VIA E-MAIL

May 26, 2020

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

Re: FedEx Corporation—Omission of Stockholder Proposal Relating to the Disclosure of Political and Electioneering Expenditures

Ladies and Gentlemen:

In a letter dated May 19, 2020, FedEx Corporation (the “Company”) requested confirmation that the Staff of the Division of Corporation Finance (the “Staff”) of the Securities and Exchange Commission would not recommend any enforcement action if, in reliance on Rule 14a-8, the Company excluded the stockholder proposal and supporting statement (the “Proposal”) submitted by Clean Yield Asset Management on behalf of The Dawn E. Peterson Trust (the “Proponent”) on April 9, 2020 from the Company’s proxy statement and form of proxy for the 2020 annual meeting of its stockholders.

On May 22, 2020, the Company received written notice that the Proponent is withdrawing the Proposal. A copy of the written notice is attached hereto as Exhibit A. In reliance upon the notice of withdrawal, the Company hereby withdraws its May 19, 2020 no-action request relating to the Proposal.
Please contact me at (901) 818-6653 if you have any questions or require any additional information relating to this matter.

Very truly yours,

FedEx Corporation

Alana L. Griffin

Attachment

cc: Clean Yield Asset Management on behalf of The Dawn E. Peterson Trust
c/o Molly Betournay
molly@cleanyield.com

Ning Chiu
Davis Polk & Wardwell
ning.chiu@davispolk.com

[1410815]
Exhibit A

The Proposal and Related Correspondence
Dear Alana,

Thank you for your email. My email to you from 5/22/2020 can serve as notification of Clean Yield’s decision to withdraw the proposal. Please let me know if you require something additional.

I hope you had a nice Memorial Day.

Best,

Molly

Molly Betournay
Director of Social Research & Advocacy
Clean Yield Asset Management
molly@cleanyield.com
(802) 526-2525 x103

This is not an investment recommendation or a solicitation to become a client of the firm. Unless indicated, these views are the author’s and may differ from those of the firm or others in the firm. We do not represent this is accurate or complete and we may not update this. Past performance is not indicative of future returns. You may contact me for additional information and important disclosures. You should be judicious when using email to request or authorize the investment in any security or instrument, or to effect any other transactions. We cannot guarantee that any such requests received via email will be processed in a timely manner. This communication is solely for the addressee(s) and may contain confidential information. We do not waive confidentiality by this transmission. Clean Yield Group monitors and stores both incoming and outgoing electronic correspondence.
To: Molly Betournay <molly@cleanyield.com>
Cc: Alana Griffin <alana.griffin@fedex.com>
Subject: RE: FDX - Request for No-Action Confirmation

Dear Molly,

Thank you for the notification. Will you send a formal withdrawal letter? I think your email suffices but want to confirm so that I include all relevant correspondence in our withdrawal letter to the SEC.

Have a great Memorial Day weekend.

Best,
Alana

Alana L. Griffin
Staff Vice President - Securities and Corporate Law
Assistant Secretary
FedEx Corporation
942 S. Shady Grove Road
Memphis, Tennessee 38120
901-818-6653
alana.griffin@fedex.com

From: Molly Betournay <molly@cleanyield.com>
Sent: Friday, May 22, 2020 1:12 PM
To: Alana Griffin <alana.griffin@fedex.com>
Subject: [EXTERNAL] RE: FDX - Request for No-Action Confirmation

Dear Alana,

After reviewing the No Action letter and discussing it with our Investment Committee and client, Clean Yield Asset Management has decided to withdraw the shareholder proposal that we submitted to FedEx on behalf of the Dawn E. Peterson Trust.

Regards,
Molly Betournay

Molly Betournay
Director of Social Research & Advocacy
Clean Yield Asset Management
molly@cleanyield.com
(802) 526-2525 x103
VIA E-MAIL

May 19, 2020

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

Re: FedEx Corporation—Omission of Stockholder Proposal Relating to the Disclosure of Political and Electioneering Expenditures

Ladies and Gentlemen:

The purpose of this letter is to inform you, pursuant to Rule 14a-8(j) under the Securities Exchange Act of 1934, as amended, that FedEx Corporation (the “Company” or “FedEx”) intends to omit from its proxy statement and form of proxy for the 2020 annual meeting of its stockholders (the “2020 Proxy Materials”) the stockholder proposal and supporting statement (the “Proposal”) submitted by Clean Yield Asset Management on behalf of The Dawn E. Peterson Trust (the “Proponent”) on April 9, 2020. The Proposal, together with related correspondence, is attached hereto as Exhibit A.

We hereby respectfully request confirmation that the staff of the Division of Corporation Finance (the “Staff”) of the Securities and Exchange Commission (the “Commission”) will not recommend any enforcement action if, in reliance on Rule 14a-8, we exclude the Proposal from our 2020 Proxy Materials. In accordance with Rule 14a-8(j), we are:

- submitting this letter not later than 80 days prior to the date on which the Company intends to file definitive 2020 Proxy Materials; and
- simultaneously providing a copy of this letter and its exhibits to the Proponent, thereby notifying it of our intention to exclude the Proposal from our 2020 Proxy Materials.
The Proposal states:

“Resolved:

FedEx publish, at least annually, a report prepared at reasonable expense analyzing the congruency of political and electioneering expenditures during the preceding year against publicly stated company values and policies.”

We believe that the Proposal may be excluded from our 2020 Proxy Materials pursuant to Rule 14a-8(i)(11) because it is substantially duplicative of two previously submitted stockholder proposals that will be included in our 2020 Proxy Materials.

Analysis

The Proposal may be excluded under Rule 14a-8(i)(11) because it substantially duplicates two other stockholder proposals that will be included in our 2020 Proxy Materials.

a. Background

On December 10, 2019, before the date we received the Proposal, we received a stockholder proposal from John Chevedden (the “Prior Electoral Expenditure Proposal”). The Prior Electoral Expenditure Proposal, together with related correspondence, is attached as Exhibit B.

The Prior Electoral Expenditure Proposal states:

“Resolved, that shareholders request FedEx to prepare and semiannually update a report, which shall be presented to the pertinent board of directors committee and posted on the Company’s website, that discloses the Company’s:

(a) Policies and procedures for making electoral contributions and expenditures (direct and indirect) with corporate funds, including the board’s role (if any) in that process; and

(b) Monetary and non-monetary contributions or expenditures that could not be deducted as an “ordinary and necessary” business expense under section 162(e)(1)(B) of the Internal Revenue Code, including (but not limited to) contributions or expenditures on behalf of candidates, parties, and committees and entities organized and operating under section 501(c)(4) of the Internal Revenue Code, as well as the portion of any dues or payments made to any tax-exempt organization (such as a trade association) used for an expenditure or contribution
that, if made directly by the Company, would not be deductible under section 162(e)(1)(B) of the Internal Revenue Code.

The report shall be made available within 12 months of the annual meeting and identify all recipients and the amount paid to each recipient from Company funds. This proposal does not encompass lobbying spending.”

In addition, on March 5, 2020, before the date we received the Proposal, we received a stockholder proposal from the International Brotherhood of Teamsters General Fund (the “Prior Lobbying Expenditure Proposal” and, together with the Prior Electoral Expenditure Proposal, the “Prior Proposals”). The Prior Lobbying Expenditure Proposal is co-sponsored by the Sisters of the Order of St. Dominic of Grand Rapids on behalf of the Sisters of St. Dominic Charitable Trust and As You Sow on behalf of the George Gund Foundation. The Prior Lobbying Expenditure Proposal, together with related correspondence, is attached as Exhibit C.

The Prior Lobbying Expenditure Proposal states:

“Resolved, the stockholders of FedEx request the preparation of a report, updated annually, disclosing:

1. Company policy and procedures governing lobbying, both direct and indirect, and grassroots lobbying communications.

2. Payments by FedEx used for (a) direct or indirect lobbying or (b) grassroots lobbying communications, in each case including the amount of the payment and the recipient.

3. FedEx’s membership in and payments to any tax-exempt organization that writes and endorses model legislation.

4. Description of management’s and the Board’s decision-making process and oversight for making payments described in section 2 and 3 above.

For purposes of this proposal, a “grassroots lobbying communication” is a communication directed to the general public that (a) refers to specific legislation or regulation, (b) reflects a view on the legislation or regulation, and (c) encourages the recipient of the communication to take action with respect to the legislation or regulation. “Indirect lobbying” is lobbying engaged in by a trade association or other organization of which FedEx is a member.

Both “direct and indirect lobbying” and “grassroots lobbying communications” include efforts at the local, state and federal levels.

The report shall be presented to the Nominating & Governance Committee and posted on FedEx’s website.”
We intend to include both of the Prior Proposals in our 2020 Proxy Materials.

b. Established Commission and Staff Precedent

Under Rule 14a-8(i)(11), a stockholder proposal may be excluded from a company’s proxy materials if the stockholder proposal substantially duplicates another stockholder proposal previously submitted to the company by another proponent that will be included in the company’s proxy materials for the same meeting. The Commission has stated that Rule 14a-8(i)(11) was adopted, in part, to eliminate the possibility that stockholders would have to consider two or more substantially identical proposals submitted by proponents acting independently of each other. See Securities Exchange Act Release No. 34-12598 (July 7, 1976).

The Staff has previously determined that similar proposals are substantially duplicative where, as in Ford Motor Company (February 19, 2004), “the terms and the breadth of the two proposals are somewhat different, [but] the principal thrust and focus are substantially the same.” Thus, a proposal may be excluded as substantially duplicative of another proposal despite differences in scope and despite the proposals requesting different actions. See, e.g. Chevron Corporation (March 28, 2019) permitting exclusion of a proposal requesting annual reporting of the company’s greenhouse gas targets and how they have aligned with the Paris Climate Agreement’s reduction goals, which succeeded a prior proposal requesting disclosure on how the company can reduce its carbon footprint and align with the Paris Climate Agreement’s reduction goals; Rite Aid Corporation (April 10, 2019) permitting exclusion of a proposal requesting an amendment of the company’s bylaws to enable stockholders at a certain ownership threshold to call a special meeting, which succeeded a prior proposal requesting an amendment of the company’s governing documents to permit stockholders to call a special meeting at a lower ownership threshold; and FedEx Corporation (July 21, 2011) (“FedEx 2011”) (permitting exclusion of a proposal requesting disclosure about the company’s political contributions, the policies governing them, a congruency analysis and an advisory stockholder vote on them, which succeeded a prior proposal requesting a semi-annual report detailing the company’s political contributions and expenditures as well as the company’s formal policies for such contributions and expenditures).

Two stockholder proposals need not be identical in order to provide a basis for exclusion under Rule 14a-8(i)(11). The stockholder proposals can differ in terms of the breadth and scope of the subject matter, so long as the principal thrust or focus is substantially the same. The Staff has noted that where one proposal incorporates or encompasses the elements of a later proposal, the subsequent proposal may be excluded. See Pfizer Inc. (February 28, 2019) permitting exclusion of a proposal requesting annual disclosure of the company’s policy governing grassroots lobbying, which succeeded a similar prior proposal accompanied by a different supporting statement; The Home Depot, Inc. (March 22, 2018) (“Home Depot”) (permitting exclusion of a proposal requesting a political contributions cost-benefit analysis report, which succeeded a similar proposal requesting a report on the company’s policies and procedures for making political contributions and expenditures and disclosure of monetary and non-monetary contributions and expenditures, including the identity of the recipients and titles of the company’s decision makers); Exxon Mobil Corporation (March 13, 2020) (“Exxon Mobil”)
(permitting the exclusion of a proposal focused on climate-related lobbying, which succeeded a proposal requesting a report on all areas in which the company may be engaged in lobbying); Duke Energy Corporation (February 19, 2016) (permitting exclusion of a proposal requesting a review of the company’s lobbying-related activities, which succeeded a similar prior proposal with a different stated purpose for the proposal); Bank of America Corporation (March 14, 2011) (permitting exclusion of a proposal requesting a special report to shareholders on the company’s mortgage servicing options, foreclosure mitigation efforts and foreclosure processes, which succeeded a similar prior proposal using different terminology); and Bank of America Corporation (February 24, 2009) (permitting exclusion of a proposal requesting a policy that would require the company’s senior executives to retain a significant portion of equity compensation for a certain period of time following termination, which succeeded a similar prior proposal requesting a policy that would require the company’s senior executives to retain a significant portion of equity compensation for a differently measured period of time during employment).

c. Application of Staff Precedent to the Proposal

Application of Staff precedent to the Proposal (together with the Prior Proposals, the “Proposals”) supports our conclusion that the Proposal substantially duplicates the Prior Proposals and, accordingly, may be excluded from our 2020 Proxy Materials. The principal thrust and focus of both the Proposal and the Prior Proposals relate to requests for public reporting on the Company’s political activities and expenditures (i.e., the Company’s expenditures of corporate funds as a participant in the political process, including both lobbying and electoral/electioneering expenditures) and related governance processes. The Proposals seek similar information — public disclosure of the Company’s political expenditures — in order to mitigate perceived risks to stockholders and the Company. In addition, the scope of the disclosure with respect to policies, procedures and expenditures addressed in the Prior Proposals is so broad as to substantially encompass and essentially duplicate the principal thrust of the more targeted and specific request included in the Proposal.

The Proposals share the same principal thrust and focus, as evidenced by the following:

- Each of the Proposals seeks reporting on the Company’s direct and indirect political expenditures. The Prior Lobbying Expenditure Proposal requests disclosure of the Company’s direct and indirect lobbying activities and expenditures, as well as the Company’s payments for grassroots lobbying communications. The Prior Lobbying Expenditure Proposal defines “indirect lobbying” as lobbying engaged in by a trade association or other organization of which the Company is a member. The Prior Electoral Expenditure Proposal seeks disclosure of the Company’s electoral contributions and expenditures, both direct and indirect (i.e., through a trade association). The Prior Electoral Expenditure Proposal expressly states that it does not encompass lobbying spending (which is covered by the Prior Lobbying Expenditure Proposal).
The Proposal defines expenditures for electioneering communications as “spending, from the corporate treasury and from the [Political Action Committee], directly or through a third party . . . which [is] reasonably susceptible to interpretation as in support of or opposition to a specific candidate” and requests that the Company publish a report “analyzing the congruency of political and electioneering expenditures during the preceding year against publicly stated company values and policies.” This report would, by its nature, require disclosure of each political expenditure by the Company (whether for lobbying or electioneering and whether direct or indirect) during the year and, therefore, duplicate the expenditure disclosures requested by the Prior Proposals.

Each of the Proposals requests a report disclosing the Company’s policies and procedures and decision-making processes regarding political activities. Each of the Proposals address perceived stockholder interest in making more transparent the internal processes by which the Company makes decisions regarding its political activities and expenditures. The Prior Lobbying Expenditure Proposal asks for a report that (a) discloses the Company’s policies and procedures governing direct and indirect lobbying and grassroots lobbying communications and (b) includes a description of management’s and the Board’s decision-making process and oversight for making payments related to lobbying and grassroots lobbying communications and to tax-exempt organizations that write or endorse model legislation. The Prior Electoral Expenditure Proposal requests disclosure of the Company’s “policies and procedures for making electoral contributions and expenditures (direct and indirect) with corporate funds, including the board’s role (if any) in that process.”

