



DIVISION OF
CORPORATION FINANCE

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

December 29, 2021

Stephen L. Burns
Cravath, Swaine & Moore LLP

Re: International Business Machines Corporation (the "Company")
Incoming letter dated December 27, 2021

Dear Mr. Burns:

This letter is in regard to your correspondence concerning the shareholder proposal (the "Proposal") submitted to the Company by James McRitchie (the "Proponent") for inclusion in the Company's proxy materials for its upcoming annual meeting of security holders. Your letter indicates that the Proponent has withdrawn the Proposal and that the Company therefore withdraws its December 14, 2021 request for a no-action letter from the Division. Because the matter is now moot, we will have no further comment.

Copies of all of the correspondence related to this matter will be made available on our website at <https://www.sec.gov/corpfin/2021-2022-shareholder-proposals-no-action>.

Sincerely,

Rule 14a-8 Review Team

cc: James McRitchie

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December 14, 2021

International Business Machines Corporation
Shareholder Proposal of James McRitchie (with John Chevedden)
Securities Exchange Act of 1934—Rule 14a-8

Ladies and Gentlemen:

I am writing on behalf of our client, International Business Machines Corporation, a New York corporation (“IBM” or the “Company”), in accordance with Rule 14a-8(j) of the Securities Exchange Act of 1934, as amended (the “Exchange Act”), to respectfully request that the Staff of the Division of Corporation Finance (the “Staff”) of the Securities and Exchange Commission (the “Commission”) concur with our view that IBM may exclude a shareholder proposal (the “Proposal”) and supporting statement submitted by James McRitchie (the “Proponent”), with his authorized representative, John Chevedden (the “Representative”), from the proxy materials to be distributed by IBM in connection with its 2022 annual meeting of shareholders (the “2022 Proxy Materials”). Copies of the Proposal and the Proponent’s letter authorizing Mr. Chevedden to act as his agent (hereinafter defined as the Authorization Letter) are included in Exhibit A. IBM has advised us as to the factual matters set forth below.

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

- filed this letter with the Commission no later than eighty (80) calendar days before the Company intends to file its definitive 2022 Proxy Materials with the Commission; and
- concurrently sent copies of this correspondence to the Proponent and the Representative.

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

Company is taking this opportunity to inform the Proponent and Representative that if either elects to submit additional correspondence to the Commission or the Staff with respect to the Proposal, a copy of that correspondence should be furnished concurrently to the undersigned on behalf of the Company and to Robert Hayes, Counsel of the Company.

THE PROPOSAL

The text of the Proposal is included in Exhibit A.

BASIS FOR EXCLUSION

On behalf of the Company, we hereby respectfully request that the Staff concur in the Company's view that it may exclude the Proposal from the 2022 Proxy Materials pursuant to:

- Rule 14a-8(c) and Rule 14a-8(f)(1) because the Proposal constituted an indirect proposal by the Representative and as such is an impermissible additional proposal submitted by the Representative.
- Rule 14a-8(i)(7) because the Proposal deals with matters relating to the Company's ordinary business operations.

BACKGROUND

On September 23, 2021, the Representative submitted his own separate proposal to the Company titled "Special Shareholder Meeting Improvement", dated September 23, 2021 (the "Chevedden Special Meeting Proposal"). *See* Exhibit B. As of the date of this letter, the Representative has not withdrawn the Chevedden Special Meeting Proposal.

On October 24, 2021, the Proponent submitted the Proposal to the Company titled "CEO Compensation to Weigh Workforce Pay and Ownership", dated October 24, 2021. *See* Exhibit A. The Proposal was accompanied by a letter dated October 24, 2021 that authorized the Representative to act as the Proponent's agent, including with respect to negotiations and/or modification of the Proposal on behalf of the Proponent (the "Authorization Letter"). A copy of the Authorization Letter is also included in Exhibit A.

On October 29, 2021 and in accordance with Rule 14a-8(f)(1), the Company sent the Proponent and the Representative a letter dated October 29, 2021 (the "Deficiency Notice"), a copy of which is attached as Exhibit C, via email to the email address from which the Proponent submitted the Proposal and the Representative's email address provided by the Proponent for communications regarding the Proposal in the Authorization Letter, notifying the Proponent and Representative of certain procedural deficiencies related to the Proposal.¹ In particular, the Authorization Letter delegated to

¹ In addition to the One Proposal Deficiency discussed herein, the Deficiency Notice also notified the Proponent and the Representative of procedural deficiencies related to proof of ownership and meeting

the Representative the authority to act as the Proponent's agent regarding the Proposal, "including negotiations and/or *modification*, and presentation at the forthcoming shareholder meeting" (emphasis added). In the Deficiency Notice, the Company informed the Proponent and the Representative that it believed the breadth of the delegation of the Representative as agent regarding the Proposal with no limitations and the specific vesting of the Representative with the authority to modify the Proposal provided him with the corresponding power to submit a proposal on the Proponent's behalf, and that the Proposal therefore constituted an indirect proposal by the Representative. Furthermore, the Deficiency Letter stated that the Representative had previously submitted the Chevedden Special Meeting Proposal and that "[g]iven that a shareholder is not permitted to submit one proposal in his or her name and simultaneously serve as a representative to submit, directly or indirectly, a different proposal on another shareholder's behalf for consideration at the same meeting, we believe that you may not seek to have Mr. Chevedden act as your agent (in the manner you indicated) regarding the Proposal unless Mr. Chevedden provides timely notice to us that he is withdrawing his separate proposal or you provide us timely notice that you are revising your delegation of Mr. Chevedden's powers to act as your agent regarding the Proposal." In the Deficiency Notice, the Company informed the Proponent and the Representative of this procedural deficiency (the "One Proposal Deficiency"), of the requirements of Rule 14a-8 and how the Proponent and the Representative could cure the One Proposal Deficiency.

On November 8, 2021, which date was the tenth (10th) calendar day following the Representative's receipt of the Deficiency Notice, the Representative sent a response (the "Representative Response") to the Deficiency Notice, a copy of which is attached as Exhibit D. The Representative Response attached the required proof of the Proponent's ownership.

On November 19, 2021, which date was the twenty-first (21st) calendar day following the Representative's receipt of the Deficiency Notice, the Proponent sent a response (the "Proponent Response") to the Deficiency Notice, a copy of which is attached as Exhibit E. The Proponent Response consisted of a cover email from the Proponent and an attached letter from the Proponent dated November 18, 2021, addressed to IBM and stating that "I hereby revoke previously delegated authority granted to John Chevedden in my letter and shareholder proposal of October 24, 2021, requesting IBM weigh workforce pay and ownership when determining CEO compensation." Assuming that the Proponent Response was intended to cure the One Proposal Deficiency, the email was not timely sent to do so. In accordance with Rule 14a-8(f)(1), the Proponent's response to the Deficiency Notice was required to be postmarked, or transmitted electronically, no later than 14 days from the date the Deficiency Notice was received. As noted above, the Proponent Response was sent on November 19, 2021, which date was the twenty-first (21st) calendar day following the receipt of the Deficiency Notice.

availability that are not the subject of this letter. Additional correspondence related to the Deficiency Notice is included in Exhibit D.

