obtaining the threshold of 40% of requests without errors.

This proposal topic won 42% support at our 2020 annual meeting in spite of misleading management opposition to it. This was not exactly a fair election because of the misleading IBM management statement next to the 2020 proposal. IBM management said written consent could enable shareholders to initiate written consent without giving notice to all shareholders. To the contrary written consent can be adopted with the safeguard that all shareholders are to be given notice.

In 2020 IBM management said it preferred a special shareholder meeting to written consent. With the widespread use of online shareholder meetings in 2020 shareholders no longer have the right to discuss concerns with other shareholders and with the directors at a special shareholder meeting which can now be a stilted formalities online meeting.

Shareholders are also severely restricted in making their views known at an online special shareholder meeting because all their questions and comments can be arbitrarily screened out. For instance Goodyear management became a leader in this shareholder disenfranchisement by hitting the mute button right in the middle of a formal shareholder proposal presentation at its 2020 online shareholder meeting.

Taking action by written consent in place of a meeting is a means shareholders can use to raise important matters outside the normal annual meeting cycle like the election of a new director.

This is important to consider after our Lead Director, Michael Eskew, received the highest negative votes of any director in 2019 and 2020 – 92 million negative votes. With long-tenure of 15-years Mr. Eskew can hardly be considered impendent. Shirley Jackson, who received the second highest negative votes in 2019 is no longer on the Board. IBM stock has fallen from \$210 since 2013.

Please vote yes:

#### **Shareholder Right to Act by Written Consent – Proposal 4**

[The line above – *Is* for publication. Please assign the correct proposal number in the 2 places.]

**Notes:**

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

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

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

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

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

The stock supporting this proposal will be held until after the annual meeting and the proposal will be presented at the annual meeting. Please acknowledge this proposal promptly by email  
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The graphic below is intended to be placed at the conclusion of the rule 14a-8 proposal. The graphic would be the same size at the largest graphic (and accompanying bold or highlighted text with the graphic) or any highlighted executive summary that management uses in conjunction with a management proposal or a shareholder proposal in the 2021 proxy.

Proponent is willing to discuss the in unison elimination of both shareholder graphics and management graphics in the proxy in regard to specific proposals.

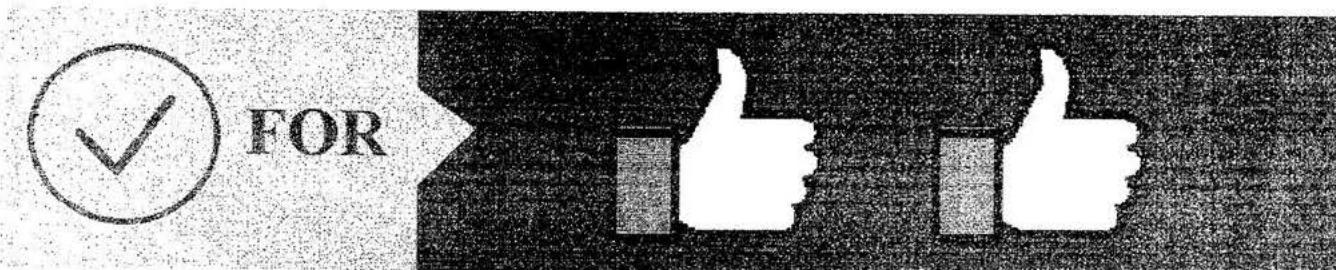


Exhibit B  
to IBM's No-Action Letter Request

Initial Submission of **Mr. John Chevedden**

International Business Machines Corporation

2021 Proxy Statement

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JOHN CHEVEDDEN

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Mr. Frank Sedlarcik  
Corporate Secretary  
International Business Machines Corporation (IBM)  
One New Orchard Road  
Armonk NY 10504  
PH: 914 499-1900  
FX: 914-765-6021

Dear Mr. Sedlarcik,

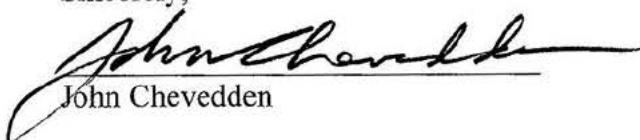
This Rule 14a-8 proposal is respectfully submitted in support of the long-term performance of our company.

