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

DIVISION OF
CORPORATION FINANCE

April 16, 2024

Sarah K. Solum
Freshfields Bruckhaus Deringer US LLP

Re: eBay Inc. (the "Company")
Incoming letter dated February 2, 2024

Dear Sarah K. Solum:

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

The Proposal requests that the Company amend its bylaws to include specified requirements for fixing the compensation of directors.

There appears to be some basis for your view that the Company may exclude the Proposal under Rule 14a-8(i)(2). We note that in the opinion of Delaware counsel, implementation of the Proposal would cause the Company to violate state law. 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)(2). In reaching this position, we have not found it necessary to address the alternative bases 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/2023-2024-shareholder-proposals-no-action.

Sincerely,

Rule 14a-8 Review Team

cc: John Chevedden

Via Online Shareholder Proposal Form

U.S. Securities and Exchange Commission
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February 2, 2024

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Our Ref - 114100-0038 SKS / EKB

RE: eBay Inc.
Exclusion of Stockholder Proposal Submitted by John Chevedden

Ladies and Gentlemen:

On behalf of eBay Inc., a Delaware corporation ("***eBay***" or the "***Company***"), and in accordance with Rule 14a-8(j) under the Securities Exchange Act of 1934, as amended (the "***Exchange Act***"), we are submitting this letter with respect to the stockholder proposal (the "***Proposal***") submitted by John Chevedden (the "***Proponent***") for inclusion in the proxy materials the Company intends to distribute in connection with its 2024 Annual Meeting of Stockholders (the "***2024 Proxy Materials***"). A copy of the Proposal and its supporting statement is attached hereto as Exhibit A, and all relevant correspondence with the Proponent is attached hereto as Exhibit B.

The Company intends to exclude the Proposal from the 2024 Proxy Materials and hereby respectfully requests confirmation that the Staff of the Division of Corporation Finance (the "***Staff***") of the U.S. Securities and Exchange Commission (the "***Commission***") will not recommend any enforcement action if, in reliance on Rule 14a-8, the Company omits the Proposal in its entirety from the 2024 Proxy Materials.

Pursuant to Rule 14a-8(j), this letter is being submitted to the Commission no later than 80 calendar days before the Company intends to file its definitive 2024 Proxy Materials. This letter constitutes the Company's statement of the reasons it deems the omission of the Proposal from the 2024 Proxy Materials to be proper.

In accordance with Rule 14a-8(j), we are simultaneously sending a copy of this letter and its attachments to the Proponent. Rule 14a-8(k) and Section E of Staff Legal Bulletin No. 14D (Nov. 7, 2008) provide that shareholder proponents are required to send companies a copy of any correspondence that the shareholder proponent elects to submit to the Commission or the Staff. Accordingly, we are taking this opportunity to remind the Proponent that if the Proponent submits correspondence to the Commission or

the Staff with respect to the Proposal, a copy of that correspondence should concurrently be furnished to the Company.

THE PROPOSAL

The Proposal sets forth the following resolution:

> RESOLVED: "The Bylaws of eBay Inc. are amended as follows:
>
> Article II Section 2.12 is deleted and replaced in its entirety as follows:
>
> Compensation of Directors. The Board shall not have any authority to fix the compensation of directors. The compensation of directors the Corporation pays shall be fixed at $1 in a fiscal year; provided, however, the Corporation may pay, grant, or award compensation greater than $1 in a fiscal year if such compensation has been (1) disclosed to stockholders in advance of the fiscal year in which the Corporation will pay, grant, or award such compensation; (2) submitted to an approval vote of stockholders at an annual or special meeting of stockholders in advance of the fiscal year in which the Corporation will pay, grant, or award such disclosed compensation; and (3) approved by a majority of stockholder votes present in person or represented by proxies and entitled to vote cast in favor of the disclosed annual compensation at an annual or special meeting of stockholders in advance of the fiscal year in which the Corporation will pay, grant, or award such compensation, which majority shall include only stockholder votes of stockholders that are not directors of the Corporation."

BASES FOR EXCLUSION

The Company believes that the Proposal may be properly omitted from 2024 Proxy Materials pursuant to:

1. Rule 14a-8(e)(2), because the Company did not receive the Proposal before the deadline for submitting stockholder proposals for inclusion in the 2024 Proxy Materials;

2. Rule 14a-8(i)(2), because implementation of the Proposal would cause the Company to violate Delaware law;

3. Rule 14a-8(i)(6), because the Company lacks the power and authority to implement the Proposal;

4. Rule 14a-8(i)(7), because the Proposal deals with a matter relating to the Company's ordinary business operations; and

5. Rule 14a-8(i)(3), because the Proposal is so vague and indefinite as to be inherently misleading.

ANALYSIS

I. The Proposal may be omitted under Rule 14a-8(e)(2) because the Company did not receive the Proposal before the deadline for submitting stockholder proposals for inclusion in the 2024 Proxy Materials.

A. Background

Rule 14a-8(e)(2) provides that stockholder proposals submitted with respect to a company's regularly scheduled annual meeting must be received at the company's principal executive offices no less than 120 calendar days before the anniversary date of the company's proxy statement that was released to stockholders in connection with the previous year's annual meeting. On April 28, 2023, the Company filed with the Commission, and commenced distribution to its stockholders of, a proxy statement and form of proxy for its 2023 Annual Meeting of Stockholders (the "***2023 Proxy Statement***"). As required by Item 1(c) of Schedule 14A and Rule 14a-5(e) under the Exchange Act, the Company included on page 91 of the 2023 Proxy Statement the deadline and procedures for receiving stockholder proposals submitted for inclusion in the 2024 Proxy Materials, calculated in the manner described in Rule 14a-8(e):

> You may submit proposals for consideration at future annual stockholder meetings. To be considered for inclusion in the proxy materials for our 2024 Annual Meeting of Stockholders, your proposal (other than a proposal for director nomination) must be received by our Corporate Secretary at our principal executive office no later than December 29, 2023. Your proposal must comply with the procedures and requirements set forth in Rule 14a-8 under the Securities Exchange Act of 1934, as amended. **Your proposal should be sent via registered, certified or express mail** to our Corporate Secretary at our principal executive office 2025 Hamilton Avenue, San Jose, California 95125; **no facsimile submissions will be accepted** (emphasis added).

A copy of page 91 of the 2023 Proxy Statement is attached to this letter as Exhibit C.

On December 28, 2023 at 7:32 PM and 7:36 PM Pacific Time, the Proponent sent two emails (the "***Initial Emails***") to the same set of five eBay.com email addresses, of which three were inactive email addresses of former eBay employees who had departed the Company in 2019, 2022 and 2023. The Initial Emails, which included copies of the Proposal dated December 28, 2023 and purported to submit the Proposal for inclusion in the 2024 Proxy Materials, were addressed in one case to one of these former employees, and in the other case to a name that was not included among the recipient email addresses. The remaining recipients of the Initial Emails were members of different sections of the Company's internal legal team, and none of those recipients were internally or externally designated as proper persons for receipt of Rule 14a-8 stockholder proposals. Neither the Corporate Secretary of the Company (to whom the 2023 Proxy Statement instructed stockholders to address any Rule 14a-8 proposals) nor any Assistant Secretary received the Initial Emails.

On January 4, 2024, after the recipients who were current eBay employees had reviewed the Initial Emails, they were able to determine that they purported to deliver a Rule 14a-8 stockholder proposal, and communicated the existence of the Initial Emails to the Corporate Secretary of the Company (the appropriate person for receipt of such a proposal). The Company sent the Proponent a letter (the "***Deficiency Notice***") by overnight courier and email, informing the Proponent, among other things, that the Company had not received the Proposal and requesting proof of mailing and delivery. To date, the Proponent has not provided such proof.

B. A proposal may be excluded under Rule 14a-8(e)(2) if the proposal is not received at the company's principal executive offices not less than 120 calendar days before the date of the company's proxy statement released to shareholders in connection with the previous year's annual meeting.

Under Rule 14a-8(f)(1), a company may exclude a stockholder proposal if the proponent fails to follow one of the eligibility or procedural requirements in Rule 14a-8. Typically, a company may exclude a proposal on this basis only after it has timely notified the proponent of an eligibility or procedural problem and the proponent has failed to timely and adequately correct the problem. However, per Rule 14a-8(f)(1), a company "need not provide [the proponent] such notice of a deficiency if the deficiency cannot be remedied, *such as if [the proponent] fail[s] to submit a proposal by the company's properly determined deadline*" (emphasis added).

One of the eligibility or procedural requirements in Rule 14a-8 is the requirement to deliver a proposal by the applicable deadline. If a proponent is submitting a proposal "for the company's annual meeting, [the proponent] can, in most cases, find the deadline in [the prior] year's proxy statement." See Rule 14a-8(e)(1). Under Rule 14a-8(e)(2):

> The deadline is calculated in the following manner if the proposal is submitted for a regularly scheduled annual meeting. The proposal must be received at the company's principal executive offices not less than 120 calendar days before the date of the company's proxy statement released to shareholders in connection with the previous year's annual meeting.

Consistent with Rule 14a-8(e)(2), the Company calculated the deadline for receiving stockholder proposals submitted for its 2024 Annual Meeting of Stockholders by (i) starting with the release date of the 2023 Proxy Statement (i.e., April 28, 2023), (ii) counting back 120 calendar days (i.e., December 29, 2022) and (iii) increasing the year by one (i.e., December 29, 2023), which includes an extra day this year because 2024 is a leap year. Because the Staff's guidance in Staff Legal Bulletin No. 14 (July 13, 2001) ("***SLB 14***"), Section C.3.b, guides companies to "[i] start with the release date disclosed in the previous year's proxy statement; [ii] increase the year by one; and [iii] count back 120 calendar days," the methodology described in SLB 14 would have resulted in a calculated deadline of December 30, 2023. However, the Company believes its calculation methodology is consistent with Rule 14a-8(e)(2) and that December 29, 2023 was properly determined as the deadline for purposes of Rule 14a-8(e)(2), for the reasons discussed below. The Company did not receive the Proposal by either the December 29, 2023

deadline disclosed in the 2023 Proxy Statement or December 30, 2023. As disclosed above, because of the purported delivery method selected by the Proponent, the Proposal was not received by the Corporate Secretary until January 4, 2024 and in either case, the Company was under no obligation to inform the Proponent within one or two calendar days of the deficiency, even if such stockholder proposal had been properly received.

The Staff strictly construes the deadline for Rule 14a-8 stockholder proposals and permits companies to exclude from proxy materials those proposals received at their principal executive offices after the deadline. *See, e.g., Walgreen Boots Alliance, Inc.* (Oct. 12, 2021) (concurring with the exclusion of a proposal that was received two days after the submission deadline); *Hewlett Packard Enterprise Co.* (Jan. 15, 2021) (same); *General Dynamics Corp.* (Jan. 8, 2021, recon. denied Mar. 17, 2021) (concurring with the exclusion of a proposal that was received four days after the submission deadline); *DTE Energy Co. (Moore)* (Dec. 18, 2018) (concurring with the exclusion of a proposal that was received two days after the submission deadline); *Verizon Communications, Inc.* (Jan. 4, 2018) (concurring with the exclusion of a proposal that was received one day after the submission deadline); *Dean Foods Co.* (Jan. 27, 2014) (concurring with the exclusion of a proposal that was received three days after the submission deadline); *PepsiCo, Inc.* (Jan. 3, 2014) (same); *Tootsie Roll Industries, Inc.* (Jan. 14, 2008) (concurring with the exclusion of a proposal that was received two days after company's deadline, even when deadline fell on a Saturday).