As such, the Proponent Response was not timely pursuant to Rule 14a-8(f)(1) and therefore could not cure any deficiency for which it may have been intended.²

ANALYSIS

I. THE PROPOSAL MAY BE EXCLUDED PURSUANT TO RULE 14A-8(C) AND RULE 14A-8(F)(1) BECAUSE THE PROPOSAL CONSTITUTED AN INDIRECT PROPOSAL BY THE REPRESENTATIVE AND AS SUCH IS AN IMPERMISSIBLE ADDITIONAL PROPOSAL SUBMITTED BY THE REPRESENTATIVE.

A. Overview of Rule 14a-8(c)

Rule 14a-8(c) provides that “[e]ach person may submit no more than one proposal, directly or indirectly, to a company for a particular shareholders’ meeting. A person may not rely on the securities holdings of another person for the purpose of meeting the eligibility requirements and submitting multiple proposals for a particular shareholders’ meeting.” Prior to the recent amendments to Rule 14a-8, effective January 4, 2021, Rule 14a-8(c) had provided that “each shareholder may submit no more than one proposal to a company for a particular shareholders’ meeting.”

As the Commission detailed in Release No. 34-89964 (the “Adopting Release”), “[w]e continue to believe that [the] one-proposal limit is appropriate. In our view, the Commission’s stated reasoning for the *one-proposal limit applies equally to representatives who submit proposals on behalf of shareholders they represent*” (emphasis added). *Id.* Rule 14a-8(c), as amended, is intended to “more effectively apply the one-proposal limit to shareholders and *representatives of shareholders*” (emphasis added). *Id.*

Furthermore, the Commission was unambiguous as to the practical implications of the amendments to Rule 14a-8(c), stating that “[u]nder the new rule, a shareholder-proponent will not be permitted to submit one proposal in his or her own

² In a separate email dated November 16, 2021 (the “November 16th Representative Email”), the 18th calendar day following the Representative’s receipt of the Deficiency Notice, Mr. Chevedden emailed the following statement to IBM, a copy of which is attached as Exhibit F: “Mr. Hayes, The only 2022 IBM rule 14a-8 proposal that I represent is my rule 14a-8 proposal. John Chevedden.” However, the relationship of the November 16th Representative Email to the Proposal is ambiguous, as there is no indication it relates to the Proposal, nor is there any mention of the Proponent or the Proposal. Furthermore, the November 16th Representative Email was addressed to a representative of IBM and copied only one other person, a separate shareholder for a separate proposal pending before the Company for which Mr. Chevedden was acting as a representative. While Mr. Chevedden subsequently clarified that “my 14a-8 proposal” referred to the Chevedden Special Meeting Proposal, he did not clarify if there was any relationship between the November 16th Representative Email and the Proposal. While we do not believe the November 16th Representative Email relates to the Proposal, even if it was intended to cure the One Proposal Deficiency, the email was not timely sent to do so. In accordance with Rule 14a-8(f)(1), the response to the Deficiency Notice was required to be postmarked, or transmitted electronically, no later than 14 days from the date the Deficiency Notice was received. As noted above, the November 16th Representative Email was sent on November 16, 2021, which date was the 18th calendar day following the receipt of the Deficiency Notice. As such, the email was not timely sent.

name and simultaneously serve as a representative to submit a different proposal on another shareholder's behalf for consideration at the same meeting" and that "[u]sing the rule in this way undermines the one-proposal limit." *Id.*

- B. The Proposal is Excludable Pursuant to Rule 14a-8(c) and Rule 14a-8(f)(1) Because the Proposal Constituted an Indirect Proposal by the Representative in Violation of the Limitations Set Forth in Rule 14a-8(c).

As set forth in the Adopting Release, a shareholder-proponent is not permitted to submit one proposal in his or her own name and simultaneously serve as a representative to submit a different proposal on another shareholder's behalf for consideration at the same meeting. *Id.* The Authorization Letter states that the Proponent delegates Mr. Chevedden to act as his agent regarding the Proposal, "including negotiations *and/or modification*, and presentation at the forthcoming shareholder meeting" (emphasis added). In accordance with SEC Division of Corporation Finance Staff Legal Bulletin 14F dated October 18, 2011 ("SLB 14F"), the Staff considers the act of modifying a proposal as effectively equivalent to submitting a proposal, and therefore, the vesting of the Representative with the power to modify the Proposal vested him with the power to submit the Proposal. As such, the Company believes that the breadth of the delegation to the Representative, including the authority to modify (i.e., *submit*) the Proposal, coupled with the facts that the Authorization Letter confirming such delegation was submitted concurrently with the Proposal and that the Proponent and Representative often work together,³ resulted in the Proponent indirectly submitting the Proposal. Given that a shareholder is not permitted to submit one proposal in his or her name and simultaneously serve as a representative to submit, directly or indirectly, a different proposal on another shareholder's behalf for consideration at the same meeting, the indirect submission of the Proposal by the Representative, who previously submitted the Chevedden Special Meeting Proposal in his own name for consideration at the same meeting, violates Rule 14a-8(c).

As discussed above, the Deficiency Notice informed the Proponent and the Representative of the One Proposal Deficiency and how to cure it. Neither the Proponent nor the Representative timely responded to the Deficiency Notice with respect

³ The Proponent describes himself as being a member of "the 'Chevedden group'", consisting of "Chevedden, McRitchie/Young and Steiner." James McRitchie, *Chevedden Group Proxy Proposals*, CorpGov.net (Oct. 31, 2018), <https://www.corpgov.net/2018/10/chevedden-group-proxy-proposals/>. We note that in *Alaska Air Group, Inc.* (avail. Mar. 5, 2009), which was decided prior to the most recent amendments to Rule 14a-8, including those to Rule 14a-8(c), the Staff concurred with the company's argument that the company may exclude from its proxy materials all three of the proposals submitted by the proponent in violation of the one-proposal limitation in Rule 14a-8(c). *See also Navidea Biopharmaceuticals, Inc.* (avail. May 11, 2018) (where the Staff concurred with the company's argument that "the submission of all of [the] proposals by [four different individuals] was coordinated, orchestrated and 'masterminded' solely by [one shareholder]" and as such, it was "appropriate to consider [the four different individuals] as a single proponent limited to one proposal for purposes of Rule 14a-8(c)," and to that end, the company could exclude all of the related proposals).

to the One-Proposal Deficiency.⁴ As such, this deficiency was not timely cured. Accordingly, the Company requests that the Staff agree with its conclusion that the Company may exclude the Proposal pursuant to Rule 14a-8(c) and Rule 14a-8(f).

We note that we are not asking in this letter or otherwise for the Chevedden Special Meeting Proposal to be excluded.

II. THE PROPOSAL MAY BE EXCLUDED UNDER RULE 14A-8(I)(7) BECAUSE THE PROPOSAL DEALS WITH MATTERS RELATING TO THE COMPANY’S ORDINARY BUSINESS OPERATIONS.

The Proposal requests that the Executive Compensation and Management Resources Committee (the “Committee”) of the Company’s Board of Directors (the “Board”) take into consideration “the pay grades, salary ranges, and *stock ownership incentives (such as, but not limited to, stock grants, performance share units, employee stock purchase plans, restricted stock units, and options)* of all classifications of Company employees when setting target amounts for CEO compensation” (emphases added). The Proposal also states that the Committee “should describe in the Company’s proxy statements for annual shareholder meetings how it complies with this requested policy.” As discussed below, under well-established precedent and recently reiterated guidance, the Proposal is excludable under Rule 14a-8(i)(7) because it seeks to micromanage the Company’s actions by prescribing a granular methodology to managing its executive compensation programs and policies, and thereby inappropriately attempts to limit the discretion of the Board.

