



DIVISION OF
CORPORATION FINANCE

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

April 9, 2025

Andrea L. Reed
Sidley Austin LLP

Re: United Airlines Holdings, Inc. (the "Company")
Incoming letter dated January 20, 2025

Dear Andrea L. Reed:

This letter is in response to your correspondence concerning the shareholder proposal (the "Proposal") submitted to the Company by the International Brotherhood of Teamsters General Fund for inclusion in the Company's proxy materials for its upcoming annual meeting of security holders.

The Proposal requests that the board of directors amend the Company's "Misconduct Clawback" recoupment policy as applied to senior executives to specify that the clawback policy shall apply if the executive's conduct resulted in a violation of law or Company policy and caused financial or reputational harm to the Company and when the executive failed or was negligent in his or her responsibility to manage or monitor conduct or risks and, in either case the Company shall disclose to shareholders the circumstances of any recoupment or decision not to pursue recoupment.

There appears to be some basis for your view that the Company may exclude the Proposal under Rule 14a-8(i)(7). In our view, the Proposal seeks to micromanage the Company. Accordingly, we will not recommend enforcement action to the Commission if the Company omits the Proposal from its proxy materials in reliance on Rule 14a-8(i)(7). In reaching this position, we have not found it necessary to address the alternative basis for omission upon which the Company relies.

Copies of all of the correspondence on which this response is based will be made available on our website at <https://www.sec.gov/corpfin/2024-2025-shareholder-proposals-no-action>.

Sincerely,

Rule 14a-8 Review Team

cc: Cornish F. Hitchcock
Hitchcock Law Firm PLLC



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January 20, 2025

Via Online Submission Form

U.S. Securities and Exchange Commission
Division of Corporation Finance
Office of Chief Counsel
100 F Street N.E.
Washington, DC 20549

Re: United Airlines Holdings, Inc. – Shareholder Proposal submitted by the International Brotherhood of Teamsters

Ladies and Gentlemen:

This letter is submitted on behalf of United Airlines Holdings, Inc. (the “Company”), pursuant to Rule 14a-8 under the Securities Exchange Act of 1934, as amended (the “Exchange Act”), to notify the Securities and Exchange Commission (the “Commission”) of the Company’s intention to exclude from its proxy materials for its 2025 Annual Meeting of Stockholders (the “2025 Annual Meeting” and such materials, the “Proxy Materials”) a shareholder proposal and statement in support thereof (collectively, the “Proposal”) submitted by International Brotherhood of Teamsters General Fund (the “Proponent”).

The Company intends to omit the Proposal from its Proxy Materials pursuant to Rule 14a-8(i)(10) on the basis that the Company has substantially implemented the Proposal, and respectfully requests confirmation that the Staff of the Division of Corporation Finance (the “Staff”) will not recommend to the Commission that enforcement action be taken if the Company excludes the Proposal from its Proxy Materials for the reasons set forth below.

Pursuant to Rule 14a-8(j) of the Exchange Act, the Company is submitting this letter, together with the Proposal and related attachments, to the Commission electronically, with copies of this letter and the attachments provided concurrently to the Proponent. This submission is occurring no later than 80 calendar days before the Company intends to file its definitive Proxy Materials with the Commission.

Rule 14a-8(k) and *Staff Legal Bulletin No. 14D* (Nov. 7, 2008) (“SLB 14D”) 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, we are taking this opportunity to inform the Proponent that if the Proponent elects to submit additional

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correspondence to the Commission or the Staff with respect to the Proposal, a copy of that correspondence should be furnished concurrently to the undersigned pursuant to Rule 14a-8(k) and SLB 14D.

THE PROPOSAL

The Proposal sets forth the following resolution to be voted on by the Company's shareholders at the 2025 Annual Meeting:

RESOLVED: *Company shareholders urge our Board of Directors to amend the Company's "Misconduct Clawback" recoupment policy as applied to senior executives, to specify that the clawback policy shall apply (a) if the executive's conduct resulted in a violation of law or Company policy and caused financial or reputational harm to the Company and (b) when the executive failed or was negligent in his or her responsibility to manage or monitor conduct or risks, and in either case the Company shall disclose to shareholders the circumstances of any recoupment or decision not to pursue recoupment.*

A full copy of the Proposal and statements in support thereof is attached to this letter as Exhibit A.

BASIS FOR EXCLUSION

The Company respectfully requests that the Staff concur in its view that the Proposal may be properly excluded from the Proxy Materials pursuant to Rule 14a-8(i)(10) because the Company has substantially implemented the Proposal.

The Proposal May Be Excluded Pursuant to Rule 14a-8(i)(10) Because the Company Has Substantially Implemented the Proposal.

A. Background of Rule 14a-8(i)(10)

Rule 14a-8(i)(10) permits a company to exclude a stockholder proposal from its proxy materials if the company has "substantially implemented" the proposal. The Commission stated in 1976 that the predecessor to Rule 14a-8(i)(10) was "designed to avoid the possibility of shareholders having to consider matters which already have been favorably acted upon by the management." *Exchange Act Release No. 34-12598* (July 7, 1976). Originally, the Staff narrowly interpreted this predecessor rule and concurred with the exclusion of a proposal only when proposals were "'fully' effected" by the company. *See Exchange Act Release No. 34-19135* (Oct. 14, 1982). By 1983, however, the Commission recognized that the "previous formalistic application of [the rule] defeated its purpose" because proponents were successfully avoiding exclusion by submitting proposals that differed from existing company policy in minor respects. *Exchange Act Release No. 34-20091*, at § II.E.6. (Aug. 16, 1983) (the "1983 Release"). Therefore, in the 1983 Release, the Commission adopted a revised interpretation of the rule to permit the omission of proposals that had been "substantially implemented," and the

Commission later codified this revised interpretation in *Exchange Act Release No. 34-40018*, at n.30 (May 21, 1998).

Accordingly, the actions requested by a proposal need not be “fully effected” by the company to be excluded; rather, to be excluded, they need only have been “substantially implemented” by the company. *See* 1983 Release. Thus, when a company can demonstrate that it has already taken actions to address the underlying concerns and essential objectives of a stockholder proposal, the Staff has concurred that the proposal has been “substantially implemented” and may be excluded as moot.

The Company notes that in *Exchange Act Release No. 95267* (July 13, 2022), the Commission proposed to amend Rule 14a-8(i)(10) to provide that proposals would be excludable if a company has already implemented the “essential elements” of the proposal. While the Commission has not yet adopted that proposed amendment, and it is therefore not applicable to the Staff’s review of this letter, it is notable the Commission stated that even under the proposed standard, “a proposal need not be rendered entirely moot, or be fully implemented in exactly the way a proponent desires, in order to be excluded. A company may be permitted to exclude a proposal it has not implemented precisely as requested if the differences between the proposal and the company’s actions are not essential to the proposal.” Pursuant to the arguments set forth below, even under the standard set forth in the proposed amendment to Rule 14a-8(i)(10), the Company believes it has substantially implemented the Proposal.

The Staff has consistently found that “a determination that the company has substantially implemented the proposal depends upon whether [the company’s] particular policies, practices, and procedures compare favorably with the guidelines of the proposal.” *See Texaco, Inc.* (Mar. 28, 1991). *See also, e.g., Best Buy Co., Inc.* (Apr. 22, 2022); *The Allstate Corp.* (Mar. 15, 2019); *Johnson & Johnson* (Feb. 6, 2019); *United Cont’l Holdings, Inc.* (Apr. 13, 2018); *eBay Inc.* (Mar. 29, 2018); *Kewaunee Scientific Corp.* (May 31, 2017); and *Wal-Mart Stores, Inc.* (Mar. 16, 2017). The Staff has permitted exclusion of a proposal under Rule 14a-8(i)(10) when a company has substantially implemented and therefore satisfied the “essential objective” of a proposal, even if the company did not take the exact action requested by the proponent, did not implement the proposal in every detail, or exercised discretion in determining how to implement the proposal. *See, e.g., Salesforce.com, Inc.* (Apr. 20, 2021)*; *Apple Inc.* (Dec. 17, 2020)*; *Wal-Mart Stores, Inc.* (Mar. 25, 2015); and *Exelon Corp.* (Feb. 26, 2010).

