

CRAVATH, SWAINE & MOORE LLP

WORLDWIDE PLAZA
825 EIGHTH AVENUE
NEW YORK, NY 10019-7475

TELEPHONE: +1-212-474-1000
FACSIMILE: +1-212-474-3700

CITYPOINT
ONE ROPEMAKER STREET
LONDON EC2Y 9HR
TELEPHONE: +44-20-7453-1000
FACSIMILE: +44-20-7860-1150

WRITER'S DIRECT DIAL NUMBER
+1-212-474-1434

WRITER'S EMAIL ADDRESS
kdrexler@cravath.com

JOHN W. WHITE
EVAN R. CHESLER
RICHARD W. CLARY
STEPHEN L. GORDON
ROBERT H. BARON
DAVID MERCADO
CHRISTINE A. VARNEY
PETER T. BARBUR
THOMAS G. RAFFERTY
MICHAEL S. GOLDMAN
RICHARD HALL
JULIE A. NORTH
ANDREW W. NEEDHAM
STEPHEN L. BURNS
KATHERINE B. FORREST
KEITH R. HUMMEL
DAVID J. KAPPOS
DANIEL SLIFKIN
ROBERT I. TOWNSEND, III
PHILIP J. BOECKMAN
WILLIAM V. FOGG
FAIZA J. SAEED
RICHARD J. STARK
THOMAS E. DUNN
MARK I. GREENE

DAVID R. MARRIOTT
MICHAEL A. PASKIN
ANDREW J. PITTS
MICHAEL T. REYNOLDS
ANTONY L. RYAN
GEORGE E. ZOBITZ
GEORGE A. STEPHANAKIS
DARIN P. MCATEE
GARY A. BORNSTEIN
TIMOTHY G. CAMERON
KARIN A. DEMASI
DAVID S. FINKELSTEIN
DAVID GREENWALD
RACHEL G. SKAISTIS
PAUL H. ZUMBRO
ERIC W. HILFERS
GEORGE F. SCHOEN
ERIK R. TAVZEL
CRAIG F. ARCELLA
DANIEL R. ZOUBEK
LAUREN ANGELILLI
TATIANA LAPUSHCHIK
ALYSSA K. CAPLES
JENNIFER S. CONWAY
MINH VAN NGO

KEVIN J. ORSINI
MATTHEW NORREALE
JOHN D. BURETTA
J. WESLEY EARNHARDT
YONATAN EVEN
BENJAMIN GRUENSTEIN
JOSEPH D. ZAVAGLIA
STEPHEN M. KESSING
LAUREN A. MOSKOWITZ
DAVID J. PERKINS
JOHNNY G. SKUMPIJA
J. LEONARD TETI, II
D. SCOTT BENNETT
TING S. CHEN
CHRISTOPHER K. FARGO
KENNETH C. HALCOM
DAVID M. STUART
AARON M. GRUBER
O. KEITH HALLAM, III
OMID H. NASAB
DAMARIS HERNANDEZ
JONATHAN J. KATZ
RORY A. LERARIS
KARA L. MUNGGOVAN
MARGARET T. SEGALL

NICHOLAS A. DORSEY
ANDREW C. ELKEN
JENNY HOCHENBERG
VANESSA A. LAVELY
G.J. LIGELIS JR.
MICHAEL E. MARIANI
LAUREN R. KENNEDY
SASHA ROSENTHAL-LARREA
ALLISON M. WEIN
MICHAEL P. ADDIS
JUSTIN C. CLARKE
SHARONMOYEE GOSWAMI
C. DANIEL HAAREN
EVAN MEHRAN NORRIS
LAUREN M. ROSENBERG

SPECIAL COUNSEL
SAMUEL C. BUTLER

OF COUNSEL
MICHAEL L. SCHLER
CHRISTOPHER J. KELLY

NCR Corporation
Stockholder Proposal of Myra K. Young
Securities Exchange Act of 1934—Rule 14a-8

December 18, 2020

Ladies and Gentlemen:

On behalf of our client, NCR Corporation, a Maryland corporation (“NCR” or the “Company”), we write to inform you of NCR’s intention to exclude from its proxy statement and form of proxy for its 2021 Annual Meeting of Stockholders (collectively, the “Proxy Materials”) a stockholder proposal and related supporting statement (the “Proposal”) received from Myra K. Young (the “Proponent”).

We hereby respectfully request that the Staff of the Division of Corporation Finance (the “Staff”) concur in our view that NCR may, for the reasons set forth below, properly exclude the Proposal from the Proxy Materials. NCR has advised us as to the factual matters set forth below and Maryland counsel has advised with respect to the applicable state law.

In accordance with Rule 14a-8(j), we have filed this letter with the Securities and Exchange Commission (the “Commission”) no later than eighty calendar days before the Company intends to file its definitive Proxy Materials with the Commission.

Also in accordance with Rule 14a-8(j), a copy of this letter and its attachments are being sent concurrently to the Proponent. Pursuant to Rule 14a-8(j) and Staff Legal Bulletin No. 14D (November 7, 2008) (“SLB 14D”), we have submitted this letter, together with the Proposal, to the Staff via e-mail at shareholderproposals@sec.gov in lieu of mailing paper copies.