The Proposal seeks a report “analyzing the congruency of political and electioneering expenditures during the preceding year against publicly stated company values and policies.” In order to provide the congruency analysis sought by the Proposal, the report would need to include discussion of the Company’s policies and procedures governing, and decision-making processes related to, its political and electioneering expenditures. It would, therefore, duplicate the disclosures requested by the Prior Proposals.

Each of the Proposals asserts, and is driven by, perceived risks to stockholders and the Company, including purported misalignment of the Company’s political expenditures with its public statements. The preamble to the Prior Lobbying Expenditure Proposal states that “full disclosure of FedEx’s direct and indirect lobbying activities and expenditures is required to assess whether FedEx’s lobbying is consistent with its expressed goals and in stockholders’ best interests.” The supporting statement notes that there are reputational risks if the Company’s lobbying contradicts its public positions and that such misalignment may harm long-term value creation. The Prior Electoral Expenditure Proposal states that the disclosure requested by the proposal would allow stockholders to “give proper weight to
different speakers and different messages” and “fully evaluate” the use of Company assets in elections.

The Proposal addresses the same concerns discussed in the Prior Proposals. The Proposal begins by noting that “[s]ome of FedEx’s politically focused expenditures appear to be misaligned with its public statements of its company values.” It states that an analysis of the Company’s political expenditures is necessary to determine whether they are “in conflict with” the Company’s values and policies. The Proposal notes that any misalignment between the Company’s political and electioneering expenditures may present risks to the Company’s brand, reputation and stockholder value.

- All of the Proposals believe that the perceived risks can be addressed through public reporting of the Company’s political activities and expenditures. The solution to these purported risks is the same in each of the Proposals: public disclosure of the Company’s political activities and expenditures and related governance processes. However, as discussed above, the disclosure requested by the Proposal is duplicative of the disclosures sought by the Prior Proposals.

Accordingly, although the scope, terms and breadth of the Proposal and the Prior Proposals are somewhat different, the principal thrust and focus of the Proposals are substantially the same: a request that the Company publicly report its political activities and expenditures and related governance processes.

As discussed above, the scope of the disclosures covered by the Prior Proposals are so broad as to substantially duplicate the more targeted and specific request included in the Proposal. In Home Depot, the Staff concurred that a proposal (the “Second Home Depot Proposal”) requesting that the board report to shareholders a cost-benefit analysis of the most recent election cycle’s political and electioneering contributions, including an examination of the effectiveness, benefits, and risks to shareholder value associated with those contributions, was substantially duplicative of a prior broader proposal (the “Prior Home Depot Proposal”) that requested “disclosure of a report on the company’s (1) policies and procedures for making contributions and expenditures (direct or indirect) to (a) participate or intervene in any political campaign on behalf of (or in opposition to) any candidate for public office or (b) influence the general public . . . with respect to an election or referendum and (2) monetary and non-monetary contributions and expenditures (direct and indirect) used in the manner described in (1) above, including (a) the identity of the recipient as well as the amount paid to each; and (b) the title(s) of the person(s) . . . responsible for decision-making.”

The “cost-benefit analysis” requested in the Second Home Depot Proposal is akin to the Proposal’s request for a report “analyzing the congruency of political and electioneering expenditures during the preceding year against publicly stated company values and policies.” Even though the Prior Home Depot Proposal did not request a cost-benefit analysis, The Home Depot noted that the cost-benefit analysis of political contributions for the most recent election
cycle would necessarily involve some degree of disclosure of such contributions as well as company's policies and procedures for making political contributions and expenditures, both of which were covered by the Prior Home Depot Proposal. The Staff concurred that the Second Home Depot Proposal was excludable as being substantially duplicative of the Prior Home Depot Proposal. See also FedEx 2011.

The Prior Proposals together cover the same subject as the Proposal but with a broader scope, and therefore subsume and incorporate the Proposal, which includes a more targeted and specific request. In Exxon Mobil, the proposal in question was more narrowly focused on climate-related lobbying and was viewed to be duplicative of a prior proposal that sought information about all areas in which the company may have been engaged in lobbying. As discussed above, implementation of the Prior Proposals would include the necessary information regarding the congruency analysis requested in the Proposal and, therefore, the Proposal may be excluded as substantially duplicative of the Prior Proposals.

Accordingly, consistent with the Staff’s previous interpretations and the intent of Rule 14a-8(i)(11), the Company believes that the Proposal may be excluded from our 2020 Proxy Materials as substantially duplicative of the Prior Proposals.

Conclusion

Based upon the foregoing analysis, we respectfully request that the Staff agree that we may omit the Proposal from our 2020 Proxy Materials.

If you have any questions or would like any additional information, please feel free to call me. Thank you for your prompt attention to this request.

Very truly yours,

FedEx Corporation

Attachments

cc: Clean Yield Asset Management on behalf of The Dawn E. Peterson Trust
c/o Molly Betournay
molly@cleanyield.com

Ning Chiu
Davis Polk & Wardwell
ning.chiu@davispolk.com
Exhibit A

The Proposal and Related Correspondence
April 9, 2020

Mark R. Allen
Executive Vice President, General Counsel and Secretary
FedEx Corporation
942 South Shady Grove Road
Memphis, TN 38120

RE: Shareholder proposal for 2020 Annual Meeting

Dear Mr. Allen,

Clean Yield Asset Management ("Clean Yield") is an investment firm based in Norwich, VT specializing in socially responsible asset management.

I am hereby authorized to notify you of our intention to file the enclosed shareholder resolution regarding electioneering contributions with FedEx Corporation on behalf of our client The Dawn E. Peterson Trust. Clean Yield submits this shareholder proposal for inclusion in the 2020 proxy statement, in accordance with Rule 14a-8 of the General Rules and Regulations of the Securities and Exchange Act of 1934 (17 C.F.R § 240.14a-8). Per Rule 14a-8, The Dawn E. Peterson Trust holds more than $2,000 of FedEx common stock, acquired more than one year prior to today's date and held continuously for that time. The Dawn E. Peterson Trust will remain invested in this position continuously through the date of the 2020 annual meeting. Verification from our client's custodian, Charles Schwab, of the position, is enclosed. A letter from Ms. Peterson authorizing Clean Yield to undertake this filing on behalf of The Dawn E. Peterson Trust will be sent separately. We will send a representative to the stockholders' meeting to move the shareholder proposal as required by the SEC rules.

We welcome discussion with the company about the contents of our proposal.

Please direct any written communications to me at the address below or to molly@cleanyield.com. Please also confirm receipt of this letter via email.

Sincerely,

Molly Betourmay

Cc: Shelley Alpern, Rhia Ventures
Enclosures: Shareholder resolution and proof of ownership letter
Shareholder Advisory Vote on Electioneering Contributions

Whereas:

Some of FedEx's politically focused expenditures appear to be misaligned with its public statements of its company values.

For example, FedEx has stated that it “supports an inclusive workplace culture and is committed to the education, recruitment, development and advancement of diverse team members worldwide, and we are recognized for our commitment to those efforts.”¹ FedEx has supported gender diversity by sponsoring a women’s employee resource group and providing maternity leave, financial assistance with adoptions and providing a work-life balance program. Yet based on public data, the proponent estimates that in 2016 and 2018 election cycles, FedEx and its political action committee (FedExPAC) have made political donations totaling over $3.3 million to politicians and political organizations working to weaken access to abortion, undermining the ability of employees to control their fertility. In this period, FedExPAC contributed $279,000 to federal and state candidates which had anti-choice voting records² in the seven states that enacted “heartbeat” bills in 2019.

Another issue is our company’s support for working people generally. The company asserts that it “actively promotes and supports a culture of health and safety for the benefit of our employees, contractors and stakeholders... Our policies and programs support our strong employee culture, providing a safe, diverse and rewarding environment.” The company also states that it respects the right of workers to unionize. However, a review of 2018 contributions by the company and FedExPAC to members of the US House of Representatives indicates that the company may be contributing substantially more to legislators who have voted against working people on a wide array of legislation.³

Proponents believe FedEx should establish policies and reporting systems that minimize risk to the firm's reputation and brand by addressing possible missteps in corporate electioneering and political spending in conflict with company values and policies.

Resolved:

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¹ 2019 10-K, p. 6 at https://www.sec.gov/Archives/edgar/data/1048911/000156459019025065/fdx-10k_20190531.htm
² Based on analysis by the Sustainable Investments Institute. The seven states are AL, GA, KY, LA, MS, MO and OH.
³ Defined as those whose lifetime voting scores are less than 50% in the AFL-CIO’s assessment of “where lawmakers stand on issues important to working families, including strengthening Social Security and Medicare, freedom to join a union, improving workplace safety and more.”
FedEx publish, at least annually, a report prepared at reasonable expense analyzing the congruency of political and electioneering expenditures during the preceding year against publicly stated company values and policies.

Supporting Statement:

Proponents recommend that such report also contain management’s analysis of risks to our company’s brand, reputation, or shareholder value of such expenditures in conflict with company values. “Expenditures for electioneering communications” means spending, from the corporate treasury and from the PAC, directly or through a third party, at any time during the year, on printed, internet or broadcast communications, which are reasonably susceptible to interpretation as in support of or opposition to a specific candidate.
April 9, 2020
Dawn Peterson

Dear Dawn Peterson,

This letter is to confirm that Charles Schwab & Co. holds as custodian for the above account 150 shares of FedEx Corporation. These shares have been held in the account continuously for at least one year prior to April 9th, 2020.

These shares are held at Depository Trust Company under the nominee name of Charles Schwab and Company.

This letter serves as confirmation that the shares are held by Charles Schwab & Co., Inc.

Sincerely,
Dustin Holloway
Team Lead, Schwab Advisor Services
3000 Schwab Way
Westlake, TX 76262

Independent investment advisors are not owned by, affiliated with, or supervised by Charles Schwab & Co., Inc. ("Schwab"). Schwab Advisor Services™ serves independent investment advisors, and includes the custody, trading, and support services of Schwab.
FROM: Molly Betoumay
Clean Yield Asset Mgmt.
PO Box 874
Norwich VT 05055

TO: Mark Allen
FedEx Corp
942 South Shady Grove Rd
Memphis TN 38120

US POSTAGE PAID
$10.90

PRIORITY MAIL 2-DAY ®
0 Lb 2.40 Oz
1006

EXPECTED DELIVERY DAY: 04/11/20

SHIP TO:
942 SHADY GROVE RD S
MEMPHIS TN 38120-4117

USPS SIGNATURE® TRACKING NUMBER
9510 8151 8806 0100 3422 97

To schedule free Package Pickup, scan the QR code.
Ms. Betournay,

Good afternoon. I hope you are doing well. I am writing to confirm that we have received the attached stockholder proposal. Future correspondence can be directed to myself, Alana and Kate.

Thanks a lot,
Edward

Edward Garitty
Senior Attorney
Securities and Corporate Law
FedEx Corporation
942 S. Shady Grove Road
Memphis, Tennessee 38120
901-818-7311
edward.garitty@fedex.com
Dear Edward,

Thank you for confirming receipt of our proposal.

Be well,

Molly

From: Edward Garitty <edward.garitty@fedex.com>
Sent: Thursday, April 16, 2020 12:51 PM
To: molly@clearyield.com
Cc: Alana Griffin <alana.griffin@fedex.com>; Kate Beukenkamp <kate.beukenkamp@fedex.com>
Subject: Clean Yield Asset Management FDX Proposal

Ms. Betournay,

Good afternoon. I hope you are doing well. I am writing to confirm that we have received the attached stockholder proposal. Future correspondence can be directed to myself, Alana and Kate.

Thanks a lot,
Edward

Edward Garitty
Senior Attorney
Securities and Corporate Law
FedEx Corporation
942 S. Shady Grove Road
Memphis, Tennessee 38120
901-818-7311
edward.garitty@fedex.com

FedEx
Ms. Betournay,

Please find attached correspondence regarding the proposal submitted on behalf of The Dawn E. Peterson Trust. Please direct any correspondence regarding this matter to Alana Griffin, Kate Beukenkamp and me.

Sincerely,
Edward Garitty

Edward Garitty
Senior Attorney
Securities and Corporate Law
FedEx Corporation
942 S. Shady Grove Road
Memphis, Tennessee 38120
901-818-7311
edward.garitty@fedex.com
Subject: The Dawn E. Peterson Trust Stockholder Proposal – Electioneering Contributions

Dear Ms. Betournay:

On April 11, 2020, we received the stockholder proposal dated April 9, 2020 that you submitted to FedEx Corporation ("FedEx") via the U.S. Postal Service on behalf of The Dawn E. Peterson Trust.

The proposal contains certain procedural deficiencies, which Securities and Exchange Commission ("SEC") regulations require us to bring to your attention. To help the SEC staff and companies properly evaluate whether the eligibility requirements of Rule 14a-8(b) of the Securities Exchange Act of 1934, as amended, have been satisfied when a stockholder submits a "proposal by proxy" through a representative, the SEC staff looks to whether such a stockholder provides documentation describing the stockholder's delegation of authority to the representative. In Staff Legal Bulletin No. 14I ("SLB 14I"), dated November 1, 2017, the SEC's Division of Corporation Finance stated it expects this documentation to:

- identify the stockholder-proponent and the person or entity selected as proxy;
- identify the company to which the proposal is directed;
- identify the annual or special meeting for which the proposal is submitted;
- identify the specific proposal to be submitted; and
- be signed and dated by the stockholder.

A copy of SLB 14I is attached for your reference. Please review SLB 14I carefully before submitting the documentation describing The Dawn E. Peterson Trust's delegation of authority to ensure that it is compliant.
In order to meet the eligibility requirements for submitting a stockholder proposal, the SEC rules require that the documentation be postmarked or transmitted electronically to us no later than 14 calendar days from the date you receive this letter. Please address any response to me at the mailing address, e-mail address or fax number provided above. A copy of Rule 14a-8, which applies to stockholder proposals submitted for inclusion in proxy statements, is enclosed for your reference.

If you have any questions, please call me.

Sincerely,

FedEx Corporation

Alana L. Griffin

Attachments
Shareholder proposals.

This section addresses when a company must include a shareholder's proposal in its proxy statement and identify the proposal in its form of proxy when the company holds an annual or special meeting of shareholders. In summary, in order to have your shareholder proposal included in 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 a large number of 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 (§240.13g-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 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 the 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 (§240.901b of this chapter), or in shareholder
reports of investment companies under §270.30d-3 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.

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 a 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(f).

(2) If you fail to submit your 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(f).