Recently, the Staff allowed *Amgen Inc.* (Apr. 3, 2024) (“Amgen”) and *Exxon Mobil Corporation* (Mar. 20, 2024) (“Exxon Mobil”) to exclude proposals requesting amendments to their clawback policies. The proposals asked that the clawback policies apply to each named executive officers and be triggered by “conduct or negligence – not merely misconduct.” The proposals also called for mandatory application of the clawback policies when triggered, rather than leaving it to the board’s discretion. Additionally, they requested that the boards report to shareholders in each annual meeting proxy the results of any deliberations regarding the policy, including reasons for not applying the policy after specific deliberations about whether to cancel or seek recoupment of unearned compensation. Lastly, the proposals asked that the full web address of the complete clawback policy be included in each annual meeting proxy.

In both cases, Amgen and Exxon Mobil argued that their existing policies and practices already substantially implemented the proposals' objectives. Amgen had updated its clawback policy on October 2, 2023, while Exxon Mobil maintained multiple policies and provisions governing the recoupment and forfeiture of incentive-based compensation for executive officers. Both companies argued that their policies covered a broader range of executives, included triggers for both misconduct and no-fault scenarios, mandated recovery in certain circumstances, and provided for disclosure in compliance with SEC rules and listing standards. The Staff concluded that both companies had substantially implemented the proposals' requests, allowing for their exclusion under Rule 14a-8(i)(10).

B. The Company's Amended Clawback Policy Substantially Implements the Proposal

The Company's Compensation Clawback Policy, which was amended on May 25, 2023 (the "Amended Clawback Policy"), attached hereto as Exhibit B, is intended to comply with the requirements of Rule 5608 of the Nasdaq Stock Market Corporate Governance Requirements ("Rule 5608"). Rule 5608 was adopted by Nasdaq pursuant to Rule 10D-1 under the Exchange Act, which directed national securities exchanges to establish listing standards that require each listed company to adopt and comply with a written executive compensation recovery policy and to provide the disclosures required by Rule 10D-1 (the "Clawback Listing Standard"). Under the Clawback Listing Standard, listed companies must recover from current and former executive officers incentive-based compensation received during the three completed fiscal years preceding the date on which the company is required to prepare certain accounting restatements. *See Exchange Act Release No. 34-96159* (Nov. 28, 2022). This clawback (the "Financial Restatement Clawback Provision") is on a "no-fault" mandatory basis.

The Amended Clawback Policy goes beyond the Clawback Listing Standards in a way that already addresses the Proposal's essential objectives, and as such, the Company has already substantially implemented the Proposal. The Proposal can be broken down into four requests:

1. the Company amend its "Misconduct Clawback" recoupment policy as applied to senior executives;
2. be triggered if the executive's conduct resulted in a violation of law or Company policy and caused financial or reputational harm;
3. be triggered when the executive was negligent in his or her responsibility to manage or monitor conduct or risks; and
4. the Company disclose to shareholders the circumstances of any recoupment or decision not to pursue recoupment.

As detailed below, the Amended Clawback Policy addresses each of the four prongs of the Proposal. Therefore, the Company has substantially implemented the Proposal.

1. The Amended Clawback Policy's Misconduct Clawback Provision Applies to Senior Executives

The Amended Clawback Policy empowers the Company to seek recovery of compensation (including any incentive-based compensation, which may be in the form of cash or equity, variable compensation, bonus, severance or sign-on compensation, including, without limitation, time-based and performance-based awards) over a three year look-back period awarded or paid to any current or former officer of United and/or United Airlines, Inc. at the level of Vice President or above if such covered executive committed a significant legal or compliance violation, irrespective of whether such violation occurred in connection with a restatement (the “Misconduct Clawback Provision”).

The first prong of the Proposal sets forth that the Misconduct Clawback Provision apply to senior executives. The Proposal does not define the term “senior executives.” The Misconduct Clawback Provision defines “Covered Persons” as “any current or former officer of the Company and/or United Airlines, Inc. at the level of Vice President or above.” This definition effectively surpasses the definitions of “executive officer” and “officer” under Rule 3b-7 and Section 16 of the Exchange Act, respectively. Rule 3b-7 defines executive officers as including the president, vice president in charge of a principal business unit, division, or function, or any officer or person performing policy-making functions for the company, including those at subsidiaries. Similarly, Section 16 officers include the president, principal financial officer, principal accounting officer, vice presidents in charge of principal business units, divisions, or functions, and any other officer who performs a policy-making function. By including all officers at the level of Vice President or above in the definition of Covered Persons, the Misconduct Clawback Provision captures a more comprehensive group of senior executives beyond the typical regulatory thresholds for senior executive positions.

2. The Misconduct Clawback Provision is Triggered by Violation of Law or Company Policy Regardless of Financial or Reputational Harm to the Company

The second prong of the Proposal sets forth a trigger for the policy to apply if the “executive’s conduct resulted in a violation of law or Company policy and caused financial or reputational harm to the Company.” The Misconduct Clawback Provision enables clawbacks for a “significant federal or state law violation, . . . significant Company policy violation, including a significant violation of the Company’s Code of Ethics and Business Conduct (as in effect from time to time), or . . . violation of the terms of any restrictive covenants set forth in any sign-on or other agreement with the Company or in any award granted by the Company to the Covered Person.”

Not only does the Misconduct Clawback Provision substantially implement this first trigger, it goes even further by eliminating the requirement for demonstrated harm, giving the Company a more robust and proactive stance in addressing misconduct.

The Proponent’s supporting statement for the Proposal takes issue with the term “significant” in the Misconduct Clawback Provision, stating that “[r]equiring a ‘significant’ violation of certain standards is unclear.” The Merriam-Webster dictionary defines “significant” has “. . .having meaning; . . . having or likely to have influence or effect; . . . of a noticeably or measurable large amount, . . . probably caused by something other than mere chance.”

The term “significant” in the Misconduct Clawback Provision gives the Company the discretion to determine when a clawback is appropriate given the specific facts and circumstances of any individual situation, while clearly communicating to shareholders that any “significant” violation will be seriously considered by the Company in applying a clawback. Further, the Proponent’s suggested language for the policy to apply “if the executive’s conduct resulted in a violation of law or Company policy and caused financial or reputational harm to the Company” certainly suggests situations which are “significant” violations under the plain meaning of the term. The Company is confident that the plain meaning of the term “significant” gives sufficient guidance to the Board and shareholders to indicate what kinds of violations are likely to result in clawbacks for Covered Persons and is also consistent with the general intent of the Proposal, satisfying the standard for substantial implementation under Rule 14a-8(i)(10).

3. The Misconduct Clawback Provision Addresses Supervisory Oversight

The second trigger for clawback requested in the Proposal is “when the executive failed or was negligent in his or her responsibility to manage or monitor conduct or risks.” The Company’s approach to supervisory responsibility in its clawback policy compares favorably with the guidelines of the Proposal, satisfying the standard for substantial implementation under Rule 14a-8(i)(10).

The Misconduct Clawback Provision allows the Company to require a clawback when a Covered Person “had supervisory authority over a person engaging in the misconduct described above and knew of, or was willfully blind to, the misconduct.” While the Misconduct Clawback Provision does not reference a negligence standard for supervisory liability, it fulfills the Proposal’s intent regarding accountability for risk management and oversight by supervisors. The Company views this supervisory accountability as the essential element of this prong of the Proposal, rather than the specific reference to a negligence standard of conduct. As a practical matter, the Company does not believe that a negligence standard would meaningfully add to the type of supervisory conduct that is already in the scope of the Misconduct Clawback Provision.