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

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

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

Sincerely,



John Chevedden

September 29, 2020

Date

cc: Stuart S. Moskowitz <smoskowi@us.ibm.com>  
Senior Counsel, IBM Legal Department  
FX: 845-491-3203  
Evan Barth <barthe@us.ibm.com>  
Natalie Wilmore <Natalie.Wilmore@ibm.com>

**Proposal 4 – Shareholder Right to Act by Written Consent**

Shareholders request that our board of directors undertake such steps as may be necessary to permit written consent by shareholders entitled to cast the minimum number of votes that would be necessary to authorize the action at a meeting at which all shareholders entitled to vote thereon were present and voting. This includes shareholder ability to initiate any appropriate topic for written consent.

Our company requires 25% of shares to combine their holdings to call a special meeting – a higher level than the 10% of shares permitted by many states of incorporation. Dozens of Fortune 500 companies provide for both shareholder rights – to act by written consent and to call a special meeting.

Our higher 25% threshold for shareholders to call a special meeting is one more reason that we should have the right to act by written consent. Plus our higher 25% threshold has bureaucratic pitfalls that trigger minor shareholder errors that could mean that 50% of shares would need to ask for a special meeting in order to be sure of obtaining the threshold of 25% of requests without errors. One can be sure that management will have a sharp eye to spot any errors.

This proposal topic won 42% support at our 2020 annual meeting in spite of management opposition to it. However this was not exactly a fair election because IBM had a misleading statement next to the 2020 proposal. IBM management said written consent could enable shareholders to initiate written consent without giving notice to all shareholders. To the contrary written consent can be adopted with the safeguard that all shareholders are to be given notice.

Additionally there is new information on the devalued rights of shareholders at a special shareholder meeting since the publication of the 2020 IBM proxy. In 2020 IBM management said it preferred a special shareholder meeting to written consent. With the widespread use of internet shareholder meetings in 2020 shareholders no longer have the right to discuss concerns with other shareholders and with the directors at a special shareholder meeting which can now be an internet meeting.

Shareholders are also severely restricted in making their views known at an internet special shareholder meeting because all their questions and comments can be arbitrarily screened out by our management under the internet meeting format. For instance Goodyear management became a leader in this shareholder disenfranchisement by hitting the mute button right in the middle of a formal shareholder proposal presentation at its 2020 shareholder meeting.

Taking action by written consent in place of a meeting is a means shareholders can use to raise important matters outside the normal annual meeting cycle like the election of a new director.

This is important to consider after our Lead Director, Michael Eskew, received the highest negative votes of any director in 2019 and 2020 – 92 million negative votes. With long-tenure of 15-years Mr. Eskew can hardly be considered impendent. Shirley Jackson, who received the second highest negative votes in 2019 is no longer on the Board. IBM stock has fallen from \$210 to \$120 since 2013.

Please vote yes:

**Shareholder Right to Act by Written Consent – Proposal 4**

[The line above – *Is* for publication. Please assign the correct proposal number in the 2 places.]

Notes:

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

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

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

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

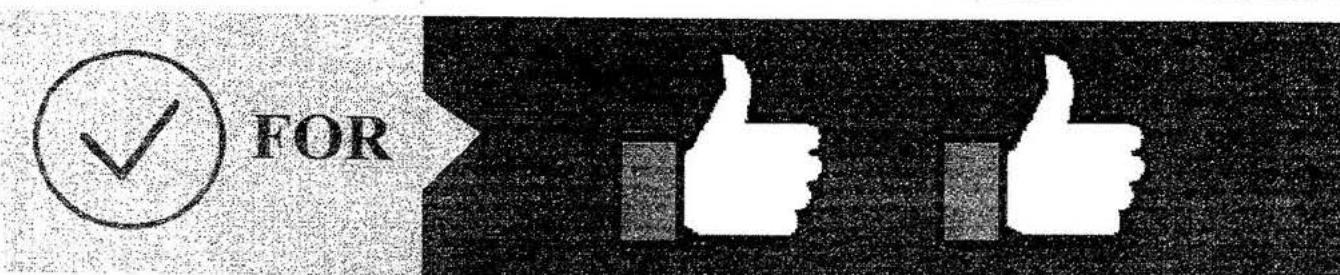
See also: Sun Microsystems, Inc. (July 21, 2005).