Additionally, In *The Kroger Co.* (Apr. 25, 2023), the Staff concurred with the exclusion of a proposal where the company did not receive a proposal submitted by email from the proponent where the email was blocked by the email security vendor as a potentially malicious email. *See also Charles River Laboratories International Inc.* (Mar. 17, 2021) (same). Further, the Staff has concurred in other instances where the submission of a stockholder proposal by email was not properly received. *See, e.g.*, *Alcoa, Inc.* (Jan. 12, 2009) (concurring with the exclusion of a proposal in which the proponent submitted a proposal by email to the company's investor relations department and by facsimile to a number that was not in the company's principal executive offices); *Discover Financial Services* (Mar. 20, 2020) (concurring with the exclusion of a proposal in which the proponent submitted the proposal via email to two company employees who no longer worked for the company and to an email address that did not belong to the company); *Sprint Corp.* (Aug. 1, 2018) (concurring with the exclusion of a proposal in which the proponent submitted the proposal via email to a company employee who no longer worked for the company and to an employee who was not an attorney); *Teladoc Health, Inc.* (Mar. 20, 2020) (concurring with the exclusion of a proposal in which the proponents faxed an incomplete letter to the company indicating that they intended to submit the proposal to three company employees, including one who no longer worked for the company, but the two current employees never received this email from the proponents).

C. The Proposal was not received by the Company before the properly determined deadline and may therefore be excluded under Rule 14a-8(e)(2).

Despite the clear instructions in the 2023 Proxy Statement to send any proposal by "registered, certified or express mail" and the reminder that "no facsimile submissions [would] be accepted," the Proponent

failed to mail the Proposal to the Company, and to date the Company has no record of having received a mailing containing the Proposal. In addition to failing to follow the clear procedures outlined in the 2023 Proxy Statement, the Proponent also failed to ensure the Initial Emails were delivered to proper recipients within the Company.

Rule 14a-8(e)(1) provides that in order to avoid controversy, stockholders should submit their proposals by means, including electronic means, that permit them to prove the date of delivery. As the Staff noted in Section F.1 of Staff Legal Bulletin No. 14L (Nov. 3, 2021) ("***SLB 14L***"), "where a dispute arises regarding a proposal's timely delivery, shareholder proponents risk exclusion of their proposals if they do not receive a confirmation of receipt from the company in order to prove timely delivery with email submissions." For this reason, in cases where (as here) a company has not disclosed in its proxy statement an email address for submitting proposals, the Staff "encourage[s] shareholder proponents to contact the company to obtain the correct email address for submitting proposals before doing so." *Id.* As the Staff has acknowledged by encouraging proponents to obtain the "correct" email address for submission of stockholder proposals, a proponent cannot satisfy Rule 14a-8(e) delivery requirements by emailing a stockholder proposal to an incorrect email address. To require otherwise would mean that every Company employee with an "@ebay.com" email address would be obligated to monitor incoming emails for potential Rule 14a-8 stockholder proposals—an untenable and impracticable result. In fact, one of the recipients is a member of the Company's Mergers and Acquisitions team, a role that is unrelated to stockholder proposals or the content of this particular stockholder proposal and one which should not be assumed to have procedural oversight for stockholder proposals.

Yet the position promoted by the Proponent would permit the Proponent to send a stockholder proposal to any Company email address. The Proponent did not contact the Company to obtain a proper email address for submitting the Proposal prior to sending the Initial Emails, instead including in the Initial Emails a belated request to "confirm that this is the correct address for rule 14a-8 proposals." Further, in a January 9, 2024 email to the eBay employee who sent the Deficiency Notice on the Company's behalf, the Proponent claimed that timely delivery of the Proposal "has clearly occurred," suggesting that the very fact that his scattershot email had elicited a response was itself proof of proper delivery. To the contrary, by emailing a seemingly random collection of current and former Company employees on the eve of the submission deadline and neglecting to determine in advance whether the recipients of the Initial Emails were actually proper recipients for the Proposal, the Proponent failed to ensure that the Proposal was received at the Company's principal executive offices by the submission deadline. In fact, as noted above, none of the recipients of the Initial Emails were proper recipients for the Proposal, and consequently the Proposal was not received at the Company's principal executive offices by the Company's properly determined deadline. Such purported delivery method is not a reliable method of submitting shareholder proposals and the fact that the proposal was eventually routed to the proper channels is, in part, a matter of luck and happenstance, but should not be considered a reliable methodology that companies should be required to accommodate.

Because the Proponent neglected to follow the procedures prescribed in the 2023 Proxy Statement for submission of stockholder proposals and failed to deliver the Proposal via email to a correct Company

email address within the time required under Rule 14a-8(e)(2), the Proposal may properly be omitted from the 2024 Proxy Materials.

II. The Proposal may be omitted under Rule 14a-8(i)(2) because implementation of the Proposal would cause the Company to violate Delaware law.

A. Rule 14a-8(i)(2) permits exclusion of a stockholder proposal if implementation of that proposal would cause a company to violate a state law to which it is subject.

Under Rule 14a-8(i)(2), a company may exclude a stockholder proposal if implementation of such proposal would "cause the company to violate any state, federal or foreign law to which it is subject." *See The Goldman Sachs Group, Inc.* (Feb. 1, 2016); *Bank of America Corp.* (Feb. 11, 2009); *Kimberly-Clark Corp.* (Dec. 18, 2009). The Company is incorporated under the laws of the State of Delaware. As discussed below, and for the reasons set forth in the legal opinion provided by Morris, Nichols, Arsht & Tunnell LLP, the Company's Delaware counsel, attached hereto as Exhibit D (the "***Delaware Law Opinion***"), the Proposal is excludable under Rule 14a-8(i)(2) because implementation of the Proposal would cause the Company to violate Delaware law.

On numerous prior occasions, the Staff has concurred with the exclusion of stockholder proposals pursuant to Rule 14a-8(i)(2) where the proposal, if implemented, would cause a company to violate state law according to a legal opinion issued by counsel in the jurisdiction of incorporation. In *MeadWestvaco Corp.* (Feb. 27, 2005), the Staff concurred with the exclusion under Rule 14a-8(i)(2) of a proposal that recommended that the company amend its bylaws so that no officer shall receive annual compensation in excess of the limits established by the U.S. Internal Revenue Code for deductibility of employee remuneration without approval by a vote of *the majority of the stockholders* within one year preceding the payment of such compensation (emphasis added). Accordingly, the proposal expressly required approval by a percentage of stockholders, i.e., per capita voting, rather than approval by a percentage of shares of stock. Section 212(a) ("***Section 212(a)***") of the Delaware General Corporation Law (the "***DGCL***") sets forth a "one vote for each share" standard and alteration of such standard is valid and enforceable only if it is stated in the company's certificate of incorporation. MeadWestvaco Corp.'s certificate of incorporation did not authorize per capita voting. As a result, the Staff concurred with excluding the proposal under Rule 14a-8(i)(2) as the implementation of the proposal would violate Delaware law. *See also Hewlett-Packard Co.* (Jan. 6, 2005) (same). *See also, e.g., Bank of America* (Feb. 11, 2009) (concurring with the exclusion under Rule 14a-8(i)(2) of a proposal that, if implemented, would result in providing stockholders a right to specify the appointment of committee members, in violation of Delaware law); *The Goldman Sachs Group, Inc.* (concurring with the exclusion under Rule 14a-8(i)(2) of a proposal that, if implemented, would cause the company to violate Delaware law relating to the appointment of non-directors on board committees); *Dominion Resources, Inc*. (Jan. 14, 2015) (concurring with the exclusion under Rule 14a-8(i)(2) of a proposal that, if implemented, would result in a director being appointed by the board without a stockholder vote, in violation of Virginia law); *AT&T Inc.* (Feb. 12, 2010) (concurring with the exclusion under Rule 14a-8(i)(2) of a proposal that, if implemented, would cause the company to violate Delaware law relating to stockholders' ability to act by written consent); *Marathon Oil Corp.* (Feb.

6, 2009) (concurring with the exclusion under Rule 14a-8(i)(2) of a proposal that, if implemented, would cause the company to violate a fundamental rule of Delaware law relating to discrimination among holders of the same class of stock); *Northrop Corp.* (Mar. 8, 1991) (concurring with the exclusion under the predecessor rule to Rule 14a-8(i)(2) of a proposal requesting the establishment of a position on the company's board of directors to represent the interests of the company's employees and retirees because the proposal would require the new director to act in a manner inconsistent with the fiduciary duty to act in the interest of the company and its stockholders as a whole under Delaware law).

Here, implementation of the Proposal would cause the Company to violate Delaware law because the Proposal would require the Company to impermissibly divest certain stockholders of their voting rights on certain matters submitted for stockholder approval. Therefore, the Company believes that the Proposal is excludable under Rule 14a-8(i)(2).

B. Implementation of the Proposal would cause the Company to violate Delaware law because it would require the Company to divest certain stockholders of their voting rights.

The Proposal includes a resolution to amend the Company's Amended and Restated Bylaws (the "***Bylaws***") that would result in an automatic amendment of the Bylaws. The Bylaw amendment would, among other things, prohibit the Company's Board of Directors (the "***Board***") from awarding annual compensation to the Company's directors over $1. The only manner to provide greater compensation would be, among other procedural requirements, stockholder approval by a "majority of stockholder votes present in person or represented by proxies." However, the Proposal specifies that such stockholder vote must "include *only stockholder votes of stockholders that are not directors of the Corporation*" (emphasis added).

As explained in the Delaware Law Opinion, implementation of the Proposal would cause the Company to violate Delaware law. Delaware law protects stockholders' right to "one vote for each share" under Section 212(a) of the DGCL. The DGCL prevents a company from taking action to disenfranchise stockholders, except through amendment to the company's certificate of incorporation.

Section 212(a) expressly grants each stockholder of a Delaware corporation a right to cast one vote per each share of stock owned on all matters submitted to stockholder action. Section 212(a) states:

> Unless otherwise provided in the *certificate of incorporation* and subject to § 213 of this title,[1] each stockholder shall be entitled to 1 vote for each share of capital stock held by such stockholder (emphasis added).

[1] As explained in the Delaware Law Opinion, "Section 213 allows a corporation's board of directors to fix a record date in advance of a stockholder meeting, to determine which stockholders are entitled to vote at an upcoming meeting. Section 213 means only that a director must hold stock as of the record date for a meeting in order to

The Proposal, which requires that "majority [approval] shall *include only* stockholder *votes of stockholders that are not directors of the Company*" (emphasis added), would result in the disenfranchisement of stockholders who also serve as directors in a departure from and non-compliance with Section 212(a). As explained in the Delaware Law Opinion:

> The reference to "each stockholder" in Section 212(a) includes each director who holds common stock. Each director of the Company is therefore entitled to one vote for each share he or she holds if the Bylaws were amended to require a stockholder vote to authorize director compensation. The Proposal would violate the DGCL because it would divest certain stockholders (that is, stockholders who are directors) of their voting rights by Bylaw amendment.

Moreover, under Delaware law, the stockholder right to "one vote for each share" may not be modified by approval of the Proposal's Bylaw amendment. Section 212(a) provides that "[u]nless otherwise provided in the certificate of incorporation," companies may not deviate from the "one vote for each share" right. The Delaware Law Opinion explains:

> The "one vote for each share" voting right does not apply if contrary provisions are made "in the certificate of incorporation." We have reviewed the Amended and Restated Certificate of Incorporation, as amended, of the Company, and it contains no provision opting out of the "one vote for each share" right. The Proponent asks the stockholders of the Company to violate Section 212(a) of the DGCL by adopting a bylaw that opts out of the "one vote for each share" rule. But Section 212(a) is clear: any opt out must be included solely in the certificate of incorporation, not in a bylaw.