A. Overview of Rule 14a-8(i)(7)

Rule 14a-8(i)(7) permits a company to omit from its proxy materials a shareholder proposal that “deals with a matter relating to the company’s ordinary business operations.” In the recently released Staff Legal Bulletin No. 14L (Nov. 3, 2021) (“SLB 14L”), the Staff indicated that, going forward, it “will realign its approach for determining whether a proposal relates to ‘ordinary business’ with the standard the Commission initially articulated in 1976,” and reasserted that “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.’” *Id.*, citing *Exchange Act Release No. 34-40018 (May 21, 1998) (the “1998 Release”)*.

The Commission’s release accompanying the 1998 amendments to Rule 14a-8 identified two central considerations that underlie the analysis for an exclusion pursuant to Rule 14a-8(i)(7). *1998 Release*. The first consideration relates to the “subject matter” of the proposal. If the subject matter is “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” then the proposal may, as a

⁴ As noted above, assuming that the Proponent Response was intended to cure the One Proposal Deficiency, the email was not timely sent to do so. As such, we do not believe that the Proponent Response was timely and therefore could not cure any deficiency for which it may have been intended.

general rule, be excluded. However, as the Staff explained in the 1998 Release and reaffirmed in SLB 14L, proposals focusing on significant policy issues generally would not be excludable. The Company is not arguing the substantive merits of the first consideration as it relates to the Proposal. The second consideration, however, is relevant to the Proposal as it relates to “the degree to which the proposal seeks to ‘micro-manage’ the company by probing too deeply into matters of a complex nature upon which shareholders, as a group, would not be in a position to make an informed judgment.” *Id.*, citing *Exchange Act Release No. 12999 (Nov. 22, 1976)*. The 1998 Release further states, “[t]his consideration 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*” (emphasis added). *Id.*

In SLB 14L, the Staff clarified its current approach to the micromanagement consideration, noting that it “will take a measured approach to evaluating companies’ micromanagement arguments – recognizing that proposals seeking detail or seeking to promote timeframes or methods do not per se constitute micromanagement.” *SLB 14L*. Importantly, the Staff clarified that it will “focus on the level of granularity sought in the proposal and whether and to what extent it inappropriately limits discretion of the board or management.” *Id.* Furthermore, the Staff “would expect the level of detail included in a shareholder proposal to be consistent with that needed to enable investors to assess an issuer’s impacts, progress towards goals, risks or other strategic matters appropriate for shareholder input.” *Id.*

In addition, the Staff highlighted its recent letter to ConocoPhillips Company as an example of its current approach to the micromanagement analysis. *Id.* In *ConocoPhillips Company*, the Staff stated that a proposal asking the company to set a greenhouse emissions reduction target did not seek to micromanage the company to such a degree to warrant exclusion because it “[did] not impose a specific method for doing so” (emphasis added). *ConocoPhillips Company (avail. Mar. 19, 2021)*. Furthermore, the Staff clarified that for similar target-setting proposals, they would “not concur in the exclusion of [the proposals] so long as the proposals afford discretion to management as to how to achieve such goals” (emphases added). *SLB 14L*.

In addition, the Staff highlighted in SLB 14L that the micromanagement analysis may include an assessment of “whether a proposal probes matters ‘too complex’ for shareholders, as a group, to make an informed judgment.” *Id.* In particular, the Staff “may consider the sophistication of investors generally on the matter, the availability of data, and the robustness of public discussion and analysis on the topic” in making this assessment. *SLB 14L*. In addition, the Staff provided that it “may also consider references to well-established national or international frameworks when assessing proposals related to disclosure, target setting, and timeframes as indicative of topics that shareholders are well-equipped to evaluate,” *Id.*, and cited the 1998 Release in reasserting that “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.’” *Id.*, citing the 1998 Release.

Finally, with respect to the Proposal's request for a report on the implementation of the policy, framing a shareholder proposal in the form of a request for a report, or including a request for annual reporting as the Proposal does, does not change the nature of the shareholder proposal. The Commission has stated that a shareholder proposal requesting the dissemination of a report may be excludable under Rule 14a-8(i)(7) if the subject matter of the report is within the ordinary business of the issuer. *Exchange Act Release No. 20091 (Aug. 16, 1983)*.

B. The Proposal is Excludable Under Rule 14a-8(i)(7) Because it Seeks to Micromanage the Company by Unduly Limiting the Ability of Management and the Board to Manage Complex Matters

The Proposal is excludable from the 2022 Proxy Materials because it seeks to micromanage the Company with respect to matters squarely within the realm of ordinary business operations best overseen by the Board or management.

The Committee has responsibility for defining and articulating the Company's overall executive compensation philosophy, and administering and approving all elements of compensation for elected corporate officers. Concurrent with that responsibility, the Committee performs many other functions, including: reviewing and approving the corporate goals and objectives relevant to CEO compensation, evaluating the CEO's performance in light of those goals and objectives and, together with the other independent directors, determining and approving the CEO's compensation based on this evaluation.

As disclosed in IBM's proxy statement in connection with its 2021 annual meeting of shareholders, the Board reviews and approves the CEO's performance goals and formally reviews progress and outcomes. As part of this process, the Board considers many factors, including an understanding of the business risks associated with the performance goals. Specifically, with respect to the CEO's compensation targets, the Chair of the Committee works directly with the Committee's compensation consultant to provide a decision-making framework for use by the Committee in setting target compensation opportunities for the CEO. The independent members of the Board review and provide final approval of the CEO's target compensation. In addition, the CEO's compensation targets factor in additional compensation policies, such as the requirement that the CEO own common stock and stock-based holdings at least 10 times his base salary.

The Proposal requests that the Committee "take into consideration the pay grades, salary ranges, and *stock ownership incentives (such as, but not limited to, stock grants, performance share units, employee stock purchase plans, restricted stock units, and options)* of *all classifications* of Company employees when setting target amounts for CEO compensation" (emphases added). In doing so, the Proposal seeks to micromanage the company by probing too deeply into matters of a complex nature upon which shareholders, as a group, would not be in a position to make an informed judgment. Furthermore, the Proposal seeks to micromanage the complex process of setting targets for CEO compensation, which, as discussed above, is currently handled, as is appropriate, by the Board through, among other things, a carefully considered process

involving a compensation consultant and a decision-making framework. This appears to be the very type of decision that the Commission was contemplating when stating that companies should “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.” *1998 Release*.

In addition, in determining if a target setting proposal is too complex, the Staff may consider “references to well-established national or international frameworks when assessing proposals related to disclosure, target setting and timeframes as indicative of topics that shareholders are well-equipped to evaluate.” *SLB 14L*. The Proposal does not reference any well-established or widely accepted frameworks or practices.⁵ In fact, the Proposal does not reference any frameworks of any kind. Therefore, while the Proposal would be too complex for shareholders to be well-equipped to assess even if it referenced a well-established framework (as detailed above), the absence of any reference to a well-established framework or benchmark in the Proposal further supports the Company’s argument that shareholders would be ill-equipped to evaluate the Proposal. As such, the Proposal relates to a topic that probes matters too complex and that shareholders are *not* “well-equipped to evaluate”.