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

1. The Proposal

As per the Proponent's proposal dated November 2, 2020, and supplemented on November 13, 2020, to provide evidence of her stock ownership, the Proponent requests that the following matter be submitted to a vote of the stockholders at NCR's next Annual Meeting of Stockholders:

RESOLVED: Shareholders ask our board to undertake such steps as may be necessary to permit removal of directors by a majority vote of shareholders with or without cause.

Copies of the Proposal and the Proponent's cover letter, each dated November 2, 2020, submitting the Proposal, the Proponent's supplemental letter dated November 13, 2020, to provide evidence of her stock ownership, and other correspondence relating to the Proposal are attached hereto as Exhibit A.

2. Background

As currently drafted, NCR's Charter provides that, subject to the terms of any class or series of stock, "any director or the entire Board of Directors may be removed for cause, by the affirmative vote of the holders of not less than 80% of the voting power of [all shares of the Company entitled to vote generally in the election of directors] then outstanding, voting as a single class."

The proposal itself only specifies that the Company permit the removal of directors "by a majority vote of shareholders." Based on the proposal language alone, it is ambiguous whether the proponent's desired standard is (i) the affirmative vote of a majority of the votes cast at a meeting of shareholders (a "Votes Cast Standard") or (ii) the affirmative vote of a majority of all the votes entitled to be cast on the matter (a "True Majority Standard").

However, the supporting statement provides "[b]est corporate governance practice is to allow shareholders, by majority vote, to elect their directors and allow for the removal of directors with or without cause **by a majority vote of shares voted for and against directors**". (Emphasis added.) It is reasonable, therefore, to assume that the request is to implement a Votes Cast Standard.

3. Grounds for Omission

Rule 14a-8(i)(2) provides that a proposal may be excluded from proxy materials if "the proposal would, if implemented, cause the company to violate any state, federal, or foreign law to which it is subject." As noted above, the Company is incorporated in the State of Maryland and, accordingly, is subject to, and governed by, the Maryland General Corporation Law (the "MGCL"). For reasons discussed below, NCR respectfully submits that the Proposal may be properly omitted from the Proxy Materials pursuant to Rule 14a-8(i)(2) because, if implemented, the Proposal would cause the company to violate Maryland law.

On numerous occasions, the Staff has concurred in exclusion of stockholder proposals where the proposal, if implemented, would, according to a legal opinion signed by counsel, require the certificate of incorporation or bylaws of the company to be amended in a manner that violates a provision of state law. *See, e.g., eBay Inc.* (Apr. 1, 2020) (permitted exclusion of a proposal requesting that the company's charter and bylaws be amended to permit employees to elect 20% of the board of directors, and where such action would violate the Delaware General Corporation Law which provides that only stockholders are entitled to elect directors of the company); *Trans World Entertainment Corporation*

(May 2, 20219) (permitting exclusion of a proposal requesting that the company’s bylaws be amended to provide for an elevated quorum requirement where such action would violate the New York Business Corporation Law which prescribes that such elevated quorum requirement may only be provided in the charter, and the amendment of which requires board action and shareholder approval); *IDACORP, Inc.* (Mar. 13, 2012) (permitting exclusion of a proposal requesting the board to amend the company’s bylaws to require a majority voting standard for uncontested director elections and plurality voting standard for contested elections where the board could not do so without violating the Idaho Business Corporation Act, which prescribes a plurality voting as the default standard, absent a contrary provision in a company’s charter).

Further, the Staff has concurred in the exclusion of a stockholder proposal where the proposal, if implemented, would take steps so that all matters presented to shareholders be decided by a simple majority of shares voted for and against each matter, including removal of directors, because such action would violate the Ohio Revised Code, which required the affirmative vote of at least a majority of the voting power of the corporation. *The J.M. Smucker Company* (June 22, 2012) (“The various provisions of the [Ohio Revised Code]... require actions to be taken by shares representing at least a majority of the total power of the Company, but the Proponent’s standard would look only to those shares that have been voted on a particular matter. As a result, the Proponent’s voting standard of a majority of votes cast would be insufficient to meet the minimum vote requirement applicable to those matters required to be submitted to shareholders under the [Ohio Revised Code].”).

Conflict with Maryland Law

Pursuant to Section 2-406(a) of the MGCL, a director may be removed, with or without cause, by the affirmative vote of a majority of all the votes entitled to be cast generally in the election of directors (*i.e.*, a True Majority Standard). Section 2-406(a) of the MGCL also provides that, despite the statutory default of a True Majority Standard, directors may also be removed by a voting standard “[a]s otherwise provided in the charter of the corporation.”¹ Notably, this language does not reference the bylaws of a corporation and, therefore, the Bylaws of the Company may not alter the True Majority Standard provided for in the MGCL.

With respect to whether the Charter may establish a Votes Cast Standard, Section 2-104(b)(5) of the MGCL provides:

The [charter of a corporation] may include . . . a provision that requires for any purpose a lesser proportion of the votes of all classes or series or of any class or series of stock than the proportion required by this article for that purpose, **but this proportion may not be less than a majority of all the votes entitled to be cast on the matter.**” (Emphasis added.)