As discussed further in the Delaware Law Opinion, and in keeping with the express provisions of Section 212(a), "[i]n each case where the Delaware courts have upheld a corporation's deviation from the 'one vote for each share' rule, that deviation was implemented through a provision in the corporation's certificate of incorporation, not the bylaws." As noted in the Delaware Law Opinion, the Proposal "does not contemplate any such amendment of the Company's Amended and Restated Certificate of Incorporation" but "instead seeks the unilateral amendment of the Bylaws by the stockholders to disqualify certain shares that would be entitled to vote in connection with a stockholder vote to authorize director compensation."

The Staff has previously concurred with the exclusion under Rule 14a-8(i)(2) of a proposal that similarly, if implemented, would require a Delaware corporation to divest a subset of stockholders of their voting rights on a certain type of matter and therefore would violate Delaware law. In *Quotient Technology Inc.* (May 6, 2022), the proposal requested the company's board of directors "disqualify all shares owned and/or controlled by both current and former [n]amed [e]xecutive [o]fficers" from voting on a proposal to

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vote at the meeting. The Proposal would disenfranchise directors even if they hold stock as of the record date for a meeting, so the reference to Section 213 in Section 212(a) does not apply to the Proposal."

approve the company's tax benefits preservation plan proposal. Quotient Technology provided a legal opinion issued by its Delaware counsel, Morris, Nichols, Arsht & Tunnell LLP, to support its argument that the proposal would cause the company to violate Delaware law. In its opinion, Quotient Technology's Delaware counsel stated that the DGCL "grants each stockholder of a Delaware corporation a fundamental franchise right to cast one vote per share of stock on all matters submitted for stockholder action" and that any departure from the "one share, one vote rule . . . can only be done by undertaking the drastic step of amending its certificate of incorporation, with a resolution setting forth an amendment that is adopted and approved by the board and the stockholders." However, Quotient Technology's certificate of incorporation did not contain a provision opting out of the "one vote for each share" right. Therefore, because the proposal in Quotient Technology sought to disqualify certain stockholders without having both the board and the stockholders approve appropriate amendments to the company's certificate of incorporation, Quotient Technology argued that the proposal, if adopted and acted upon, would cause the company to violate Delaware law, as supported by the opinion of its Delaware counsel. The Staff concurred with exclusion under Rule 14a-8(i)(2) "not[ing] that in the opinion of Delaware counsel, implementation of the [proposal] would cause the [c]ompany to violate state law." *See also Marathon Oil Corp.* (Feb. 6, 2009).

Here, the Proposal would result in a Bylaw amendment that would similarly disqualify a subset of stockholders from voting on a specific matter, by divesting the stockholders who are also the Company's directors of their voting rights on director compensation matters. As in Quotient Technology, the Company's Amended and Restated Certificate of Incorporation, as amended (the "***Certificate***") does not contain a provision opting out of the "one vote for each share" right and the Proposal does not seek an appropriate amendment to the Certificate to opt out of such right. Accordingly, implementation of the Proposal's Bylaw amendment is impermissible because, as explained in the Delaware Law Opinion, "Section 212(a) neither contemplates nor permits amending bylaws to disenfranchise a sub-group of stockholders." Therefore, as in Quotient Technology, the Proposal is excludable pursuant to Rule 14a-8(i)(2) because implementation of the Proposal would cause the Company to violate Delaware law, as supported by the Delaware Law Opinion.

III. The Proposal may be omitted under Rule 14a-8(i)(6) because the Company lacks the power and authority to implement the Proposal.

Under Rule 14a-8(i)(6), a company may exclude a stockholder proposal "[i]f the company would lack the power or authority to implement the proposal." As discussed above, the implementation of the Proposal would cause the Company to violate Delaware law and the Company lacks the power and authority to implement any proposal that would violate Delaware law. Therefore, the Proposal is excludable under 14a-8(i)(6). The Staff has concurred on numerous occasions that a company may exclude a proposal under both Rule 14a-8(i)(2) and Rule 14a-8(i)(6) if the implementation of the proposal would cause the company to violate applicable state law and accordingly, the company lacks the authority to implement such proposal. *See, e.g.*, *eBay Inc.* (Apr. 1, 2020); *Trans World Entertainment Corp. (Robert J. Higgins TWMC Trust)* (May 2, 2019); *PayPal Holdings, Inc.* (Mar. 9, 2018); *IDACORP, Inc.* (Mar. 13, 2012); *RTI Biologics, Inc.* (Feb. 6, 2012); *NiSource Inc.* (Mar. 22, 2010).

As discussed above and more broadly in the Delaware Law Opinion, implementing the Proposal's Bylaw amendment to divest certain stockholders of their voting rights would cause the Company to violate Section 212(a) because the Certificate does not contain any provision opting out of the "one vote for each share" right. As explained in the Delaware Law Opinion, "Section 212(a) neither contemplates nor permits amending bylaws to disenfranchise a sub-group of stockholders," and, therefore, implementation of the Proposal would cause the Company to violate Delaware law. Therefore, notwithstanding that the Bylaws can unilaterally be amended through a stockholder vote, the Proposal is excludable under both Rule 14a-8(i)(2) and Rule 14a-8(i)(6) because the implementation of the Proposal would cause the Company to violate Delaware law, and because the Company lacks the power or authority under Delaware law to implement the Proposal.

IV. The Proposal may be omitted under Rule 14a-8(i)(7) because it deals with a matter relating to the Company's ordinary business operations.

A. A proposal may be excluded under Rule 14a-8(i)(7) if it addresses a company's ordinary business operations and does not raise a significant issue that transcends ordinary business operations.

The Proposal relates to the Company's ordinary business operations and seeks to micromanage the Company. Under Rule 14a-8(i)(7), a registrant may omit from its proxy materials a stockholder proposal that relates to the registrant's "ordinary business" operations. In SEC Release No. 34-40018 (May 21, 1998) (the "***1998 Release***"), the Commission noted that the principal policy for this 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," and identified two central considerations that underlie this policy. The first was that "[c]ertain tasks are so fundamental to the 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," and the second "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.*

In evaluating whether a proposal seeks to micromanage a company, the Staff focuses on "the level of granularity sought in the proposal and whether and to what extent it inappropriately limits discretion of the board or management." Section B, SLB 14L. The Staff may also consider "the sophistication of investors generally on the matter, the availability of data, and the robustness of public discussion and analysis on the topic." *Id*. Underlying this inquiry is the view that the ordinary business operations exclusion is "designed to preserve management's discretion on ordinary business matters but not prevent shareholders from providing high-level direction on large strategic corporate matters." *Id.*

As the Commission noted in the 1998 Release, proposals focusing on "sufficiently significant social policy issues" are generally not excludable because they would "transcend the day-to-day business matters and raise policy issues so significant that it would be appropriate for shareholder vote." *Id*. In evaluating

whether a proposal raises a social policy issue that transcends the ordinary business of a company, the Staff focuses on the social policy significance of the issue that is the subject of the shareholder proposal and whether the proposal raises issues with a broad societal impact. *See* SLB 14L.

B. The Proposal is overly granular and prescriptive and seeks to micromanage the Company.

By restricting the Board from fixing any director compensation above $1 in any fiscal year without advance stockholder approval, the Proposal seeks to micromanage the Company to a level of granularity that "inappropriately limits discretion of the board." SLB 14L. Setting director compensation is a fundamental task of the Board and is enormously consequential for the Company's ability to attract qualified directors. The Proposal, if approved, would cripple the Company's ability to recruit and retain a qualified and stable Board: with a Bylaws provision that would leave directors and director candidates perpetually uncertain about whether they would be compensated for their service, coupled with competitors to the Company that do not have such burdensome requirements, the Company's ability to compete for qualified directors would be severely handicapped, which would have profound consequences for the Company's ability to promote stewardship of the Company's business and promote the long-term interests of stockholders. As these consequences demonstrate, director compensation decisions of the type contemplated by the Proposal are fundamental to "[the] 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." *See* 1998 Release.

The disastrous knock-on effects that the Proposal would impose reflect the pivotal role of compensation decisions and discretion in the Board's ability to manage the Company. The Board, together with the Compensation and Human Capital Committee of the Board (the "***CHC Committee***"), exercises significant business judgment and discretion to design a director compensation program that is able to attract, reward and retain qualified directors and motivate the Company's directors to promote long-term stockholder value. As disclosed in the 2023 Proxy Statement, the CHC Committee also reviews and assesses the Company's director compensation program, including by consulting with the Company's independent compensation consultant and benchmarking the Company's director compensation practices against the compensation practices of its peers, to ensure the program is competitive and in line with market practice.

Furthermore, by seeking to remove a fundamental tool of the Board's discretion—the ability to determine the compensation of directors, and consequently to attract, retain and motivate a qualified and stable Board—the Proposal goes well beyond "seeking detail or seeking to promote timeframes or methods" for the Company's director compensation or "providing high-level direction" to the Board. The Proposal seeks not just to limit the Board's discretion over these matters, but rather to remove such discretion entirely, substituting stockholders' judgment for the Company's in a way that would be destined to cripple the Company's ability to attract, retain and motivate a qualified and stable Board. As described above, the setting of director compensation requires the Board to balance complex and dynamic considerations, including market conditions, director incentives and motivation, and recruitment and retention of talented directors. In addition, the processes described above with respect to the significant amount of effort,

work, time and complexity would be best served by the entity that undertakes the multi-month workstream. Substituting the judgment of stockholders for this nuanced determination would amount to overwhelming micromanagement of, and interference with, the Company's ordinary business operations. Diversified stockholders, who lack the extensive Company- and market-specific knowledge necessary to make informed and carefully considered decisions, are not well positioned to substitute their judgment for the Board's judgment on these matters. Each of the factors noted by the Staff in SLB 14L—the "sophistication of investors generally on the matter, the availability of data, and the robustness of public discussion and analysis on the topic"—underscores the Proposal's inappropriate attempt to micromanage the Board's execution of this fundamental oversight task.

The Staff has recently concurred with the exclusion of similar stockholder proposals that sought to micromanage fundamental board-level decisions. For example, in *AT&T Inc.* (Jan. 3, 2023), the Staff concurred with the exclusion of a proposal that requested the board to adopt a policy obtaining shareholder 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 in certain form. There, the company argued that the proposal ran afoul of the kind of management-level discretion the Commission sought to preserve with the ordinary business exclusion. By seeking shareholder approval of "*any* future agreements and corporate policies" (emphasis added), the proposal inappropriately limited the discretion of the company's board. *See also Rite Aid Corp.* (Feb. 12, 2021) (concurring with the 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, wherein the issuer noted 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 grants without regard to circumstances and the committee's business judgment.)

Furthermore, good governance practices suggest that directors and executive officers align themselves with stockholders through their equity ownership of a company's securities. Many companies have stock ownership guidelines to promote this alignment, including eBay. In the 2023 Proxy Statement, eBay notes that its Board has "adopted stock ownership guidelines to better align the interests of [its] directors and executive officers with the interests of [its] stockholders and further promote [its] commitment to sound corporate governance." eBay directors are required to achieve ownership of eBay common stock valued at five times the amount of annual retainer payments to directors. Not permitting voting of their securities undermines their alignment. Furthermore, uncertainty regarding the amount of the annual retainer payable to directors, or the assumption that such amount may be $1 would render the policy and its underlying principles moot. Creating such misalignment and uncertainty underscores the granular and prescriptive nature of the Proposal that would, if implemented, frustrate and mismanage a fundamental tool to align shareholder and director interests.