4. The Company Is Required Under Applicable Securities Law to Disclose Certain Information in the Annual Proxy Statement Indicating Its Application of its Amended Clawback Policy.

The final prong of the Proposal requests that the Company “shall disclose to shareholders the circumstances of any recoupment or decision not to pursue recoupment.” The Amended Clawback Policy requires the Company to disclose any recovery of compensation as required under SEC rules and Nasdaq Listing Standards, as well as in additional circumstances as deemed appropriate by the Company.

In addition, the Clawback Listing Standard requires the Company to comply with certain disclosure requirements. The required disclosures include information about when the policy was triggered, the amount of erroneously awarded compensation subject to recoupment, and details regarding any reliance on the impracticability exceptions, including the amount of recovery

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forgone and a brief description of the reason the Company decided in each case not to pursue recovery. In addition, if the Company was required to prepare an accounting restatement and yet concluded that recovery of erroneously awarded compensation was not required pursuant to the Updated Clawback Policy, the Company is required to briefly explain why application of the Updated Clawback Policy resulted in this conclusion.

Further, when a clawback impacts years disclosed in the Summary Compensation Table of the annual proxy statement, then it is already required to be reflected in such table and footnote disclosure (under Instruction 5 to Item 402(c) of Regulation S-K). The Company intends and expects to provide these disclosures, if and when applicable, in its proxy statement. Thus, like in the case of Amgen and Exxon Mobil, which both cited SEC rules and listing standards that mandated the disclosure of clawback actions described above, the Company has substantially implemented the Proposals' request.

CONCLUSION

The Amended Clawback Policy already addresses the Proposal's essential objectives, despite the minor differences addressed above, and as such, the Company has already substantially implemented the Proposal. Based on the foregoing analysis, the Company intends to exclude the Proposal from its Proxy Materials, and we respectfully request that the Staff concur that the Proposal may be excluded under Rule 14a-8(i)(10).

We would be happy to provide you with any additional information and answer any questions that you have regarding this subject. If you have any questions regarding this request or desire additional information, please contact the undersigned by phone at (312) 853-7881 or by email at andrea.reed@sidley.com.

Very truly yours,



Andrea L. Reed

Attachments

cc: E. Anna Ha, Deputy General Counsel and Corporate Secretary
United Airlines Holdings, Inc.
Fred Zuckerman, General Secretary-Treasurer, International Brotherhood of Teamsters
General Fund

Exhibit A

Copy of the Proposal

RESOLVED: Company shareholders urge our Board of Directors to amend the Company's "Misconduct Clawback" recoupment policy as applied to senior executives, to specify that the clawback policy shall apply (a) if the executive's conduct resulted in a violation of law or Company policy and caused financial or reputational harm to the Company and (b) when the executive failed or was negligent in his or her responsibility to manage or monitor conduct or risks, and in either case the Company shall disclose to shareholders the circumstances of any recoupment or decision not to pursue recoupment.

SUPPORTING STATEMENT:

We believe that the Company's clawback policy for recouping executive pay needs to be strengthened in key respects.

We believe that a strong clawback policy is an essential element of a "pay for performance" executive compensation philosophy and that the board should have discretion to fit any recoupment to the specific circumstances. We also view an effective clawback policy as an essential element in safeguarding against material risk management, operational, safety or reputational failures.

The current policy focuses on "misconduct," which is defined as "a significant federal or state law violation," "a significant Company policy violation," including a significant violation of the Company's Code of Ethics and Business Conduct or "a violation of the terms of any restrictive covenants set forth in any sign-on or other agreement with the Company or in any award granted by the Company." The policy also applies if a covered person "had supervisory authority over a person engaging in the misconduct described above and knew of, or was willfully blind to, the misconduct."

United's current policy falls short of a strong clawback policy.

- An executive's "conduct" – not simply "misconduct" – can be harmful to the company.
- Requiring a "significant" violation of certain standards is unclear. For example, would the requirement of a "federal or state law violation" ("significant" or otherwise) apply only if a court or government agency has definitively ruled that a violation occurred? A deferred prosecution agreement can harm a company, but it does not establish a "violation" of the law.
- The current policy requires that executives be "willfully blind" to an employee's misconduct. Supervising the execution of company policies is the fundamental task of senior executives, and we see no reason to excuse failures that may have resulted from an executive's negligence or otherwise failing to do one's job.
- There is no requirement that the Company disclose whether and how it has exercised that discretion, including situations where no clawback occurs.

As a public company, United faces financial and reputational risks on a number of fronts. For example, air safety concerns can receive considerable media attention and thus can have a negative effect on the Company's financial and reputational health. The benefits to investors, customers and employees from a stronger policy are evident. Granting the board the discretion to assess executive conduct and not just misconduct ensures clear executive accountability for harmful corporate failures.

Exhibit B

Copy of Amended Clawback Policy

**UNITED AIRLINES HOLDINGS, INC.
COMPENSATION CLAWBACK POLICY**

A. Statement of Policy

The Compensation Committee (the “Committee”) of the Board of Directors (the “Board”) of United Airlines Holdings, Inc. (the “Company”) has determined that it is in the best interests of the Company and its stockholders to adopt this Compensation Clawback Policy (“Policy”) effective as of May 25, 2023. This Policy applies to Covered Persons (as defined below) and is intended to be fair in terms of balancing both the need to provide certainty regarding compensation and the need to provide accountability when circumstances arise that make the award or payment of such compensation unjustified.

B. Clawback Triggering Events and Covered Persons

1. Financial Restatement.

(a) The Company shall, except as otherwise provided by Section G, require, to the extent legally permitted, the reasonably prompt return, repayment or forfeiture of any erroneously-awarded incentive-based compensation, which may be in the form of cash or equity, that is granted, earned, or vested based wholly or in part upon the attainment of a financial reporting measure (i.e., any measure that is determined and presented in accordance with the accounting principles used in the Company’s financial statements, and any measure that is derived wholly or in part from such measures, as well as the Company’s stock price and total stockholder return, but excluding equity awards that vest exclusively upon completion of a specified employment period, without any performance condition, and bonus awards that are discretionary or based on subjective goals or goals unrelated to financial reporting measures) (such compensation, “Incentive-Based Compensation”) received by any Covered Person (as defined below) if the Company is required to prepare an accounting restatement due to the material noncompliance of the Company with any financial reporting requirement under the securities laws, including any required accounting restatement to correct an error in previously issued financial statements that is material to the previously issued financial statements or that would result in a material misstatement if the error were corrected in the current period or left uncorrected in the current period, regardless of if or when restated financial statements are filed by the Company (a “Financial Restatement Clawback”).

(b) For purposes of a Financial Restatement Clawback, “Covered Person” shall mean any current or former “executive officer” of the Company. The term “executive officer” has the meaning set forth in the Nasdaq Stock Market (“Nasdaq”) listing standards (the “Nasdaq Listing Standards”) adopted to implement the requirements of the clawback rules adopted by the Securities and Exchange Commission (“SEC”) in Rule 5608(d).

(c) The Financial Restatement Clawback shall apply to Incentive-Based Compensation received by a Covered Person (i) after beginning service as an executive officer, (ii) who served as an executive officer at any time during the performance period for that Incentive-Based Compensation, (iii) while the Company has a class of securities listed on a national securities exchange or a national securities association; and (iv) during the three completed fiscal years immediately preceding the date the Company is required to prepare an accounting restatement described in Section 1(a) (which date shall

be the earlier of (A) the date the Board, a committee of the Board, or the officer or officers of the Company authorized to take such action if Board action is not required, concludes, or reasonably should have concluded, that the Company is required to prepare an accounting restatement as described in Section 1(a), and (B) the date a court, regulator or other legally authorized body directs the Company to prepare an accounting restatement as described in Section 1(a)). In addition, the Financial Restatement Clawback shall apply to any transition periods that result from a change in the Company's fiscal year as determined in accordance with the Nasdaq Listing Standards. Incentive-Based Compensation shall be deemed received in the Company's fiscal period during which the financial reporting measure specified in the Incentive-Based Compensation award is attained, even if payment or grant of the Incentive-Based Compensation occurs after the end of that period. Notwithstanding the lookback period described above, the Company shall only be required, except as otherwise provided by Section G, to effect a Financial Statement Clawback for Incentive-Based Compensation received on or after the effective date of Nasdaq Listing Standard Rule 5608.