(g) Question 7: Who has the burden of persuading the Commission or its staff that my proposal can be excluded? Except as otherwise noted, the burden is on the company to demonstrate that it is entitled to exclude a proposal.

(h) Question 8: Must I appear personally at the shareholders' meeting to present the proposal? (1) Either you, or your representative who is qualified under state law to present the proposal on your behalf, must attend the meeting to present the proposal. Whether you attend the meeting yourself or send a qualified representative to the meeting in your place, you should make sure that you, or your representative, follow the proper state law procedures for attending the meeting and/or presenting your proposal.

(2) If the company holds its shareholder meeting in whole or in part via electronic media, and the company permits you or your representative to present your proposal via such media, then you may appear through electronic media rather than traveling to the meeting to appear in person.

(3) If you or your qualified representative fail to appear and present the proposal, without good cause, the company will be permitted to exclude all of your proposals from its proxy materials for any meetings held in the following two calendar years.

(i) Question 9: If I have complied with the procedural requirements, on what other bases may a company rely to exclude my proposal? (1) Improper under state law: If the proposal is not a proper subject for action by shareholders under the laws of the jurisdiction of the company's organization.

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

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

Note to paragraph (i)(2): We will not apply this basis for exclusion to permit exclusion of a proposal on grounds that it would violate foreign law if compliance with the foreign law would result in a violation of any state or federal law.
(3) **Violation of proxy rules:** If the proposal or supporting statement is contrary to any of the Commission's proxy rules, including §240.14a-9, which prohibits materially false or misleading statements in proxy solicitation 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 proposals:** 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-23(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.

(i) 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.

(i) 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.

(ii) Question 19: 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.

(iii) 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 30 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  
Securities and Exchange Commission  

Shareholder Proposals  

Staff Legal Bulletin No. 14I (CF)  

Action: Publication of CF Staff Legal Bulletin  

Date: November 1, 2017  

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

Supplementary Information: The statements in this bulletin represent the views of the Division of Corporation Finance (the “Division”). This bulletin is not a rule, regulation or statement of the Securities and Exchange Commission (the “Commission”). Further, the Commission has neither approved nor disapproved its content. 

Contacts: For further information, please contact the Division’s Office of Chief Counsel by submitting a web-based request form at https://www.sec.gov/forms/corp_fin_interpretive. 

A. The purpose of this bulletin  

This bulletin is part of a continuing effort by the Division to provide guidance on important issues arising under Exchange Act Rule 14a-8. Specifically, this bulletin contains information about the Division’s views on: 

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

You can find additional guidance about Rule 14a-8 in the following bulletins that are available on the Commission’s website: SLB No. 14, SLB No. 14A, SLB No. 14B, SLB No. 14C, SLB No. 14D, SLB No. 14E, SLB No. 14F, SLB No. 14G and SLB No. 14H. 

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

1. Background  

Rule 14a-8(i)(7), the “ordinary business” exception, is one of the substantive bases for exclusion of a shareholder proposal in Rule 14a-8. It permits a company to exclude a proposal that “deals with a matter relating to the company’s ordinary business operations.” The purpose of the exception is “to confine the resolution of ordinary business problems to management and the board of directors, since it is impracticable for shareholders to decide how to solve such problems at an annual shareholders meeting.”[1] 

2. The Division’s application of Rule 14a-8(i)(7)
The Commission has stated that the policy underlying the “ordinary business” exception rests on two central considerations. The first relates to the proposal’s subject matter; the second, the degree to which the proposal “micromanages” the company. Under the first consideration, proposals that raise matters that are “so fundamental to management’s ability to run a company on a day-to-day basis that they could not, as a practical matter, be subject to direct shareholder oversight” may be excluded, unless such a proposal focuses on policy issues that are sufficiently significant because they transcend ordinary business and would be appropriate for a shareholder vote. Whether the significant policy exception applies depends, in part, on the connection between the significant policy issue and the company’s business operations.

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

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

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

1. Background

Rule 14a-8(i)(5), the “economic relevance” exception, is one of the substantive bases for exclusion of a shareholder proposal in Rule 14a-8. It permits a company to exclude a proposal that “relates to operations which account for less than 5 percent of the company’s total assets at the end of its most recent fiscal year, and for less than 5 percent of its net earnings and gross sales for its most recent fiscal year, and is not otherwise significantly related to the company’s business.”

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

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

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

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

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

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

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

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

As with the "ordinary business" exception in Rule 14a-8(i)(7), determining whether a proposal is "otherwise significantly related to the company's business" can raise difficult judgment calls. Similarly, we believe that the board of directors is generally in a better position to determine these matters in the first instance. A board acting with the knowledge of the company's business and the implications for a particular proposal on that company's business is better situated than the staff to determine whether a particular proposal is "otherwise significantly related to the company's business." Accordingly, we would expect a company's Rule 14a-8(i)(5) no-action request to include a discussion that reflects the board's analysis of the proposal's significance to the company. That explanation would be most helpful if it detailed the specific processes employed by the board to ensure that its conclusions are well-informed and well-reasoned.

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

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

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

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

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

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

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

E. Rule 14a-8(d)

1. Background

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

2. The use of images in shareholder proposals

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

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

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

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

[2] Id.

[3] Id.


[6] Id.


[8] Proponents bear the burden of demonstrating that a proposal is "otherwise significantly related to the company's business." See Release No. 34-39093 (Sep. 18, 1997), citing Release No. 34-19135.


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

[11] This guidance applies only to proposals submitted by proxy after the date on which this staff legal bulletin is published.

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

[13] Rule 14a-8(d) is intended to limit the amount of space a shareholder proposal may occupy in a company's proxy statement. See Release No. 34-12999 (Nov. 22, 1976).


[15] These decisions were consistent with a longstanding Division position. See Ferrofluidics Corp. (Sep. 18, 1992).

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

Edward Garitty

From: Molly Betournay <molly@cleanyield.com>
Sent: Friday, April 17, 2020 2:20 PM
To: Edward Garitty
Cc: Alana Griffin; Kate Beukenkamp
Subject: [EXTERNAL] RE: FOX Stockholder Proposal - The Dawn E. Peterson Trust

Edward,

Thank you for your email. We sent the client authorization letter via USPS yesterday.

Have a lovely weekend.

Regards,

Molly

Molly Betournay
Director of Social Research & Advocacy
Clean Yield Asset Management
molly@cleanyield.com
(802) 526-2525 x103

Certified

This is not an investment recommendation or a solicitation to become a client of the firm. Unless indicated, these views are the author’s and may differ from those of the firm or others in the firm. We do not represent this is accurate or complete and we may not update this. Past performance is not indicative of future returns. You may contact me for additional information and important disclosures. You should be judicious when using email to request or authorize the investment in any security or instrument, or to effect any other transactions. We cannot guarantee that any such requests received via email will be processed in a timely manner. This communication is solely for the addressee(s) and may contain confidential information. We do not waive confidentiality by mistransmission. Clean Yield Group monitors and stores both incoming and outgoing electronic correspondence.
Thank you, Molly. Same to you.

Edward Garitty

From: Edward Garitty
Sent: Friday, April 17, 2020 2:49 PM
To: Molly Betournay
Cc: Alana Griffin; Kate Beukenkamp
Subject: RE: FDX Stockholder Proposal - The Dawn E. Peterson Trust

Thank you, Molly. Same to you.

From: Molly Betournay <molly@cleanyield.com>
Sent: Friday, April 17, 2020 2:20 PM
To: Edward Garitty <edward.garitty@fedex.com>
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Subject: [EXTERNAL] RE: FDX Stockholder Proposal - The Dawn E. Peterson Trust

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Have a lovely weekend.

Regards,

Molly

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(802) 526-2525 x103

Certified

This is not an investment recommendation or a solicitation to become a client of the firm. Unless indicated, these views are the author’s and may differ from those of the firm or others in the firm. We do not represent this is accurate or complete and we may not update this. Past performance is not indicative of future returns. You may contact me for additional information and important disclosures. You should be judicious when using email to request or authorize the investment in any security or instrument, or to effect any other transactions. We cannot guarantee that any such requests received via email will be processed in a timely manner. This communication is solely for the addressee(s) and may contain confidential information. We do not waive confidentiality by mistransmission. Clean Yield Group monitors and stores both incoming and outgoing electronic correspondence.
Dear Edward,

The attached letter and copy of our client authorization letter was sent to FedEx on 4/16. I received notice from USPS that it was delivered on 4/21. I am sending along an electronic copy, as well, for your convenience.

Regards,

Molly

Molly Betournay
Director of Social Research & Advocacy
Clean Yield Asset Management
molly@cleanyield.com
(802) 526-2525 x103

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Edward Garitty

From: Edward Garitty
Sent: Tuesday, April 28, 2020 1:41 PM
To: Molly Betournay
Cc: Alana Griffin; Kate Beukenkamp
Subject: RE: FDX Stockholder Proposal - The Dawn E. Peterson Trust

Thank you, Molly.

From: Molly Betournay <molly@cleanyield.com>
Sent: Tuesday, April 28, 2020 1:38 PM
To: Edward Garitty <edward.garitty@fedex.com>
Cc: Alana Griffin <alana.griffin@fedex.com>; Kate Beukenkamp <kate.beukenkamp@fedex.com>
Subject: [EXTERNAL] RE: FDX Stockholder Proposal - The Dawn E. Peterson Trust

Dear Edward,

The attached letter and copy of our client authorization letter was sent to FedEx on 4/16. I received notice from USPS that it was delivered on 4/21. I am sending along an electronic copy, as well, for your convenience.

Regards,

Molly

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April 16, 2020

Mark R. Allen
Executive Vice President, General Counsel and Secretary
FedEx Corporation
942 South Shady Grove Road
Memphis, TN 38120

RE: Shareholder proposal for 2020 Annual Meeting

Dear Mr. Allen:

As indicated in our letter dated April 9, 2020, which included our materials to file a shareholder proposal regarding electioneering contributions at FedEx Corporation, I am sending a letter from the client, Dawn E. Peterson, authorizing Clean Yield to file this proposal on behalf of the Dawn E. Peterson Trust.

Please direct any written communications to me at the address below or to molly@cleancyield.com. Please also confirm receipt of this letter via email.

Yours very truly,

Molly Betournay

Enclosures: Client authorization letter
April 9, 2020

Ms. Molly Betournay
Director of Research & Advocacy
Clean Yield Asset Management
16 Beaver Meadow Road
P.O. Box 874
Norwich, VT 05055

Dear Ms. Betournay:

I hereby authorize Clean Yield Asset Management to file a shareholder resolution on behalf of the Dawn E Peterson Trust at the FedEx (FDX) 2020 annual shareholder meeting. Specifically, the proposal requests at least annually, a report analyzing the congruency of political and electioneering expenditures against publicly stated company values and policies.

I confirm that the Dawn E Peterson Trust is the beneficial owner of more than $2,000 worth of common stock in FedEx and has held this position continuously for more than a year. The Trust will retain this position through the date of the company’s annual meeting in 2020.

I specifically give Clean Yield Asset Management full authority to deal with any and all aspects of the aforementioned shareholder resolution. I understand that the Trust may be identified on the corporation’s proxy statement as the filer of the aforementioned resolution.

Sincerely,

Dawn E Peterson,
Dawn E Peterson Trust
Mark R. Allen  
Corporate Secretary  
FedEx Corporation  
942 South Shady Grove Rd  
Memphis, TN 38120
Exhibit B

The Prior Electoral Expenditure Proposal and Related Correspondence
Mr. Garitty,

Please see the attached rule 14a-8 proposal to improve corporate governance and enhance long-term shareholder value at de minimis up-front cost – especially considering the substantial market capitalization of the company.

Sincerely,

John Chevedden
Dear Mr. Allen,

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

Date: December 18, 2019

cc: Edward Garitty <edward.garitty@fedex.com>
Eddie Klank <ceklank@fedex.com>
Megan Barnes <megan.barnes@fedex.com>
PH: 901-818-7029
FX: 901-818-7119
Resolved, that shareholders request FedEx to prepare and semiannually update a report, which shall be presented to the pertinent board of directors committee and posted on the Company’s website, that discloses the Company’s:

(a) Policies and procedures for making electoral contributions and expenditures (direct and indirect) with corporate funds, including the board’s role (if any) in that process; and
(b) Monetary and non-monetary contributions or expenditures that could not be deducted as an “ordinary and necessary” business expense under section 162(e)(1)(B) of the Internal Revenue Code, including (but not limited to) contributions or expenditures on behalf of candidates, parties, and committees and entities organized and operating under section 501(c)(4) of the Internal Revenue Code, as well as the portion of any dues or payments made to any tax-exempt organization (such as a trade association) used for an expenditure or contribution that, if made directly by the Company, would not be deductible under section 162(e)(1)(B) of the Internal Revenue Code.

The report shall be made available within 12 months of the annual meeting and identify all recipients and the amount paid to each recipient from Company funds. This proposal does not encompass lobbying spending.

Supporting Statement

As a long-term FedEx shareholder, I and other FedEx shareholders support transparency and accountability in corporate electoral spending. Disclosure is in the best interest of the Company and its shareholders. The Supreme Court recognized this in its 2010 Citizens United decision, which said, “[D]isclosure permits citizens and shareholders to react to the speech of corporate entities in a proper way. This transparency enables the electorate to make informed decisions and give proper weight to different speakers and messages.”

Publicly available records show FedEx has contributed at least $1.1 million in corporate funds since the 2010 election cycle. (CQMoneyLine: http://moneyline.cq.com; National Institute on Money in State Politics: http://www.followthemoney.org).

I acknowledge that FedEx publicly discloses a policy on corporate political spending and its direct contributions to candidates, parties, and committees. I believe this is deficient because FedEx does not disclose the following:

- A full list of trade associations to which it belongs and the non-deductible portion under section 162(e)(1)(B) of the dues paid to each.

Information on indirect electoral spending through trade associations cannot be obtained by shareholders unless the Company discloses it. This proposal asks the Company to disclose all of its electoral spending, direct and indirect.

This would bring our company in line with a growing number of leading companies, including United Parcel Service, International Paper, and Microsoft, which present this information on their websites. The Company’s Board and shareholders need comprehensive disclosure to be able to fully evaluate the use of corporate assets in elections.

Please vote For this critical governance reform:


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

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

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

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

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

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

The stock supporting this proposal will be held until after the annual meeting and the proposal will be presented at the annual meeting. Please acknowledge this proposal promptly by email [ ].
Receipt acknowledged, Mr. Chevedden.

Respectfully yours,

Eddie Klank

Mr. Garitty,
Please see the attached rule 14a-8 proposal to improve corporate governance and enhance long-term shareholder value at de minimis up-front cost – especially considering the substantial market capitalization of the company.
Sincerely,
John Chevedden
Mr. Chevedden:

As indicated by Eddie Klank last evening, we received the stockholder proposal you submitted on December 10, 2019. Please find attached correspondence regarding the proposal. Please direct any correspondence regarding this matter to Eddie Klank, Edward Garitty, and me.