C. The Proposal does not raise significant social policy issues that transcend the Company's ordinary business.

The Proposal focuses on the ordinary business matter of the Company's director compensation determinations and does not "transcend the day-to-day business matters and raise policy issues so significant that it would be appropriate for a shareholder vote." *See* 1998 Release. The supporting statement accompanying the Proposal suggests that the Proposal would promote an "independent Board, one that has as its sole objective representing stockholders without conflict of interest," and does not address any issues of broad social concern or suggest that the subject matter of the Proposal raises any significant social policy issues. Consequently, the Proposal does not transcend the ordinary business of the Company and may be properly omitted in reliance on Rule 14a-8(i)(7). *See* SLB 14L.

V. The Proposal may be excluded pursuant to Rule 14a-8(i)(3) because it is so vague and indefinite as to be inherently misleading.

A. A proposal may be excluded under Rule 14a-8(i)(3) if it is so vague and indefinite that neither stockholders nor the company is able to determine with any reasonable certainty exactly what actions or measures the proposal requires.

A stockholder proposal is excludable under Rule 14a-8(i)(3) if the proposal is "so vague and indefinite that neither the stockholders voting on the proposal, nor the company in implementing the proposal (if adopted), would be able to determine with any reasonable certainty exactly what actions or measures the proposal requires." *See* Staff Legal Bulletin No. 14B (Sep. 15, 2004) ("***SLB 14B***"). A proposal may be so vague and indefinite as to be materially misleading when the "meaning and application of terms and conditions . . . in the proposal would have to be made without guidance from the proposal and would be subject to differing interpretations" such that "any action ultimately taken by the [c]ompany upon implementation [of the proposal] could be significantly different from the actions envisioned by shareholders voting on the proposal." *See Fuqua Industries, Inc.* (Mar. 12, 1991). The courts have also ruled on cases involving similar proposals, finding that "shareholders are entitled to know precisely the breadth of the proposal on which they are asked to vote" and that a proposal should be excluded when "it [would be] impossible for either the board of directors or the stockholders at large to comprehend precisely what the proposal would entail." *New York City Employees' Retirement System v. Brunswick Corp.*, 789 F. Supp. 144, 146 (S.D.N.Y. 1992); *Dyer v. Securities and Exchange Comm'n*, 287 F.2d 773, 781 (8th Cir. 1961).

B. The Proposal is so vague and indefinite that it would be impossible for the Company's stockholders to know what they are voting on.

As drafted, the Bylaw amendment promoted by the Proposal creates significant uncertainty about whether or how it would apply to the compensation of directors who are also executive officers of the Company. This uncertainty would preclude the Company's stockholders from understanding the Proposal and, if the Proposal is approved, would preclude the Company from knowing how to implement it, rendering the Proposal impermissibly vague and indefinite.

In the supporting statement accompanying the Proposal, the Proponent states that the Company's stockholders "seek an independent Board" and that the stockholders "seek the authority to approve compensation that directors receive" from the Company. In the Proposal and the accompanying supporting statement, the Proponent ignores the fact that boards of directors, including the Company's, include both non-employee directors and employee directors. In the case of the Company, the Company's President and Chief Executive Officer is both an officer and a director of the Company.

Although the supporting statement accompanying the Proposal touches only on "an independent Board" and does not mention any issues relating to executive compensation, as drafted, the Proposal is not limited to the compensation of non-employee directors of the Company. In contrast to the Bylaws currently in effect, which provide that "[d]irectors, *as such*, may receive…fees and other compensation for their services *as directors*," the Proposal would enact a blanket prohibition on the Board's ability to pay directors for their services in any capacity: "The Board shall not have *any* authority to fix the compensation of directors" (emphasis added). As drafted, this stark prohibition could preclude the Board from fixing the compensation of any employee director, including compensation for services as a Company employee, by virtue of that employee's status as a director, and creates significant uncertainty as to how (and whether) the Board would be permitted to determine the compensation of its President and Chief Executive Officer or any other employee directors.

This ambiguity is highly material: executive compensation decisions are the subject of extensive stockholder and media scrutiny and are themselves subject to an advisory vote of stockholders. The supporting statement accompanying the Proposal does nothing to acknowledge or address this profound ambiguity, rendering the Proposal vague and misleading and making it all but certain that the Company's actions in implementing the Bylaw amendment the Proposal would require would be "significantly different from the actions envisioned by shareholders voting on the proposal." *Fuqua Industries, Inc.*

As a result of the significant and unresolved ambiguities created by the Proposal's awkward drafting and misleading disclosure, stockholders asked to vote on the Proposal would be unable to determine with any reasonable certainty the scope and impact of the Proposal on the Company's ability to compensate its employee directors, and the Company would be unable to determine how to implement the Proposal to the satisfaction of stockholders if the Proposal were approved. Because neither the Company nor its stockholders would be able to determine with any reasonable certainty exactly what actions or measures the Proposal requires, the Proposal is so vague and indefinite as to be inherently misleading. The Proposal may therefore be properly omitted from the 2024 Proxy Materials pursuant to Rule 14a-8(i)(3).

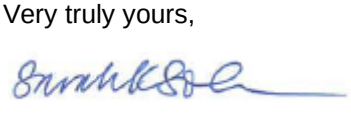
CONCLUSION

For the reasons set forth above, the Company respectfully requests the Staff's concurrence that the Proposal may be properly excluded from the 2024 Proxy Materials and further requests confirmation that the Staff will not recommend any enforcement action if the Company so excludes the Proposal.

We would be happy to provide you with any additional information and answer any questions that you may have regarding this subject. Should you disagree with the conclusions set forth herein, we

respectfully request the opportunity to confer with you prior to the determination of the Staff's final position. Please do not hesitate to call Sarah K. Solum at (650) 618-9243 or Elizabeth K. Bieber at (212) 508-8884.

Very truly yours,



Sarah K. Solum Elizabeth K. Bieber

cc: Marie Oh Huber, eBay Inc.
Molly Finn, eBay Inc.
Oliver Cohen, eBay Inc.
John Chevedden

Enclosures

Exhibit A: The Proposal
Exhibit B: Correspondence with the Proponent
Exhibit C: Extract from 2023 Proxy Statement
Exhibit D: Delaware Law Opinion

Exhibit A

The Proposal

JOHN CHEVEDDEN

[redacted] [redacted]

Ms. Marie Oh Huber
Corporate Secretary
eBay Inc. (EBAY)
2025 Hamilton Ave
San Jose CA 95125
PH: [redacted]

Dear Ms. Oh Huber,

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 intend to continue to hold the required amount of Company shares through the date of the Company's next Annual Meeting of Stockholders and beyond as is or will be documented in my ownership proof.

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.

Please use the title of the proposal in bold in all references to the proposal in the proxy including the table of contents, like Board of Directors proposals, and on the ballot. If there is objection to the title please negotiate or seek no action relief as a last resort.

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

Please confirm that this proposal was sent to the correct email address for rule 14a-8 proposals.
Per SEC SLB 14L, Section F, the Securities and Exchange Commission Staff "encourages both companies and shareholder proponents to acknowledge receipt of emails when requested."
I so request.

Sincerely,

John Chevedden

December 20, 2023
Date

cc: Tara McMillan <[redacted]>
Josh Westerman <[redacted]>
Scott Andrews <[redacted]>
Diana Lorenz <[redacted]>

[EBAY: Rule 14a-8 Proposal, December 28, 2023]
[This line and any line above it – *Not* for publication.]

Proposal 4 – Bylaw Amendment: Stockholder Approval of Director Compensation

The Bylaws of eBay Inc. are amended as follows:

Article II Section 2.12 is deleted and replaced in its entirety as follows:

Compensation of Directors. The Board shall not have any authority to fix the compensation of directors. The compensation of directors the Corporation pays shall be fixed at $1 in a fiscal year; provided, however, the Corporation may pay, grant, or award compensation greater than $1 in a fiscal year if such compensation has been (1) disclosed to stockholders in advance of the fiscal year in which the Corporation will pay, grant, or award such compensation; (2) submitted to an approval vote of stockholders at an annual or special meeting of stockholders in advance of the fiscal year in which the Corporation will pay, grant, or award such disclosed compensation; and (3) approved by a majority of stockholder votes present in person or represented by proxies and entitled to vote cast in favor of the disclosed annual compensation at an annual or special meeting of stockholders in advance of the fiscal year in which the Corporation will pay, grant, or award such compensation, which majority shall include only stockholder votes of stockholders that are not directors of the Corporation.

Supporting statement

EBay stockholders seek an independent Board, one that has as its sole objective representing stockholders without conflict of interest. One interest pertains to compensation and how EBay compensates directors for board service. Stockholders seek the authority to approve compensation that directors receive from EBay.

Stockholders want and need authority over how and how much EBay compensates directors. If stockholders approve compensation, then directors have the greatest incentive to work in the sole interest of stockholders. Currently, directors design and approve compensation with no approval from stockholders. Directors receive whatever compensation they desire. This bylaw amendment corrects this problem.

The bylaw amendment provides for a stockholder vote on director compensation. Directors can continue to design and propose compensation structure and amount, including the mix and amount of cash and equity. Stockholders will have final approval over whether directors receive what directors propose. Stockholders will vote on director compensation as disclosed in the proxy statement for a stockholder meeting before the fiscal year in which directors receive that compensation. Stock owned by directors will not count in the vote, so the vote result represents the independent views of stockholders.

I urge stockholders to approve this bylaw amendment and assume proper authority over the compensation of directors who represent us.

Notes:

Please use the title of the proposal in bold in all references to the proposal in the proxy and on the ballot. If there is objection to the title please negotiate or seek no action relief as a last resort.

"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. **I intend to continue holding the same required amount of Company shares through the date of the Company's next Annual Meeting of Stockholders as is or will be documented in my ownership proof.**

Please acknowledge this proposal promptly by email [redacted].

It is not intend that dashes (–) in the proposal be replaced by hyphens (-).
Please alert the proxy editor.

The color version of the below graphic is to be published immediately after the bold title line of the proposal at the **beginning** of the proposal and be **center justified**.

Please use the title of the proposal in bold in all references to the proposal in the proxy and on the ballot.
If there is objection to the title please negotiate or seek no action relief as a last resort.
Please do not insert any management words between the top line of the proposal and the concluding line of the proposal.

Exhibit B

Correspondence with the Proponent

From:	John Chevedden
To:	Tara McMillan; Westerman, Josh; Andrews, Scott; Lorenz, Diana; Cohen, Oliver
Subject:	Rule 14a-8 Proposal (EBAY)
Date:	Thursday, December 28, 2023 10:34:29 PM
Attachments:	Scan2023-12-28_192303.pdf

External Email

Rule 14a-8 Proposal (EBAY)

Dear Ms. McMillan,
Please see the attached rule 14a-8 proposal.
Please confirm that this is the correct email address for rule 14a-8 proposals.
Per SEC SLB 14L, Section F, the Securities and Exchange Commission Staff "encourages both companies and shareholder proponents to acknowledge receipt of emails when requested."
I so request.

Hard copies of any request related to this proposal are not needed as long as you request that I confirm receipt in the email cover message.

The proponent is available for a telephone meeting on the first Monday and Tuesday after 10-days of the proposal submittal date at noon PT.
Please arrange in advance in a separate email message regarding a meeting if needed.
John Chevedden

JOHN CHEVEDDEN

[redacted] [redacted]

Ms. Marie Oh Huber
Corporate Secretary
eBay Inc. (EBAY)
2025 Hamilton Ave
San Jose CA 95125
PH: [redacted]

Dear Ms. Oh Huber,

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 intend to continue to hold the required amount of Company shares through the date of the Company's next Annual Meeting of Stockholders and beyond as is or will be documented in my ownership proof.

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.

Please use the title of the proposal in bold in all references to the proposal in the proxy including the table of contents, like Board of Directors proposals, and on the ballot. If there is objection to the title please negotiate or seek no action relief as a last resort.