Because Section 2-406 of the MGCL provides for a True Majority Standard, Section 2-104(b)(5) does not permit the charter of a Maryland corporation to implement a Votes Cast Standard with regard to the removal of directors because that would be “less than a majority of all of the votes entitled to be cast on the matter”. Indeed, when discussing the permissible voting standard for removing directors, the leading treatise on Maryland corporate law cites to Section 2-104(b)(5) of the MGCL in concluding that “[t]he charter [of a corporation] may not set the required vote for removing a director below a majority of the votes entitled to be cast.”²

¹ For this reason, as set forth above, the current requirement in the Company’s Charter requiring 80% of the votes entitled to be cast in the election of directors to remove a director is permissible.

² JAMES J. HANKS, JR., MARYLAND CORPORATION LAW § 6.11 at 6-84 (1990 & Supp. 2020).

The opinion of Maryland counsel attached hereto as Exhibit B states that neither the Charter nor the Bylaws of the Company may permit the removal of a director upon the affirmative vote of a majority of the votes cast (*i.e.*, a Votes Cast Standard), and that the lowest permissible standard for the removal of directors is a majority of the votes entitled to be cast on the matter (*i.e.*, a True Majority Standard). Given that NCR, a Maryland corporation, is subject to the MGCL, the Proposal is contrary to state law.

Therefore, the Company and its Board could not implement the Proposal without violating applicable state law and thus the Company may properly omit the Proposal from the Proxy Materials in accordance with Rule 14a-8(i)(2). Accordingly, we respectfully request that the Staff concur that the Proposal may be properly omitted from the Proxy Materials on the basis of Rule 14a-8(i)(2).

4. **Conclusion**

Based on the foregoing, we hereby respectfully request that the Staff concur in our view that the Proposal may be properly excluded from NCR's Proxy Materials. If the Staff has any questions with respect to the foregoing, or if for any reason the Staff does not agree that NCR may omit the Proposal from its Proxy Materials, please contact me at (212) 474-1434. I would appreciate your sending your response via e-mail to me at kdrexler@cravath.com as well as to NCR, attention of James Bedore, Executive Vice President, General Counsel and Secretary at James.Bedore@ncr.com.

Very truly yours,

/s/ Kimberley S. Drexler
Kimberley S. Drexler

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

VIA EMAIL: shareholderproposals@sec.gov

Encls.

Copies w/encl. to:

Myra K. Young
c/o John Chevedden

VIA EMAIL: ***

James Bedore
Executive Vice President, General Counsel and Secretary
NCR Corporation
864 Spring Street NW
Atlanta, GA 30308

VIA EMAIL: James.Bedore@ncr.com

Chanda Kirchner
Law Vice President and Chief Corporate Counsel
NCR Corporation
864 Spring Street NW
Atlanta, GA 30308

VIA EMAIL: Chanda.Kirchner@ncr.com

Michael D. Schiffer, Partner
Venable LLP
750 E. Pratt Street, Suite 900
Baltimore, MD 21202

VIA EMAIL: mschiffer@venable.com

EXHIBIT A

**PROPOSAL AND
CORRESPONDENCE WITH PROPONENT**

Edward Gallagher
General Counsel and Secretary
NCR Corporation (NCR)
3097 Satellite Boulevard
Duluth, GA 30096
PH: (212) 589-8472
Via email: Edward.gallagher@NCR.com

Dear Corporate Secretary,

I am pleased to be a shareholder in NCR Corporation (NCR) and appreciate the leadership NCR has shown in consumer transaction technologies. However, I believe NCR has unrealized potential that can be unlocked through low or no cost corporate governance reform.

I am submitting a shareholder proposal for a vote at the next annual shareholder meeting to **permit removal of directors by a majority vote of shareholders with or without cause**. The attached proposal meets all Rule 14a-8 requirements, including the continuous ownership of the required stock value for over a year and I pledge to continue to hold the required amount of stock until after the date of the next shareholder meeting. My submitted format, with the shareholder-supplied emphasis, is intended to be used for definitive proxy publication.

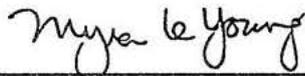
This letter confirms that I am delegating John Chevedden to act as my agent regarding this Rule 14a-8 proposal, including its submission, negotiations and/or modification, and presentation at the forthcoming shareholder meeting. Please direct all future communications regarding my rule 14a-8 proposal to John Chevedden (PH: ***

to facilitate prompt communication. My

husband, James McRitchie is hereby delegated to act as Mr. Chevedden's backup agent regarding this proposal. Please identify Myra K. Young as the proponent of the proposal exclusively.

Your consideration and the consideration of the Board of Directors is appreciated in responding to this proposal. We expect to forward a broker letter soon, so if you simply acknowledge my proposal in an email message to *** it may not be necessary for you to request such evidence of ownership.

Sincerely,



Myra K. Young

November 2, 2020

Date

[NCR Rule 14a-8 Proposal, November 2, 2020]
[This line and any line above it – *Not* for publication.]
Proposal 4* - Shareholder Right to Remove Directors by Majority Vote

Resolved: Shareholders ask our board to undertake such steps as may be necessary to permit removal of directors by a majority vote of shareholders with or without cause.