Best regards,
Megan Barnes

Megan H. Barnes
Securities and Corporate Law
FedEx Corporation
942 S. Shady Grove Road
Memphis, Tennessee 38120
Telephone 901.818.7381
Facsimile 901.818.7170
megan.barnes@fedex.com

Mr. Garitty,

Please see the attached rule 14a-8 proposal to improve corporate governance and enhance long-term shareholder value at de minimis up-front cost – especially considering the substantial market capitalization of the company.

Sincerely,
John Chevedden
Via E-mail and FedEx Envelope

December 11, 2019

John Chevedden

Subject: John Chevedden Stockholder Proposal – Political Disclosure

Dear Mr. Chevedden:

We received the stockholder proposal dated December 10, 2019 that you submitted to FedEx Corporation ("FedEx") on December 10, 2019.

The proposal contains certain procedural deficiencies, which Securities and Exchange Commission ("SEC") regulations require us to bring to your attention. Rule 14a-8(b)(1) of the Securities Exchange Act of 1934, as amended, requires that in order to be eligible to submit a proposal for inclusion in FedEx’s proxy statement, each stockholder proponent must, among other things, have continuously held at least $2,000 in market value, or 1%, of FedEx’s common stock for at least one year by the date the proponent submits the proposal, and must continue to hold such common stock through the date of the FedEx annual meeting. Our stock records indicate that you are not currently the registered holder of any shares of FedEx common stock, and you have not provided proof of ownership.

Accordingly, Rule 14a-8(b) requires that a proponent of a proposal prove eligibility as a beneficial stockholder of the company by submitting either:

- a written statement from the “record” holder of the shares (usually a bank or broker) verifying that, at the time the proponent submitted the proposal (in your case, December 10, 2019), the proponent had continuously held at least $2,000 in market value, or 1%, of FedEx’s common stock for at least the one-year period prior to and including the date the proposal was submitted, and that the proponent intends to continue to hold such common stock through the date of the FedEx annual meeting; or

- a copy of a filed Schedule 13D, Schedule 13G, Form 3, Form 4, Form 5, or amendments to those documents or updated forms, reflecting the proponent’s ownership of shares as of or before the date on which the one-year eligibility period begins, the proponent’s written statement that he or she continuously held the required number of shares for the one-year period as of the date of the statement and the proponent’s written statement that he or she intends to continue ownership of the shares through the date of the FedEx annual meeting.
To help stockholders comply with the requirements when submitting proof of ownership to companies, the SEC's Division of Corporation Finance published Staff Legal Bulletin No. 14F ("SLB 14F"), dated October 18, 2011, Staff Legal Bulletin No. 14G ("SLB 14G"), dated October 16, 2012, and Staff Legal Bulletin No. 14K ("SLB 14K"), dated October 16, 2019, copies of which are attached for your reference. SLB 14F and SLB 14G provide that for securities held through The Depository Trust Company ("DTC"), only DTC participants should be viewed as "record" holders of securities that are deposited at DTC. You can confirm whether your bank or broker is a DTC participant by checking DTC's participant list, which is currently available on the Internet at: http://www.dtcc.com/~lmedia/Files/Downloads/%20client-center/DTC/alpha.pdf?la=en.

If you hold shares through a bank or broker that is not a DTC participant, you will need to obtain proof of ownership from the DTC participant through which the bank or broker holds the shares, or an affiliate of such DTC participant. You should be able to find the name of the DTC participant by asking your bank or broker. If the DTC participant that holds your shares knows the holdings of your bank or broker, but does not know your holdings, you may satisfy the proof of ownership requirements by submitting two proof of ownership statements — one from your bank or broker confirming your ownership and the other from the DTC participant confirming the bank's or broker's ownership. Please review SLB 14F carefully before submitting proof of ownership to ensure that it is compliant.

In order to meet the eligibility requirements for submitting a stockholder proposal, the SEC rules require that the documentation be postmarked or transmitted electronically to us no later than 14 calendar days from the date you receive this letter. Please address any response to me at the mailing address, e-mail address or fax number provided above. A copy of Rule 14a-8, which applies to stockholder proposals submitted for inclusion in proxy statements, is enclosed for your reference.

If you have any questions, please call me.

Sincerely,

FedEx Corporation

Clement E. Klank III

Attachments
§240.14a-8

Information after the termination of the solicitation.

(a) The security holder shall reimburse the reasonable expenses incurred by the registrant in performing the acts requested pursuant to paragraph (a) of this section.

Note 1 to §240.14a-7. Reasonably prompt methods of distribution to security holders may be used instead of mailing. If an alternative distribution method is chosen, the costs of that method should be considered where necessary rather than the costs of mailing.

Note 2 to §240.14a-7 When providing the information required by §240.14a-7(n)(1)(i), if the registrant has received affirmative written or implied consent to delivery of a single copy of proxy materials to a shared address in accordance with §240.14a-3(e)(1), it shall exclude from the number of record holders those to whom it does not have to deliver a separate proxy statement.

§240.14a-8 Shareholder proposals.

This section addresses when a company must include a shareholder's proposal in its proxy statement and identify the proposal in its form of proxy when the company holds an annual or special meeting of shareholders. In summary, in order to have your shareholder proposal included on a company's proxy card, and included along with any supporting statement in its proxy statement, you must be eligible and follow certain procedures. Under a few specific circumstances, the company is permitted to exclude your proposal, but only after submitting its reasons to the Commission. We structured this section in a question-and-answer format so that it is easier to understand. The references to "you" are to a shareholder seeking to submit the proposal.

(a) Question 1: What is a proposal? A shareholder proposal is your recommendation or requirement that the company and/or its board of directors take action, which you intend to present at a meeting of the company's shareholders. Your proposal should state as clearly as possible the course of action that you believe the company should follow. If your proposal is placed on the company's proxy card, the company must also provide in the form of proxy means for shareholders to specify by boxes a choice between approval or disapproval, or abstention. Unless otherwise indicated, the word "proposal" as used in this section refers both to your proposal, and to your corresponding statement in support of your proposal (if any).

(b) Question 2: Who is eligible to submit a proposal, and how do I demonstrate to the company that I am eligible? (1) In order to be eligible to submit a proposal, you must have continuously held at least $2,000 in market value, or 1%, of the company's securities entitled to be voted on the proposal at the meeting for at least one year by the date you submit the proposal. You must continue to hold those securities through the date of the meeting.

(2) If you are the registered holder of your securities, which means that your name appears in the company's records as a shareholder, the company can verify your eligibility on its own, although you will still have to provide the company with a written statement that you intend to continue to hold the securities through the date of the meeting of shareholders. However, if you are not the 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...
Question (g): What is the deadline for submitting a proposal? (1) 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. (3) If you are submitting your proposal for a meeting of shareholders that is not held in the following two calendar years, the deadline is a reasonable time before the company begins to print and send its proxy materials.

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(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.

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.

Question 8: Must I appear personally at the shareholders' meeting to present the proposal? (1) Either you, or your representative who is qualified...
under state law to present the proposal on your behalf, must attend the meeting to present the proposal. Whether you attend the meeting yourself or send a qualified representative to the meeting in your place, you should make sure that you, or your representative, follow the proper state law procedures for attending the meeting and/or presenting your proposal.

(2) If the company holds its shareholder meeting in whole or in part via electronic media, and the company permits you or your representative to present your proposal via such media, then you may appear through electronic media rather than traveling to the meeting to appear in person.

(3) If you or your qualified representative fail to appear and present the proposal, without good cause, the company will be permitted to exclude all of your proposals from its proxy materials for any meetings held in the following two calendar years.

(1) Question 2: If I have complied with the procedural requirements, on what other bases may a company rely to exclude my proposal if, otherwise, it would provide an advisory vote or seek future advisory votes to approve the compensation of executives as disclosed pursuant to subsection 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 (1)(10): A company’s submission to the Commission under this section should specify the points of conflict with the company’s proposal.

(6) Absence of power/authority: 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;

(7) Management functions: 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;

(8) Director elections: If the proposal deals with a matter relating to the company’s ordinary business operations;

(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;

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

NOTE TO PARAGRAPH (1)(10): A company’s submission to the Commission under this section should specify the points of conflict with the company’s proposal.

(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;

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

NOTE TO PARAGRAPH (1)(10): 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 (1)(10): A company’s submission to the Commission under this section should specify the points of conflict with the company’s proposal.
Securities and Exchange Commission

... 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-8(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-8(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 have 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:

(1) Less than 3% of the vote if proposed once within the preceding 5 calendar years;

(2) Less than 6% of the vote on its last submission to shareholders if proposed twice previously within the preceding 5 calendar years; or

(3) 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? If the company intends to exclude a proposal from its proxy materials, it must file its reasons with the Commission no later than 30 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 30 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.

(c) 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 response. You should submit six paper copies of your response.

(i) 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?

(i) 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.


§240.14a-9 False or misleading statements.

(a) 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 make the statements therein not false or misleading or necessary 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 fact that a proxy statement, form of proxy or other soliciting material has been filed with or examined by the Commission shall not be deemed a finding by the Commission that such material is accurate or complete or not false or misleading, or that the Commission has passed upon the merits of or approved any statement contained therein or any matter to be acted upon by security holders. No representation contrary to the foregoing shall be made.

(c) No nominee, nominating shareholder or nominating shareholder group, or any member thereof, shall cause to be included in a registrant's proxy materials, either pursuant to the Federal proxy rules, an applicable state or foreign law provision, or a registrant's governing documents as they relate to including shareholder nominees for director in a registrant's proxy materials, either pursuant to Schedule 14N (§240.14n-101), or include in any other related communication, 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 make the statements therein not false or misleading or necessary to correct any statement in any earlier communication with respect to a solicitation for the same meeting or subject matter which has become false or misleading.

Note: The following are some examples of what, depending upon particular facts and circumstances, may be misleading within the meaning of this section.

a. Predictions as to specific future market values.

b. Material which directly or indirectly impugns character, integrity or personal reputation, or directly or indirectly makes charges concerning improper, illegal or immoral conduct or associations, without factual foundation.
Division of Corporation Finance  
Securities and Exchange Commission  

Shareholder Proposals  
Staff Legal Bulletin No. 14F (CF)  

Action: Publication of CF Staff Legal Bulletin  
Date: October 18, 2011  
Summary: This staff legal bulletin provides information for companies and shareholders regarding Rule 14a-8 under the Securities Exchange Act of 1934.  

Supplementary Information: The statements in this bulletin represent the views of the Division of Corporation Finance (the “Division”). This bulletin is not a rule, regulation or statement of the Securities and Exchange Commission (the “Commission”). Further, the Commission has neither approved nor disapproved its content.  
Contacts: For further information, please contact the Division’s Office of Chief Counsel by calling (202) 551-3500 or by submitting a web-based request form at https://www.sec.gov/forms/corp_fin_interpretive.  

A. The purpose of this bulletin  
This bulletin is part of a continuing effort by the Division to provide guidance on important issues arising under Exchange Act Rule 14a-8. Specifically, this bulletin contains information regarding:  
- Brokers and banks that constitute “record” holders under Rule 14a-8(b)(2)(i) for purposes of verifying whether a beneficial owner is eligible to submit a proposal under Rule 14a-8;  
- Common errors shareholders can avoid when submitting proof of ownership to companies;  
- The submission of revised proposals;  
- Procedures for withdrawing no-action requests regarding proposals submitted by multiple proponents; and  
- The Division’s new process for transmitting Rule 14a-8 no-action responses by email.  
You can find additional guidance regarding Rule 14a-8 in the following bulletins that are available on the Commission’s website: SLB No. 14, SLB No. 14A, SLB No. 14B, SLB No. 14C, SLB No. 14D and SLB No. 14E.  

B. The types of brokers and banks that constitute “record” holders under Rule 14a-8(b)(2)(i) for purposes of verifying whether a beneficial owner is eligible to submit a proposal under Rule 14a-8  
1. Eligibility to submit a proposal under Rule 14a-8
To be eligible to submit a shareholder proposal, a shareholder 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 shareholder meeting for at least one year as of the date the shareholder submits the proposal. The shareholder must also continue to hold the required amount of securities through the date of the meeting and must provide the company with a written statement of intent to do so.¹

The steps that a shareholder must take to verify his or her eligibility to submit a proposal depend on how the shareholder owns the securities. There are two types of security holders in the U.S.: registered owners and beneficial owners.² Registered owners have a direct relationship with the issuer because their ownership of shares is listed on the records maintained by the issuer or its transfer agent. If a shareholder is a registered owner, the company can independently confirm that the shareholder's holdings satisfy Rule 14a-8(b)'s eligibility requirement.

The vast majority of investors in shares issued by U.S. companies, however, are beneficial owners, which means that they hold their securities in book-entry form through a securities intermediary, such as a broker or a bank. Beneficial owners are sometimes referred to as "street name" holders. Rule 14a-8(b)(2)(i) provides that a beneficial owner can provide proof of ownership to support his or her eligibility to submit a proposal by submitting a written statement "from the 'record' holder of [the] securities (usually a broker or bank)," verifying that, at the time the proposal was submitted, the shareholder held the required amount of securities continuously for at least one year.³

2. The role of the Depository Trust Company

Most large U.S. brokers and banks deposit their customers' securities with, and hold those securities through, the Depository Trust Company ("DTC"), a registered clearing agency acting as a securities depository. Such brokers and banks are often referred to as "participants" in DTC.⁴ The names of these DTC participants, however, do not appear as the registered owners of the securities deposited with DTC on the list of shareholders maintained by the company or, more typically, by its transfer agent. Rather, DTC's nominee, Cede & Co., appears on the shareholder list as the sole registered owner of securities deposited with DTC by the DTC participants. A company can request from DTC a "securities position listing" as of a specified date, which identifies the DTC participants having a position in the company's securities and the number of securities held by each DTC participant on that date.⁵

3. Brokers and banks that constitute "record" holders under Rule 14a-8(b)(2)(i) for purposes of verifying whether a beneficial owner is eligible to submit a proposal under Rule 14a-8

In The Hain Celestial Group, Inc. (Oct. 1, 2008), we took the position that an introducing broker could be considered a "record" holder for purposes of Rule 14a-8(b)(2)(i). An introducing broker is a broker that engages in sales and other activities involving customer contact, such as opening customer accounts and accepting customer orders, but is not permitted to maintain custody of customer funds and securities.⁶ Instead, an introducing broker engages another broker, known as a "clearing broker," to hold custody of client funds and securities, to clear and execute customer trades, and to handle other functions such as issuing confirmations of customer trades and customer account statements. Clearing brokers generally are DTC participants; introducing brokers generally are not. As introducing brokers generally are not DTC participants, and therefore typically do not appear on DTC's securities position listing, Hain Celestial has required companies to
accept proof of ownership letters from brokers in cases where, unlike the positions of registered owners and brokers and banks that are DTC participants, the company is unable to verify the positions against its own or its transfer agent’s records or against DTC’s securities position listing.