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

Please confirm that this proposal was sent to the correct email address for rule 14a-8 proposals.
Per SEC SLB 14L, Section F, the Securities and Exchange Commission Staff "encourages both companies and shareholder proponents to acknowledge receipt of emails when requested."
I so request.

Sincerely,

John Chevedden

December 20, 2023
Date

cc: Tara McMillan <[redacted]>
Josh Westerman <[redacted]>
Scott Andrews <[redacted]>
Diana Lorenz <[redacted]>

[EBAY: Rule 14a-8 Proposal, December 28, 2023]
[This line and any line above it – *Not* for publication.]

Proposal 4 – Bylaw Amendment: Stockholder Approval of Director Compensation

The Bylaws of eBay Inc. are amended as follows:

Article II Section 2.12 is deleted and replaced in its entirety as follows:

Compensation of Directors. The Board shall not have any authority to fix the compensation of directors. The compensation of directors the Corporation pays shall be fixed at $1 in a fiscal year; provided, however, the Corporation may pay, grant, or award compensation greater than $1 in a fiscal year if such compensation has been (1) disclosed to stockholders in advance of the fiscal year in which the Corporation will pay, grant, or award such compensation; (2) submitted to an approval vote of stockholders at an annual or special meeting of stockholders in advance of the fiscal year in which the Corporation will pay, grant, or award such disclosed compensation; and (3) approved by a majority of stockholder votes present in person or represented by proxies and entitled to vote cast in favor of the disclosed annual compensation at an annual or special meeting of stockholders in advance of the fiscal year in which the Corporation will pay, grant, or award such compensation, which majority shall include only stockholder votes of stockholders that are not directors of the Corporation.

Supporting statement

EBay stockholders seek an independent Board, one that has as its sole objective representing stockholders without conflict of interest. One interest pertains to compensation and how EBay compensates directors for board service. Stockholders seek the authority to approve compensation that directors receive from EBay.

Stockholders want and need authority over how and how much EBay compensates directors. If stockholders approve compensation, then directors have the greatest incentive to work in the sole interest of stockholders. Currently, directors design and approve compensation with no approval from stockholders. Directors receive whatever compensation they desire. This bylaw amendment corrects this problem.

The bylaw amendment provides for a stockholder vote on director compensation. Directors can continue to design and propose compensation structure and amount, including the mix and amount of cash and equity. Stockholders will have final approval over whether directors receive what directors propose. Stockholders will vote on director compensation as disclosed in the proxy statement for a stockholder meeting before the fiscal year in which directors receive that compensation. Stock owned by directors will not count in the vote, so the vote result represents the independent views of stockholders.

I urge stockholders to approve this bylaw amendment and assume proper authority over the compensation of directors who represent us.

Notes:

Please use the title of the proposal in bold in all references to the proposal in the proxy and on the ballot. If there is objection to the title please negotiate or seek no action relief as a last resort.

"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. **I intend to continue holding the same required amount of Company shares through the date of the Company's next Annual Meeting of Stockholders as is or will be documented in my ownership proof.**

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Please alert the proxy editor.

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Please do not insert any management words between the top line of the proposal and the concluding line of the proposal.

From:	John Chevedden
To:	Tara McMillan; Westerman, Josh; Andrews, Scott; Lorenz, Diana; Cohen, Oliver
Subject:	Rule 14a-8 Proposal (EBAY)
Date:	Friday, December 29, 2023 11:29:08 AM
Attachments:	Scan2023-12-28_192303.pdf

External Email

Rule 14a-8 Proposal (EBAY)

Dear Mr. Kirt,
Please see the attached rule 14a-8 proposal.
Please confirm that this is the correct email address for rule 14a-8 proposals.
Per SEC SLB 14L, Section F, the Securities and Exchange Commission Staff "encourages both companies and shareholder proponents to acknowledge receipt of emails when requested."
I so request.

Hard copies of any request related to this proposal are not needed as long as you request that I confirm receipt in the email cover message.

The proponent is available for a telephone meeting on the first Monday and Tuesday after 10-days of the proposal submittal date at noon PT.
Please arrange in advance in a separate email message regarding a meeting if needed.
John Chevedden

JOHN CHEVEDDEN

[redacted] [redacted]

Ms. Marie Oh Huber
Corporate Secretary
eBay Inc. (EBAY)
2025 Hamilton Ave
San Jose CA 95125
PH: [redacted]

Dear Ms. Oh Huber,

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.

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Per SEC SLB 14L, Section F, the Securities and Exchange Commission Staff "encourages both companies and shareholder proponents to acknowledge receipt of emails when requested."
I so request.

Sincerely,

John Chevedden

December 20, 2023
Date

cc: Tara McMillan <[redacted]>
Josh Westerman <[redacted]>
Scott Andrews <[redacted]>
Diana Lorenz <[redacted]>

[EBAY: Rule 14a-8 Proposal, December 28, 2023]
[This line and any line above it – *Not* for publication.]

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Supporting statement

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Stockholders want and need authority over how and how much EBay compensates directors. If stockholders approve compensation, then directors have the greatest incentive to work in the sole interest of stockholders. Currently, directors design and approve compensation with no approval from stockholders. Directors receive whatever compensation they desire. This bylaw amendment corrects this problem.

The bylaw amendment provides for a stockholder vote on director compensation. Directors can continue to design and propose compensation structure and amount, including the mix and amount of cash and equity. Stockholders will have final approval over whether directors receive what directors propose. Stockholders will vote on director compensation as disclosed in the proxy statement for a stockholder meeting before the fiscal year in which directors receive that compensation. Stock owned by directors will not count in the vote, so the vote result represents the independent views of stockholders.

I urge stockholders to approve this bylaw amendment and assume proper authority over the compensation of directors who represent us.

Notes:

Please use the title of the proposal in bold in all references to the proposal in the proxy and on the ballot. If there is objection to the title please negotiate or seek no action relief as a last resort.

"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. **I intend to continue holding the same required amount of Company shares through the date of the Company's next Annual Meeting of Stockholders as is or will be documented in my ownership proof.**

Please acknowledge this proposal promptly by email [redacted].

It is not intend that dashes (–) in the proposal be replaced by hyphens (-).
Please alert the proxy editor.

The color version of the below graphic is to be published immediately after the bold title line of the proposal at the **beginning** of the proposal and be **center justified**.

Please use the title of the proposal in bold in all references to the proposal in the proxy and on the ballot.
If there is objection to the title please negotiate or seek no action relief as a last resort.
Please do not insert any management words between the top line of the proposal and the concluding line of the proposal.

From: Cohen, Oliver
To: John Chevedden
Cc: Finn, Molly; Dunlap, Kristin
Subject: RE: Rule 14a-8 Proposal (EBAY)
Attachments: eBay - Deficiency Notice (Chevedden) (January 2024).pdf

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Dear Mr. Chevedden,

This confirms receipt of your December 28 email purporting to submit a stockholder proposal for inclusion in eBay's proxy materials for its 2024 Annual Meeting of Stockholders. We are reviewing and evaluating your email, including its attachment, and this email is not intended to serve as confirmation regarding any eligibility or procedural requirements of Rule 14a-8 under the Securities Exchange Act of 1934, as amended.

Thank you for providing your availability to meet. We will reach out if it is helpful to have a discussion.

Best,
Oliver

From: John Chevedden <[redacted]>
Sent: Thursday, December 28, 2023 7:32 PM
To: Tara McMillan <[redacted]>; Westerman, Josh [redacted]>; Andrews, Scott <[redacted]>; Lorenz, Diana <[redacted]>; Cohen, Oliver <[redacted]>
Subject: Rule 14a-8 Proposal (EBAY)

External Email

Rule 14a-8 Proposal (EBAY)

Dear Ms. McMillan,
Please see the attached rule 14a-8 proposal.
Please confirm that this is the correct email address for rule 14a-8 proposals.
Per SEC SLB 14L, Section F, the Securities and Exchange Commission Staff "encourages both companies and shareholder proponents to acknowledge receipt of emails when requested."
I so request.

Hard copies of any request related to this proposal are not needed as long as you request that I confirm receipt in the email cover message.

The proponent is available for a telephone meeting on the first Monday and Tuesday after 10-days of the proposal submittal date at noon PT.
Please arrange in advance in a separate email message regarding a meeting if needed.
John Chevedden

January 4, 2024

VIA OVERNIGHT COURIER AND EMAIL

Mr. John Chevedden
[redacted]

Dear Mr. Chevedden:

I am writing on behalf of eBay Inc. (the "***Company***"), certain of whose personnel received from you an email on December 28, 2023 (the "***Proposal Email***") purporting to deliver a stockholder proposal entitled "Proposal 4 – Bylaw Amendment: Stockholder Approval of Director Compensation" (the "***Proposal***") for inclusion in the proxy materials for the Company's 2024 Annual Meeting of Stockholders (the "***2024 Proxy Materials***").

Rule 14a-8(e) under the Securities Exchange Act of 1934, as amended (the "***Exchange Act***"), provides in relevant part that the deadline for submitting a stockholder proposal may be found in last year's proxy statement, and that a proposal submitted for a regularly scheduled annual meeting must be received at a company's principal executive offices not less than 120 calendar days before the date of the company's proxy statement released to shareholders in connection with the previous year's annual meeting. For the Company, this deadline was December 29, 2023 (the "***Submission Deadline***"). As disclosed in the proxy statement for the Company's 2023 Annual Meeting of Stockholders (the "***2023 Proxy Materials***"), in order to be considered for inclusion in the 2024 Proxy Materials, a stockholder proposal must have been sent via registered, certified or express mail to the Company's Corporate Secretary at its principal executive office at 2025 Hamilton Avenue, San Jose, California 95125, and received by the Corporate Secretary of the Company at its principal executive offices no later than the Submission Deadline. As further disclosed in the 2023 Proxy Materials, no facsimile submissions are accepted.

The Company has no record of having received the Proposal via registered, certified or express mail at its principal executive offices by the Submission Deadline. In order to enable the Company to determine whether the Proposal was properly submitted in accordance with Rule 14a-8(e) under the Exchange Act, please provide proof of mailing and delivery of the Proposal at your earliest convenience.

In addition, please be advised that the Proposal, if properly submitted on or before the Submission Deadline, contains additional procedural deficiencies as described below, which the rules and regulations of the Securities and Exchange Commission (the "***SEC***") require us to bring to your attention.

Rule 14a-8(b) under the Exchange Act provides that a stockholder proponent ("***Proponent***") must submit sufficient proof of continuous ownership of (i) at least $2,000 in market value of the Company's securities entitled to vote on the proposal for at least three years, (ii) at least $15,000 in market value of the Company's securities entitled to vote on the proposal for at least two years or (iii) at least $25,000 in market value of the Company's securities entitled to vote on the proposal for at least one year as of the date the stockholder proposal was submitted. A Proponent's holdings may not be aggregated with those of another stockholder or group of stockholders to meet the requisite amount of securities necessary to be eligible to submit a proposal. Although the Proposal Email indicated that the confirmation may be forthcoming, the Company's stock records do not indicate that you are the record owner of sufficient shares to satisfy this requirement. To date, we have not received proof that you have satisfied the ownership requirements of Rule 14a-8(b) under the Exchange Act as of the date that the Proposal was submitted to the Company, if any.

