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

DIVISION OF
CORPORATION FINANCE

January 17, 2020

Stephen L. Burns
Cravath, Swaine & Moore LLP
sburns@cravath.com

Re: International Business Machines Corporation
Incoming letter dated January 10, 2020

Dear Mr. Burns:

This letter is in response to your correspondence dated January 10, 2020 concerning the shareholder proposal (the "Proposal") submitted to International Business Machines Corporation (the "Company") by Kenneth Steiner (the "Proponent"). On December 20, 2019, we issued a no-action response expressing our informal view that the Company could not exclude the Proposal from its proxy materials for its upcoming annual meeting in reliance on rules 14a-8 (b) and (f) or rule 14a-8(e)(2). You have asked us to reconsider our position. After reviewing the information contained in your correspondence, we find no basis to reconsider our position.

Rule 14a-8 currently does not provide a basis to exclude a proposal where the shareholder that uses a representative fails to provide documentation meeting all of the guidelines set forth in Staff Legal Bulletin 14I ("SLB 14I") (Nov. 1, 2017). SLB 14I is not a rule or regulation. SLB 14I addresses situations where there may be ambiguities about the actual proponent and their role with respect to the proposal. Given the facts here, we do not believe there was any ambiguity.

Sincerely,

William Hinman
Director
Division of
Corporation Finance

cc: John Chevedden
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***FISMA & OMB Memorandum M-07-16

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January 10, 2020

Request for Reconsideration by International Business Machines Corporation
Shareholder Proposal of Kenneth Steiner
Securities Exchange Act of 1934--Rule 14a-8

Ladies and Gentlemen:

I am writing on behalf of our client, International Business Machines Corporation, a New York corporation ("IBM" or the "Company"), to respectfully request that the Staff of the Division of Corporation Finance (the "Staff") of the Securities and Exchange Commission (the "Commission") reconsider its response dated December 20, 2019, denying IBM no-action relief with respect to a shareholder proposal and supporting statement (the "Proposal") received from Mr. John Chevedden (the "Representative"), acting on behalf of Mr. Kenneth Steiner (the "Proponent"), from the proxy materials to be distributed by IBM in connection with its 2020 annual meeting of shareholders (the "2020 proxy materials"). We believe the Staff's decision cannot be reconciled with the guidance set forth in Section D of Staff Legal Bulletin 14I (Nov. 1, 2017) ("SLB 14I").

Section D of SLB 14I sets forth five basic items that the Staff would expect the documentation for a proposal by proxy to address, one of which is that the authorizing documentation "identify the specific proposal to be submitted". Prior no-action decisions by the Staff suggest that a proponent may satisfy the requirement to identify the "specific proposal to be submitted" by simply identifying in the applicable authorization letter the general topic of the authorized proposal (in lieu of including a detailed description of the proposal).[1] The Company has applied this interpretation of SLB 14I when considering such authorization letters and in the past has included proposals by proxy in its proxy materials so long as the applicable authorization letter (whether in the initial authorization

[1] *See* JPMorgan Chase & Co. (Mar. 30, 2018) (the "JPMorgan Letter") and Celgene Corporation (Mar. 14, 2018).

letter or in a timely cured re-submission of the authorization letter) at least noted the topic of the authorized proposal.

As noted above, the Staff has previously considered no-action letters addressing this specific item of SLB 14I. In the case of the JPMorgan Letter, the initial authorization letter provided as evidence of authorization for the proposal by proxy failed to identify even a general topic of a proposal being authorized. However, a revised authorization letter curing that deficiency was timely provided by the proponent within 14 days after receiving a deficiency notice. Our facts are clearly distinguishable from that case. The initial letter provided to the Company by the Proponent purporting to authorize the Representative to make a proposal by proxy (the "Authorization Letter", attached as Exhibit A) also did not include even the general topic of an authorized proposal. However, unlike in the JPMorgan Letter, in our case the Representative and Proponent failed to provide a corrected authorization letter or any other supplemental correspondence as proof of authorization within the required 14 day period available to cure the deficiency. We do not believe that the failure to identify at least the topic of the authorized proposal is a "foot fault". It is a very low bar to meet and ensures that a company can reasonably conclude that a proponent has in fact authorized the proposal being submitted. We would also note that in our case, the initial Authorization Letter was signed and dated October 9, 2019, nine days prior to the date (October 18, 2019) set forth on the face of the Proposal submitted to the Company along with the Authorization Letter. In light of these facts, we believe that it is unreasonable to expect the Company to conclude that the Proposal accompanying the Authorization Letter was properly authorized on October 9, 2019.[2]

It appears to us that the Staff considers the initial Authorization Letter to be adequate documentation to support the submission of a proposal by proxy. We are unable to reconcile that, however, with our understanding of the principles of SLB 14I. Such a position on the Authorization Letter would seem to suggest that the enumerated general expectations for properly documenting proposals by proxy included in SLB 14I are optional. If an authorization letter is not required to meet even the simple requirement to identify the topic of the proposal being authorized, purported representatives could simply obtain signed authorization letters and later decide what proposal to include in their submission. If such "blank-check" proxies are permitted under Rule 14a-8, it is unclear to us and our client what the fourth item in Section D of SLB 14I is addressing or why it was included. To our view, such a position would create uncertainty both as to how a company should review proposals by proxy and as to how a potential proponent should properly document proposals by proxy. We believe that both companies and proponents need to have reasonable certainty as to the basic requirements of a properly authorized proposal by proxy, as well as reasonable certainty that the timing requirements to cure deficiencies are applicable in this context. We respectfully request that the Staff reconsider and clarify its position in light of its prior guidance set forth in SLB 14I.