Supporting Statement: Best corporate governance practice is to allow shareholders, by majority vote, to elect their directors and allow for the removal of directors with or without cause by a majority vote of shares voted for and against directors.

In December 2015, the Delaware Court of Chancery (the “Court”) issued a decision, *In Re VAALCO Energy, Inc.*, in which the Court interpreted Section 141(k) of General Corporation Law of the State of Delaware and held that if a company does not have (i) a classified board of directors or (ii) cumulative voting in election of directors, then such company may not provide in its certificate of incorporation or bylaws that its directors may be removed only for cause. Prior to the *VAALCO* decision, it was unclear whether Section 141(k) prohibited allowing director removal only for cause when a company did not have classified board or did not allow for a cumulative vote.

Although NCR Corporation (NCR) is incorporated in Maryland, not Delaware, the Delaware ruling would suggest review of organizational and governing documents is prudent, particularly at companies such as NCR, with declassified boards.

To obtain a board majority between annual meetings in an emergency situation, shareholders must be able to create vacancies and be able to fill them. Although NCR allows shareholders to call a special meeting, the main purpose of calling a special meeting is to change the board between annual meetings. Requiring a vote of holders of not less than 80% of the voting power of all eligible stock outstanding is an unreasonably high threshold for shareholders to remove a director.

The current right of shareholders to call a special meeting can accomplish little if directors cannot be removed with or without cause by a majority vote. See *The Never-Ending Quest for Shareholder Rights: Special Meetings and Written Consent* by Emiliano Catan and Marcel Kahan, November 2018 at <https://corpgov.law.harvard.edu/2019/05/31/the-never-ending-quest-for-shareholder-rights-special-meetings-and-written-consent/>.

Increase Shareholder Value
Vote for Shareholder Right to Remove Directors by Majority Vote– Proposal [4*]
[This line and any below are *not* for publication]
Number 4* to be assigned by NCR

Notes:

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

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

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

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

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

The stock supporting this proposal will be held until after the annual meeting and the proposal will be presented at the annual meeting. Please acknowledge this proposal promptly by email

[

From: John Chevedden ***
Sent: Monday, November 2, 2020 8:30 PM
To: Bedore, James M <James.Bedore@ncr.com>
Cc: Kirchner, Chanda <Chanda.Kirchner@ncr.com>
Subject: Rule 14a-8 Proposal (NCR)``

***External Message* - Use caution before opening links or attachments**

Mr. Bedore,

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.

I expect to forward a broker letter soon so if you acknowledge this proposal in an email message it will save you from requesting a broker letter from me.

Sincerely,
John Chevedden

From: Kirchner, Chanda <Chanda.Kirchner@ncr.com>
Sent: Thursday, November 12, 2020 12:10 PM
To: olmsted
Cc: Bedore, James M
Subject: RE: Rule 14a-8 Proposal (NCR)``
Attachments: Letter dated 2020 Nov 12_with Annex A.pdf



Mr. Chevedden,

Please see the attached response from NCR Corporation regarding the Rule 14a-8 proposal.

Sincerely,
Chanda Kirchner

Chanda Kirchner
Law Vice President and Chief Corporate Counsel
NCR Corporation
chanda.kirchner@ncr.com | ncr.com
office: 678.808.7957 | mobile: 937.231.3354



The information contained in this message is privileged, private and confidential, is the property of NCR Corporation, and is solely for the use of its intended recipient. If you are not the person to whom this e-mail is addressed, or if it has been sent to you in error, please notify the sender immediately. If you are not the intended recipient, please note that permission to use, copy, disclose, alter or distribute this message, and any attachments, is expressly denied.

From: John Chevedden ***
Sent: Monday, November 2, 2020 8:30 PM
To: Bedore, James M <James.Bedore@ncr.com>
Cc: Kirchner, Chanda <Chanda.Kirchner@ncr.com>
Subject: Rule 14a-8 Proposal (NCR)``

***External Message* - Use caution before opening links or attachments**

Mr. Bedore,
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.

I expect to forward a broker letter soon so if you acknowledge this proposal in an email message it will save you from requesting a broker letter from me.

Sincerely,
John Chevedden

NCR Corporation
Law Department
864 Spring St. NW
Atlanta, GA 30308
Chanda.Kirchner@ncr.com
678-808-7957



VIA Email ***) and Federal Express

November 12, 2020

John Chevedden

Re: Notice of Procedural Deficiencies of Stockholder Proposal Submitted for NCR's 2021 Annual Meeting of Stockholders

Dear Mr. Chevedden:

This letter is regarding the proposal submitted by Ms. Myra K. Young in her letter dated November 2, 2020 (the "Stockholder Proposal"), which was: addressed to an individual who, as we advised you in 2019, is no longer employed by NCR Corporation (the "Company"); and sent via electronic mail to certain employees of NCR on November 2, 2020. The Stockholder Proposal requests that the Board of Directors (the "Board") of the Company undertake such steps as may be necessary to permit removal of the members of the Board by a majority vote of shareholders with or without cause. The supporting statement included in the Stockholder Proposal further refers to such action to occur "by a majority vote of shares voted for and against directors."