(d) A Financial Statement Clawback shall be required, except as otherwise provided by Section G, regardless of whether the Covered Person or any other person was at fault or responsible for accounting errors that contributed to the need for the accounting restatement or engaged in any misconduct.

2. Misconduct.

(a) The Company has the discretion to require, to the extent legally permitted, the return, repayment or forfeiture of any compensation (including any incentive-based compensation, which may be in the form of cash or equity, variable compensation, bonus, severance, or sign-on compensation) awarded or paid to any Covered Person (as defined below) if the Company determines that such Covered Person committed a significant federal or state law violation, committed a significant Company policy violation, including a significant violation of the Company's Code of Ethics and Business Conduct (as in effect from time to time), or committed a violation of the terms of any restrictive covenants set forth in any sign-on or other agreement with the Company or in any award granted by the Company to the Covered Person (a "Misconduct Clawback"). The Company also has the discretion to require a Misconduct Clawback in circumstances in which a Covered Person had supervisory authority over a person engaging in the misconduct described above and knew of, or was willfully blind to, the misconduct.

(b) For purposes of a Misconduct Clawback, "Covered Person" shall mean any current or former officer of the Company and/or United Airlines, Inc. at the level of Vice President or above.

(c) If the Company concludes that a Covered Person has engaged in conduct giving rise to a Misconduct Clawback within the thirty-six (36) months following the award or payment (including vesting) of any compensation (including any incentive-based compensation, which may be in the form of cash or equity, other variable compensation, bonus, severance, or sign-on compensation) (the "Misconduct Lookback Period"), subject to the enforcement provisions of the Policy, the Administrator (as defined below) may, in its sole discretion and to the extent legally permitted, direct the Company to seek recovery of any amount of such compensation awarded or paid (including vesting) for the performance or vesting period in which such misconduct occurred. In addition, subject to the enforcement provisions of the Policy, the Company shall, if directed by the Administrator and to the extent legally permitted, provide for the forfeiture of any such compensation awarded within the Misconduct Conduct Lookback Period that has not been settled, paid, or become vested, as applicable. In each such

instance, the amount required to be returned, repaid or forfeited by the Covered Person shall be determined by the Administrator in its sole discretion.

C. Calculation of Recoverable Amount

(a) The amount required to be returned, repaid or forfeited in a Financial Restatement Clawback shall be the amount of Incentive-Based Compensation that was received by the Covered Person in excess of the amount that otherwise would have been received had it been determined based on the restated amounts, as determined in accordance with the Nasdaq Listing Standards and without regard to any taxes paid or withheld. For Incentive-Based Compensation based on stock price or total stockholder return, where the amount of erroneously awarded compensation is not subject to mathematical recalculation directly from the information in an accounting restatement, the Administrator shall determine the amount to be recovered based on a reasonable estimate of the accounting restatement impact on the stock price or total stockholder return upon which the Incentive-Based Compensation was received, and the Company shall document the determination of that reasonable estimate and provide it to Nasdaq.

(b) The amount required to be returned, repaid or forfeited in a Misconduct Clawback shall be such amount of compensation (including any incentive-based compensation, which may be in the form of cash or equity, other variable compensation, bonus, severance, or sign-on compensation) as determined at the discretion of the Company, which may be 100% of such compensation amount awarded or otherwise received by the Covered Person. For the avoidance of doubt, the Company may require a Misconduct Clawback even if the misconduct did not result in the award or payment of an amount greater than what the Covered Person would have received absent such misconduct. In evaluating whether to require a Misconduct Clawback and the recoverable amount, the Company may consider such factors as it deems relevant and appropriate, which factors may include but are not limited to the seriousness of the violation, whether the Covered Person benefitted from the violation, and whether asserting the Misconduct Clawback would prejudice the Company's interests in any way.

D. Administration

The Committee shall be responsible for making all determinations under this Policy with respect to any Covered Person who is subject to Section 16 of the Securities Exchange Act of 1934, as amended, and, except as otherwise provided by this Policy, the Chief Executive Officer ("CEO") of the Company, or any other officer or employee of the Company (or of any wholly-owned subsidiary of the Company) designated by the CEO, shall be responsible for making determinations with respect to any Covered Person who is not subject to Section 16 (in such role, the Committee or the CEO (or his or her designee) is the "Administrator").

The Administrator shall make all determinations regarding the application and operation of this Policy in its sole discretion, and all such determinations shall be final and binding. Further, the exercise by the Administrator of any rights pursuant to this Policy shall be without prejudice to any other rights that the Company may have with respect to any Covered Person, including disciplinary action and termination of employment. Decisions made pursuant to this Policy may be made in conjunction with, or separate and apart from, other compensation recoupment programs of the Company. The Administrator may seek recovery pursuant to this Policy in any manner that it chooses, including direct reimbursement by the Covered Person of cash or shares of Company common stock, withholding unpaid compensation, or canceling unvested awards.

This Policy shall be filed as an exhibit with the Company's annual report on Form 10-K to the extent required by and in accordance with the SEC's requirements. The Company will disclose any recovery of compensation pursuant to this Policy as required by the rules of the SEC, as required by the Nasdaq Listing Standards, and in such additional circumstances as deemed appropriate by the Company.

This Policy supersedes and replaces the Company's prior "Policy on Recoupment of Incentive Compensation" previously adopted by the Committee and effective as of February 22, 2018. The Committee may amend or change the terms of this Policy at any time for any reason, including as required to comply with the rules of the SEC and the Nasdaq Listing Standards.

E. Successors

The Policy shall be binding and enforceable against all Covered Persons and their beneficiaries, executors, administrators, and other legal representatives.

F. No Indemnification or Reimbursement

The Company shall not indemnify any Covered Person against the loss of any compensation effected pursuant to this Policy, and any purported indemnification shall be null and void *ab initio*. The Company shall not pay or reimburse the premium for any insurance policy to cover any losses incurred by any Covered Person under this Policy.

G. Exceptions

The Committee (or a majority of independent directors serving on the Board in the Committee's absence) may determine not to seek recovery from a Covered Person in connection with a Financial Restatement Clawback in whole or part to the extent it determines in its sole discretion that such recovery would be impracticable because (1) the direct expense paid to a third party to assist in enforcing this Policy would exceed the amount to be recovered (after the Company has made a reasonable and documented attempt to recover the erroneously awarded Incentive-Based Compensation and provided corresponding documentation of such attempt to Nasdaq), (2) recovery would violate the home country law that was in effect prior to November 28, 2022, as determined by an opinion of home country counsel, acceptable to Nasdaq, that is provided to Nasdaq, or (3) recovery would likely cause the Company's 401(k) plan or any other tax-qualified retirement plan to fail to meet the requirements of Section 401(a)(13) or Section 411(a) of the Internal Revenue Code of 1986, as amended, and regulations thereunder.

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10 February 2025

Office of the Chief Counsel
Division of Corporation Finance
Securities & Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549

By online portal submission

Re: Shareholder proposal to United Airlines Holdings, Inc.
from International Brotherhood of Teamsters

Dear Counsel:

I write on behalf of the International Brotherhood of Teamsters to respond to the letter from counsel for United Airlines Holdings, Inc. (“United” or the “Company”) dated 20 January 2025 (“United Letter”) in which United advises of its intent to omit a shareholder proposal from the International Brotherhood of Teamsters (the “Proposal”) from the Company’s 2025 proxy materials. For the reasons below we respectfully ask the Division to advise United that the Division does not concur with the Company’s arguments.