To remedy this defect, you must submit sufficient proof of your continuous ownership of the requisite number of shares of the Company for the requisite period preceding and including the date the Proposal was submitted to the Company, if any. As explained in Rule 14a-8(b) and in SEC staff guidance, sufficient proof must be in the form of:

1. a written statement from the "record" holder of your shares (usually a broker or a bank) verifying that you continuously held the requisite number of shares of the Company for the requisite period preceding and including the date the Proposal was submitted, if any; or

2. if you have filed with the SEC a Schedule 13D, Schedule 13G, Form 3, Form 4 or Form 5, or amendments to those documents or updated forms, reflecting your ownership of the requisite number of shares of the Company as of or before the date on which the applicable eligibility period begins: (1) a copy of the schedule and/or form, and any subsequent amendments reporting a change in the ownership level and (2) a written statement that you continuously held the requisite number of shares of the Company for the requisite period.

If you intend to demonstrate ownership by submitting a written statement from the "record" holder of your shares as set forth in 1. above, please note 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 that acts as a securities depository. DTC is also known through the account name of Cede & Co. Under SEC Staff Legal Bulletin No. 14F ("***SLB 14F***"), only DTC participants are viewed as record holders of securities that are deposited at DTC. You can confirm whether your broker or bank is a DTC participant by asking your broker or bank or by checking DTC 's participant list, which is available at http://www.dtcc.com/client-center/dtc-directories.

In these situations, stockholders need to obtain proof of ownership from the DTC participant through which the securities are held, as follows:

1. If your broker or bank is a DTC participant, then you need to submit a written statement from your broker or bank verifying that you continuously held the requisite number of shares of the Company for the one-year period preceding and including the date the Proposal was submitted, if any.

2. If your broker or bank is not a DTC participant, then you need to submit proof of ownership from the DTC participant through which the shares are held verifying that you continuously held the requisite number of shares of the Company for the one-year period preceding and including the date the Proposal was submitted, if any.

You should be able to find out the identity of the DTC participant by asking your broker or bank. If your broker is an introducing broker, you may also be able to learn the identity and telephone number of the DTC participant through your account statements, because the clearing broker identified on your account statements will generally be a DTC participant. If the DTC participant that holds your shares is not able to confirm your individual holdings but is able to confirm the holdings of your broker or bank, then you need to satisfy the proof of ownership requirements by obtaining and submitting two proof of ownership statements verifying that, for the requisite period preceding and including the date the Proposal was submitted, if any, the requisite number of shares of the Company were continuously held: (i) one from your broker or bank confirming your ownership, and (ii) the other from the DTC participant confirming the broker or bank's ownership.

Rule 14a-8(f) under the Exchange Act requires that any response to this letter be postmarked or transmitted electronically no later than 14 calendar days from the date you receive this letter. Please address any response to the Corporate Secretary of the Company at the following address:

eBay Inc.
2025 Hamilton Avenue
San Jose, California 95125

Attention: Corporate Secretary
Marie Oh Huber, Senior Vice President, Chief Legal Officer, General Counsel and Secretary

Molly Finn, Vice President and Deputy General Counsel, Corporate and Assistant Secretary
Oliver Cohen, Senior Corporate Counsel, Securities and Governance

Alternatively, you may transmit any response by email to me, Oliver Cohen, at olcohen@ebay.com.

Thank you for your interest in eBay. Copies of Rule 14a-8 under the Exchange Act and SLB 14F are enclosed for your reference.

Sincerely,

Oliver Cohen

Oliver Cohen
Senior Corporate Counsel, Securities and Governance
eBay Inc.

Cc: Marie Oh Huber, Senior Vice President, Chief Legal Officer, General Counsel and Secretary
Molly Finn, Vice President and Deputy General Counsel, Corporate and Assistant Secretary

Title 17 —Commodity and Securities Exchanges
Chapter II —Securities and Exchange Commission
Part 240 —General Rules and Regulations, Securities Exchange Act of 1934
Subpart A —Rules and Regulations Under the Securities Exchange Act of 1934
Regulation 14A: Solicitation of Proxies

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z–2, 77z–3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78c–3, 78c–5,78d, 78e, 78f, 78g, 78i, 78j, 78j–1, 78j–4, 78k, 78k–1, 78*l,* 78m, 78n, 78n–1, 78*o,* 78*o*–4, 78*o*–10, 78p, 78q, 78q–1, 78s, 78u–5, 78w, 78x, 78dd, 78*ll,* 78mm, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4, 80b–11, 7201 *et seq.,* and 8302; 7 U.S.C. 2(c)(2)(E); 12 U.S.C.5221(e)(3); 18 U.S.C. 1350; and Pub. L. 111–203, 939A, 124 Stat.1376 (2010); and Pub. L. 112–106, sec. 503 and 602, 126 Stat. 326 (2012), unless otherwise noted. Section 240.3a4–1 also issued under secs. 3 and 15, 89 Stat. 97, as amended, 89 Stat. 121 as amended; Section 240.3a12–8 also issued under 15 U.S.C. 78a *et seq.,* particularly secs. 3(a)(12), 15 U.S.C. 78c(a)(12), and 23(a), 15 U.S.C. 78w(a); *See Part 240 for more*

Editorial Note: Nomenclature changes to part 240 appear at 57 FR 36501, Aug. 13, 1992, and 57 FR 47409, Oct. 16, 1992.

§ 240.14a-8 Shareholder proposals.

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

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

(b) ***Question 2:*** Who is eligible to submit a proposal, and how do I demonstrate to the company that I am eligible?

(1) To be eligible to submit a proposal, you must satisfy the following requirements:

(i) You must have continuously held:

(A) At least $2,000 in market value of the company's securities entitled to vote on the proposal for at least three years; or

(B) At least $15,000 in market value of the company's securities entitled to vote on the proposal for at least two years; or

(C) At least $25,000 in market value of the company's securities entitled to vote on the proposal for at least one year; or

(D) The amounts specified in paragraph (b)(3) of this section. This paragraph (b)(1)(i)(D) will expire on the same date that § 240.14a–8(b)(3) expires; and

(ii) You must provide the company with a written statement that you intend to continue to hold the requisite amount of securities, determined in accordance with paragraph (b)(1)(i)(A) through (C) of this section, through the date of the shareholders' meeting for which the proposal is submitted; and

(iii) You must provide the company 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. You must include your contact information as well as business days and specific times that you are available to discuss the proposal with the company. You must identify times that are within the regular business hours of the company's principal executive offices. If these hours are not disclosed in the company's proxy statement for the prior year's annual meeting, you must identify times that are between 9 a.m. and 5:30 p.m. in the time zone of the company's principal executive offices. If you elect to co-file a proposal, all co-filers must either:

(A) Agree to the same dates and times of availability, or

(B) Identify a single lead filer who will provide dates and times of the lead filer's availability to engage on behalf of all co-filers; and

(iv) If you use a representative to submit a shareholder proposal on your behalf, you must provide the company with written documentation that:

(A) Identifies the company to which the proposal is directed;

(B) Identifies the annual or special meeting for which the proposal is submitted;

(C) Identifies you as the proponent and identifies the person acting on your behalf as your representative;

(D) Includes your statement authorizing the designated representative to submit the proposal and otherwise act on your behalf;

(E) Identifies the specific topic of the proposal to be submitted;

(F) Includes your statement supporting the proposal; and

(G) Is signed and dated by you.

(v) The requirements of paragraph (b)(1)(iv) of this section shall not apply to shareholders that are entities so long as the representative's authority to act on the shareholder's behalf is apparent and self-evident such that a reasonable person would understand that the agent has authority to submit the proposal and otherwise act on the shareholder's behalf.

(vi) For purposes of paragraph (b)(1)(i) of this section, you may not aggregate your holdings with those of another shareholder or group of shareholders to meet the requisite amount of securities necessary to be eligible to submit a proposal.

(2) One of the following methods must be used to demonstrate your eligibility to submit a proposal:

(i) If you are the registered holder of your securities, which means that your name appears in the company's records as a shareholder, the company can verify your eligibility on its own, although you will still have to provide the company with a written statement that you intend to continue to hold the requisite amount of securities, determined in accordance with paragraph (b)(1)(i)(A) through (C) of this section, through the date of the meeting of shareholders.

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

(A) The first way is to submit to the company a written statement from the "record" holder of your securities (usually a broker or bank) verifying that, at the time you submitted your proposal, you continuously held at least $2,000, $15,000, or $25,000 in market value of the company's securities entitled to vote on the proposal for at least three years, two years, or one year, respectively. You must also include your own written statement that you intend to continue to hold the requisite amount of securities, determined in accordance with paragraph (b)(1)(i)(A) through (C) of this section, through the date of the shareholders' meeting for which the proposal is submitted; or

(B) The second way to prove ownership applies only if you were required to file, and filed, a Schedule 13D (§ 240.13d–101), Schedule 13G (§ 240.13d–102), Form 3 (§ 249.103 of this chapter), Form 4 (§ 249.104 of this chapter), and/or Form 5 (§ 249.105 of this chapter), or amendments to those documents or updated forms, demonstrating that you meet at least one of the share ownership requirements under paragraph (b)(1)(i)(A) through (C) of this section. If you have filed one or more of these documents with the SEC, you may demonstrate your eligibility to submit a proposal by submitting to the company:

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

(*2*) Your written statement that you continuously held at least $2,000, $15,000, or $25,000 in market value of the company's securities entitled to vote on the proposal for at least three years, two years, or one year, respectively; and

(*3*) Your written statement that you intend to continue to hold the requisite amount of securities, determined in accordance with paragraph (b)(1)(i)(A) through (C) of this section, through the date of the company's annual or special meeting.

(c) ***Question 3:*** How many proposals may I submit? Each 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.

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

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

(1) If you are submitting your proposal for the company's annual meeting, you can in most cases find the deadline in last year's proxy statement. However, if the company did not hold an annual meeting last year, or has changed the date of its meeting for this year more than 30 days from last year's meeting, you can usually find the deadline in one of the company's quarterly reports on Form 10–Q (§

249.308a of this chapter), or in shareholder reports of investment companies under § 270.30d–1 of this chapter of the Investment Company Act of 1940. In order to avoid controversy, shareholders should submit their proposals by means, including electronic means, that permit them to prove the date of delivery.

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

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

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

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

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

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

(h) ***Question 8:*** Must I appear personally at the shareholders' meeting to present the proposal?

(1) Either you, or your representative who is qualified under state law to present the proposal on your behalf, must attend the meeting to present the proposal. Whether you attend the meeting yourself or send a qualified representative to the meeting in your place, you should make sure that you, or your representative, follow the proper state law procedures for attending the meeting and/or presenting your proposal.

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

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

(i) ***Question 9:*** If I have complied with the procedural requirements, on what other bases may a company rely to exclude my proposal?

(1) Improper under state law: If the proposal is not a proper subject for action by shareholders under the laws of the jurisdiction of the company's organization;

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

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

> Note to paragraph (i)(2): We will not apply this basis for exclusion to permit exclusion of a proposal on grounds that it would violate foreign law if compliance with the foreign law would result in a violation of any state or federal law.

(3) ***Violation of proxy rules:*** If the proposal or supporting statement is contrary to any of the Commission's proxy rules, including § 240.14a-9, which prohibits materially false or misleading statements in proxy soliciting materials;

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

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

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

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

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

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

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

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

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

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

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

Note to paragraph (i)(9): A company's submission to the Commission under this section should specify the points of conflict with the company's proposal.

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

Note to paragraph (i)(10): A company may exclude a shareholder proposal that would provide an advisory vote or seek future advisory votes to approve the compensation of executives as disclosed pursuant to Item 402 of Regulation S–K (§ 229.402 of this chapter) or any successor to Item 402 (a "say-on-pay vote") or that relates to the frequency of say-on-pay votes, provided that in the most recent shareholder vote required by § 240.14a–21(b) of this chapter a single year (*i.e.,* one, two, or three years) received approval of a majority of votes cast on the matter and the company has adopted a policy on the frequency of say-on-pay votes that is consistent with the choice of the majority of votes cast in the most recent shareholder vote required by § 240.14a–21(b) of this chapter.