Based on a review of the Company's records, it does not appear that Ms. Young is a registered holder of the Company's securities. In addition, we have not yet received the broker letter that Ms. Young indicated, per her November 2, 2020 letter, would be forthcoming. Therefore, the Company has not been able to determine whether she has satisfied the minimum ownership requirements pursuant to Rule 14a-8(b)(1) under the Securities Exchange Act of 1934, as amended. In order to be eligible to submit a stockholder proposal under Rule 14a-8, the submitting stockholder must have continuously held at least \$2,000 in market value, or at least 1%, of the Company's securities entitled to vote on the proposal at the annual meeting for at least the one-year period preceding and including the date of proposal submission. Rule 14a-8(b)(2) requires stockholders who are not registered holders of the Company's securities, such as Ms. Young, to prove to the Company their eligibility to submit a stockholder proposal pursuant to Rule 14a-8 in one of two ways:

- (1) submit to the Company a written statement from the "record" holder of your securities (usually a broker or a bank) verifying that you continuously held the requisite amount of the Company's securities for at least the one-year period preceding and including November 2, 2020 (Rule 14a-8(b)(2)(i)); or

- (2) if you have filed with the SEC a Schedule 13D, Schedule 13G, Form 3, Form 4 and/or Form 5, or amendments to those documents or updated forms, reflecting your ownership of the Company's securities as of or before the date on which the one-year eligibility period begins, submit to the Company a copy of the schedule and/or form, and any subsequent amendments reporting a change in your ownership level and your written statement that you continuously held the requisite amount of the Company's securities for at least the one-year period preceding and including November 2, 2020 (Rule 14a-8(b)(2)(ii)).

Pursuant to Rule 14a-8(f), the documentation required by Rule 14a 8(b)(2)(i) to prove Ms. Young's security ownership needs to be postmarked or transmitted electronically to the Company no later than 14 days from the date of receipt of this letter. Failure to comply with these rules on a timely basis would allow the Company to exclude Ms. Young's stockholder proposal from its proxy materials.

Please ensure that any electronic communication is delivered to James M. Bedore with a copy to me at the email addresses provided below. Also, please ensure that any documentation submitted by U.S. mail or other delivery service is sent to James M. Bedore with a copy to me at the addresses provided below.

NCR Corporation
Attn: James M. Bedore, Executive Vice President, General Counsel
and Secretary
864 Spring Street NW
Atlanta, Georgia 30308-1007
james.bedore@ncr.com

NCR Corporation
Attn: Chanda Kirchner, Law Vice President, Chief Corporate Counsel
and Assistant Secretary
864 Spring Street NW
Atlanta, Georgia 30308-1007
chanda.kirchner@ncr.com

For your convenience in addressing any future communications, note that James M. Bedore is the Corporate Secretary of NCR Corporation. Also note that Edward Gallagher, who was included as a recipient of the Stockholder Proposal, is no longer an employee of NCR Corporation. In addition, note that NCR Corporation no longer occupies property at the address in Duluth, Georgia included in the Stockholder Proposal.

We look forward to receiving Ms. Young's proof of stock ownership. For your convenience a copy of Rule 14a-8 has been attached hereto as Annex A.

Very truly yours,

Chanda Kirchner
Law Vice President, Chief Corporate Counsel and Assistant Secretary

cc: James M. Bedore, Executive Vice President, General Counsel and Secretary

Encl.

17 CFR § 240.14a-8 - Shareholder proposals.

§ 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 like many shareholders you are not a registered holder, the company likely does not know that you are a shareholder, or how many shares you own. In this case, at the time you submit your proposal, you must prove your eligibility to the company in one of two ways:

(i) The first way is to submit to the company a written statement from the “record” holder of your securities (usually a broker or bank) verifying that, at the time you submitted your proposal, you continuously held the securities for at least one year. You must also include your own written statement that you intend to continue to hold the securities through the date of the meeting of shareholders; or

(ii) The second way to prove ownership applies only if you have filed a Schedule 13D (§ 240.13d-101), Schedule 13G (§ 240.13d-102), Form 3 (§ 249.103 of this chapter), Form 4 (§ 249.104 of this chapter) and/or Form 5 (§ 249.105 of this chapter), or amendments to those documents or updated forms, reflecting your ownership of the shares as of or before the date on which the one-year eligibility period begins. If you have filed one of these documents with the SEC, you may demonstrate your eligibility by submitting to the company:

(A) A copy of the schedule and/or form, and any subsequent amendments reporting a change in your ownership level;

(B) Your written statement that you continuously held the required number of shares for the one-year period as of the date of the statement; and

(C) Your written statement that you intend to continue ownership of the shares through the date of the company's annual or special meeting.

(c) *Question 3:* How many proposals may I submit? Each shareholder may submit no more than one proposal to a company for a particular shareholders' meeting.

(d) *Question 4:* How long can my proposal be? The proposal, including any accompanying supporting statement, may not exceed 500 words.

(e) *Question 5:* What is the deadline for submitting a proposal?