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[2] We would like to note that the Representative is experienced in the practice of submitting proposals by proxy. In 2019, the Representative submitted two other proposals to the Company, one of which was also a proposal by proxy. That proposal by proxy included an authorization letter that properly identified a specific proposal.

We would like to reiterate that, unlike in the JPMorgan Letter, there was no timely cure of the deficient Authorization Letter in our case. We believe the following facts are not in dispute:

- On October 18, 2019, IBM received the initial Authorization Letter dated October 9, 2019, accompanied by the Proposal dated October 18, 2019 on its face.

- The letter notifying the Representative of the procedural deficiency in the Authorization Letter (the "Deficiency Notice") was delivered to and received by the Representative on October 18, 2019.

- The deadline under Rule 14a-8(f)(1) for the Representative to provide an updated or corrected Authorization Letter was November 1, 2019 (14 calendar days after the Deficiency Notice was received by the Representative).

- The Representative failed to provide a corrected Authorization Letter by the required date of November 1, 2019.

- The Representative untimely provided a corrected Authorization Letter on November 22, 2019, 21 days after the expiration of the 14 calendar day deadline under Rule 14a-8(f)(1) and 10 days after the expiration of the deadline to submit 14a-8 shareholder proposals to the Company.[3]

Based on the foregoing, the Company respectfully requests that the Staff reconsider its position and concur that it will take no action if IBM excludes the Proposal from its 2020 proxy materials pursuant to Rule 14a-8(b) and Rule 14a-8(f)(1) because the Proponent failed to properly authorize the Representative to submit the Proposal and did not correct such failure on a timely basis. We would be pleased to provide the Staff with any additional information, and answer any questions that you may have regarding this letter. I can be reached at (212) 474-1146 or sburns@cravath.com. Please copy Stuart Moskowitz, Senior Counsel of the Company, on any related correspondence at smoskowi@us.ibm.com.

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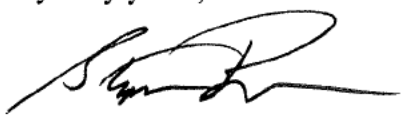
[3] In his December 1, 2019 letter to the Staff, the Representative essentially acknowledged both that the initial Authorization Letter was deficient and that he had not provided a corrected Authorization Letter within the required 14 calendar day deadline. The Representative instead argued that the Staff should allow his untimely correction because it was submitted within 14 calendar days following the deadline to submit 14a-8 shareholder proposals to the Company. Clearly, the Representative was attempting to create a "phantom" cure period that does not exist in Rule 14a-8(f)(1). We would note that the Representative's untimely attempt at a cure is analogous to the facts of Sprint Corporation (Dec. 13, 2019) and Exxon Mobil Corporation (Feb. 14, 2018), in which the Staff concurred with each respective company's view that they may exclude a proposal from their proxy materials pursuant to Rule 14a-8(b) and Rule 14a-8(f)(1) because the proponent in each case failed to provide timely proof of the requisite stock ownership after receiving timely notice of such deficiency.

We are sending the Representative a copy of this submission. Rule 14a-8(k) provides that a shareholder proponent is required to send a company a copy of any correspondence that the proponent elects to submit to the Commission or the Staff. As such, the Representative is respectfully reminded that if he elects to submit additional correspondence to the Staff with respect to this matter, a copy of that correspondence should concurrently be furnished directly to my attention and to the attention of Stuart Moskowitz, Senior Counsel of the Company, at the addresses set forth below in accordance with Rule 14a-8(k).

Very truly yours,



Stephen L. Burns

Office of Chief Counsel
Division of Corporation Finance
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VIA EMAIL: shareholderproposals@sec.gov

Encls.

Copies w/encls to:

Stuart S. Moskowitz
Senior Counsel
International Business Machines Corporation
Corporate Law Department
One New Orchard Road, Mail Drop 301
Armonk, New York 10504

VIA EMAIL: smoskowi@us.ibm.com

Mr. John Chevedden
***

VIA EMAIL: ***

**Exhibit A**
to IBM's No-Action Reconsideration Request

Shareholder Proposal of Mr. John Chevedden as representative of Mr. Kenneth Steiner

International Business Machines Corporation

The Authorization Letter

Kenneth Steiner
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Ms. Christina M. Montgomery
Corporate Secretary
International Business Machines Corporation (IBM)
One New Orchard Road
Armonk NY 10504
PH: 914 499-1900
FX: 914-765-6021

Dear Ms. Montgomery,

I purchased stock in our company because I believed our company had potential for improved performance. My attached Rule 14a-8 proposal is submitted in support of the long-term performance of our company. This Rule 14a-8 proposal is submitted as a low-cost method to improve company performance.

My proposal is for the next annual shareholder meeting. I will meet Rule 14a-8 requirements including the continuous ownership of the required stock value until after the date of the respective shareholder meeting. My submitted format, with the shareholder-supplied emphasis, is intended to be used for definitive proxy publication. This is my proxy for John Chevedden and/or his designee to forward this Rule 14a-8 proposal to the company and to act on my behalf regarding this Rule 14a-8 proposal, and/or modification of it, for the forthcoming shareholder meeting before, during and after the forthcoming shareholder meeting. Please direct all future communications regarding my rule 14a-8 proposal to John Chevedden
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to facilitate prompt and verifiable communications. Please identify this proposal as my proposal exclusively.

This letter does not cover proposals that are not rule 14a-8 proposals. This letter does not grant the power to vote. 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 my proposal promptly by email to
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Sincerely,

Kenneth Steiner

10-9-19
Date

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