Furthermore, the Proposal requires that pay grades, salary ranges and stock ownership incentives (such as, but not limited to, stock grants, performance share units, employee stock purchase plans, restricted stock units and options) of *all classifications of Company employees* be considered by the Committee, regardless of the number of such grades, ranges or classifications in use at the Company globally, and whether or not the Committee would, in its judgment, view each of these as relevant in determining the target compensation of the CEO. In doing so, the Proposal goes beyond the level of granularity of similar proposals for which the Staff has responded to no-action requests and is therefore distinguishable. For example, proposals in *The TJX Companies, Inc. (Kay Berkson and the Benedictine Sisters of Mount St. Scholastica)* (avail. Apr. 9, 2020) and *SL Green Realty Corp* (avail. Jan. 18, 2017) requested that the compensation committees take into consideration the “pay grades and/or salary ranges of all classifications” of the companies’ employees when setting target amounts for CEO compensation; however, in contrast to both *The TJX Companies, Inc.* and *SL Green Realty Corp*, the Proposal prescribes a significantly more granular methodology by requesting the Committee also consider the *stock ownership incentives (such as, but not limited to, stock grants, performance share units, employee stock purchase plans, restricted stock units and options)* of all classifications of Company employees when setting target amounts for CEO compensation. In contrast to *The TJX Companies, Inc.* and *SL Green Realty Corp*, this level of granularity inappropriately limits the discretion of the board of management to appropriately determine the relevant factors to be considered when setting the CEO’s compensation targets.

The Staff has previously concurred in the exclusion of proposals that seek to regulate executive compensation, but go too far as to micromanage. For example, in

⁵ CEO compensation is a very company-specific determination where there is no “one size fits all” methodology whereas for certain other topics, such as environmental, social and governance disclosure, multiple internationally-recognized frameworks exist.

JPMorgan Chase & Co. (avail. Mar. 22, 2019), the proposal requested that the board adopt a policy prohibiting the vesting of equity-based awards for senior executives when they voluntarily resign to enter government service. The company argued that the actions required by the policy presented in the proposal “necessitate[d] highly complex determinations that are dependent on management’s and the Board of Directors’ underlying knowledge and expertise.” The Staff concurred with exclusion of the proposal and explained that “by seeking to impose specific methods for implementing complex policies” the proposal micromanaged the company. In *AbbVie Inc.* (avail. Feb. 15, 2019), the Staff concurred with the exclusion of a proposal that prescribed a specific methodology prohibiting certain adjustments to financial performance metrics. In *AbbVie*, the Staff noted that the proposal, which sought to prohibit legal or compliance costs from being excluded when determining the amount of senior executive incentive compensation, “micromanages the Company by seeking to impose specific methods for implementing complex policies”, as it “would prohibit any adjustment of the broad categories of expenses covered by the [p]roposal without regard to specific circumstances of the possibility of reasonable exceptions.”

On the other hand, the Staff has not concurred with exclusion under Rule 14a-8(i)(7) where the proposal only required the creation of a target and did not prescribe specific methods and actions for setting such target. As discussed above, in *ConocoPhillips Company*, the Staff denied exclusion under Rule 14a-9(i)(7) where the proposal merely requested that the Company set a target and did not prescribe a method for doing so, citing the fact that the proposal “[did] not impose a specific method for [setting the target].” *ConocoPhillips Company*.

Like the proposal in *JPMorgan Chase & Co.*, the action requested by the Proposal relates to highly complex determinations that are dependent on the underlying knowledge and expertise of the Committee. As of December 31, 2020, the Company employed approximately 345,900 employees, across five business segments, in over 90 geographies. Given the scale and geographic diversity of the Company’s workforce, the variety of business lines and ongoing strategic initiatives at any given time, and the extraordinarily complex and non-standardized nature of CEO compensation target setting, the Company’s decisions with respect to CEO compensation target setting involve complex determinations by the Board that the shareholders are not well-equipped to vote on at a shareholder meeting. Therefore, the Proposal is similar to the proposal excluded in *JPMorgan Chase & Co.* in that it involves highly complex determinations. And, just as in *AbbVie*, the action requested by the Proposal—prescribing specific data that must be considered when setting executive compensation—would prohibit any adjustment of the categories of data to be considered, “without regard to specific circumstances or the possibility of reasonable exceptions.” *AbbVie*. Unlike the proposal in *ConocoPhillips Company*, the Proposal imposes a specific method for setting the target, and unlike the proposals in *The TJX Companies, Inc.* and *SL Green Realty Corp.*, the Proposal’s requirement to consider various stock ownership categories of all classifications of Company employees makes the Proposal impermissibly granular.

For these reasons, the prescriptive nature of the Proposal—requiring the Committee to consider specific types of pay data for all classifications of Company employees and annually report on its compliance with the requested policy—

impermissibly seeks to micromanage the Company. Consistent with well-established precedent discussed above, including *JPMorgan Chase & Co.*, *AbbVie* and *ConocoPhillips Company*, as well as the Staff's recent guidance in SLB 14L, the Company believes that the Proposal may be excluded from its 2022 Proxy Materials pursuant to Rule 14a-8(i)(7) as it relates to the Company's ordinary business operations and attempts to micromanage the highly complex issue of CEO compensation target setting.

CONCLUSION

Based on the foregoing analysis, the Company respectfully requests that the Staff confirm that it will take no enforcement action if IBM excludes the Proposal from its 2022 Proxy Materials for one or both of the reasons set forth above. 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 Robert Hayes, Counsel of the Company, on any related correspondence at Robert.Hayes@ibm.com.

We are sending the Proponent and 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 Proponent and Representative are respectfully reminded that if they elect 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 Robert Hayes, 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
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

VIA EMAIL: shareholderproposals@sec.gov

Encls.

Copies w/encls to:

Robert Hayes
Counsel

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

VIA EMAIL: robert.hayes@ibm.com

Mr. James McRitchie

VIA EMAIL: jm@corpgov.net

Mr. John Chevedden

PII
[REDACTED]

VIA EMAIL: [REDACTED] PII

Exhibit A
to IBM's No-Action Letter Request

Shareholder Proposal of Mr. James McRitchie (with Mr. John Chevedden)

International Business Machines Corporation

The Proposal and the Authorization Letter

From: "James McRitchie" <jm@corpgov.net>

To: fsedlarcik@us.ibm.com

Cc: robert.hayes@ibm.com, barthe@us.ibm.com, "John Chevedden" [REDACTED] PII

Date: 10/24/2021 01:37 PM

Subject: [EXTERNAL] (IBM) shareholder proposal

Dear Mr. Sedlarcik or current Corporate Secretary

Please find and acknowledge receipt of the attached proposal seeking that IBM weigh workforce pay and ownership when determining CEO compensation.

Best Wishes,

James McRitchie
Shareholder Advocate
Corporate Governance
<http://www.corpgov.net>
9295 Yorkship Court
Elk Grove, CA 95758

916.869.2402(See attached file: IBM submission Ownership.pdf)

Corporate Governance

CorpGov.net: improving accountability through democratic corporate governance since 1995

Mr. Frank Sedlarcik, Corporate Secretary
International Business Machines Corporation (IBM)
One New Orchard Road
Armonk NY 10504
PH: 914 499-1900; FX: 914-765-6021; FX: 845-491-3203 per SM 11-7-14
Via: fsedlarcik@us.ibm.com
cc: "Robert Hayes" <robert.hayes@ibm.com>
Evan Barth <barthe@us.ibm.com>

Dear Mr. Sedlarcik or current Corporate Secretary:

I am submitting the attached shareholder proposal, which I support, requesting International Business Machines Corporation (IBM) **weigh workforce pay and ownership when determining CEO compensation**. This proposal is for presentation at the next shareholder meeting. I pledge to continue to hold the required amount of stock until after the date of that meeting.