(1) If you are submitting your proposal for the company's annual meeting, you can in most cases find the deadline in last year's proxy statement. However, if the company did not hold an annual meeting last year, or has changed the date of its meeting for this year more than 30 days from last year's meeting, you can usually find the deadline in one of the company's quarterly reports on Form 10-Q (§ 249.308a of this chapter), or in shareholder reports of investment companies under § 270.30d-1 of this chapter of the Investment Company Act of 1940. In order to avoid controversy, shareholders should submit their proposals by means, including electronic means, that permit them to prove the date of delivery.

(2) The deadline is calculated in the following manner if the proposal is submitted for a regularly scheduled annual meeting. The proposal must be received at the company's principal executive offices not less than 120 calendar days before the date of the company's proxy statement released to shareholders in connection with the previous year's annual meeting. However, if the company did not hold an annual meeting the previous year, or if the date of this year's annual meeting has been changed by more than 30 days from the date of the previous year's meeting, then the deadline is a reasonable time before the company begins to print and send its proxy materials.

(3) If you are submitting your proposal for a meeting of shareholders other than a regularly scheduled annual meeting, the deadline is a reasonable time before the company begins to print and send its proxy materials.

(f) Question 6: What if I fail to follow one of the eligibility or procedural requirements explained in answers to Questions 1 through 4 of this section?

(1) The company may exclude your proposal, but only after it has notified you of the problem, and you have failed adequately to correct it. Within 14 calendar days of receiving your proposal, the company must notify you in writing of any procedural or eligibility deficiencies, as well as of the time frame for your response. Your response must be postmarked, or transmitted electronically, no later than 14 days from the date you received the company's notification. A company need not provide you such notice of a deficiency if the deficiency cannot be remedied, such as if you fail to submit a proposal by the company's properly determined deadline. If the company intends to exclude the proposal, it will later have to make a submission under § 240.14a-8 and provide you with a copy under Question 10 below, § 240.14a-8(j).

(2) If you fail in your promise to hold the required number of securities through the date of the meeting of shareholders, then the company will be permitted to exclude all of your proposals from its proxy materials for any meeting held in the following two calendar years.

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

(h) Question 8: 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 soliciting materials;

(4) **Personal grievance; special interest:** If the proposal relates to the redress of a personal claim or grievance against the company or any other person, or if it is designed to result in a benefit to you, or to further a personal interest, which is not shared by the other shareholders at large;

(5) *Relevance:* If the proposal relates to operations which account for less than 5 percent of the company's total assets at the end of its most recent fiscal year, and for less than 5 percent of its net earnings and gross sales for its most recent fiscal year, and is not otherwise significantly related to the company's business;

(6) *Absence of power/authority:* If the company would lack the power or authority to implement the proposal;

(7) *Management functions:* If the proposal deals with a matter relating to the company's ordinary business operations;

(8) *Director elections:* If the proposal:

(i) Would disqualify a nominee who is standing for election;

(ii) Would remove a director from office before his or her term expired;

(iii) Questions the competence, business judgment, or character of one or more nominees or directors;

(iv) Seeks to include a specific individual in the company's proxy materials for election to the board of directors; or

(v) Otherwise could affect the outcome of the upcoming election of directors.

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

Note to paragraph (I)(9):

A company's submission to the Commission under this section should specify the points of conflict with the company's proposal.

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

Note to paragraph (I)(10):

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

on the frequency of say-on-pay votes that is consistent with the choice of the majority of votes cast in the most recent shareholder vote required by § 240.14a-21(b) of this chapter.

(11) Duplication: If the proposal substantially duplicates another proposal previously submitted to the company by another proponent that will be included in the company's proxy materials for the same meeting;

(12) Resubmissions: If the proposal deals with substantially the same subject matter as another proposal or proposals that has or have been previously included in the company's proxy materials within the preceding 5 calendar years, a company may exclude it from its proxy materials for any meeting held within 3 calendar years of the last time it was included if the proposal received:

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

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

(iii) Less than 10% of the vote on its last submission to shareholders if proposed three times or more previously within the preceding 5 calendar years; and

(13) Specific amount of dividends: If the proposal relates to specific amounts of cash or stock dividends.

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

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

(2) The company must file six paper copies of the following:

(i) The proposal;

(ii) An explanation of why the company believes that it may exclude the proposal, which should, if possible, refer to the most recent applicable authority, such as prior Division letters issued under the rule; and

(iii) A supporting opinion of counsel when such reasons are based on matters of state or foreign law.

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

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

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

(1) The company's proxy statement must include your name and address, as well as the number of the company's voting securities that you hold. However, instead of providing that information, the company may instead include a statement that it will provide the information to shareholders promptly upon receiving an oral or written request.

(2) The company is not responsible for the contents of your proposal or supporting statement.

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

(1) The company may elect to include in its proxy statement reasons why it believes shareholders should vote against your proposal. The company is allowed to make arguments reflecting its own point of view, just as you may express your own point of view in your proposal's supporting statement.

(2) However, if you believe that the company's opposition to your proposal contains materially false or misleading statements that may violate our anti-fraud rule, § 240.14a-9, you should promptly send to the Commission staff and the company a letter explaining the reasons for your view, along with a copy of the company's statements opposing your proposal. To the extent possible, your letter should include specific factual information demonstrating the inaccuracy of the company's claims. Time permitting, you may wish to try to work out your differences with the company by yourself before contacting the Commission staff.