In light of questions we have received following two recent court cases relating to proof of ownership under Rule 14a-8 and in light of the Commission’s discussion of registered and beneficial owners in the Proxy Mechanics Concept Release, we have reconsidered our views as to what types of brokers and banks should be considered "record" holders under Rule 14a-8(b)(2)(i). Because of the transparency of DTC participants’ positions in a company’s securities, we will take the view going forward that, for Rule 14a-8(b)(2)(i) purposes, only DTC participants should be viewed as "record" holders of securities that are deposited at DTC. As a result, we will no longer follow Hain Celestial.

We believe that taking this approach as to who constitutes a "record" holder for purposes of Rule 14a-8(b)(2)(i) will provide greater certainty to beneficial owners and companies. We also note that this approach is consistent with Exchange Act Rule 12g5-1 and a 1988 staff no-action letter addressing that rule, under which brokers and banks that are DTC participants are considered to be the record holders of securities on deposit with DTC when calculating the number of record holders for purposes of Sections 12(g) and 15(d) of the Exchange Act.

Companies have occasionally expressed the view that, because DTC’s nominee, Cede & Co., appears on the shareholder list as the sole registered owner of securities deposited with DTC by the DTC participants, only DTC or Cede & Co. should be viewed as the “record” holder of the securities held on deposit at DTC for purposes of Rule 14a-8(b)(2)(i). We have never interpreted the rule to require a shareholder to obtain a proof of ownership letter from DTC or Cede & Co., and nothing in this guidance should be construed as changing that view.

How can a shareholder determine whether his or her broker or bank is a DTC participant?

Shareholders and companies can confirm whether a particular broker or bank is a DTC participant by checking DTC’s participant list, which is currently available on the Internet at http://www.dtcc.com/~media/Files/Downloads/client-center/DTC/alpha.ashx.

What if a shareholder’s broker or bank is not on DTC’s participant list?

The shareholder will need to obtain proof of ownership from the DTC participant through which the securities are held. The shareholder should be able to find out who this DTC participant is by asking the shareholder’s broker or bank.

If the DTC participant knows the shareholder’s broker or bank’s holdings, but does not know the shareholder’s holdings, a shareholder could satisfy Rule 14a-8(b)(2)(i) by obtaining and submitting two proof of ownership statements verifying that, at the time the proposal was submitted, the required amount of securities were continuously held for at least one year – one from the shareholder’s broker or bank confirming the shareholder’s ownership, and the other from the DTC participant confirming the broker or bank’s ownership.

How will the staff process no-action requests that argue for exclusion on the basis that the shareholder’s proof of ownership is not from a DTC
C. Common errors shareholders can avoid when submitting proof of ownership to companies

In this section, we describe two common errors shareholders make when submitting proof of ownership for purposes of Rule 14a-8(b)(2), and we provide guidance on how to avoid these errors.

First, Rule 14a-8(b) requires a shareholder to provide proof of ownership that he or she has "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" (emphasis added). We note 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. In some cases, the letter speaks as of a date before the date the proposal is submitted, thereby leaving a gap between the date of the verification and the date the proposal is submitted. In other cases, the letter speaks as of a date after the date the proposal was submitted but covers a period of only one year, thus failing to verify the shareholder's beneficial ownership over the required full one-year period preceding the date of the proposal's submission.

Second, many letters fail to confirm continuous ownership of the securities. This can occur when a broker or bank submits a letter that confirms the shareholder's beneficial ownership only as of a specified date but omits any reference to continuous ownership for a one-year period.

We recognize that the requirements of Rule 14a-8(b) are highly prescriptive and can cause inconvenience for shareholders when submitting proposals. Although our administration of Rule 14a-8(b) is constrained by the terms of the rule, we believe that shareholders can avoid the two errors highlighted above by arranging to have their broker or bank provide the required verification of ownership as of the date they plan to submit the proposal using the following format:

"As of [date the proposal is submitted], [name of shareholder] held, and has held continuously for at least one year, [number of securities] shares of [company name] [class of securities].""11

As discussed above, a shareholder may also need to provide a separate written statement from the DTC participant through which the shareholder's securities are held if the shareholder's broker or bank is not a DTC participant.

D. The submission of revised proposals

On occasion, a shareholder will revise a proposal after submitting it to a company. This section addresses questions we have received regarding revisions to a proposal or supporting statement.
1. A shareholder submits a timely proposal. The shareholder then submits a revised proposal before the company’s deadline for receiving proposals. Must the company accept the revisions?

Yes. In this situation, we believe the revised proposal serves as a replacement of the initial proposal. By submitting a revised proposal, the shareholder has effectively withdrawn the initial proposal. Therefore, the shareholder is not in violation of the one-proposal limitation in Rule 14a-8(c). If the company intends to submit a no-action request, it must do so with respect to the revised proposal.

We recognize that in Question and Answer E.2 of SLB No. 14, we indicated that if a shareholder makes revisions to a proposal before the company submits its no-action request, the company can choose whether to accept the revisions. However, this guidance has led some companies to believe that, in cases where shareholders attempt to make changes to an initial proposal, the company is free to ignore such revisions even if the revised proposal is submitted before the company’s deadline for receiving shareholder proposals. We are revising our guidance on this issue to make clear that a company may not ignore a revised proposal in this situation.

2. A shareholder submits a timely proposal. After the deadline for receiving proposals, the shareholder submits a revised proposal. Must the company accept the revisions?

No. If a shareholder submits revisions to a proposal after the deadline for receiving proposals under Rule 14a-8(e), the company is not required to accept the revisions. However, if the company does not accept the revisions, it must treat the revised proposal as a second proposal and submit a notice stating its intention to exclude the revised proposal, as required by Rule 14a-8(j). The company’s notice may cite Rule 14a-8(e) as the reason for excluding the revised proposal. If the company does not accept the revisions and intends to exclude the initial proposal, it would also need to submit its reasons for excluding the initial proposal.

3. If a shareholder submits a revised proposal, as of which date must the shareholder prove his or her share ownership?

A shareholder must prove ownership as of the date the original proposal is submitted. When the Commission has discussed revisions to proposals, it has not suggested that a revision triggers a requirement to provide proof of ownership a second time. As outlined in Rule 14a-8(b), proving ownership includes providing a written statement that the shareholder intends to continue to hold the securities through the date of the shareholder meeting. Rule 14a-8(f)(2) provides that if the shareholder "fails in [his or her] 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 [the same shareholder’s] proposals from its proxy materials for any meeting held in the following two calendar years." With these provisions in mind, we do not interpret Rule 14a-8 as requiring additional proof of ownership when a shareholder submits a revised proposal.

E. Procedures for withdrawing no-action requests for proposals submitted by multiple proponents

We have previously addressed the requirements for withdrawing a Rule 14a-8 no-action request in SLB Nos. 14 and 14C. SLB No. 14 notes that a company should include with a withdrawal letter documentation demonstrating that a shareholder has withdrawn the proposal. In cases where a proposal submitted by multiple shareholders is withdrawn, SLB No. 14C states that, if each shareholder has designated a lead individual to act
on its behalf and the company is able to demonstrate that the individual is authorized to act on behalf of all of the proponents, the company need only provide a letter from that lead Individual indicating that the lead individual is withdrawing the proposal on behalf of all of the proponents.

Because there is no relief granted by the staff in cases where a no-action request is withdrawn following the withdrawal of the related proposal, we recognize that the threshold for withdrawing a no-action request need not be overly burdensome. Going forward, we will process a withdrawal request if the company provides a letter from the lead filer that includes a representation that the lead filer is authorized to withdraw the proposal on behalf of each proponent identified in the company’s no-action request.16

F. Use of email to transmit our Rule 14a-8 no-action responses to companies and proponents

To date, the Division has transmitted copies of our Rule 14a-8 no-action responses, including copies of the correspondence we have received in connection with such requests, by U.S. mail to companies and proponents. We also post our response and the related correspondence to the Commission’s website shortly after issuance of our response.

In order to accelerate delivery of staff responses to companies and proponents, and to reduce our copying and postage costs, going forward, we intend to transmit our Rule 14a-8 no-action responses by email to companies and proponents. We therefore encourage both companies and proponents to include email contact information in any correspondence to each other and to us. We will use U.S. mail to transmit our no-action response to any company or proponent for which we do not have email contact information.

Given the availability of our responses and the related correspondence on the Commission’s website and the requirement under Rule 14a-8 for companies and proponents to copy each other on correspondence submitted to the Commission, we believe it is unnecessary to transmit copies of the related correspondence along with our no-action response. Therefore, we intend to transmit only our staff response and not the correspondence we receive from the parties. We will continue to post to the Commission’s website copies of this correspondence at the same time that we post our staff no-action response.

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1 See Rule 14a-8(b).

2 For an explanation of the types of share ownership in the U.S., see Concept Release on U.S. Proxy System, Release No. 34-62495 (July 14, 2010) [75 FR 42982] ("Proxy Mechanics Concept Release"), at Section II.A. The term “beneficial owner” does not have a uniform meaning under the federal securities laws. It has a different meaning in this bulletin as compared to “beneficial owner” and “beneficial ownership” in Sections 13 and 16 of the Exchange Act. Our use of the term in this bulletin is not intended to suggest that registered owners are not beneficial owners for purposes of those Exchange Act provisions. See Proposed Amendments to Rule 14a-8 under the Securities Exchange Act of 1934 Relating to Proposals by Security Holders, Release No. 34-12598 (July 7, 1976) [41 FR 29982], at n.2 ("The term 'beneficial owner' when used in the context of the proxy rules, and in light of the purposes of those rules, may be interpreted to have a broader meaning than it would for certain other purpose[s] under the federal securities laws, such as reporting pursuant to the Williams Act.").
If a shareholder has filed a Schedule 13D, Schedule 13G, Form 3, Form 4 or Form 5 reflecting ownership of the required amount of shares, the shareholder may instead prove ownership by submitting a copy of such filings and providing the additional information that is described in Rule 14a-8(b)(2)(ii).

DTC holds the deposited securities in “fungible bulk,” meaning that there are no specifically identifiable shares directly owned by the DTC participants. Rather, each DTC participant holds a pro rata interest or position in the aggregate number of shares of a particular issuer held at DTC. Correspondingly, each customer of a DTC participant – such as an individual investor – owns a pro rata interest in the shares in which the DTC participant has a pro rata interest. See Proxy Mechanics Concept Release, at Section II.B.2.a.


See KBR Inc. v. Chevedden, Civil Action No. H-11-0196, 2011 U.S. Dist. LEXIS 36431, 2011 WL 1463611 (S.D. Tex. Apr. 4, 2011); Apache Corp. v. Chevedden, 696 F. Supp. 2d 723 (S.D. Tex. 2010). In both cases, the court concluded that a securities intermediary was not a record holder for purposes of Rule 14a-8(b) because it did not appear on a list of the company’s non-objecting beneficial owners or on any DTC securities position listing, nor was the intermediary a DTC participant.

Techno Corp. (Sept. 20, 1988).

In addition, if the shareholder’s broker is an introducing broker, the shareholder’s account statements should include the clearing broker’s identity and telephone number. See Net Capital Rule Release, at Section II.C.(iii). The clearing broker will generally be a DTC participant.

For purposes of Rule 14a-8(b), the submission date of a proposal will generally precede the company’s receipt date of the proposal, absent the use of electronic or other means of same-day delivery.

This format is acceptable for purposes of Rule 14a-8(b), but it is not mandatory or exclusive.

As such, it is not appropriate for a company to send a notice of defect for multiple proposals under Rule 14a-8(c) upon receiving a revised proposal.

This position will apply to all proposals submitted after an initial proposal but before the company’s deadline for receiving proposals, regardless of whether they are explicitly labeled as “revisions” to an initial proposal, unless the shareholder affirmatively indicates an intent to submit a second, additional proposal for inclusion in the company’s proxy materials. In that case, the company must send the shareholder a notice of defect pursuant to Rule 14a-8(f)(1) if it intends to exclude either proposal from its proxy materials in reliance on Rule 14a-8(c). In light of this guidance, with respect to proposals or revisions received before a company’s deadline for submission, we will no longer follow Layne Christensen Co. (Mar. 21, 2011) and other prior staff no-action letters in which we took the view that a proposal would violate the Rule 14a-8(c) one-proposal limitation if such proposal is submitted to a company after the company has either submitted a Rule 14a-8 no-action request to exclude an earlier proposal submitted by
the same proponent or notified the proponent that the earlier proposal was excludable under the rule.


15 Because the relevant date for proving ownership under Rule 14a-8(b) is the date the proposal is submitted, a proponent who does not adequately prove ownership in connection with a proposal is not permitted to submit another proposal for the same meeting on a later date.

16 Nothing in this staff position has any effect on the status of any shareholder proposal that is not withdrawn by the proponent or its authorized representative.

Division of Corporation Finance  
Securities and Exchange Commission  

Shareholder Proposals  
Staff Legal Bulletin No. 14G (CF)  

Action: Publication of CF Staff Legal Bulletin  

Date: October 16, 2012  

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

Supplementary Information: The statements in this bulletin represent the views of the Division of Corporation Finance (the "Division"). This bulletin is not a rule, regulation or statement of the Securities and Exchange Commission (the "Commission"). Further, the Commission has neither approved nor disapproved its content.  

Contacts: For further information, please contact the Division’s Office of Chief Counsel by calling (202) 551-3500 or by submitting a web-based request form at https://www.sec.gov/forms/corp_fin_interpretive.  

A. The purpose of this bulletin  

This bulletin is part of a continuing effort by the Division to provide guidance on important issues arising under Exchange Act Rule 14a-8. Specifically, this bulletin contains information regarding:  

- the parties that can provide proof of ownership under Rule 14a-8(b)(2)(i) for purposes of verifying whether a beneficial owner is eligible to submit a proposal under Rule 14a-8;  
- the manner in which companies should notify proponents of a failure to provide proof of ownership for the one-year period required under Rule 14a-8(b)(1); and  
- the use of website references in proposals and supporting statements.  

You can find additional guidance regarding Rule 14a-8 in the following bulletins that are available on the Commission’s website: SLB No. 14, SLB No. 14A, SLB No. 14B, SLB No. 14C, SLB No. 14D, SLB No. 14E and SLB No. 14F.  

B. Parties that can provide proof of ownership under Rule 14a-8(b)(2)(i) for purposes of verifying whether a beneficial owner is eligible to submit a proposal under Rule 14a-8  

1. Sufficiency of proof of ownership letters provided by affiliates of DTC participants for purposes of Rule 14a-8(b)(2)(i)
To be eligible to submit a proposal under Rule 14a-8, a shareholder must, among other things, provide documentation evidencing that the shareholder has 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 shareholder meeting for at least one year as of the date the shareholder submits the proposal. If the shareholder is a beneficial owner of the securities, which means that the securities are held in book-entry form through a securities intermediary, Rule 14a-8(b)(2)(i) provides that this documentation can be in the form of a "written statement from the 'record' holder of your securities (usually a broker or bank)...."