I will meet Rule 14a-8 requirements including the continuous ownership of the required stock value until after the date of the next shareholder meeting. I have owned the stock continuously since January 2014. My submitted format, with the shareholder-supplied emphasis, is intended to be used for definitive proxy publication.

I am available to meet with the Company representative via phone on November 12, at 10:30 or 11 a.m. Pacific or at a time that is mutually convenient.

This letter confirms that I am delegating John Chevedden to act as my agent regarding this Rule 14a-8 proposal, including 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 ^{PII} [REDACTED] to facilitate prompt communication.

Your consideration and that of the Board of Directors is appreciated in support of the long-term performance of our company. You can avoid the time and expense of filing a deficiency letter to verify ownership by simply acknowledging receipt of my proposal promptly by email to ^{PII} [REDACTED] with a cc to jm@corpgov.net. That will prompt me to request the required letter from my broker and to submit it to you.

Sincerely,



James McRitchie

October 24, 2021

Date

[IBM: Rule 14a-8 Proposal, October 24, 2021]
[This line and any line above it – *Not* for publication.]



Proposal 4* - **CEO Compensation to Weigh Workforce Pay and Ownership**

Resolved: Shareholders of International Business Machines Corporation (“Company”) request the Executive Compensation and Management Resources Committee (“Committee”) of the Board of Directors take into consideration the pay grades, salary ranges, and stock ownership incentives (such as, but not limited to, stock grants, performance share units, employee stock purchase plans, restricted stock units, and options) of all classifications of Company employees when setting target amounts for CEO compensation. The Committee should describe in the Company’s proxy statements for annual shareholder meetings how it complies with this requested policy. Compliance with this policy is excused where it will result in the violation of any existing contractual obligation or the terms of any existing compensation plan.

Supporting Statement:

To ensure that our Company’s CEO compensation is reasonable relative to our Company’s overall employee pay philosophy and structure, the Committee should also consider the pay grades, salary ranges, and stock ownership incentives of all Company employees when setting CEO compensation target amounts.

This proposal does not require the Committee to use other employee pay data in a specific way to set CEO compensation targets. Under this proposal, the Committee will have discretion to determine how other employee pay and stock incentives should impact CEO compensation targets.

The current system of determining CEO compensation without considering the pay, including stock ownership, of average company employees has led to glaring inequality between the CEO. The last reported ratio of the CEO’s annual total compensation to that of the median employee’s annual total compensation was 347:1. A similar ratio focused on stock ownership would probably be higher. From 1973 to 2018, inflation-adjusted wages for nonsupervisory American workers were essentially flat.¹ Meanwhile, a dollar’s worth of stock grew (in real terms) to \$14.09.² Those working for a living have seen their incomes stagnate, while those with significant income from capital ownership have done very well.

Our Company has stock incentive plans for employees but should track and disclose the percentage of employees who participate and at what rates. Our Company should measure and disclose its progress towards an employee ownership culture.³

¹ <https://www.pewresearch.org/fact-tank/2018/08/07/for-most-us-workers-real-wages-have-barely-budged-for-decades/>

² http://moneychimp.com/features/market_cagr.htm

³ <https://smlr.rutgers.edu/faculty-research-engagement/institute-study-employee-ownership-and-profit-sharing>

Employee ownership is correlated with better firm performance, fewer layoffs, better employee compensation and benefits, higher median household wealth, longer median job tenure, and reduced racial and gender wealth gaps.⁴

Employee engagement and trust are crucial to success. Chief Justice Strine and Kirby M. Smith, wrote that expanding the compensation committee's perspective beyond executive compensation would make the committee think about the "company's workforce as a whole" and "result in directors who have a better grasp on how human talent matters for the company's business strategy and operations."⁵

Increase Long-Term Shareholder Value

Vote **Report on Inclusion of Employee Voices in Board Level Decisions** – Proposal [4*]

[This line and any below, *except for footnotes*, are *not* for publication.]

Number 4* to be assigned by IBM

The graphic included above is intended to be published with the rule 14a-8 proposal and would be the same size as the largest management graphic (or highlighted management text) used in conjunction with a management proposal or opposition to a Rule 14a-8 shareholder proposal in the 2021 proxy.

The proponent is willing to discuss mutual elimination of both shareholder graphic and any management graphic in the proxy in regard to this specific proposal. Reference SEC Staff Legal Bulletin No. 14I (CF) [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.

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)

⁴ <https://www.nceo.org/article/research-employee-ownership>

⁵ <https://www.edelman.com/trust/2021-trust-barometer/belief-driven-employee/new-employee-employer-compact>

Exhibit B
to IBM's No-Action Letter Request

Shareholder Proposal of Mr. James McRitchie (with Mr. John Chevedden)

International Business Machines Corporation

The Chevedden Special Meeting Proposal

From: John Chevedden [REDACTED] PII
Sent: Thursday, September 23, 2021 9:58 AM
To: Evan Barth <barthe@us.ibm.com>
Cc: Natalie Wilmore <Natalie.Wilmore@ibm.com>
Subject: [IBM External] Rule 14a-8 Proposal (IBM)``



Dear Mr. Barth,
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.
If you confirm proposal receipt in the next day a broker letter can be promptly forwarded that will save you from making a formal request.
Sincerely,
John Chevedden

(See attached file: 23092021.pdf)

Mr. Frank Sedlarcik
Corporate Secretary
International Business Machines Corporation (IBM)
One New Orchard Road
Armonk NY 10504
PH: 914 499-1900
FX: 914-765-6021
FX: 845-491-3203

Dear Mr. Sedlarcik,

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

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

This proposal is for the next annual shareholder meeting.

I intent to continue to hold through the date of the Company's 2023 Annual Meeting of Stockholders the requisite amount of Company shares used to satisfy the applicable ownership requirement.

This submitted format, with the shareholder-supplied emphasis, is intended to be used for definitive proxy publication.

Please assign the proper sequential proposal number in each appropriate place.

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

Sincerely,


John Chevedden


Date

cc: Evan Barth <barthe@us.ibm.com>
Natalie Wilmore <Natalie.Wilmore@ibm.com>

[IBM – Rule 14a-8 Proposal, September 23, 2021]
[This line and any line above it is not for publication.]
Proposal 4 – Special Shareholder Meeting Improvement

Shareowners ask our board to take the steps necessary to amend the appropriate company governing documents to give the owners of a combined 10% of our outstanding common stock the power to call a special shareowner meeting.

It is important to have a more reasonable stock ownership percentage to call for a special shareholder meeting to help make up for the fact that we do not have a right to act by written consent. Many companies give shareholders both the right to call a special meeting and a right to act by written consent.

IBM shareholders are in favor of a right to act by written consent. IBM shareholders gave 42% support to a shareholder proposal for a right to act by written consent in 2020.

This 42% support most likely represents a majority of the shares that have access to proxy voting advice that is independent of our biased management which is adamantly against additional rights for shareholders which in turn would be greater management accountability when our stock is down from \$180 in 2017.