The Proposal states:

Resolved: Company shareholders urge our Board of Directors to amend the Company’s “Misconduct Clawback” recoupment policy as applied to senior executives, to specify that the clawback policy shall apply (a) if the executive’s conduct resulted in a violation of law or Company policy and caused financial or reputational harm to the Company and (b) when the executive failed or was negligent in his or her responsibility to manage or monitor conduct or risks, and in either case the Company shall disclose to shareholders the circumstances of any recoupment or decision not to pursue recoupment.

The Supporting Statement expressed support for a strong clawback policy

and, focusing on senior executives, identifies certain changes to the current “misconduct clawback” policy that are needed:

- The trigger should be “conduct,” not “misconduct.”
- The trigger for considering a clawback should be a violation of certain standards, not a “significant” violation.
- The trigger for failure to supervise should be less stringent than being “willfully blind” to an employee’s “misconduct.”
- The company should disclose whether and how it has exercised discretion when no clawback occurs.

The Supporting Statement notes that United, as a public company, faces financial and reputational risks on a number of fronts. For example, air safety concerns can receive considerable media attention and thus can have a negative effect on the Company’s financial and reputational health. The benefits to investors, customers and employees from a stronger policy are evident. Granting the board the discretion to assess executive conduct and not just misconduct ensures clear executive accountability for harmful corporate failures.

In response, United argues that the Proposal has been “substantially implemented” and may thus be omitted from its proxy materials under Rule 14a-8(i)(10). For the reasons stated below, we respectfully ask the Division to advise United that the Division does not concur with United’s assessment.

DISCUSSION

The benchmark for a successful “substantially implemented” argument is whether the requested action “compares favorably” to the completed action. Here, there is no comparison. Unfortunately, United’s arguments are often misleading or manage to obscure key points.

The Proposal asks United to revise the thresholds for what is now termed the “Misconduct Clawback” in several key respects:

- Defining the threshold for review as an executive’s “conduct,” not “misconduct.”
- Revising the threshold for examining that “conduct” from a “significant” violation of some standard to simply a “violation.”
- Deleting the threshold for examining supervisory conduct by deleting the requirement that the executive be “willfully blind to” what is going on.

The paragraph below shows (roughly) how United’s existing policy could be amended to implement the recommended changes (shown in bold and strikeout) as applied to senior executives:

2. **Misconduct.**

(a) The Company has the discretion to require, to the extent legally permitted, the return, repayment or forfeiture of any compensation (including any incentive-based compensation, which may be in the form of cash or equity, variable compensation, bonus, severance, or sign-on compensation) awarded or paid to any Covered Person (as defined below) if the Company determines that such Covered Person committed a ~~significant~~ federal or state law violation, committed a ~~significant~~ Company policy violation, including a ~~significant~~ violation of the Company's Code of Ethics and Business Conduct (as in effect from time to time), or committed a violation of the terms of any restrictive covenants set forth in any sign-on or other agreement with the Company or in any award granted by the Company to the Covered Person (a "~~Misconduct Clawback~~"). The Company also has the discretion to require a ~~Misconduct Clawback~~ in circumstances in which a Covered Person had supervisory authority over a person engaging in the misconduct described above and knew of, ~~or was willfully blind to~~, the ~~misconduct~~.

There is obviously a world of difference between the original text of United's policy and the emendations shown above. As written, the current text is larded with words that could result in the clawback policy having little if any practical application, depending on how one defines "misconduct" or determines how "significant" is "significant"? And if an executive fails to supervise staff properly, and if that failure damages the company, why should the threshold be a "willful blindness" to the action of one's staff?

Words matter. Precision matters. The essence of the Proposal is that the current policy, as written, gives the board of directors too much discretion *not* to consider situations where a clawback might be warranted. The obvious thrust of the Proposal is to limit the board's discretion to say "We're not going to consider a clawback" in a given situation.

Despite the obvious differences in what exists and what is being proposed, United argues that the wording differences are "minor" and that the existing language achieves the "essential objectives" of the Proposal. United Letter, p. 7. This argument defies logic, not to mention the ordinary meaning of the words in the existing policy. As we now show, the way that United characterizes – or mischaracterizes – the Proposal answers any suggestion that the current policy is "substantially" what the Proposal is recommending.

1. *The Proposal is said to ask United to amend its misconduct clawback policy to apply to "senior executives," yet the policy already applies to senior executives and many other "covered persons."* United Letter, pp. 4-5.

This is a clear misreading of the Proposal. What the Proposal is saying, in a nutshell, is that whatever standard the Company may adopt for United's other "covered officials," there should be a separate standard for "senior executives." The current standard for "senior executives" is too permissive.

For context, the Commission has for over 30 years viewed compensation issues involving "senior executives" as a matter of special interest to shareholders, regardless of whatever policies a company may adopt for other executives or the workforce generally. This is apparent from rulemaking proceedings starting in 1992 that require disclosure in a company's proxy statement of various forms of "senior executive" compensation. See *Executive Compensation Disclosure*, Release No. 34-30851, 57 FED. REG. 29582 (2 July 1992). At about the same time, "senior executive" compensation was deemed a topic fit for shareholder consideration notwithstanding the "ordinary business" limitation in what is now Rule 14a-8(i)(7). See *Bell Atlantic Corp.* (13 February 1992); *Battle Mountain Gold Co.* (13 February 1992). Thus, over the years, the Division has granted no-action relief as to compensation-related proposals that would cover more than just "senior executives." *E.g.*, *Bank of America Corp.* (31 January 2012) (100 top-earning executives); *3M Co.* (6 January 2018) (corporate officers); *Apple Hospitality REIT, Inc.* (18 February 2015) ("management team").

2. *The current policy is said to be triggered by violations of certain standards regardless of financial or reputational harm to the Company. United Letter, pp. 5-6.*

United here quibbles with the fact that the Proposal would change the trigger from a "significant violation" of a given standard to a "violation" of a given standard that caused "financial or reputational harm to the Company." United reads this change as injecting a "demonstrated harm" standard into the current standard, which has no such requirement.

The key, however, is deleting the word "significant." United does not explain how, under current policy, a senior executive could commit a "significant violation of federal or state law, and such a "significant violation" of the law would have no effect on the Company. What would be an example? Suppose that the media were to report that a senior executive was having an extra-marital affair with an employee. Under current policy, the board would have to make threshold determinations of (a) whether the behavior constitutes "misconduct" and (b) whether the behavior was a "significant" violation. The proposed language about "harm" does not somehow align the proposed language with current requirement of a "significant" violation of some standard. United here is grasping at straws.

3. *The current policy is said to provide adequately for supervisory accountability. United Letter, p. 6.*

United characterizes the proposed standard as a “negligence standard” when, in fact, “willful blindness” is required. United is correct that, at a very basic level, both the current and the proposed standards are aimed at assuring some measure of supervisory accountability, but “negligent” behavior and “willful” behavior are not remotely comparable concepts.