(3) We require the company to send you a copy of its statements opposing your proposal before it sends its proxy materials, so that you may bring to our attention any materially false or misleading statements, under the following timeframes:

(i) If our no-action response requires that you make revisions to your proposal or supporting statement as a condition to requiring the company to include it in its proxy materials, then the company must provide you with a copy of its opposition statements no later than 5 calendar days after the company receives a copy of your revised proposal; or

(ii) In all other cases, the company must provide you with a copy of its opposition statements no later than 30 calendar days before its files definitive copies of its proxy statement and form of proxy under § 240.14a-6.

[63 FR 29119, May 28, 1998; 63 FR 50622, 50623, Sept. 22, 1998, as amended at 72 FR 4168, Jan. 29, 2007; 72 FR 70456, Dec. 11, 2007; 73 FR 977, Jan. 4, 2008; 76 FR 6045, Feb. 2, 2011; 75 FR 56782, Sept. 16, 2010]

From: John Chevedden *** >
Sent: Friday, November 13, 2020 12:29 AM
To: Kirchner, Chanda
Cc: Bedore, James M
Subject: Rule 14a-8 Proposal (NCR) blb
Attachments: 12112020_14.pdf

***External Message* - Use caution before opening links or attachments**

Dear Ms. Kirchner,
Please see the attached broker letter.
Please confirm receipt.
Sincerely,
John Chevedden



11/05/2020

Myra Young

Re: Your TD Ameritrade Account Ending in ***

Dear Myra Young,

Pursuant to your request, this letter is to confirm that as of the date of this letter, Myra K. Young held, and had held continuously for at least 13 months, 100 shares of NCR Corporation (NCR) common stock in her account ending in *** at TD Ameritrade. The DTC clearinghouse number for TD Ameritrade is 0188.

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

Sincerely,

A handwritten signature in cursive script that reads 'Gabriel Elliott'.

Gabriel Elliott
Resource Specialist
TD Ameritrade

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

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

TD Ameritrade, Inc., member FINRA/SIPC (www.finra.org, www.sipc.org). TD Ameritrade is a trademark jointly owned by TD Ameritrade IP Company, Inc. and The Toronto-Dominion Bank. © 2015 TD Ameritrade IP Company, Inc. All rights reserved. Used with permission.

From: Kirchner, Chanda <Chanda.Kirchner@ncr.com>
Sent: Friday, November 13, 2020 4:23 PM
To: John Chevedden; ***
Cc: Bedore, James M
Subject: RE: Rule 14a-8 Proposal (NCR) blb



Mr. Chevedden,

NCR confirms that it has received your email below.

Sincerely,

Chanda Kirchner

Law Vice President and Chief Corporate Counsel

NCR Corporation

chanda.kirchner@ncr.com | ncr.com

office: 678.808.7957 | mobile: 937.231.3354



The information contained in this message is privileged, private and confidential, is the property of NCR Corporation, and is solely for the use of its intended recipient. If you are not the person to whom this e-mail is addressed, or if it has been sent to you in error, please notify the sender immediately. If you are not the intended recipient, please note that permission to use, copy, disclose, alter or distribute this message, and any attachments, is expressly denied.

From: John Chevedden ***
Sent: Friday, November 13, 2020 12:29 AM
To: Kirchner, Chanda <Chanda.Kirchner@ncr.com>
Cc: Bedore, James M <James.Bedore@ncr.com>
Subject: Rule 14a-8 Proposal (NCR) blb

***External Message* - Use caution before opening links or attachments**

Dear Ms. Kirchner,
Please see the attached broker letter.
Please confirm receipt.
Sincerely,
John Chevedden

EXHIBIT B

OPINION OF MARYLAND COUNSEL

December 18, 2020

NCR Corporation
864 Spring Street NW
Atlanta, GA 30308

RE: Stockholder Proposal of Myra K. Young

Ladies and Gentlemen:

We have served as Maryland counsel to NCR Corporation, a Maryland corporation (the “Company”), in connection with certain matters of Maryland law arising out of the stockholder proposal (the “Proposal”) submitted by Myra K. Young pursuant to Rule 14a-8 (“Rule 14a-8”) of the Securities Exchange Act of 1934, as amended (the “Exchange Act”), and the related Supporting Statement (the “Supporting Statement”) for inclusion in the proxy statement and form of proxy of the Company for the 2021 Annual Meeting of Stockholders of the Company (the “Annual Meeting”).

We have been asked to consider, in connection with the Company’s evaluation of the Proposal, whether Maryland law permits the Charter or Bylaws (each as defined below) to include a provision permitting the removal of a director upon the affirmative vote of a majority of all the votes cast with respect to the removal of the director (a “Votes Cast Standard”).

In connection with our representation of the Company, and as a basis for the opinion hereinafter set forth, we have examined originals, or copies certified or otherwise identified to our satisfaction, of the following documents (collectively, the “Documents”):

1. The charter of the Company (the “Charter”), certified by the State Department of Assessments and Taxation of Maryland;
2. The Bylaws of the Company (the “Bylaws”), certified as of the date hereof by an officer of the Company;
3. The Proposal and Supporting Statement; and
4. Such other documents and matters as we have deemed necessary or appropriate to express the opinion set forth below, subject to the assumptions, limitations and qualifications stated herein.