Our biased management is thus getting a free ride on the back of small shareholders who have no recourse but to rely on the biased view of management. And 40% of IBM stock is held by non-institutional investors who are the smaller IBM shareholders who lack independent proxy voting advice.

Our management is best served by providing the means for 10% of shareholders to bring emerging opportunities or solutions to problems to the attention of management and all shareholders.

Also shareholder engagement is a toothless way to introduce new ideas to management. And management can abruptly discontinue or drastically restructure any shareholder engagement program if it fails to give less than cheerleading support to management.

It is important to have a more reasonable stock ownership percentage to call for a special shareholder meeting to help make up for the fact that we have no right to act by written consent and IBM shareholders are in favor of a right to act by written consent.

Please vote yes:

Special Shareholder Meeting Improvement – Proposal 4

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

Notes:

"Proposal 4" stands in for the final proposal number that management will assign.

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

PI

The color version of the below graphic is to be published immediately after the bold title line of the proposal.

Will consider withdrawal of the graphic if management commits to a fair presentation of the proposal which includes:

No management graphic in connection with the rule 14a-8 proposals in the proxy or ballot.

No proxy or ballot text suggesting that the proposal will be moot due to lack of presentation.

No ballot electioneering text repeating the negative management recommendation.

Management will give me the opportunity to correct any typographical errors.

Management will give me advance notice if it does a special solicitation that mentions this proposal.



FOR

*Shareholder
Rights*

Exhibit C
to IBM's No-Action Letter Request

Shareholder Proposal of Mr. James McRitchie (with Mr. John Chevedden)

International Business Machines Corporation

The Deficiency Notice

From: Robert Hayes/US/IBM
To: jm@corp.gov.net
Cc: "John Chevedden" [REDACTED] PII
Date: 10/29/2021 05:16 PM
Subject: Your Stockholder Proposal

Dear Mr. McRitchie

IBM has received your stockholder proposal. Please see attached letter.

Please also note that Evan Barth is no longer with IBM.

Thank you,
Rob

(See attached file: CCF10292021.pdf)

Robert Hayes
Counsel
IBM
T/L: 641-6490
External No: (914) 499-6490
Email: robert.hayes@ibm.com
Fax: (914) 499-6445

PREPARED BY IBM ATTORNEY / PRIVILEGE REVIEW REQUIRED

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



International Business Machines Corporation
Corporate Law Department
One New Orchard Road, Mail Stop 301
Armonk, NY 10504

VIA E-MAIL
im@corpgov.net

WITH COPY TO:

PII

October 29, 2021

Dear Mr. McRitchie,

I have been asked by Mr. Frank P. Sedlarcik, Vice President, Assistant General Counsel and Secretary of International Business Machines Corporation ("IBM" or the "Company"), to write to you: (i) to acknowledge IBM's timely receipt on October 24, 2021 of your e-mail, to which you attached a stockholder proposal entitled "CEO Compensation to Weigh Workforce Pay and Ownership" (hereinafter the "Proposal") and a signed cover letter (hereinafter the "Cover Letter") dated October 24, 2021, which was transmitted via e-mail on October 24, 2021, in which you seek to delegate Mr. John Chevedden as your agent and (ii) to notify you of certain deficiencies under 17 CFR §240.14a-8 ("Rule 14a-8"). A full copy of Rule 14a-8 can be found in the Code of Federal Regulations, which is available in many public reference libraries. For convenience, you may also access this rule directly on the Internet at the following link: <https://www.ecfr.gov/current/title-17/chapter-II/part-240/section-240.14a-8>.

Since this submission involves a matter relating to IBM's 2022 proxy statement, we are formally sending you this letter under the federal proxy rules to ensure that you both understand and timely satisfy all requirements in connection with this submission as outlined in this letter. Please understand that in order to be eligible to submit the Proposal for consideration at our 2022 Annual Meeting, Rule 14a-8 of Regulation 14A of the United States Securities and Exchange Commission ("SEC") requires that you must have (i) continuously held at least \$2,000 in market value of the Company's securities entitled to be voted on the Proposal at the meeting for at least three years by the date you submitted the Proposal, (ii) continuously held at least \$15,000 in market value of the Company's securities entitled to be voted on the Proposal at the meeting for at least two years by the date you submitted the Proposal, (iii) continuously held at least \$25,000 in market value of the Company's securities entitled to be voted on the Proposal at the meeting for at least one year by the date you submitted the Proposal or (iv) continuously held at least \$2,000 in market value of the Company's securities entitled to be voted on the Proposal at the meeting for at least one year as of January 4, 2021 and continuously maintained a minimum investment of at least \$2,000 of such

securities from January 4, 2021 through October 24, 2021, and must provide the company with your written statement that you intend to continue to hold at least \$2,000 of such securities through the date of the shareholders' meeting for which the proposal is submitted.

The stockholder must continue to hold those securities through the date of the meeting. To avoid any confusion, please be advised that in accordance with SEC Division of Corporation Finance Staff Legal Bulletin 14G dated October 16, 2012, the SEC considers your submission of this Proposal to have been made on October 24, 2021, because this is the date your letter was transmitted electronically. See Staff Legal Bulletin 14G at: <https://www.sec.gov/interps/legal/cfslb14g.htm>.

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. 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.

You state in the Cover Letter that you "will meet Rule 14a-8 requirements including the continuous ownership of the required stock value until after the date of the next shareholder meeting" and that you have "owned the stock continuously since January 2014", but you have not provided sufficient evidence of your IBM stockholdings to meet Rule 14a-8(b)'s eligibility requirements. As a result, I could not confirm your eligibility to file the Proposal under such rule. I therefore had our stockholder relations department check with Computershare, our transfer agent, on any potential IBM stockholdings held of record by you. However, Computershare was unable to locate any shares held of record by you. Therefore, to facilitate compliance with Rule 14a-8 and confirm eligibility, I am now formally requesting that you provide the Company with proper proof of your IBM stockholdings, as required under the SEC's rules and regulations.

If you are an IBM stockholder of record under an account at Computershare which we have somehow missed, we apologize for not locating you in our own records. If this is the case, I will need for you to advise me precisely how the IBM shares are listed on our records, and for you to provide the Company with a written statement that you intend to continue to hold the requisite IBM securities through the date of IBM's 2022 annual meeting.

However, if you are not a registered stockholder, please understand that the Company does not know that you are a stockholder, or how many shares you own. In this case, you must prove eligibility to the Company in one of two ways: 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, at the time you submitted the Proposal, that you continuously held the requisite amount of IBM securities

as set forth above. To be clear, in accordance with the SEC's Staff Legal Bulletin 14G, dated October 16, 2012, the proof of ownership must cover the relevant period preceding and including October 24, 2021, the date the letter containing your Proposal was transmitted electronically. You must also include a written statement that you intend to continue to hold the requisite amount of IBM securities through the date of the 2022 annual meeting of shareholders.

The second way to prove ownership applies only if you have filed a Schedule 13D (17 CFR §240.13d-101), Schedule 13G (17 CFR §240.13d-102), Form 3 (17 CFR §249.103), Form 4 (17 CFR §249.104) and/or Form 5 (17 CFR §249.105), or amendments to those documents or updated forms, reflecting your ownership of the requisite amount of IBM securities as of or before the date on which the applicable 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 requisite amount of IBM securities for the applicable period preceding and including October 24, 2021; and (C) your written statement that you intend to continue to hold the requisite amount of IBM securities through the date of the 2022 annual meeting of shareholders.