The stock supporting this proposal will be held until after the annual meeting and the proposal will be presented at the annual meeting. Please acknowledge this proposal promptly by email  
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The graphic below is intended to be placed at the conclusion of the rule 14a-8 proposal. The graphic would be the same size at the largest graphic (and accompanying bold text with the graphic) that management uses in conjunction with a management proposal or a shareholder proposal in the 2021 proxy.

Proponent is willing to discuss the in unison elimination of both shareholder graphics and management graphics in the proxy in regard to specific proposals.



Correspondence relating to

Shareholder Proposal of **Mr. John Chevedden**

International Business Machines Corporation

2021 Proxy Statement

From: Natalie Wilmore/US/IBM  
To  
Cc: Evan Barth/Armonk/IBM@IBMUS  
Subject: Confidential: IBM Shareholder Proposals  
Date: Fri, Nov 20, 2020 3:39 PM

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Dear Mr. Chevedden,

We are in receipt of two shareholder proposals for which you serve as either proponent or proxy for the proponent: (1) Shareholder Right to Act by Written Consent (“Written Consent”); and (2) Independent Board Chairman.

On November 2, we received a revised version of the Written Consent proposal that erroneously states that IBM requires 40% of shares that cast ballots at the annual meeting to call a special shareholders meeting. Under Article II Section 3 of [IBM's by-laws](#), special meetings of the stockholders shall be called by the Board upon written request delivered to the Secretary of the Corporation by the holder(s) with the power to vote and dispose of at least 25% of the outstanding shares of the Corporation. The original proposal, received on September 29, correctly stated that 25% of the shares may call a special meeting. Of course, the proposal must be factually correct, so please confirm you consent to IBM replacing “40%” with “25%”.

In addition, we received a graphic for inclusion with both proposals, including the color graphic received by email on November 6. Per your suggestion, IBM management will not use any graphic in the proxy in connection with your proposals and therefore will not include your graphic.

If you have any questions or wish to discuss these matters further, please don't hesitate to reach out to me.

Thank you for your interest in IBM,  
Natalie

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**Natalie F. Wilmore**  
Counsel  
Corporate Governance & Securities  
IBM Corporation  
1 New Orchard Road  
Armonk, NY 10504  
Phone: (914) 499-4803  
Email: [natalie.wilmore@ibm.com](mailto:natalie.wilmore@ibm.com)  
Pronouns: She/Her/Hers

**PREPARED BY AN IBM ATTORNEY / PRIVILEGE REVIEW REQUIRED**

This e-mail and its attachments, if any, may contain information that is private, confidential, or protected by attorney-client, solicitor-client or other privilege. If you received this e-mail in error, please delete it from your system without copying it and notify me of the misdirection by e-mail.

From: John Chevedden \*\*\*  
To: Natalie Wilmore <[Natalie.Wilmore@ibm.com](mailto:Natalie.Wilmore@ibm.com)>  
Cc:  
Subject: [EXTERNAL] (IBM)  
Date: Fri, Nov 20, 2020 10:19 PM

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Dear Ms. Wilmore,  
Thank you for your message.  
Please review this carefully:  
IBM now requires 40% of shares that cast ballots at the annual meeting to call a special shareholder meeting

John Chevedden

From: Natalie Wilmore/US/IBM  
To:  
Date: 11/24/2020 05:33 PM  
Subject: Re: [EXTERNAL] (IBM)

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Dear Mr. Chevedden,

Thank you for your response. You are correct that simply replacing the references in your supporting statement from “40%” to “25%” does not effectively correct the factual inaccuracies in your proposal.