4. *The current policy is said to require adequate disclosures of information regarding application of the Company’s clawback policy. United Letter, pp. 6-7.*

United points out, correctly enough, that certain disclosures are required with respect to operation of the “financial restatement” clawback policy, notably, amounts recovered in a restatement situation or amounts foregone as impactful to recover. *Listing Standards for Recovery of Erroneously Awarded Compensation*, Release No. 34-96159, 87 FED. REG. 73076 (28 November 2022). However, any such disclosure obligations apply only to restatement-related clawbacks and not to clawbacks under a “misconduct clawback” policy. The only citation that United provides is to Instruction 5 as to Item 402(c), which makes it clear that disclosure obligations with respect to a Summary Compensation Table relate to the mandatory restatement-related disclosure.¹

We turn finally to United’s selective discussion of no-action letters involving similar proposals. United is factually correct that *Amgen Inc. (Chevedden)* (3 April 2024) and *Exxon Mobil Corp. (Steiner)* (20 March 2024) did grant no-action relief as to proposals to apply clawback policies to triggered by “conduct or negligence - not merely misconduct.” Somewhat oddly, however, United makes no mention of *AT&T Inc. (Chevedden)* (14 March 2024), decided at roughly the same time, which is closer to the United Proposal and which reached the opposite result. Moreover, the policies in the letters United cites look nothing like United’s policy:

- Amgen, unlike United, had only one clawback policy, *i.e.*, the one required by NASDAQ listing standards dealing with financial restatements, and not a separate one dealing with “conduct” or “misconduct.” Because such a financial statement clawback policy is in the nature of strict liability, a proposal to amend that policy to focus on “conduct” was not necessary.

- The Exxon Mobil policy, as summarized in the Exxon Mobil letter, states (emphasis added):

¹ Instruction 5 reads: “Reduce the amount reported in the applicable Summary Compensation Table column for the fiscal year in which the amount recovered initially was reported as compensation by any *amounts recovered pursuant to the compensation recovery policy required by the listing standards* adopted pursuant to 17 CFR 240.10D-1, and identify such amounts by footnote” (emphasis added).

The Company Recoupment Policies apply without regard to fault or misconduct by an affected executive. The additional forfeiture provisions of the Incentive Arrangements are triggered upon the existence of any “detrimental activity”, whether during or after employment. As explained above, the kinds of conduct that would constitute “detrimental activity” are intentionally broad and cover all material violations of the Company’s standards, policies, procedures or duties that the officers have to the Company, and therefore *compare favorably with the standard elements of negligence under the common law of the Company’s state of incorporation.*

By contrast, the AT&T policy is closer to what we have here, as it consisted of a financial restatement clawback policy and a separate “policy on restitution.” Under the latter AT&T would, in appropriate circumstances, seek restitution of any bonus, commission, or other compensation received by any employee as a result of the employee's *intentional or knowing fraudulent or illegal conduct*, including the making of a material misrepresentation contained in the Company's financial statements.” AT&T letter, pp. 14-17 (emphasis added). Thus, the proposal at issue in the AT&T letter made sense, given that company’s policy, and it would appear that this distinction prompted a denial of relief as to AT&T, but not as to Amgen and Exxon Mobil.

CONCLUSION

For these reasons the International Brotherhood of Teamsters respectfully asks the Division to advise United that the Division does not concur in United’s assessment of the Proposal.

Thank you for your consideration of these points. Please do not hesitate to contact me if we can provide any additional information.

Respectfully submitted,



Cornish F. Hitchcock

cc: Andrea Reed



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March 7, 2025

Via Online Submission Form

U.S. Securities and Exchange Commission
Division of Corporation Finance
Office of Chief Counsel
100 F Street N.E.
Washington, DC 20549

Re: United Airlines Holdings, Inc. – Shareholder Proposal Submitted by International Brotherhood of Teamsters

Ladies and Gentlemen:

We refer to our letter dated January 20, 2025 (the “No-Action Request”), submitted on behalf of United Airlines Holdings, Inc. (the “Company”), pursuant to which the Company requested the Staff of the Division of Corporation Finance (the “Staff”) of the Securities and Exchange Commission (the “Commission”) not to recommend enforcement action if the Company omits from its proxy materials for its 2025 Annual Meeting of Stockholders (the “2025 Annual Meeting”) and such materials, the “Proxy Materials”) the shareholder proposal and statement in support thereof (collectively, the “Proposal”) submitted by the International Brotherhood of Teamster (the “Proponent”) to the Company.

On February 10, 2025, the Proponent submitted a letter to the Staff responding to the No-Action Request (the “Proponent Letter”), dated February 10, 2025.

In response to the Proponent Letter, the Company wishes to address certain assertions made by the Proponent and reiterate its belief that the Proposal may be omitted from the Proxy Materials because the Company has met the threshold for substantial implementation under Rule 14a-8(i)(10) under the Securities Exchange Act of 1934, as amended (the “Exchange Act”). The Company also wishes to supplement the No-Action Request in light of the recently issued Staff Legal Bulletin 14M (“SLB 14M”) on February 12, 2025. In accordance with the guidance set forth in SLB 14M, the Company believes that the Proposal may be excluded from the Proxy Materials in reliance on Rule 14a-8(i)(7) because it deals with matters related to the Company’s ordinary business by seeking to micromanage the Company.

Pursuant to Rule 14a-8(j) under the Exchange Act, a copy of this letter is being provided concurrently to the Proponent.

The Company Has Met The Standard For Exclusion Under Rule 14a-8(i)(10).

The Proponent Letter, which emphasizes perceived discrepancies between the language of the Proposal and the Company’s Compensation Clawback Policy, which was amended on May 25, 2023 (the “Amended Clawback Policy”), misapply the Commission’s “substantial implementation” standard under Rule 14a-8(i)(10). By focusing on textual differences, the Proponent erroneously implies that exclusion in reliance on Rule 14a-8(i)(10) requires verbatim adoption of the Proposal’s terms. This approach conflicts with the SEC’s long-standing interpretation of Rule 14a-8(i)(10), which prioritizes functional alignment with a proposal’s essential objectives over verbatim adoption of its requests.

At one time, the Staff interpreted the predecessor rule narrowly, considering a proposal to be excludable under this provision only if it had been “‘fully’ effected” by the company. *See Exchange Act Release No. 19135* at § II.B.5. (Oct. 14, 1982). By 1982, however, the Commission recognized that the Staff’s narrow interpretation of the predecessor rule “may not serve the interests of the issuer’s security holders at large and may lead to an abuse of the security holder proposal process,” in particular by enabling proponents to argue “successfully on numerous occasions that a proposal may not be excluded as moot in cases where the company has taken most but not all of the actions requested by the proposal.” *Id.* Accordingly, the Commission proposed in 1982, and adopted in 1983, a revised interpretation of the rule to permit the omission of proposals that had been “substantially implemented.” *See Exchange Act Release No. 20091*, at § II.E.6. (Aug. 16, 1983) (the “1983 Release”) (indicating that the Staff’s “previous formalistic application of” the predecessor rule “defeated its purpose” because the interpretation allowed proponents to obtain a shareholder vote on an existing company policy by changing only a few words of the policy). The Commission later codified this revised interpretation in *Exchange Act Release No. 40018* at n.30 (May 21, 1998) (the “1998 Release”). Accordingly, the actions requested by a proposal need not be “fully effected” by the company to be excluded; rather, to be excluded, they need only to have been “substantially implemented” by the company. *See* the 1983 Release. To illustrate, in *Alliant Energy Corp.* (Mar. 30, 2023) the Staff allowed exclusion of a climate disclosure proposal because the company’s ESG reports and website disclosures satisfied the proposal’s “essential objective” of transparency, despite not providing the exact report requested.

The Amended Clawback Policy empowers the Company to seek recovery of compensation (including any incentive-based compensation, which may be in the form of cash or equity, variable compensation, bonus, severance or sign-on compensation, including, without limitation, time-based and performance-based awards) over a three-year look-back period awarded or paid to any current or former officer of the Company and/or United Airlines, Inc. at the level of Vice President or above if such covered executive committed a significant legal or compliance violation, irrespective of whether such violation occurred in connection with a restatement (the “Misconduct Clawback Provision”). The Company also has the discretion to apply the Misconduct Clawback Provision in circumstances in which a covered person had supervisory authority over a person engaging in the misconduct and knew of, or was willfully blind to, the misconduct.