On October 18, 2011, the staff of the Division of Corporation Finance released Staff Legal Bulletin 14F, containing a detailed discussion of the meaning 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. You may access a copy of this Bulletin at: <https://www.sec.gov/interps/legal/cfslb14f.htm>.

In this bulletin, the staff explained that 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. The staff went on to note that 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.

The staff then went on to explain that 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. Pointing to Exchange Act Rule 17Ad-8, the staff noted that 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.

The staff also explained the difference between an introducing broker and a clearing broker. 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. 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.

In clarifying what types of brokers and banks should be considered “record” holders under Rule 14a-8(b)(2)(i), the staff noted that because of the transparency of DTC participants’ positions in a company’s securities, for Rule 14a-8(b)(2)(i) purposes, only DTC participants are viewed as “record” holders of securities that are deposited at DTC. As introducing brokers generally are not DTC participants, and therefore typically do not appear on DTC’s securities position listing, merely sending in a letter from an introducing broker who is not a DTC participant, standing alone, cannot satisfy the proof of beneficial ownership requirements under Rule 14a-8, as unlike the positions of registered owners and brokers and banks that are DTC participants, the Company is unable to verify the positions of such introducing broker against its own or its transfer agent’s records or against DTC’s securities position listing.

Given the foregoing, and with this information in hand, for any shares of IBM that are held by you in street name, the staff has provided specific guidance which you will need to follow in order to satisfy the 14a-8 proof of ownership requirements in connection with your submission. That guidance is as follows:

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/client-center/dtc-directories>.

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. The staff has also clarified that in accordance with the Net Capital Rule, Release No. 34-31511 (Nov. 24, 1992) (57 FR 56973) (“Net Capital Rule Release”), at Section II.C.(iii), if the shareholder’s broker is an introducing broker, the shareholder’s account statements should include the clearing broker’s identity and telephone number . The clearing broker will generally be a DTC participant.

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.

Furthermore, Rule 14a-8(b) requires the Company to be provided with a written statement that you are able to meet with the Company in person or via teleconference no less than 10 calendar days, nor more than 30 calendar days, after submission of the shareholder proposal. In particular, Rule

14a-8(b) requires that you include the “business days and times” (i.e., more than one date and time) that you are available to discuss the proposal, and provide your contact information. You state in the Cover Letter that you are “available to meet with the Company representative via phone on November 12, at 10:30 or 11 a.m. Pacific or at a time that is mutually convenient.” The Company, however, has not been provided with your contact information (i.e., your phone number) nor has the Company been provided with more than one date that you are available to discuss the proposal. To remedy these defects, the Company must timely be provided with a statement, which must include your contact information and the specific business days and times that you are available to discuss the proposal.

Finally, Rule 14a-8(c), effective as of January 4, 2021 and applicable to any proposal submitted for an annual or special meeting to be held on or after January 1, 2022, provides that each person may submit no more than one proposal, directly or indirectly, to a company for a particular shareholders' meeting and that a person may not rely on the securities holdings of another person for the purpose of meeting the eligibility requirements and submitting multiple proposals for a particular shareholders' meeting. As set forth in the adopting release (Release No. 34-89964), a shareholder-proponent is not permitted to submit one proposal in his or her own name and simultaneously serve as a representative to submit a different proposal on another shareholder's behalf for consideration at the same meeting. The Cover Letter states that you seek to delegate Mr. Chevedden (to whom we are also sending this letter per your request) to act as your agent regarding the Proposal, “including negotiations *and/or modification*, and presentation at the forthcoming shareholder meeting” (emphasis added). We believe that the breadth of the delegation of Mr. Chevedden as “agent regarding this Rule 14a-8 proposal” with no restrictions and the vesting of Mr. Chevedden with the authority to modify the Proposal provide him with the corresponding power to submit a proposal on your behalf, and that the Proposal would therefore constitute an indirect proposal by Mr. Chevedden.¹ Please be aware that Mr. Chevedden previously submitted his own separate proposal to us on September 23, 2021. Given that a shareholder is not permitted to submit one proposal in his or her name and simultaneously serve as a representative to submit, directly or indirectly, a different proposal on another shareholder's behalf for consideration at the same meeting, we believe that you may not seek to have Mr. Chevedden act as your agent (in the manner you indicated) regarding the Proposal unless Mr. Chevedden provides timely notice to us that he is withdrawing his separate proposal or you provide us timely notice that you are revising your delegation of Mr. Chevedden's powers to act as your agent regarding the Proposal.

I have provided you with this letter detailing the specific SEC rules, staff guidance and other information related to Rule 14a-8 in order to afford you with an opportunity to obtain and furnish me with the proper proof of ownership on a timely basis. Please note that all of the information I've requested in this letter must be sent directly to my attention at the mailing address set forth above or to my e-mail address: robert.hayes@ibm.com, within 14 calendar days of the date you receive

¹ In accordance with SEC Division of Corporation Finance Staff Legal Bulletin 14F dated October 18, 2011, the SEC considers the process of modifying a proposal as effectively withdrawing the initial proposal and submitting a new proposal, stating that “[i]n 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.” You may access a copy of this Bulletin at: <https://www.sec.gov/interp/legals/cfs1b14f.htm>.

this request, and that the Company reserves the right to omit the Proposal under the applicable provisions of Regulation 14A. Thank you for your interest in IBM and this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "R. Hayes", with a long horizontal flourish extending to the right.

Robert Hayes
Counsel

Exhibit D
to IBM's No-Action Letter Request

Shareholder Proposal of Mr. James McRitchie (with Mr. John Chevedden)

International Business Machines Corporation

The Representative Response

From: "John Chevedden" [REDACTED] PII
To: "Robert Hayes" <robert.hayes@ibm.com>
Cc: "James McRitchie" <corpgovnet@gmail.com>
Date: 11/08/2021 09:50 AM
Subject: [EXTERNAL] Rule 14a-8 Proposal (IBM) blb

Mr. Hayes,
Please see the attached broker letter.
Please confirm receipt.
John Chevedden *(See attached file: IBM BL.pdf)*



11/03/2021

James McRitchie
9295 Yorkship Ct
Elk Grove, CA 95758

Re: Your TD Ameritrade account ending in PII

Dear James McRitchie,

Thank you for allowing me to assist you today. Pursuant to your request, this letter is to confirm that as of January 4, 2021, James McRitchie had continuously held shares of the International Business Machines (IBM) common stock with a value of at least \$2,000 for at least one year, and Mr. McRitchie has continuously maintained a minimum investment of at least \$2,000 of such securities (the Shares) from January 4, 2021 through the date of this letter. 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 Client Services > Message Center to write us. You can also call Private Client Services at 800-400-4078. We're available 24 hours a day, seven days a week.

Sincerely,

A handwritten signature in black ink that reads 'William Pieper'.

William Pieper
Resource Specialist
TD Ameritrade

TD Ameritrade understands the importance of protecting your privacy. From time to time we need to send you notifications like this one to give you important information about your account. If you've opted out of receiving promotional marketing communications from us, containing news about new and valuable TD Ameritrade services, we will continue to honor your request.

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

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Distributed by TD Ameritrade, Inc., 200 South 108th Avenue, Omaha, NE 68154-2631.