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

(12) ***Resubmissions.*** If the proposal addresses substantially the same subject matter as a proposal, or proposals, previously included in the company's proxy materials within the preceding five calendar years if the most recent vote occurred within the preceding three calendar years and the most recent vote was:

(i) Less than 5 percent of the votes cast if previously voted on once;

(ii) Less than 15 percent of the votes cast if previously voted on twice; or

(iii) Less than 25 percent of the votes cast if previously voted on three or more times.

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

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

(1) If the company intends to exclude a proposal from its proxy materials, it must file its reasons with the Commission no later than 80 calendar days before it files its definitive proxy statement and form of proxy with the Commission. The company must simultaneously provide you with a copy of its

submission. The Commission staff may permit the company to make its submission later than 80 days before the company files its definitive proxy statement and form of proxy, if the company demonstrates good cause for missing the deadline.

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

(i) The proposal;

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

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

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

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

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

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

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

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

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

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

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

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

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

[63 FR 29119, May 28, 1998; 63 FR 50622, 50623, Sept. 22, 1998, as amended at 72 FR 4168, Jan. 29, 2007; 72 FR 70456, Dec. 11, 2007; 73 FR 977, Jan. 4, 2008; 76 FR 6045, Feb. 2, 2011; 75 FR 56782, Sept. 16, 2010; 85 FR 70294, Nov. 4, 2020]

Shareholder Proposals

Staff Legal Bulletin No. 14F (CF)

Action: Publication of CF Staff Legal Bulletin

Date: October 18, 2011

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

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

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

A. The purpose of this bulletin

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

- Brokers and banks that constitute "record" holders under Rule 14a-8(b)(2)(i) for purposes of verifying whether a beneficial owner is eligible to submit a proposal under Rule 14a-8;
- Common errors shareholders can avoid when submitting proof of ownership to companies;
- The submission of revised proposals;
- Procedures for withdrawing no-action requests regarding proposals submitted by multiple proponents; and
- The Division's new process for transmitting Rule 14a-8 no-action responses by email.

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

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

1. Eligibility to submit a proposal under Rule 14a-8

To be eligible to submit a shareholder proposal, a shareholder must have continuously held at least $2,000 in market value, or 1%, of the company's securities entitled to be voted on the proposal at the shareholder meeting for at least one year as of the date the shareholder submits the proposal. The shareholder must also continue to hold the required amount of securities through the date of the meeting and must provide the company with a written statement of intent to do so.[1]

The steps that a shareholder must take to verify his or her eligibility to submit a proposal depend on how the shareholder owns the securities. There are two types of security holders in the U.S.: registered owners and beneficial owners.[2] Registered owners have a direct relationship with the issuer because their ownership of shares is listed on the records maintained by the issuer or

its transfer agent. If a shareholder is a registered owner, the company can independently confirm that the shareholder's holdings satisfy Rule 14a-8(b)'s eligibility requirement.

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

2. The role of the Depository Trust Company

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

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

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

In light of questions we have received following two recent court cases relating to proof of ownership under Rule 14a-8[7] and in light of the Commission's discussion of registered and beneficial owners in the Proxy Mechanics Concept Release, we have reconsidered our views as to what types of brokers and banks should be considered "record" holders under Rule 14a-8(b)(2)(i). Because of the transparency of DTC participants' positions in a company's securities, we will take the view going forward that, for Rule 14a-8(b)(2)(i) purposes, only DTC participants should be viewed as "record" holders of securities that are deposited at DTC. As a result, we will no longer follow *Hain Celestial*.

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

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

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

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

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

The shareholder will need to obtain proof of ownership from the DTC participant through which the securities are held. The shareholder should be able to find out who this DTC participant is by asking the shareholder's broker or bank.[9]

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

How will the staff process no-action requests that argue for exclusion on the basis that the shareholder's proof of ownership is not from a DTC participant?

The staff will grant no-action relief to a company on the basis that the shareholder's proof of ownership is not from a DTC participant only if the company's notice of defect describes the required proof of ownership in a manner that is consistent with the guidance contained in this bulletin. Under Rule 14a-8(f)(1), the shareholder will have an opportunity to obtain the requisite proof of ownership after receiving the notice of defect.

C. Common errors shareholders can avoid when submitting proof of ownership to companies

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

First, Rule 14a-8(b) requires a shareholder to provide proof of ownership that he or she has "continuously held at least $2,000 in market value, or 1%, of the company's securities entitled to be voted on the proposal at the meeting for at least one year by the date you submit the proposal" (emphasis added).[10] We note that many proof of ownership letters do not satisfy this requirement because they do not verify the shareholder's beneficial ownership for the entire one-year period preceding and including the date the proposal is submitted. In some cases, the letter speaks as of a date *before* the date the proposal is submitted, thereby leaving a gap between the date of the verification and the date the proposal is submitted. In other cases, the letter speaks as of a date *after* the date the proposal was submitted but covers a period of only one year, thus failing to verify the shareholder's beneficial ownership over the required full one-year period preceding the date of the proposal's submission.

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

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

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

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

D. The submission of revised proposals

On occasion, a shareholder will revise a proposal after submitting it to a company. This section addresses questions we have received regarding revisions to a proposal or supporting statement.

1. A shareholder submits a timely proposal. The shareholder then submits a revised proposal before the company's deadline for receiving proposals. Must the company accept the revisions?

Yes. In this situation, we believe the revised proposal serves as a replacement of the initial proposal. By submitting a revised proposal, the shareholder has effectively withdrawn the initial proposal. Therefore, the shareholder is not in violation of the one-proposal limitation in Rule 14a-8(c).[12] If the company intends to submit a no-action request, it must do so with respect to the revised proposal.

We recognize that in Question and Answer E.2 of SLB No. 14, we indicated that if a shareholder makes revisions to a proposal before the company submits its no-action request, the company can choose whether to accept the revisions. However, this guidance has led some companies to believe that, in cases where shareholders attempt to make changes to an initial proposal, the company is free to ignore such revisions even if the revised proposal is submitted before the company's deadline for receiving shareholder proposals. We are revising our guidance on this issue to make clear that a company may not ignore a revised proposal in this situation.[13]

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

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

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

A shareholder must prove ownership as of the date the original proposal is submitted. When the Commission has discussed revisions to proposals,[14] it has not suggested that a revision triggers a requirement to provide proof of ownership a second time. As outlined in Rule 14a-8(b), proving ownership includes providing a written statement that the shareholder intends to continue to hold the securities through the date of the shareholder meeting. Rule 14a-8(f)(2) provides that if the shareholder "fails in [his or her] promise to hold the required number of securities through the date of the meeting of shareholders, then the company will be permitted to exclude all of [the same shareholder's] proposals from its proxy materials for any meeting held in the following two calendar years." With these provisions in mind, we do not interpret Rule 14a-8 as requiring additional proof of ownership when a shareholder submits a revised proposal.[15]

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

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

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

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

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

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

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

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[1] *See* Rule 14a-8(b).

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

[3] If a shareholder has filed a Schedule 13D, Schedule 13G, Form 3, Form 4 or Form 5 reflecting ownership of the required amount of shares, the shareholder may instead prove ownership by submitting a copy of such filings and providing the additional information that is described in Rule 14a-8(b)(2)(ii).

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

[5] *See* Exchange Act Rule 17Ad-8.

[6] *See* Net Capital Rule, Release No. 34-31511 (Nov. 24, 1992) [57 FR 56973] ("Net Capital Rule Release"), at Section II.C.

[7] *See KBR Inc. v. Chevedden*, Civil Action No. H-11-0196, 2011 U.S. Dist. LEXIS 36431, 2011 WL 1463611 (S.D. Tex. Apr. 4, 2011); *Apache Corp. v. Chevedden,* 696 F. Supp. 2d 723 (S.D. Tex. 2010). In both cases, the court concluded that a securities

From: John Chevedden
To: Cohen, Oliver
Subject: (EBAY)
Date: Tuesday, January 9, 2024 9:29:13 AM

External Email

Mr. Cohn,

The rule is that the rule 14a-8 proposal timely reach a proper person at company headquarters which has clearly occurred.

John Chevedden

Exhibit C

Extract from 2023 Proxy Statement

May I propose actions for consideration at next year's Annual Meeting or nominate individuals to serve as directors?

You may submit proposals for consideration at future annual stockholder meetings. To be considered for inclusion in the proxy materials for our 2024 Annual Meeting of Stockholders, your proposal (other than a proposal for director nomination) must be received by our Corporate Secretary at our principal executive office no later than December 29, 2023. Your proposal must comply with the procedures and requirements set forth in Rule 14a-8 under the Securities Exchange Act of 1934, as amended. Your proposal should be sent via registered, certified or express mail to our Corporate Secretary at our principal executive office 2025 Hamilton Avenue, San Jose, California 95125; no facsimile submissions will be accepted.

A stockholder proposal or nomination for director will generally not be included in our proxy materials, but will otherwise be considered at the 2024 Annual Meeting of Stockholders so long as it is submitted to our Corporate Secretary at our principal executive office no earlier than February 22, 2024 and no later than March 23, 2024 and otherwise in accordance with our bylaws.

Stockholders who intend to solicit proxies in reliance on the SEC's universal proxy rule for director nominees submitted under the advance notice requirements of our bylaws must comply with the additional requirements of Rule 14a-19(b). We encourage stockholders who wish to submit a proposal or nomination to seek independent counsel. We will not consider any proposal or nomination that is not timely or otherwise does not meet the bylaw and SEC requirements. We reserve the right to reject, rule out of order, or take other appropriate action with respect to any proposal that does not comply with these and other applicable requirements.

Our bylaws also provide that, under certain circumstances, a stockholder or group of stockholders may include director candidates that they have nominated in the proxy materials for our annual meetings. These proxy access provisions of our bylaws provide, among other things, that a stockholder, or a group of up to 20 stockholders, owning 3% or more of the Company's outstanding stock continuously for at least three years, may nominate, and include in our proxy materials for an annual meeting, two individuals to serve as directors or 20% of the Board, whichever is greater. The nominating stockholder or group of stockholders also must deliver the information required by, and each nominee must meet the qualifications required by, our bylaws. Requests to include stockholder-nominated candidates in the Company's proxy materials for the 2024 Annual Meeting of Stockholders must be received by the Corporate Secretary at the above address no earlier than February 22, 2024 and no later than March 23, 2024. We advise you to review our bylaws, which contain these and other requirements with respect to advance notice of stockholder proposals and director nominations and proxy access nominations, including certain information that must be included concerning the stockholder and each proposal and nominee. Failure to comply with the requirements, procedures and deadlines in our bylaws may preclude presentation and consideration of the matter or nomination of the applicable candidate for election at the 2024 Annual Meeting of Stockholders. Our bylaws were filed with the SEC as an exhibit to our Annual Report on Form 10-K for the year ended December 31, 2022 and can be viewed by visiting our investor relations website at https://investors.ebayinc.com/financial-information/annual-reports/default.aspx. You may also obtain a copy by writing to our Corporate Secretary at our principal executive office (2025 Hamilton Avenue, San Jose, California 95125).

How can I get electronic access to the Proxy Statement and Annual Report?

The Notice, proxy card or voting instruction form will contain instructions on how to:

- view our proxy materials for the Annual Meeting on the Internet and vote your shares; and
- instruct us to send our future proxy materials to you electronically by email.

Our proxy materials are also available on our investor relations website at https://investors.ebayinc.com/financial-information/annual-reports/default.aspx.