In expressing the opinion set forth below, we have assumed the following: all Documents submitted to us as certified or photostatic copies conform to the original documents; all public records reviewed or relied upon by us or on our behalf are true and complete; there has

NCR Corporation
December 18, 2020
Page 2

been no oral or written modification of or amendment to any of the Documents, and there has been no waiver of any provision of any of the Documents, by action or omission of the parties or otherwise.

I. The Proposal

As currently drafted, the Charter provides that, subject to the terms of any class or series of stock, “any director or the entire Board of Directors may be removed for cause, by the affirmative vote of the holders of not less than 80% of the voting power of [all shares of the Company entitled to vote generally in the election of directors] then outstanding, voting as a single class.” On November 2, 2020, Myra K Young, a stockholder of the Company, submitted the following Proposal along with the related Supporting Statement, pursuant to Rule 14a-8, to the Company for inclusion in the Company’s proxy statement and form of proxy for the Annual Meeting:

RESOLVED: Shareholders ask our board to undertake such steps as may be necessary to permit removal of directors by a majority vote of shareholders with or without cause.¹

We note that the proposal itself only specifies that the Company permit the removal of directors “by a majority vote of shareholders.” Based on the proposal language alone, it is ambiguous whether the proponent’s desired standard is (i) a Votes Cast Standard or (ii) the affirmative vote of a majority of all the votes entitled to be cast on the matter (a “True Majority Standard”).

However, the supporting statement provides “[b]est corporate governance practice is to allow shareholders, by majority vote, to elect their directors and allow for the removal of directors with or without cause **by a majority vote of shares voted for and against directors**”. (Emphasis added.) We, therefore, assume that the request is to implement a Votes Cast Standard, and this opinion addresses whether Maryland law permits the Charter or Bylaws to include a provision that would permit the removal of a director by a Votes Cast Standard.

II. Applicable Law and Analysis

¹ The Proposal also requests the Company remove the cause requirement and allow stockholders to remove a director with or without cause. A “no cause” removal provision is permitted under Maryland law.

NCR Corporation
December 18, 2020
Page 3

Pursuant to Section 2-406(a) of the Maryland General Corporation Law (the “MGCL”), a director may be removed, with or without cause, by the affirmative vote of a majority of all the votes entitled to be cast generally in the election of directors (*i.e.*, a True Majority Standard). Section 2-406(a) of the MGCL also provides that, despite the statutory default of a True Majority Standard, directors may also be removed by a voting standard “[a]s otherwise provided in the charter of the corporation.”² Notably, this language does not reference the bylaws of a corporation and, therefore, the Bylaws may not alter the True Majority Standard provided for in the MGCL.

With respect to whether the Charter may establish a Votes Cast Standard, Section 2-104(b)(5) of the MGCL provides:

The [charter of a corporation] may include . . . a provision that requires for any purpose a lesser proportion of the votes of all classes or series or of any class or series of stock than the proportion required by this article for that purpose, **but this proportion may not be less than a majority of all the votes entitled to be cast on the matter.**” (Emphasis added.)

Because Section 2-406 of the MGCL provides for a True Majority Standard, Section 2-104(b)(5) does not permit the charter of a Maryland corporation to implement a Votes Cast Standard with regard to the removal of directors because that would be “less than a majority of all of the votes entitled to be cast on the matter”. Indeed, when discussing the permissible voting standard for removing directors, the leading treatise on Maryland corporate law cites to Section 2-104(b)(5) of the MGCL in concluding that “[t]he charter [of a corporation] may not set the required vote for removing a director below a majority of the votes entitled to be cast.”³

² For this reason, as set forth above, the current requirement in the Company’s charter requiring 80% of the votes entitled to be cast in the election of directors to remove a director is permissible.

³ JAMES J. HANKS, JR., MARYLAND CORPORATION LAW § 6.11 at 6-84 (1990 & Supp. 2020).

NCR Corporation
December 18, 2020
Page 4

III. Opinion

Based upon the foregoing analysis and reasoning and subject to the limitations, assumptions and qualifications set forth herein, it is our opinion that, under Maryland law, neither the Charter nor the Bylaws may permit the removal of a director upon the affirmative vote of a majority of the votes cast (*i.e.*, a Votes Cast Standard), and that the lowest permissible standard for the removal of directors is a majority of the votes entitled to be cast on the matter (*i.e.*, a True Majority Standard).

The foregoing opinion is limited to the laws of the State of Maryland and we do not express any opinion herein concerning any other law. The opinion expressed herein is limited to the matters specifically set forth herein and no other opinion shall be inferred beyond the matters expressly stated. We assume no obligation to supplement this opinion if any applicable law changes after the date hereof or if we become aware of any fact that might change the opinion expressed herein after the date hereof.

This opinion presented in this letter is solely for your use in connection with the Proposal and, accordingly, may not be relied upon, quoted in any manner to, or delivered to any other person or entity without, in each instance, our prior written consent. Notwithstanding the foregoing, this opinion may be submitted to the United States Securities and Exchange Commission as an exhibit to the Company's no action letter request related to the Proposal.

Very truly yours,