TDA 1002212 02/21

Exhibit E
to IBM's No-Action Letter Request

Shareholder Proposal of Mr. James McRitchie (with Mr. John Chevedden)

International Business Machines Corporation

The Proponent Response

From: "James McRitchie" <jm@corpgov.net>
To: fsedlarcik@us.ibm.com
Cc: robert.hayes@ibm.com, "John Chevedden" [REDACTED] PII
Date: 11/19/2021 08:06 PM
Subject: [EXTERNAL] Revocation of Delegation to Mr. Chevedden

Please see attached and acknowledge receipt.

James McRitchie
Shareholder Advocate
Corporate Governance
<http://www.corpgov.net>
9295 Yorkship Court
Elk Grove, CA 95758

916.869.2402

(See attached file: IBM revocation of delegation OWN.pdf)

Corporate Governance

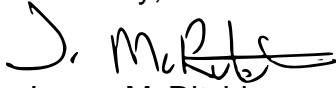
CorpGov.net: improving accountability through democratic corporate governance since 1995

Mr. Frank Sedlarcik, Corporate Secretary
International Business Machines Corporation (IBM)
One New Orchard Road
Armonk NY 10504
PH: 914 499-1900; FX: 914-765-6021; FX: 845-491-3203 per SM 11-7-14
Via: fsedlarcik@us.ibm.com
cc: Robert Hayes, robert.hayes@ibm.com
John Chevedden, [REDACTED] ^{PH}

Dear Mr. Sedlarcik or current Corporate Secretary,

I hereby revoke previously delegated authority granted to John Chevedden in my letter and shareholder proposal of October 24, 2021, requesting IBM **weigh workforce pay and ownership when determining CEO compensation.**

Sincerely,


James McRitchie

November 18, 2021

Date

Exhibit F
to IBM's No-Action Letter Request

Shareholder Proposal of Mr. James McRitchie (with Mr. John Chevedden)

International Business Machines Corporation

The November 16th Representative Email

From: "John Chevedden" [REDACTED] PI
To: "Robert Hayes" <robert.hayes@ibm.com>
Cc: "Kenneth Steiner" <ksteiner4455@gmail.com>
Date: 11/16/2021 12:06 AM
Subject: [EXTERNAL] (IBM)

Mr. Hayes,

The only 2022 IBM rule 14a-8 proposal that I represent is my rule 14a-8 proposal.

John Chevedden

CRAVATH, SWAINE & MOORE LLP

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ANTONY L. RYAN
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DAVID J. PERKINS

J. LEONARD TETI, II
D. SCOTT BENNETT
TING S. CHEN
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DAVID M. STUART
AARON M. GRUBER
O. KEITH HALLAM, III
OMID H. NASAB
DAMARIS HERNÁNDEZ
JONATHAN J. KATZ
DAVID L. PORTILLA
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MARGARET T. SEGALL
DANIEL K. ZACH
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JENNY HOCHENBERG
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G.J. LIGELIS JR.
MICHAEL E. MARIANI
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JUSTIN C. CLARKE
SHARONMOYEE GOSWAMI
C. DANIEL HAAREN
EVAN MEHRAN NORRIS

LAUREN M. ROSENBERG
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MATTHEW J. BOBBY
DANIEL J. CERQUEIRA
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OF COUNSEL
MICHAEL L. SCHLER
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NICOLE F. FOSTER
LILLIAN S. GROSSBARD
KIMBERLY A. GROUSSET
ANDREI HARASYMIAK

December 27, 2021

International Business Machines Corporation
Shareholder Proposal of James McRitchie (with John Chevedden)
Securities Exchange Act of 1934—Rule 14a-8

Ladies and Gentlemen:

I am writing on behalf of our client, International Business Machines Corporation, a New York corporation (the “Company” or “IBM”), to advise the Staff of the Division of Corporation Finance (the “Staff”) of the Securities and Exchange Commission that at the Company’s direction we are formally withdrawing our request that the Staff concur in our view that the Company may properly exclude the shareholder proposal and supporting statement (collectively, the “Proposal”) submitted by James McRitchie (the “Proponent”), with his authorized representative, John Chevedden, from the proxy materials to be distributed by the Company in connection with its 2022 annual meeting of shareholders (the “2022 proxy materials”).

I am withdrawing our request of the Staff in light of the fact that the Proponent has withdrawn the Proposal and no longer seeks to have it included in the 2022 proxy materials. A copy of the correspondence between the Proponent and IBM, including the Proponent’s December 25, 2021 email withdrawing the Proposal, is set forth in Exhibit A.

If the Staff has any questions with respect to the foregoing, please do not hesitate to contact me at (212) 474-1146 or sburns@cravath.com. Please copy Robert Hayes (robert.hayes@ibm.com), Counsel of the Company, on any related correspondence.

Thank you for your attention to this matter.

Sincerely,



Stephen L. Burns

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

VIA EMAIL: shareholderproposals@sec.gov

Encls.

Copies w/encls to:

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

VIA EMAIL: robert.hayes@ibm.com

Mr. James McRitchie

VIA EMAIL: jm@corpgov.net

Mr. John Chevedden

VIA EMAIL

Exhibit A

Correspondence Between the Proponent and IBM

[see attached]

From: Robert Hayes <robert.hayes@ibm.com>
Sent: Monday, December 27, 2021 12:04 PM
To: James McRitchie <jm@corpgov.net>
Cc: Michael Mariani <MMariani@cravath.com>; John Chevedden [REDACTED]; Stephen Burns <SBurns@cravath.com>; Zachary Smith <zsmith@cravath.com>
Subject: RE: IBM

Dear Mr. McRitchie,

I am confirming receipt of your email dated December 25, 2021, pursuant to which you have withdrawn your shareholder proposal titled "CEO Compensation to Weigh Workforce Pay and Ownership."

Thanks,
Rob

Robert Hayes
Counsel
IBM
T/L: 641-6490
External No: (914) 499-6490
Email: robert.hayes@ibm.com
Fax: (914) 499-6445

PREPARED BY IBM ATTORNEY / PRIVILEGE REVIEW REQUIRED

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

From: "James McRitchie" <jm@corpgov.net>
To: "Robert Hayes" <robert.hayes@ibm.com>
Cc: "Michael Mariani" <MMariani@cravath.com>, "Zachary Smith" <zsmith@cravath.com>, "Stephen Burns" <SBurns@cravath.com>, "John Chevedden" [REDACTED]
Date: 12/25/2021 01:45 PM
Subject: [EXTERNAL] Re: IBM

This Message Is From an External Sender

This message came from outside your organization.

Dear Mr. Hayes

I am withdrawing my proposal, weigh workforce pay and ownership when determining CEO compensation. Thanks for helping me reframe the arguments to help me present a better proposal next year.

Wishing you and yours the best for 2022.

James McRitchie
Shareholder Advocate
Corporate Governance
<http://www.corpgov.net>
9295 Yorkship Court
Elk Grove, CA 95758

916.869.2402

On Dec 14, 2021, at 12:02 PM, Stephen Burns <SBurns@cravath.com> wrote:

Please see the attached.

This e-mail is confidential and may be privileged. Use or disclosure of it by anyone other than a designated addressee is unauthorized. If you are not an intended recipient, please delete this e-mail from the computer on which you received it.[attachment "IBM - No-Action Request - John McRitchie (with John Chevedden) (12.14.21).pdf" deleted by Robert Hayes/US/IBM]