In SLB No. 14F, the Division described its view that only securities intermediaries that are participants in the Depository Trust Company ("DTC") should be viewed as "record" holders of securities that are deposited at DTC for purposes of Rule 14a-8(b)(2)(i). Therefore, a beneficial owner must obtain a proof of ownership letter from the DTC participant through which its securities are held at DTC in order to satisfy the proof of ownership requirements in Rule 14a-8.

During the most recent proxy season, some companies questioned the sufficiency of proof of ownership letters from entities that were not themselves DTC participants, but were affiliates of DTC participants. By virtue of the affiliate relationship, we believe that a securities intermediary holding shares through its affiliated DTC participant should be in a position to verify its customers' ownership of securities. Accordingly, we are of the view that, for purposes of Rule 14a-8(b)(2)(i), a proof of ownership letter from an affiliate of a DTC participant satisfies the requirement to provide a proof of ownership letter from a DTC participant.

2. Adequacy of proof of ownership letters from securities intermediaries that are not brokers or banks

We understand that there are circumstances in which securities intermediaries that are not brokers or banks maintain securities accounts in the ordinary course of their business. A shareholder who holds securities through a securities intermediary that is not a broker or bank can satisfy Rule 14a-8’s documentation requirement by submitting a proof of ownership letter from that securities intermediary. If the securities intermediary is not a DTC participant or an affiliate of a DTC participant, then the shareholder will also need to obtain a proof of ownership letter from the DTC participant or an affiliate of a DTC participant that can verify the holdings of the securities intermediary.

C. Manner in which companies should notify proponents of a failure to provide proof of ownership for the one-year period required under Rule 14a-8(b)(1)

As discussed in Section C of SLB No. 14F, a common error in proof of ownership letters is that they do not verify a proponent's beneficial ownership for the entire one-year period preceding and including the date the proposal was submitted, as required by Rule 14a-8(b)(1). In some cases, the letter speaks as of a date before the date the proposal was submitted, thereby leaving a gap between the date of verification and the date the proposal was submitted. In other cases, the letter speaks as of a date after the date the proposal was submitted but covers a period of only one year, thus failing to verify the proponent's beneficial ownership over the required full one-year period preceding the date of the proposal's submission.

Under Rule 14a-8(f), if a proponent fails to follow one of the eligibility or procedural requirements of the rule, a company may exclude the proposal only if it notifies the proponent of the defect and the proponent fails to
correct it. In SLB No. 14 and SLB No. 14B, we explained that companies should provide adequate detail about what a proponent must do to remedy all eligibility or procedural defects.

We are concerned that companies' notices of defect are not adequately describing the defects or explaining what a proponent must do to remedy defects in proof of ownership letters. For example, some companies' notices of defect make no mention of the gap in the period of ownership covered by the proponent's proof of ownership letter or other specific deficiencies that the company has identified. We do not believe that such notices of defect serve the purpose of Rule 14a-8(f).

Accordingly, going forward, we will not concur in the exclusion of a proposal under Rules 14a-8(b) and 14a-8(f) on the basis that a proponent's proof of ownership does not cover the one-year period preceding and including the date the proposal is submitted unless the company provides a notice of defect that identifies the specific date on which the proposal was submitted and explains that the proponent must obtain a new proof of ownership letter verifying continuous ownership of the requisite amount of securities for the one-year period preceding and including such date to cure the defect. We view the proposal's date of submission as the date the proposal is postmarked or transmitted electronically. Identifying in the notice of defect the specific date on which the proposal was submitted will help a proponent better understand how to remedy the defects described above and will be particularly helpful in those instances in which it may be difficult for a proponent to determine the date of submission, such as when the proposal is not postmarked on the same day it is placed in the mail. In addition, companies should include copies of the postmark or evidence of electronic transmission with their no-action requests.

D. Use of website addresses in proposals and supporting statements

Recently, a number of proponents have included in their proposals or in their supporting statements the addresses to websites that provide more information about their proposals. In some cases, companies have sought to exclude either the website address or the entire proposal due to the reference to the website address.

In SLB No. 14, we explained that a reference to a website address in a proposal does not raise the concerns addressed by the 500-word limitation in Rule 14a-8(d). We continue to be of this view and, accordingly, we will continue to count a website address as one word for purposes of Rule 14a-8(d). To the extent that the company seeks the exclusion of a website reference in a proposal, but not the proposal itself, we will continue to follow the guidance stated in SLB No. 14, which provides that references to website addresses in proposals or supporting statements could be subject to exclusion under Rule 14a-8(i)(3) if the information contained on the website is materially false or misleading, irrelevant to the subject matter of the proposal or otherwise in contravention of the proxy rules, including Rule 14a-9.3

In light of the growing interest in including references to website addresses in proposals and supporting statements, we are providing additional guidance on the appropriate use of website addresses in proposals and supporting statements.4

1. References to website addresses in a proposal or supporting statement and Rule 14a-8(i)(3)

References to websites in a proposal or supporting statement may raise concerns under Rule 14a-8(i)(3). In SLB No. 14B, we stated that the
exclusion of a proposal under Rule 14a-8(i)(3) as vague and indefinite may be appropriate if 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. In evaluating whether a proposal may be excluded on this basis, we consider only the information contained in the proposal and supporting statement and determine whether, based on that information, shareholders and the company can determine what actions the proposal seeks.

If a proposal or supporting statement refers to a website that provides information necessary for shareholders and the company to understand with reasonable certainty exactly what actions or measures the proposal requires, and such information is not also contained in the proposal or in the supporting statement, then we believe the proposal would raise concerns under Rule 14a-9 and would be subject to exclusion under Rule 14a-8(i)(3) as vague and indefinite. By contrast, if shareholders and the company can understand with reasonable certainty exactly what actions or measures the proposal requires without reviewing the information provided on the website, then we believe that the proposal would not be subject to exclusion under Rule 14a-8(i)(3) on the basis of the reference to the website address. In this case, the information on the website only supplements the information contained in the proposal and in the supporting statement.

2. Providing the company with the materials that will be published on the referenced website

We recognize that if a proposal references a website that is not operational at the time the proposal is submitted, it will be impossible for a company or the staff to evaluate whether the website reference may be excluded. In our view, a reference to a non-operational website in a proposal or supporting statement could be excluded under Rule 14a-8(i)(3) as irrelevant to the subject matter of a proposal. We understand, however, that a proponent may wish to include a reference to a website containing information related to the proposal but wait to activate the website until it becomes clear that the proposal will be included in the company’s proxy materials. Therefore, we will not concur that a reference to a website may be excluded as irrelevant under Rule 14a-8(i)(3) on the basis that it is not yet operational if the proponent, at the time the proposal is submitted, provides the company with the materials that are intended for publication on the website and a representation that the website will become operational at, or prior to, the time the company files its definitive proxy materials.

3. Potential issues that may arise if the content of a referenced website changes after the proposal is submitted

To the extent the information on a website changes after submission of a proposal and the company believes the revised information renders the website reference excludable under Rule 14a-8, a company seeking our concurrence that the website reference may be excluded must submit a letter presenting its reasons for doing so. While Rule 14a-8(j) requires a company to submit its reasons for exclusion with the Commission no later than 80 calendar days before it files its definitive proxy materials, we may concur that the changes to the referenced website constitute "good cause" for the company to file its reasons for excluding the website reference after the 80-day deadline and grant the company’s request that the 80-day requirement be waived.
1 An entity is an “affiliate” of a DTC participant if such entity directly, or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with, the DTC participant.

2 Rule 14a-8(b)(2)(i) itself acknowledges that the record holder is “usually,” but not always, a broker or bank.

3 Rule 14a-9 prohibits statements in proxy materials which, at the time and in the light of the circumstances under which they are made, are false or misleading with respect to any material fact, or which omit to state any material fact necessary in order to make the statements not false or misleading.

4 A website that provides more information about a shareholder proposal may constitute a proxy solicitation under the proxy rules. Accordingly, we remind shareholders who elect to include website addresses in their proposals to comply with all applicable rules regarding proxy solicitations.

http://www.sec.gov/interps/legal/cfslb14g.htm

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Shareholder Proposals: Staff Legal Bulletin No. 14K (CF)

Division of Corporation Finance
Securities and Exchange Commission

Action: Publication of CF Staff Legal Bulletin
Date: October 16, 2019
Summary: This staff legal bulletin provides information for companies and shareholders regarding Rule 14a-8 under the Securities Exchange Act of 1934.

Supplementary Information: The statements in this bulletin represent the views of the Division of Corporation Finance (the "Division"). This bulletin is not a rule, regulation or statement of the Securities and Exchange Commission (the "Commission"). Further, the Commission has neither approved nor disapproved its content. This bulletin, like all staff guidance, has no legal force or effect: it does not alter or amend applicable law, and it creates no new or additional obligations for any person.

Contacts: For further information, please contact the Division’s Office of Chief Counsel by submitting a web-based request form at https://www.sec.gov/forms/corp_fin_interpretive.

A. The Purpose of this bulletin
This bulletin is part of a continuing effort by the Division to provide guidance on important issues arising under Exchange Act Rule 14a-8. Specifically, this bulletin contains information regarding:

- the analytical framework of Rule 14a-8(i)(7);
- board analyses provided in no-action requests to demonstrate that the policy issue raised by the proposal is not significant to the company;
- the scope and application of micromanagement as a basis to exclude a proposal under Rule 14a-8(i)(7); and
- proof of ownership letters.

You can find additional guidance about Rule 14a-8 in the following bulletins that are available on the Commission’s website: SLB No. 14, SLB No. 14A, SLB No. 14B, SLB No. 14C, SLB No. 14D, SLB No. 14E, SLB No. 14F, SLB No. 14G, SLB No. 14H, SLB No. 14I and SLB No. 14J.

B. Rule 14a-8(i)(7)
1. Background
Rule 14a-8(i)(7), the "ordinary business" exception, permits a company to exclude a proposal that "deals with a matter relating to the company's ordinary business operations." The purpose of the exception is "to confine the resolution of ordinary business problems to management and the board of directors, since it is impracticable for shareholders to decide how to solve such problems at an annual shareholders meeting."[1] The Commission has stated that the policy underlying the "ordinary business" exception rests on two central considerations.[2] The first relates to the proposal's subject matter; the second relates to the degree to which the proposal "micromanages" the company.

2. Significance

Under the first consideration, proposals that raise matters that are "so fundamental to management's ability to run a company on a day-to-day basis that they could not, as a practical matter, be subject to direct shareholder oversight" relate to a company's "ordinary" business operations.[3] The Commission has stated, however, that proposals relating to such matters but focusing on a significant policy issue are not excludable under the first consideration "because the proposals would transcend the day-to-day business matters and raise policy issues so significant that it would be appropriate for a shareholder vote."[4] We have previously expressed the view that whether the significant policy exception applies depends, in part, on the connection between the significant policy issue and the company's business operations.[5]

In the past, proponents and companies have often focused on the overall significance of the policy issue raised by the proposal, instead of whether the proposal raises a policy issue that transcends the particular company's ordinary business operations. The staff takes a company-specific approach in evaluating significance, rather than recognizing particular issues or categories of issues as universally "significant." Accordingly, a policy issue that is significant to one company may not be significant to another.[6]

In reflecting on the language of the Rule 14a-8 and the Commission’s statements on its purpose, we believe the focus of an argument for exclusion under Rule 14a-8(i)(7) should be on whether the proposal deals with a matter relating to that company's ordinary business operations or raises a policy issue that transcends that company's ordinary business operations. When a proposal raises a policy issue that appears to be significant, a company's no-action request should focus on the significance of the issue to that company. If the company does not meet that burden, the staff believes the matter may not be excluded under Rule 14a-8(i)(7).[7]

3. Board analysis

In SLB Nos. 14I and 14J, we noted that evaluating whether a proposal transcends ordinary business matters often raises difficult judgment calls that we believe are matters that the board of directors generally is well-situated to analyze. In this regard, we continue to believe that a well-developed discussion of the board's analysis of whether the particular policy issue raised by the proposal is sufficiently significant in relation to the company can assist the staff in evaluating a company's no-action request and, in turn, assist the company in demonstrating that it may exclude the proposal.

In SLB No. 14J, we noted our view that a well-developed discussion of the board's analysis will describe in sufficient detail the specific substantive factors the board considered in arriving at its conclusion, and set forth a non-exclusive list of such factors. Overall, we found during the most recent proxy season that the no-action requests that included a discussion of the board's analysis were more helpful in determining whether the proposal was significant to the company's business. We also found the analysis helpful even in instances where we granted relief under Rule 14a-8(i)(7) but did not explicitly reference the board's analysis in our response letter. The improvement in the board analyses provided was largely attributable to a greater proportion of requests discussing in detail the specific substantive factors, such as those set forth in SLB No. 14J, that the board considered in arriving at its conclusion that an issue was not significant in relation to the company's business.

Additionally, in a number of instances, we were unable to agree with exclusion where a board analysis was not provided, which was especially likely where the significance of a particular issue to a particular company and its shareholders may depend on factors that are not self-evident.[8] If a request where significance is at issue does
not include a robust analysis substantiating the board’s determination that the policy issue raised by the proposal is not significant to the company, our analysis and ability to state a view regarding exclusion may be impacted. While we do not necessarily expect the board, or a board committee, to prepare the significance analysis that is included in the company’s no-action request, we do believe it is important that the appropriate body with fiduciary duties to shareholders give due consideration as to whether the policy issue presented by a proposal is of significance to the company.

a. Delta analysis
In SLB No. 14J, the staff explained that a board analysis could address, among other substantive factors, whether the company has already addressed in some manner the policy issue raised by the proposal, including the differences — or the delta — between the proposal’s specific request and the actions the company has already taken, and an analysis of whether the specific manner in which the proposal addresses the issue presents a significant policy issue for the company. A delta analysis could be useful for companies that have already addressed the policy issue in some manner but may not have substantially implemented the proposal’s specific request for purposes of exclusion under Rule 14a-8(i)(10) (e.g., by addressing the issue in a manner not contemplated by the proposal). In these cases, it would helpful if the delta analysis identifies, for example, the differences between the actions that the company has already taken to address the issue and the proposal’s specific request. It also is helpful when the board’s analysis explains whether the difference between the company’s actions and the proposal’s request represents a significant policy issue to the company. In other words, have the company’s prior actions diminished the significance of the policy issue to such an extent that the proposal does not present a policy issue that is significant to the company?

For example, if a shareholder proposal sought greater disclosure of a telecommunications company’s customer information privacy policy, under appropriate circumstances, the company’s board analysis could highlight, if it is the case, how its cybersecurity policy addresses the issues covered by the proposal and how the difference — or delta — between the two approaches would not raise a significant policy issue for the company.