The first sentence in the second paragraph of your supporting statement states, in relevant part: “IBM now requires 40% of shares that cast ballots at the annual meeting to call a special shareholder meeting.” This is false and misleading; IBM has no such requirement. The third paragraph of your supporting statement makes further reference to this false and misleading “40% requirement.”

As mentioned in my November 20, 2020 email, Article II Section 3 of IBM’s by-laws provides that “Special meetings of the stockholders, unless otherwise provided by law, may be called at any time by the Chairman of the Board or by the Board, and shall be called by the Board upon written request delivered to the Secretary of the Corporation by the holder(s) with the power to vote and dispose of at least 25% of the outstanding shares of the Corporation.” A link to IBM’s by-laws is available here: [https://www.ibm.com/investor/att/pdf/IBM\\_Bylaws.pdf](https://www.ibm.com/investor/att/pdf/IBM_Bylaws.pdf)

In order to accurately reflect the percent of shares required to call a special meeting as codified in IBM’s by-laws, we propose to correct these inaccuracies by (1) amending the first sentence in the second paragraph of your supporting statement to read: “Our company requires 25% of shares to combine their holdings to call a special meeting—” and (2) amending the references in the third paragraph of the supporting statement from “40%” to “25%”. These changes would reflect the language of your original supporting statement and your supporting statement from last year. We would appreciate it if you could please confirm your consent to the correction of these factual errors.

If you have any questions or wish to discuss these matters further, please don’t hesitate to reach out to me.

Thank you for your interest in IBM,  
Natalie

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**Natalie F. Wilmore**  
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Corporate Governance & Securities  
IBM Corporation  
1 New Orchard Road  
Armonk, NY 10504  
Phone: (914) 499-4803  
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Pronouns: She/Her/Hers

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**From:** John Chevedden \*\*\* >  
**Date:** November 24, 2020 at 9:55:20 PM EST  
**To:** Natalie Wilmore <[Natalie.Wilmore@ibm.com](mailto:Natalie.Wilmore@ibm.com)>  
**Subject:** [EXTERNAL] (IBM)

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Dear Ms. Wilmore,

Please advise the lowest percent of IBM shares( that cast ballots at the 2020 IBM annual meeting) that could have called for a special IBM shareholder meeting in 2020.

IBM now requires 40% of shares that cast ballots at the annual meeting to call a special shareholder meeting.

John Chevedden

From: Natalie Wilmore/US/IBM  
To  
Date: 11/25/2020 10:36 AM  
Subject: Re: [EXTERNAL] (IBM)

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Dear Mr. Chevedden,

We respectfully submit that it is factually inaccurate to state that IBM requires 40% of shares that cast ballots at the annual meeting to call a special shareholder meeting. I believe it will be easiest to discuss this matter by phone. Are you available for a call? I am free all day today or Friday, and can be reached at \*\*\*  
\*\*\* (home) or (860) 301-0360 (cell). If this week is not convenient for you, please feel free to suggest some dates and times for a call next week. Thank you again for your engagement on this issue.

Best,  
Natalie

--  
**Natalie F. Wilmore**  
Counsel  
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**From:** John Chevedden \*\*\*  
**Date:** November 25, 2020 at 9:14:13 PM EST  
**To:** Natalie Wilmore <[Natalie.Wilmore@ibm.com](mailto:Natalie.Wilmore@ibm.com)>  
**Subject:** [EXTERNAL] (IBM)

---

Dear Ms. Wilmore,

Please respond to the question.

Please advise the lowest percent of IBM shares( that cast ballots at the 2020 IBM annual meeting) that could have called for a special IBM shareholder meeting in 2020.

IBM now requires 40% of shares that cast ballots at the annual meeting to call a special shareholder meeting.