As discussed in further detail in the No-Action Request, the Misconduct Clawback Provision already:

- Applies to Vice Presidents and above, exceeding both the Proposal’s undefined “senior executives” and the definitions of “executive officers” under Rule 3b-7 and Section 16(a) of the Exchange Act. This broader scope ensures accountability across a wider range of leadership roles, directly fulfilling the Proposal’s objective of applying clawbacks to senior executives.
- Is triggered by legal or policy violations without requiring proof of financial harm—a stricter standard higher than the Proposal’s “caused harm” threshold. The term “significant” inherently captures scenarios where misconduct causes harm, aligning with the Proposal’s intent. The Proponent’s insistence on removing “significant” disregards the SEC’s approach, where proposal is excludable despite deviations from the exact language in the proposal when the essential objectives are otherwise met.
- Functionally addresses the Proposal’s objective of holding supervisors accountable by targeting situations where the supervisor “knew of, or was willfully blind to, the misconduct,” addressing supervisory lapses more precisely than negligence. This ensures accountability for oversight failures while avoiding overbroad liability for the actions of others with a general “negligence” standard, thereby fulfilling the Proposal’s objective of holding executives responsible for risk management.
- Addresses the disclosure of misconduct clawbacks by requiring that “[t]he Company will disclose any recovery of compensation pursuant to this Policy as required by the rules of the SEC, as required by the Nasdaq Listing Standards, and in such additional circumstances as deemed appropriate by the Company.”

The Proponent’s requested edits are not necessary in order to align the Amended Clawback Policy with the essential objectives of the Proposal.

As discussed in the No-Action Request, the Staff’s responses in *Amgen Inc.* (Apr. 3, 2024) (“Amgen”) and *Exxon Mobil Corporation* (Mar. 20, 2024) (“Exxon Mobil”) demonstrate that clawback proposals may be excluded pursuant to Rule 14a-8(i)(10) when a company’s policy addresses the essential objective of the proposal, despite differences in scope and terminologies used. In both cases, the Staff permitted exclusion of proposals seeking amendments to clawback triggers and disclosure requirements. Amgen and Exxon Mobil argued that their existing policies covered broader executive groups, mandated clawback for misconduct (as opposed to “conduct or negligence” requested in the proposals) and ensured disclosure of clawback actions pursuant to disclosure requirements under the rules of the Commission. The Staff concluded these frameworks fulfilled the proposals’ essential objectives even though neither company adopted the proposal’s specific requests.

The Proponent mistakenly asserts in the Proponent Letter that the Proposal is more akin to that submitted to *AT&T Inc.* (Mar. 14, 2024), which the Staff denied exclusion. This assertion

misses a critical fact – the proposal to AT&T sought to expand its clawback policy to include triggers based on “conduct or negligence – not merely serious misconduct.” AT&T’s no-action request relied on two policies: (i) a clawback policy, which complied with Rule 10D-1, mandating recovery in cases of financial restatements); and (ii) and policy on restitution, which, as AT&T described, “applies in circumstances involving intentional or knowing fraudulent or illegal conduct.” Thus, there is a glaring gap between the proposal’s essential objective – to expand AT&T’s clawback policy to cover negligence – and AT&T’s clawback framework, which covered only the highest standards of misconduct. This is not the case in the Company’s Misconduct Clawback Provision, which is triggered by “a significant federal or state law violation, . . . a significant Company policy violation, including a significant violation of the Company’s Code of Ethics and Business Conduct (as in effect from time to time), or . . . a violation of the terms of any restrictive covenants set forth in any sign-on or other agreement with the Company or in any award granted by the Company to the Covered Person.” The use of the term “significant” gives the Company some flexibility to determine when clawback is appropriate and applies a standard for misconduct far less stringent than the standard in AT&T’s policy on restitution.

As explained above and in more detail in the No-Action Request, unlike in the case of AT&T, no significant gaps exist between the Proposal’s essential objectives and the Amended Clawback Policy. By fixating on minor language differences, the Proponent effectively resurrects the “fully implemented” standard, which the SEC abandoned in the 1983 Release. Under the substantial implementation standard that the Staff has applied time and again, the Company is not required to adopt the Proponent’s preferred language in order for the Proposal to be excludable in reliance on Rule 14a-8(i)(10); rather the Company needs to show that it has addressed the Proposal’s essential objectives, which it has.

Finally, the Company wishes to reiterate that, contrary to the Proponent Letter, the Company’s disclosure obligations regarding clawbacks are not confined to those pursuant to restatements. As stated in the No-Action Request, when a clawback impacts years disclosed in the Summary Compensation Table of the annual proxy statement, then it is already required to be reflected in such table and footnote disclosure (under Instruction 5 to Item 402(c) of Regulation S-K). The Company intends and expects to provide these disclosures, if and when applicable, in its annual meeting proxy statements. Finally, the Amended Clawback Policy itself explicitly empowers the Company to disclose misconduct clawbacks in circumstances beyond regulatory requirements. Pursuant to this provision, the Board of Directors of the Company (the “Board”) may disclose a decision not to pursue recoupment if doing so clarifies governance priorities or mitigates investor concerns. This flexibility aligns with the Proposal’s demand for transparency, as it ensures shareholders are informed of material clawback decisions, even when not legally mandated.

Thus, as described above and in the No-Action Request, the Company has substantially implemented the Proposal, making it excludable in reliance on Rule 14a-8(i)(10).

Pursuant to the New Guidance under SLB 14M, the Proposal May be Excluded Under Rule 14a-8(i)(7) Because it Relates to the Company’s Ordinary Business by Micromanaging the Company

A. Background of the Ordinary Business Exclusion

Rule 14a-8(i)(7) permits a company to omit from its proxy materials a stockholder proposal that relates to the company’s “ordinary business” operations. According to the Commission’s release accompanying the 1998 amendments to Rule 14a-8, the term “ordinary business” “refers to matters that are not necessarily ‘ordinary’ in the common meaning of the word,” but instead the term “is rooted in the corporate law concept providing management with flexibility in directing certain core matters involving the company’s business and operations.” See the 1998 Release. In the 1998 Release, the Commission stated that the underlying policy of the ordinary business exclusion 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.*

In *Staff Legal Bulletin No. 14J Section C.2* (“SLB 14J”), which was reinstated by SLB 14M, the Commission stated that the policy underlying the “ordinary business” exclusion rests on two central considerations: (1) the proposal’s subject matter and (2) the degree to which the proposal “micromanages” the company. The Commission clarified that “a proposal that may not be excludable under the first consideration may be excludable under the second if it micromanages the company” and stated that “determinations as to excludability of proposals will be made on a case-by-case basis, taking into account factors such as the nature of the proposal and the circumstances of the company to which it is directed.” SLB 14J.

With respect to the micromanagement prong of Rule 14a-8(i)(7), the 1998 Release further states that “[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 . . . methods for implementing complex policies.” *Staff Legal Bulletin No. 14K Section B.4* (“SLB 14K”), which was reinstated by SLB 14M, states that in considering arguments for exclusion based on micromanagement, the Staff looks to “whether the proposal seeks intricate detail or imposes a specific strategy, method, action, outcome or timeline for addressing an issue, thereby supplanting the judgment of management and the board.” According to the Staff, “[w]hen a proposal prescribes specific actions that the company’s management or the board must undertake without affording them sufficient flexibility or discretion in addressing the complex matter presented by the proposal, the proposal may micromanage the company to such a degree that exclusion of the proposal would be warranted.” SLB 14K. The Staff noted that “a proposal urging the board to adopt a policy prohibiting adjusting financial performance metrics to exclude compliance costs when determining executive compensation would be excludable on micromanagement grounds because such proposal prohibits any such adjustments without regard to specific circumstances or the possibility of reasonable exceptions.” *Id.* When citing micromanagement as a reason to exclude a proposal, the Staff expects companies to include in its analysis “how the proposal may unduly limit the ability of management and the board to manage

complex matters with a level of flexibility necessary to fulfill their fiduciary duties to shareholders.” *Id.*

The Company concedes that shareholder proposals regarding senior executive clawback policies are not typically considered matters of ordinary business for purposes of Rule 14a-8(i)(7). However, under the recent guidance in SLB 14M, the Proposal’s prescriptive nature of how the Company should design and implement the Misconduct Clawback Policy now falls within the micromanagement prong of the ordinary business exclusion under Rule 14a-8(i)(7).