Based on our evaluation of no-action requests this past season, a delta analysis is most helpful where it clearly identifies the differences between the manner in which the company has addressed an issue and the manner in which a proposal seeks to address the issue and explains in detail why those differences do not represent a significant policy issue to the company. By contrast, conclusory statements about the differences that fail to explain why the board believes that the issue is no longer significant are less helpful.

b. Prior voting results
Another substantive factor identified in SLB No. 14J was whether the company’s shareholders have previously voted on the matter and the board’s views on the voting results. In SLB No. 14J, we noted that where a company’s shareholders have previously voted on the matter we would expect the voting results to be addressed as part of the board’s analysis. This past season, we were unable to agree with exclusion in some instances where a board’s analysis was provided because we did not find the board’s discussion of the prior vote to be persuasive in demonstrating that the policy issue is no longer significant to the company. In these instances, companies argued unsuccessfully that:

- The voting results were not significant given that a majority of shareholders voted against the prior proposal.
- The significance of the prior voting results was mitigated by the impact of proxy advisory firms’ recommendations.
- When considering the voting results based on shares outstanding, instead of votes cast, the voting results were not significant.

Based on our evaluation of recent no-action requests, the board’s analysis may be more helpful if it includes, for example, a robust discussion that explains how the company’s subsequent actions, intervening events or other objective indicia of shareholder engagement on the issue bear on the significance of the underlying issue to the company. For example, if after a proposal receives significant support, a company engages with its shareholders
to better understand the level of support, we believe that it may be more helpful if the board’s analysis includes a
discussion that describes how its view on significance is informed by those engagements as well as any actions
the company may have taken to address concerns expressed in the proposal.

4. Micromanagement

Under the Commission’s second consideration, a proposal may be excludable under the “ordinary business”
exception if it “micromanages” the company. This prong of the Rule 14a-8(i)(7) analysis rests on an evaluation of
the manner in which a proposal seeks to address the subject matter raised, rather than the subject matter itself. As
illustrated below, two proposals focusing on the same subject matter may warrant different outcomes based solely
on the level of prescriptiveness with which the proposals approach that subject matter.

In considering arguments for exclusion based on micromanagement, and consistent with the Commission’s views,
[9] we look to whether the proposal seeks intricate detail or imposes a specific strategy, method, action, outcome
or timeline for addressing an issue, thereby supplanting the judgment of management and the board. Thus, a
proposal framed as a request that the company consider, discuss the feasibility of, or evaluate the potential for a
particular issue generally would not be viewed as micromanaging matters of a complex nature. However, a
proposal, regardless of its precatory nature, that prescribes specific timeframes or methods for implementing
complex policies, consistent with the Commission’s guidance,[10] may run afoul of micromanagement. In our view,
the precatory nature of a proposal does not bear on the degree to which a proposal micromanages.[11] Following
a successful vote on a shareholder proposal, management and the board generally consider whether and how to
implement the proposal. Notwithstanding the precatory nature of a proposal, if the method or strategy for
implementing the action requested by the proposal is overly prescriptive, thereby potentially limiting the judgment
and discretion of the board and management, the proposal may be viewed as micromanaging the company.

For example, this past season we agreed that a proposal seeking annual reporting on “short-, medium- and long-
term greenhouse gas targets aligned with the greenhouse gas reduction goals established by the Paris Climate
Agreement to keep the increase in global average temperature to well below 2 degrees Celsius and to pursue
efforts to limit the increase to 1.5 degrees Celsius” was excludable on the basis of micromanagement.[12] In our
view, the proposal micromanaged the company by prescribing the method for addressing reduction of greenhouse
gas emissions. We viewed the proposal as effectively requiring the adoption of time-bound targets (short, medium
and long) that the company would measure itself against and changes in operations to meet those goals, thereby
imposing a specific method for implementing a complex policy.

In contrast, we did not concur with the excludability of a proposal seeking a report “describing if, and how, [a
company] plans to reduce its total contribution to climate change and align its operations and investments with the
Paris [Climate] Agreement's goal of maintaining global temperatures well below 2 degrees Celsius.” The proposal
was not excludable because the proposal transcended ordinary business matters and did not seek to
micromanage the company to such a degree that exclusion would be appropriate.[13] In our view, the proposal did
not seek to micromanage the company because it deferred to management's discretion to consider if and how the
company plans to reduce its carbon footprint and asked the company to consider the relative benefits and
drawbacks of several actions.

When analyzing a proposal to determine the underlying concern or central purpose of any proposal, we look not
only to the resolved clause but to the proposal in its entirety. Thus, if a supporting statement modifies or re-focuses
the intent of the resolved clause, or effectively requires some action in order to achieve the proposal's central
purpose as set forth in the resolved clause, we take that into account in determining whether the proposal seeks to
micromanage the company.

This past season, where we concurred with a company’s micromanagement argument, it was not because we
viewed the proposal as presenting issues that are too complex for shareholders to understand. Rather, it was
based on our assessment of the level of prescriptiveness of the proposal. When a proposal prescribes specific
actions that the company’s management or the board must undertake without affording them sufficient flexibility or
discretion in addressing the complex matter presented by the proposal, the proposal may micromanage the

https://www.sec.gov/corpfin/staff-legal-bulletin-14k-shareholder-proposals
company to such a degree that exclusion of the proposal would be warranted. For example, a proposal urging the board to adopt a policy prohibiting adjusting financial performance metrics to exclude compliance costs when determining executive compensation would be excludable on micromanagement grounds because such proposal prohibits any such adjustments without regard to specific circumstances or the possibility of reasonable exceptions.[14] When a company asserts the micromanagement prong as a reason to exclude a proposal, we would expect it to include in its analysis how the proposal may unduly limit the ability of management and the board to manage complex matters with a level of flexibility necessary to fulfill their fiduciary duties to shareholders.

C. Proof of ownership letters

In this section we address shareholder proof of ownership for purposes of Rule 14a-8(b). In relevant part, Rule 14a-8(b) provides that a proponent must prove eligibility to submit a proposal by offering proof that it "continuously held" the required amount of securities "for at least one year by the date" the proposal is submitted.

In Section C of SLB No. 14F, we identified several common errors shareholders make when submitting proof of ownership for purposes of satisfying Rule 14a-8(b).[2] In an effort to reduce such errors, we provided a suggested format for shareholders and their brokers or banks to follow when supplying the required verification of ownership.[16] We note that brokers and banks are not required to follow this format.

This season, we observed that some companies applied an overly technical reading of proof of ownership letters as a means to exclude a proposal. We generally do not find such arguments persuasive. For example, in two recent instances we did not concur with the excludability of a proposal based on Rule 14a-8(b) where the proof of ownership letter deviated from the format set forth in SLB No. 14F.[17] In those cases, we concluded that the proponent nonetheless had supplied documentary support sufficiently evidencing the requisite minimum ownership requirements for the one-year period, as required by Rule 14a-8(b). We took a plain meaning approach to interpreting the text of the proof of ownership letter, and we expect companies to apply a similar approach in their review of such letters.

While we continue to encourage shareholders and their brokers or banks to use the sample language provided in SLB No. 14F to avoid this issue, such formulation is neither mandatory nor the exclusive means of demonstrating the ownership requirements of Rule 14a-8(b).[18] As previously stated, we recognize that the requirements of Rule 14a-8(b) can be quite technical.[19] Accordingly, companies should not seek to exclude a shareholder proposal based on drafting variances in the proof of ownership letter if the language used in such letter is clear and sufficiently evidences the requisite minimum ownership requirements.

[2] Id.
[3] Id.
[4] Id.
[6] For example, although a climate change proposal submitted to an energy company may raise significant policy issues for that company, a similar proposal submitted to a software development company may not raise significant policy issues for that company.
[7] See Rule 14a-8(g).
[9] Release No. 34-40018. The Commission explained that micromanagement "may come into play in a number of circumstances, such as where the proposal involves intricate detail, or seeks to impose specific time-frames or methods for implementing complex policies."
Our (i)(7) analysis would be the same if the proposal were mandatory or precatory.

Devon Energy Corp. (Mar. 4, 2019).

Anadarko Petroleum Corp. (Mar. 4, 2019).

See, e.g., Johnson & Johnson (Feb. 14, 2019).

Staff Legal Bulletin No. 14F (Oct. 8, 2011).

Id. The Division suggested the following formulation: "As of [date the proposal is submitted], [name of shareholder] held, and has held continuously for at least one year, [number of securities] shares of [company name] [class of securities]."

See Amazon.com, Inc. (Apr. 3, 2019); Gilead Sciences, Inc. (Mar. 7, 2019).

See Staff Legal Bulletin No. 14F, n.11.

Id.
Mr. Klank,
Please see the attached broker letter.
Sincerely,
John Chevedden
Dear Mr. Chevedden:

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

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

<table>
<thead>
<tr>
<th>Security Name</th>
<th>CUSIP</th>
<th>Symbol</th>
<th>Share Quantity</th>
</tr>
</thead>
<tbody>
<tr>
<td>General Motors Company</td>
<td>37045V100</td>
<td>GM</td>
<td>100.000</td>
</tr>
<tr>
<td>Mattel Inc</td>
<td>577081102</td>
<td>MAT</td>
<td>200.000</td>
</tr>
<tr>
<td>Delta Air Lines Inc</td>
<td>247361702</td>
<td>DAL</td>
<td>100.000</td>
</tr>
<tr>
<td>Fed Ex Corp</td>
<td>31428X106</td>
<td>FDX</td>
<td>100.00</td>
</tr>
</tbody>
</table>

These securities are registered in the name of National Financial Services LLC, a DTC participant (DTC number: 0226) and Fidelity Investments subsidiary.

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

Sincerely,

Stormy Delehanty
Operations Specialist

Our File: W030790-13DEC19
Exhibit C

The Prior Lobbying Expenditure Proposal and Related Correspondence
To: Mark Allen, Exec. VP & Secty.
Company: FedEx Corp
Fax: 19014349279
Phone:

From: Jhingory, Marcia
Fax:
Phone:
E-mail: MJhingory@teamster.org

NOTES:

Please find attached, a shareholder proposal on behalf of the Teamsters General Fund, along with a cover letter and proof of shares for consideration at the company's 2020 annual shareholders meeting.

The original copy was sent by UPS ground. Please acknowledge receipt.

Thank you.
Whereas, we believe full disclosure of FedEx’s direct and indirect lobbying activities and expenditures is required to assess whether FedEx’s lobbying is consistent with its expressed goals and in stockholders’ best interests.

Resolved, the stockholders of FedEx request the preparation of a report, updated annually, disclosing:

1. Company policy and procedures governing lobbying, both direct and indirect, and grassroots lobbying communications.

2. Payments by FedEx used for (a) direct or indirect lobbying or (b) grassroots lobbying communications, in each case including the amount of the payment and the recipient.

3. FedEx’s membership in and payments to any tax-exempt organization that writes and endorses model legislation.

4. Description of management’s and the Board’s decision-making process and oversight for making payments described in section 2 and 3 above.

For purposes of this proposal, a “grassroots lobbying communication” is a communication directed to the general public that (a) refers to specific legislation or regulation, (b) reflects a view on the legislation or regulation, and (c) encourages the recipient of the communication to take action with respect to the legislation or regulation. “Indirect lobbying” is lobbying engaged in by a trade association or other organization of which FedEx is a member.

Both “direct and indirect lobbying” and “grassroots lobbying communications” include efforts at the local, state and federal levels.

The report shall be presented to the Nominating & Governance Committee and posted on FedEx’s website.

Supporting Statement:

FedEx spent over $132 million since 2010 on federal lobbying. This does not include state lobbying expenditures, where FedEx lobbies but disclosure is uneven or absent. For example, FedEx spent over $2.6 million lobbying in California since 2010. FedEx’s lobbying on corporate taxes has drawn media attention. (https://www.nytimes.com/2019/11/17/business/how-fedex-cut-its-tax-bill-to-0.html)
FedEx sits on the board of the Chamber of Commerce, which spent over $1.5 billion on lobbying since 1998, and also belongs to the Business Roundtable (BRT), which is lobbying against shareholder rights to file resolutions. FedEx does not disclose its memberships in, or payments to, trade associations, or the amounts used for lobbying. FedEx does not disclose its membership in tax-exempt organizations that write and endorse model legislation, such as the American Legislative Exchange Council (ALEC).

We are concerned FedEx’s lack of disclosure presents reputational risks when its lobbying contradicts company public positions. FedEx has drawn scrutiny for signing the BRT Statement on the Purpose of the Corporation, a commitment from CEOs for taking a broader view in creating long-term value for all stakeholders, yet also attends the ALEC annual conference. FedEx uses the Global Reporting Initiative (GRI) for sustainability reporting, yet currently fails to report “any differences between its lobbying positions and any stated policies, goals, or other public positions” under GRI Standard 415, pertaining to risks associated with lobbying.

We believe the reputational damage stemming from this misalignment between general policy positions and actual direct and indirect lobbying efforts harms long-term value creation. Thus, we urge FedEx to expand its lobbying disclosure.
March 5, 2020

Mark Allen, Esq., Executive Vice President,
General Counsel and Secretary
FedEx Corp.
942 South shady Grove Road
Memphis, TN 38120

RE: FedEx Corp. - Cusip # 31428X106

Dear Mr. Allen:

Amalgamated Bank is the record owner of 176 shares of common stock (the “Shares”) of FedEx Corp., 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 # ***. The International Brotherhood of Teamsters General Fund has held the shares continuously since 7/27/2006, and will continue to hold these shares through the date of the annual shareholders meeting.

If you have any questions or need anything further, please do not hesitate to call me at (212) 895-4974.

Very truly yours,

Suzette Spooner
Vice President

cc: Louis Maliza
March 5, 2020

BY FACSIMILE: 901.434.9279
BY UPS GROUND

Mark R. Allen, Esq., Executive Vice President,
General Counsel and Secretary
FedEx Corp.
942 South Shady Grove Road
Memphis, TN 38120

Dear Mr. Allen:

I hereby submit the following resolution on behalf of the Teamsters General Fund, in accordance with SEC Rule 14a-8, to be presented at the Company’s 2020 Annual Shareholders Meeting.

The General Fund has owned 176 shares of FedEx Corp., continuously for at least one year and intends to continue to own at least this amount through the date of the annual meeting. Enclosed is relevant proof of ownership.

Any written communication should be sent to the above address via U.S. Postal Service, UPS, or DHL, as the Teamsters have a policy of accepting only union delivery. If you have any questions about this proposal, please direct them to Louis Malizia of the Capital Strategies Department at 202-624-6930.

Sincerely,

[Signature]
Ken Hall
General Secretary-Treasurer

KH/im
Enclosures
Good afternoon, Sister Clingman.

Receipt acknowledged. Please direct future correspondence on this matter to myself, Alana Griffin and Kate Beukenkamp (copied here).