John Chevedden

From: Evan Barth/Armonk/IBM  
To:  
Cc: Natalie Wilmore/US/IBM@IBM  
Date: 12/01/2020 06:50 PM  
Subject: Re: IBM

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Dear Mr. Chevedden,

Per our two prior emails, there is no such 40% requirement, and referring to this as a requirement is false and misleading. IBM's only voting requirement is the by-law requirement referenced in my prior emails. Regarding your question, our voting results from last year's annual meeting can be found in our Form 8-K filed with the SEC on April 29, 2020, which is publicly available; our voting results from all prior annual meetings have similarly been filed with the SEC, and are also publicly available. If you wish to speak further, we are available by phone at the numbers in our previous emails.

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Evan Barth  
Senior Counsel  
IBM  
T/L: 641-6063  
External No: (914) 499-6063  
Email: [barthe@us.ibm.com](mailto:barthe@us.ibm.com)  
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From: John Chevedden <\*\*\*>  
To: Evan Barth <[barthe@us.ibm.com](mailto:barthe@us.ibm.com)>  
Date: 12/01/2020 09:54 PM  
Subject: [EXTERNAL] (IBM)

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This is a compromise pending resolution of all issues:  
Under the IBM bylaws 40% of IBM shares, that cast ballots at the annual meeting, are  
needed to call a special shareholder meeting.

Exhibit D  
to IBM's No-Action Letter Request

Excerpt of IBM's by-laws relating to  
Shareholder Proposal of **Mr. John Chevedden**  
International Business Machines Corporation  
2021 Proxy Statement

BY-LAWS  
of  
INTERNATIONAL BUSINESS MACHINES CORPORATION

Adopted April 29, 1958

As Amended Through

April 6, 2020

succeeding day not a legal holiday, or any other day as determined by the Board. If the directors to be elected at such annual meeting shall not have been elected thereat or at any adjournment thereof, the Board shall forthwith call a special meeting of the stockholders for the election of directors to be held as soon thereafter as convenient and give notice thereof as provided in these By-laws in respect of the notice of an annual meeting of the stockholders. At such special meeting the stockholders may elect the directors and transact other business with the same force and effect as at an annual meeting of the stockholders duly called and held.

**SECTION 3. Special Meetings.** Special meetings of the stockholders, unless otherwise provided by law, may be called at any time by the Chairman of the Board or by the Board, and shall be called by the Board upon written request delivered to the Secretary of the Corporation by the holder(s) with the power to vote and dispose of at least 25% of the outstanding shares of the Corporation. Such request shall be signed by each such holder, stating the number of shares owned by each holder, and shall indicate the purpose of the requested meeting and provide the other information required for the submission of business at an annual meeting pursuant to Section 7 of this Article II. In addition, any stockholder(s) requesting a special meeting shall promptly provide any other information reasonably requested by the Corporation. Business conducted at a special meeting shall be limited to that specified in the notice of meeting.

**SECTION 4. Notice of Meetings.** Notice of each meeting of the stockholders, annual or special, shall be given in the name of the Chairman of the Board, a Vice Chairman of the Board or the President or a Vice President or the Secretary. Such notice shall state the purpose or purposes for which the meeting is called and the date and hour when and the place where it is to be held. A copy thereof shall be duly delivered or transmitted to all stockholders of record entitled to vote at such meeting, and all stockholders of record who, by reason of any action proposed to be taken at such meeting, would be entitled to have their stock appraised if such action were taken, not less than ten or more than sixty days before the day on which the meeting is called to be held. If mailed, such copy shall be directed to each stockholder at the address listed on the record of stockholders of the Corporation, or if the stockholder shall have filed with the Secretary a written request that notices be mailed to some other address, it shall be mailed to the address designated in such request. Nevertheless, notice of any meeting of the stockholders shall not be required to be given to any stockholder who shall waive notice thereof as hereinafter provided in Article IX of these By-laws. Except when expressly required by law, notice of any adjourned meeting of the stockholders need not be given nor shall publication of notice of any annual or special meeting thereof be required.

**SECTION 5. Quorum.** Except as otherwise provided by law, at all meetings of the stockholders, the presence of holders of record of a majority of the outstanding shares of stock of the Corporation having voting power, in person or represented by proxy and entitled to vote thereat, shall be necessary to constitute a quorum for the transaction of business. In the absence of a quorum at any such meeting or any