B. The Proposal Is Excludable Because It Seeks To Micromanage The Company.

The Proposal seeks to impose specific methods for the Company to pursue clawback of executive compensation in situations that go beyond clawbacks required by law, and the Proponent Letter even goes so far as to provide a markup of the Misconduct Clawback Policy to insert the Proponent’s specific wording in the Company’s policy. In particular, the Proposal seeks for the Company to adopt two prescriptive triggers for clawbacks: first, mandating recoupment whenever “conduct resulted in a violation of law or Company policy and caused financial and reputational harm,” and second, expanding liability to include circumstances when the “executive failed or was negligent in his or her responsibility to manage or monitor conduct or risks...” These two triggers create rigid compliance parameters that ignore the Board’s need to weigh context-specific factors when evaluating misconduct or instances of oversight failures in relation to clawbacks. The Proposal therefore unduly limits the ability of the Board to manage a complex matter with a level of flexibility necessary to fulfill their fiduciary duties to stockholders. In developing the Misconduct Clawback Policy, the Board balanced the need for stringent accountability with the practicalities of maintaining an attractive environment for leadership recruitment and retention, crafting a policy that is both rigorous and tailored to the Company.

As discussed above and in the No-Action Request, the Misconduct Clawback Policy already addresses the essential objectives of the Proposal, but does so in a way that the Board has deemed most appropriate for the Company in exercise of its fiduciary duties to stockholders. In particular, the Misconduct Clawback Policy enables clawbacks for a “significant federal or state law violation, . . . significant Company policy violation, including a significant violation of the Company’s Code of Ethics and Business Conduct (as in effect from time to time), or . . . violation of the terms of any restrictive covenants set forth in any sign-on or other agreement with the Company or in any award granted by the Company...” By requiring a harm standard, the Proposal constrains the Board’s ability to address misconduct proactively and to prioritize accountability over retroactive harm assessments, reflecting its fiduciary judgment that clawbacks should deter misconduct broadly, not merely remediate quantifiable losses. The term “significant” in the Misconduct Clawback Policy is purposefully used to focus on violations of meaningful consequence, preserving the Board’s discretion to act decisively in the Company’s best interests when deemed appropriate.

The Proposal’s second trigger—applying clawbacks for supervisory negligence—similarly encroaches on the Board’s discretion by replacing the Misconduct Clawback

Policy’s “willful blindness” standard with a lower liability threshold. This distinction is critical: the Misconduct Clawback Policy’s “willful blindness” threshold allows the Board to exercise its discretion in applying the clawback when deemed appropriate and avoid overbroad liability. The Proposal’s negligence standard for supervisory liability could interfere with the Company’s ability to attract, retain and incentivize qualified executives.

In assessing whether a proposal micromanages by seeking to impose specific methods for implementing complex policies, the Staff evaluates not just the wording of the proposal but also the action called for by the proposal and the manner in which the action called for under a proposal would affect a company’s activities and management discretion. *See The Coca-Cola Co.* (Feb. 16, 2022) and *Deere & Co.* (Jan. 3, 2022) (each of which involved a broadly phrased request but required detailed and intrusive actions to implement). *See also Phillips 66* (Mar. 20, 2023) (concurring with the exclusion of a proposal requesting an audited report describing the undiscounted expected value to settle obligations for the company’s asset retirement obligations with indeterminate settlement dates, where the no-action request described the extent to which preparation of the report would probe deeply into complex matters); *Valero Energy Corporation* (Mar. 20, 2023) (same).

Notably, the Staff has concurred with the exclusion based on micromanagement of proposals that, similar to the Proposal, seek to supplant the board’s discretion on a matter of executive compensation. For example, in *AT&T Inc.* (“AT&T 2023”) (Mar. 15, 2023), the Staff concurred with the exclusion of a proposal requesting the company’s board adopt a policy of obtaining stockholder approval for any future agreements and corporate policies that could oblige the company to make payments or awards following the death of a senior executive. There, the company argued that the proposal inappropriately limited the discretion of the company’s board in determining executive compensation benefits, going beyond “seeking detail or seeking to promote a timeframe,” and instead imposed a singular method by which the company could approve payments or awards to certain executives in the event of their death. Like in *AT&T 2023*, exclusion of the Proposal is consistent with a long line of precedents where the Staff has concurred that attempts to dictate specific features of executive compensation program seek to micromanage a company to an extent inconsistent with the standards of Rule 14a-8(i)(7). *See also Rite Aid Corp.* (Apr. 23, 2021, *recon. denied* May 10, 2021) (permitting exclusion of a proposal that requested the board adopt a policy that would prohibit equity compensation grants to senior executives when the company’s common stock had a market price lower than the grant date market price of any prior equity compensation grants to such executives, where the company argued that the proposal prescribed specific limitations on the ability of its compensation committee “to make business judgments, without any flexibility or discretion,” and restricted the compensation committee from “making any equity compensation grants to senior executives in certain instances without regard to circumstances and the committee’s business judgment.”); *Gilead Sciences, Inc.* (Dec. 23, 2020) (permitting exclusion of a proposal recommending the company reduce its named executive officer pay ratios each year until they reached 20 to 1, where the company argued the terms of the proposal were prescriptive and would unduly limit the ability of management and the board to manage complex matters with a level of flexibility necessary to fulfill fiduciary duties to shareholders); *Comcast Corp.* (Apr. 1, 2020) (permitting exclusion of a proposal reducing a company’s CEO pay ratio by 25-50%); *JPMorgan Chase & Co.* (Mar. 22, 2019) (permitting exclusion of a proposal that

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requested the board adopt a policy prohibiting the vesting of equity-based awards for senior executives who voluntarily resigned to enter government service); *AbbVie Inc.* (Feb. 15, 2019) (permitting exclusion of a proposal requesting a policy to prohibit financial performance metric adjustments to exclude legal or compliance costs for the purposes of determining senior executive incentive compensation, noting that the proposal “would prohibit any adjustment of the broad categories of expenses covered by the [p]roposal without regard to specific circumstances or the possibility of reasonable exceptions”). Like these precedents, the Proposal would require the Board to change the circumstances in which the Misconduct Clawback Policy would apply, replacing the Board’s discretion in deciding the appropriate approach regarding clawbacks for misconduct.

In fact, the Proponent Letter emphasizes the Proponent’s goals to limit the Board’s discretion in addressing the concerns raised by the Proponent. The Proponent Letter states: “The essence of the Proposal is that the current policy, as written, gives the board of directors too much discretion *not* to consider situations where a clawback might be warranted. ***The obvious thrust of the Proposal is to limit the board discretion*** to say ‘We’re not going to consider a clawback’ in a given situation.” (emphasis added).

Conclusion

For the reasons stated above and in the No-Action Request, the Company intends to exclude the Proposal from its 2025 Proxy Materials, and we respectfully request that the Staff concur that the Proposal may be excluded under Rule 14a-8. If you have any questions regarding this request or desire additional information, please contact the undersigned by phone at (312) 853-7881 or by email at andrea.reed@sidley.com.

Very truly yours,



Andrea L. Reed

Attachments

cc: E. Anna Ha, Deputy General Counsel and Corporate Secretary, United Airlines Holdings, Inc.
Fred Zuckerman, General Secretary-Treasurer, International Brotherhood of Teamsters General Fund