Thanks a lot,
Edward

---

Edward Garitty
Senior Attorney
Securities and Corporate Law
FedEx Corporation
942 S. Shady Grove Road
Memphis, Tennessee 38120
901-818-7311
edward.garitty@fedex.com

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From: Mary Brigid Clingman, OP <MBClingman@GRDominicans.org>
Sent: 02 April, 2020 15:17
To: Michael Allen <Mike.Allen@fedex.com>
Cc: Eddie Klank <ceklank@fedex.com>
Subject: [EXTERNAL] Cofiling resolution with the International Brotherhood of Teamsters

Dear Mr. Allen,

Attached please find the documentation required for the co-filing of a shareholder resolution filed 3/5/2020 by the International Brotherhood of Teamsters. Thank you for processing this for the annual meeting. Original hard copies will be posted tomorrow.

Mary Brigid Clingman OP
Education should not be the filling of a pail, but the lighting of a fire.

William Butler Yeats
Mark R. Allen, Esq.
Exec. Vice President, General Council and Secretary
FedEx Corp.
942 South Shady Grove Road
Memphis, TN, 38120

April 2, 2020

RE: Shareholder proposal for 2020 Annual Meeting

Dear Mr. Allen:

On behalf of the Sisters of St. Dominic Charitable Trust, I write to give notice that pursuant to the proxy statement of FedEx Corp and Rule 14a-8 under of the Securities Exchange Act of 1934, as amended, we intend to co-file the enclosed proposal with lead filer International Brotherhood of Teamsters at the Company's 2020 annual meeting of stockholders.

Our congregation is an apostolic community of vowed women religious. We are rooted in both the Word of God and the Dominican tradition of the Catholic Church. In keeping with our commitment to socially responsible investment, we are co-filing the attached proposal out of concern that the Company ought to disclose important information regarding its direct and indirect lobbying.

The Sisters of St. Dominic Charitable Trust has been a continuous shareholder for one year of more than $2,000 in market value of FOX stock, which would meet the requirements under SEC rules. Verification of this ownership, provided by our custodial bank, is enclosed. We intend to hold at least the minimum required number of shares through the date of the 2020 annual meeting.

We hope that the Company will continue to engage in productive dialogue with the filers of this proposal. As the lead filer, the International Brotherhood of Teamsters is authorized to act on our behalf in all aspects of the resolution including negotiation and withdrawal. A representative of the lead filer will be present at the stockholder meeting to present the proposal.

We would appreciate being copied on any correspondence related to this matter.

Sincerely,

Sr. Maureen Geary, OP
Treasurer
Dominican Sisters ~ Grand Rapids
April 2, 2020

To whom it may concern:

This is to confirm that PNC is the custodian of account numbers *** (Charitable Pool) and *** (Custodial Pool) that holds 170 shares and 30 shares of the FedEx Corporation owned by Sisters of the Order of St. Dominic of Grand Rapids.

We confirm that the above accounts have beneficial ownership of at least $2000 in market value of the voting securities of WEN and that such beneficial ownership has continuously existed for one or more years in accordance with Rule 14a-8(b) of the Securities Exchange Act of 1934, as amended.

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

Sincerely,

Matthew C. Bauder, CFA
Partner
Atlanta Consulting Group
309 East Paces Ferry Rd, Suite 600
Atlanta, GA 30305
Whereas, we believe full disclosure of FedEx's direct and indirect lobbying activities and expenditures is required to assess whether FedEx’s lobbying is consistent with its expressed goals and in stockholders' best interests.

Resolved, the stockholders of FedEx request the preparation of a report, updated annually, disclosing:

1. Company policy and procedures governing lobbying, both direct and indirect, and grassroots lobbying communications.

2. Payments by FedEx used for (a) direct or indirect lobbying or (b) grassroots lobbying communications, in each case including the amount of the payment and the recipient.

3. FedEx’s membership in and payments to any tax-exempt organization that writes and endorses model legislation.

4. Description of management’s and the Board’s decision-making process and oversight for making payments described in section 2 and 3 above.

For purposes of this proposal, a “grassroots lobbying communication” is a communication directed to the general public that (a) refers to specific legislation or regulation, (b) reflects a view on the legislation or regulation, and (c) encourages the recipient of the communication to take action with respect to the legislation or regulation. “Indirect lobbying” is lobbying engaged in by a trade association or other organization of which FedEx is a member.

Both “direct and indirect lobbying” and “grassroots lobbying communications” include efforts at the local, state and federal levels.

The report shall be presented to the Nominating & Governance Committee and posted on FedEx’s website.

Supporting Statement:

FedEx spent over $132 million since 2010 on federal lobbying. This does not include state lobbying expenditures, where FedEx lobbies but disclosure is uneven or absent. For example, FedEx spent over $2.6 million lobbying in California since 2010. FedEx’s lobbying on corporate taxes has drawn media attention. (https://www.nytimes.com/2019/11/17/business/how-fedex-cut-its-tax-bill-to-0.html)

FedEx sits on the board of the Chamber of Commerce, which spent over $1.5 billion on lobbying since 1998, and also belongs to the Business Roundtable (BRT), which is lobbying against shareholder rights to file resolutions. FedEx does not disclose its memberships in, or payments to, trade associations, or the amounts used for lobbying. FedEx does not disclose its membership in tax-exempt organizations that write and endorse model legislation, such as the American Legislative Exchange Council (ALEC).
We are concerned FedEx’s lack of disclosure presents reputational risks when its lobbying contradicts company public positions. FedEx has drawn scrutiny for signing the BRT Statement on the Purpose of the Corporation, a commitment from CEOs for taking a broader view in creating long-term value for all stakeholders, yet also attends the ALEC annual conference. (https://readsludge.com/2019/08/27/these-ceos-promised-to-be-socially-responsible-but-their-companies-are-pushing-alecs-right-wing-agenda/). FedEx uses the Global Reporting Initiative (GRI) for sustainability reporting, yet currently fails to report “any differences between its lobbying positions and any stated policies, goals, or other public positions” under GRI Standard 415, pertaining to risks associated with lobbying.

We believe the reputational damage stemming from this misalignment between general policy positions and actual direct and indirect lobbying efforts harms long-term value creation. Thus, we urge FedEx to expand its lobbying disclosure.
March 5, 2020

BY FACSIMILE: 901.434.9279
BY UPS GROUND

Mark R. Allen, Esq., Executive Vice President,
General Counsel and Secretary
FedEx Corp.
942 South Shady Grove Road
Memphis, TN 38120

Dear Mr. Allen:

I hereby submit the following resolution on behalf of the Teamsters General Fund, in accordance with SEC Rule 14a-8, to be presented at the Company’s 2020 Annual Shareholders Meeting.

The General Fund has owned 176 shares of FedEx Corp., continuously for at least one year and intends to continue to own at least this amount through the date of the annual meeting. Enclosed is relevant proof of ownership.

Any written communication should be sent to the above address via U.S. Postal Service, UPS, or DHL, as the Teamsters have a policy of accepting only union delivery. If you have any questions about this proposal, please direct them to Louis Malizia of the Capital Strategies Department at 202-624-6930.

Sincerely,

Ken Hall
General Secretary-Treasurer

KH/Im
Enclosures
Dominican Sisters
Grand Rapids, Michigan
2025 Fulton St East
Grand Rapids, MI 49503-3895

Emboldened by faith, serving with joy

Mark Allen Esq.
Exec. Vice President
FedEx Corp
942 South Shady Grove Rd.
Memphis TN 38120.
Attention:
Mark R. Allen-
Executive Vice President, General Counsel and Secretary
C/O Investor Relations, FedEx

Hello Mark-

Please find the attached file which contains the co-filing documents (filing letter, shareholder resolution, shareholder authorization letter, and proof of ownership letter) to co-file with the Teamsters from As You Sow on behalf of the George Gund Foundation (co-filer), for inclusion in the 2020 proxy statement. Copies were sent via USPS Priority Mail on Wednesday 4/8. I have confirmation that this packet of documents was received in your offices on Friday 4/10. Please confirm receipt of these materials.

Thank you and best regards,
Gail

Gail Follansbee (she/her)
Coordinator, Shareholder Relations
As You Sow
2150 Kittredge St., Suite 450
Berkeley, CA 94704
(510) 735-8139 (direct line) ~ (650) 868-9828 (cell)
gail@asyousow.org | www.asyousow.org
April 8, 2020

Mark Allen
Executive V.P., General Counsel and Secretary
FedEx Corporation
942 South Shady Grove Road
Memphis, TN 38120

Dear Mr. Allen,

As You Sow is co-filing a shareholder proposal on behalf of the following FedEx shareholder for action at the next annual meeting of the Company:

- The George Gund Foundation

Shareholder is a co-filer of the enclosed proposal with the Teamsters General Fund, who is the Proponent of the proposal. As You Sow has submitted the enclosed shareholder proposal on behalf of Proponent for inclusion in the 2020 proxy statement in accordance with Rule 14a-8 of the General Rules and Regulations of the Securities Exchange Act of 1934. As You Sow is authorized to act on the co-filer’s behalf with regard to withdrawal of the proposal.

Letters authorizing As You Sow to act on co-filer’s behalf are enclosed. A representative of the lead filer will attend the stockholders’ meeting to move the resolution as required. To schedule a dialogue, please contact myself, Andrew Behar, CEO, at abehar@asyousow.org. Please send all correspondence to me with a copy to shareholderengagement@asyousow.org. Also, please note that our address has changed. Our new address is set forth above.

Sincerely,

Andrew Behar
CEO

Enclosures
- Shareholder Proposal
- The George Gund Foundation Authorization Letter
- The George Gund Proof of Ownership Letter
Whereas, we believe full disclosure of FedEx’s direct and indirect lobbying activities and expenditures is required to assess whether FedEx’s lobbying is consistent with its expressed goals and in stockholders’ best interests.

Resolved, the stockholders of FedEx request the preparation of a report, updated annually, disclosing:

1. Company policy and procedures governing lobbying, both direct and indirect, and grassroots lobbying communications.

2. Payments by FedEx used for (a) direct or indirect lobbying or (b) grassroots lobbying communications, in each case including the amount of the payment and the recipient.

3. FedEx’s membership in and payments to any tax-exempt organization that writes and endorses model legislation.

4. Description of management’s and the Board’s decision-making process and oversight for making payments described in section 2 and 3 above.

For purposes of this proposal, a “grassroots lobbying communication” is a communication directed to the general public that (a) refers to specific legislation or regulation, (b) reflects a view on the legislation or regulation, and (c) encourages the recipient of the communication to take action with respect to the legislation or regulation. “Indirect lobbying” is lobbying engaged in by a trade association or other organization of which FedEx is a member.

Both “direct and indirect lobbying” and “grassroots lobbying communications” include efforts at the local, state and federal levels.

The report shall be presented to the Nominating & Governance Committee and posted on FedEx’s website.

Supporting Statement:

FedEx spent over $132 million since 2010 on federal lobbying. This does not include state lobbying expenditures, where FedEx lobbies but disclosure is uneven or absent. For example, FedEx spent over $2.6 million lobbying in California since 2010. FedEx’s lobbying on corporate taxes has drawn media attention. (https://www.nytimes.com/2019/11/17/business/how-fedex-cut-its-tax-bill-to-0.html)
FedEx sits on the board of the Chamber of Commerce, which spent over $1.5 billion on lobbying since 1998, and also belongs to the Business Roundtable (BRT), which is lobbying against shareholder rights to file resolutions. FedEx does not disclose its memberships in, or payments to, trade associations, or the amounts used for lobbying. FedEx does not disclose its membership in tax-exempt organizations that write and endorse model legislation, such as the American Legislative Exchange Council (ALEC).

We are concerned FedEx’s lack of disclosure presents reputational risks when its lobbying contradicts company public positions. FedEx has drawn scrutiny for signing the BRT Statement on the Purpose of the Corporation, a commitment from CEOs for taking a broader view in creating long-term value for all stakeholders, yet also attends the ALEC annual conference. (https://readsludge.com/2019/08/27/these-ceos-promised-to-be-socially-responsible-but-their-companies-are-pushing-alecs-right-wing-agenda). FedEx uses the Global Reporting Initiative (GRI) for sustainability reporting, yet currently fails to report “any differences between its lobbying positions and any stated policies, goals, or other public positions” under GRI Standard 415, pertaining to risks associated with lobbying.

We believe the reputational damage stemming from this misalignment between general policy positions and actual direct and indirect lobbying efforts harms long-term value creation. Thus, we urge FedEx to expand its lobbying disclosure.
April 6, 2020

Mr. Andrew Behar
CEO
As You Sow
2150 Kittredge Street, Suite 450
Berkeley, CA 94704

Re: Authorization to File Shareholder Resolution

Dear Mr. Behar,

The undersigned ("Stockholder") authorizes As You Sow to file or co-file a shareholder resolution on Stockholder’s behalf with The FedEx Corporation (the “Company”) for inclusion in the Company’s 2020 proxy statement, in accordance with Rule 14a-8 of the General Rules and Regulations of the Securities and Exchange Act of 1934. The resolution at issue relates to disclosure of direct and indirect lobbying activities and expenditures.

The Stockholder has continuously owned over $2,000 worth of Company stock, with voting rights, for over a year. The Stockholder intends to hold the required amount of stock through the date of the company’s annual meeting in 2020.

The Stockholder gives As You Sow the authority to address, on Stockholder’s behalf, any and all aspects of the shareholder resolution, including designating another entity as lead filer and representative of the shareholder. The Stockholder understands that the Stockholder’s name may appear on the company’s proxy statement as the filer of the aforementioned resolution and that the media may mention the Stockholder’s name in relation to the resolution.

The shareholder further authorizes As You Sow to send a letter of support of the resolution on Stockholder’s behalf concerning the resolution.

Sincerely,

[Signature]

David T. Abbott
Executive Director

DTA/cmg
Institutional Advisors

April 7, 2020

Mark Allen
Executive Vice President, General Counsel and Secretary
FedEx Corporation
942 South Shady Grove Road
Memphis, Tennessee 38120

Dear Mr. Allen,

RE: FEDEX CORPORATION

KeyBank National Association
127 Public Square
Cleveland, OH 44114

KeyBank National Association
Custodian For The George Gund Fdn
Under Agreement Dated 03/11/2005
GUND*GEORGE FDN-SHAPIRO DYN CUST
0677730

George Gund Foundation
1845 Guildhall Bldg.
45 Prospect Ave West
Cleveland OH 44115-1005

KeyBank National Association, a DTC participant, is a custodian for the George Gund Foundation. This letter serves as confirmation that the George Gund Foundation owns the GUND*GEORGE FDN-SHAPIRO DYN CUST account. In the account they hold 19,920 shares of FedEx Corporation CMN. They hold more than $2000 worth of shares and have held them for more than one year.

Feel free to reach out to me directly if any additional information is required.

Best regards,

Craig Mosier
Vice President
Senior Relationship Manager
KeyBank Institutional Advisors

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Mr. Mark Allen
EVP, General Counsel
and Secretary
FedEx Corporation
942 South Shady Grove Rd.
Memphis, TN 38120

2150 Kittredge St. Suite 450
Berkeley, CA 94704