You can choose to receive future proxy materials electronically by visiting our investor relations website at https://investors.ebayinc.com/financial-information/annual-reports/default.aspx. If you choose to receive future proxy materials electronically, you will receive an email next year with instructions containing a link to those materials and a link to the proxy voting site. Your choice to receive proxy materials electronically will remain in effect until you contact eBay Investor Relations and tell us otherwise. You may visit our investor relations website at https://investors.ebayinc.com or contact eBay Investor Relations by mail at 2025 Hamilton Avenue, San Jose, California 95125 or at ir@ebay.com or by telephone at (408) 376-7493.

How do I obtain a paper copy of the proxy materials?

If you would like to receive a paper copy of our proxy materials, please follow the instructions included in the Notice.

Exhibit D

Delaware Law Opinion

MORRIS, NICHOLS, ARSHT & TUNNELL LLP

1201 NORTH MARKET STREET
P.O. BOX 1347
WILMINGTON, DELAWARE 19899-1347

(302) 658-9200
(302) 658-3989 FAX

February 2, 2024

eBay Inc.
2025 Hamilton Ave.
San Jose, CA 95125

RE: Stockholder Proposal Submitted by John Chevedden

Ladies and Gentlemen:

This letter confirms our opinion regarding a stockholder proposal (the "Proposal") submitted to eBay Inc., a Delaware corporation (the "Company"), by John Chevedden (the "Proponent") for inclusion in the Company's proxy materials for its 2024 annual meeting of stockholders. For the reasons explained below, it is our opinion that implementation of the Proposal would cause the Company to violate Delaware law and that the Company lacks the power and authority to implement the Proposal.

The Proposal would result in an automatic amendment to the Company's Bylaws. The amendment would prohibit the Company's Board of Directors from awarding annual compensation to directors greater than $1 unless, among other requirements, the compensation is approved by a "majority of stockholder votes present in person or represented by proxies." This vote on director compensation "shall include only stockholder votes of stockholders that are not directors" of the Company.[1]

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[1] The Proposal provides:

"The Bylaws of eBay Inc. are amended as follows:

Article II, Section 2.12 [of the Bylaws] is deleted and replaced in its entirety as follows:

Compensation of Directors. The Board shall not have any authority to fix the compensation of directors. The compensation of directors the Corporation pays shall be fixed at $1 in a fiscal year; provided, however, the Corporation may pay, grant, or award compensation greater than $1 in a fiscal year if such compensation has been (1) disclosed to stockholders in advance of the fiscal year in which the Corporation will pay, grant, or award such compensation; (2) submitted to an approval vote of stockholders at an annual or special meeting of stockholders in advance of the fiscal year in which the Corporation will pay, grant, or award such disclosed compensation; and (3) approved by a majority of stockholder votes present in person or represented by proxies and entitled to vote cast in favor of the disclosed annual compensation at an annual or special meeting of stockholders in advance of the fiscal year in which the Corporation will pay, grant, or award such compensation, which majority shall include only stockholder votes of stockholders that are not directors of the Corporation."

Section 141(h) of the Delaware General Corporation Law (the "DGCL") authorizes a board of directors to fix director compensation unless that authority is restricted in the certificate of incorporation or bylaws. We doubt that a bylaw requiring annual stockholder authorization for director compensation greater than $1 is a lawful "restriction" under Section 141(h). But we need not express a view on that broader issue because the stockholder vote included in the Proposal would violate the specific and express provisions of Section 212(a) of the DGCL.

The DGCL grants each stockholder of a Delaware corporation a fundamental franchise right to cast one vote per share of stock on all matters submitted for stockholder action. All stockholders are entitled to one vote per share. Section 212(a) of the DGCL states:

> Unless otherwise provided in the certificate of incorporation and subject to § 213 of this title, each stockholder shall be entitled to 1 vote for each share of capital stock held by such stockholder.[2]

The Proposal would cause the Company to violate Section 212(a). The reference to "each stockholder" in Section 212(a) includes each director who holds common stock. Each director of the Company is therefore entitled to one vote for each share he or she holds if the Bylaws were amended to require a stockholder vote to authorize director compensation. The Proposal would violate the DGCL because it would divest certain stockholders (that is, stockholders who are directors) of their voting rights by Bylaw amendment.

Under Section 212(a), the "one vote for each share" right may be modified only in one of two ways, and neither of them applies to the Proposal:

- Section 212(a) is "subject to" Section 213 of the DGCL. Section 213 allows a corporation's board of directors to fix a record date in advance of a stockholder meeting, to determine which stockholders are entitled to vote at an upcoming meeting. Section 213 means only that a director must hold stock as of the record date for a meeting in order to vote at the meeting. The Proposal would disenfranchise directors even if they hold stock as of the record date for a meeting, so the reference to Section 213 in Section 212(a) does not apply to the Proposal.

- The "one vote for each share" voting right does not apply if contrary provisions are made "in the certificate of incorporation." We have reviewed the Amended and Restated Certificate of Incorporation, as amended, of the Company, and it contains no provision opting out of the "one vote for each share" right. The Proponent asks the stockholders of the Company to violate Section 212(a) of the DGCL by adopting a bylaw that opts out of the "one vote for each share" rule. But Section 212(a) is clear: any opt out must be included solely in the certificate of incorporation, not in a bylaw.[3]

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[2] 8 *Del. C.* § 212(a).

[3] When a statutory provision like Section 212(a) is subject only to opt-outs "otherwise provided in the certificate of incorporation," this language operates as a "bylaw excluder in the sense that those words make clear that the specific grant of authority in that particular statute is one that can be varied only by charter and therefore indisputably not

Section 212(a) neither contemplates nor permits amending bylaws to disenfranchise a sub-group of stockholders.[4] The case law interpreting Section 212(a) supports this conclusion. In each case where the Delaware courts have upheld a corporation's deviation from the "one vote for each share" rule, that deviation was implemented through a provision in the corporation's certificate of incorporation, not the bylaws.[5] The Proposal does not contemplate any such amendment of the Company's Amended and Restated Certificate of Incorporation. The Proposal instead seeks the unilateral amendment of the Bylaws by the stockholders to disqualify certain shares that would be entitled to vote in connection with a stockholder vote to authorize director compensation.

Because the Proposal would nullify the voting power of stock owned by directors, the Proposal asks the stockholders to amend the Bylaws of the Company in a manner expressly prohibited by Delaware law. Accordingly, it is our opinion that implementation of the Proposal would cause the Company to violate Delaware law and that the Company lacks the power and authority to implement the Proposal.

Very truly yours,

Morris, Nichols, Arsht & Tunnell LLP

one that can be altered by a § 109 bylaw." *Jones Apparel Group, Inc. v. Maxwell Shoe Company, Inc.*, 883 A.2d 837, 848 (Del. Ch. 2004).

[4] In contrast to the Proposal, if directors are concerned that their compensation may be questioned or challenged in litigation, the directors might ask stockholders to *ratify* the compensation by a stockholder vote that excludes stock owned by directors. Ratification votes are voluntarily submitted by a board and are *in addition to* the vote required to authorize an action. *See Lewis v. Vogelstein*, 699 A.2d 327, 334 (Del. Ch. 1997) (distinguishing ratification votes from "those instances in which shareholder votes are a necessary step in authorizing a transaction."). The Proposal would impose a mandatory *authorization* vote, not a voluntary *ratification* vote. Accordingly, the Proposal must comply with the "one vote for each share" rule imposed by Section 212(a).

[5] *See Colon v. Bumble, Inc.*, 2023 WL 5920100 (Del. Ch. Sept. 12, 2023); *Providence & Worcester Co. v. Baker*, 378 A.2d 121 (Del. 1977); *Williams v. Geier*, 1987 WL 11285 (Del Ch. May 20, 1987); *Sagusa, Inc. v. Magellan Petroleum Corp*., 1993 WL 512487 (Del. Ch. Dec. 1, 1993), *aff'd*, 650 A.2d 1306 (Del. 1994) (Table).

February 3, 2024

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

 # 1 Rule 14a-8 Proposal
eBay Inc. (EBAY)
Stockholder Approval of Director Compensation
John Chevedden
516751, 516776

Ladies and Gentlemen:

This is a counterpoint to the February 2, 2024 no-action request.

Page 4 of the no action request cites the requirement that a rule 14a-8 proposal must be delivered to the "company's principal executive offices." Page 22 of the no action request has the exhibit that shows that the proposal was deceived to the email address of Oliver Cohen on December 28, 2023. The email address of Oliver Cohen is the "company's principal executive offices" because the email address of Oliver Cohen forwarded the no action request to the proponent per the attached exhibit.

It is irrelevant that the Company quibbles with the delivery of the rule 14a-8 proposal to other Company email addresses. There is no requirement under rule 14a-8 that a rule 14a-8 proposal must be delivered to at least 2 out of 5 email addresses at the company's principal executive offices.

The Company has 4 other purported issues with the rule 14a-8 proposal which will be rebutted. When a Company puts forth so many issues it often means that no one issue is sufficient and that it is hoping for a cumulative effect. Rule 14a-8 does not provide for a cumulative effect that 5 weak arguments equal one strong argument.

Sincerely,

John Chevedden

cc: Oliver Cohen

On January 4, 2024, after the recipients who were current eBay employees had reviewed the Initial Emails, they were able to determine that they purported to deliver a Rule 14a-8 stockholder proposal, and communicated the existence of the Initial Emails to the Corporate Secretary of the Company (the appropriate person for receipt of such a proposal). The Company sent the Proponent a letter (the "***Deficiency Notice***") by overnight courier and email, informing the Proponent, among other things, that the Company had not received the Proposal and requesting proof of mailing and delivery. To date, the Proponent has not provided such proof.

B. A proposal may be excluded under Rule 14a-8(e)(2) if the proposal is not received at the company's principal executive offices not less than 120 calendar days before the date of the company's proxy statement released to shareholders in connection with the previous year's annual meeting.

Under Rule 14a-8(f)(1), a company may exclude a stockholder proposal if the proponent fails to follow one of the eligibility or procedural requirements in Rule 14a-8. Typically, a company may exclude a proposal on this basis only after it has timely notified the proponent of an eligibility or procedural problem and the proponent has failed to timely and adequately correct the problem. However, per Rule 14a-8(f)(1), a company "need not provide [the proponent] such notice of a deficiency if the deficiency cannot be remedied, *such as if [the proponent] fail[s] to submit a proposal by the company's properly determined deadline*" (emphasis added).

One of the eligibility or procedural requirements in Rule 14a-8 is the requirement to deliver a proposal by the applicable deadline. If a proponent is submitting a proposal "for the company's annual meeting, [the proponent] can, in most cases, find the deadline in [the prior] year's proxy statement." See Rule 14a-8(e)(1). Under Rule 14a-8(e)(2):

> The deadline is calculated in the following manner if the proposal is submitted for a regularly scheduled annual meeting. The proposal must be received at the company's principal executive offices not less than 120 calendar days before the date of the company's proxy statement released to shareholders in connection with the previous year's annual meeting.

Consistent with Rule 14a-8(e)(2), the Company calculated the deadline for receiving stockholder proposals submitted for its 2024 Annual Meeting of Stockholders by (i) starting with the release date of the 2023 Proxy Statement (i.e., April 28, 2023), (ii) counting back 120 calendar days (i.e., December 29, 2022) and (iii) increasing the year by one (i.e., December 29, 2023), which includes an extra day this year because 2024 is a leap year. Because the Staff's guidance in Staff Legal Bulletin No. 14 (July 13, 2001) ("***SLB 14***"), Section C.3.b, guides companies to "[i] start with the release date disclosed in the previous year's proxy statement; [ii] increase the year by one; and [iii] count back 120 calendar days," the methodology described in SLB 14 would have resulted in a calculated deadline of December 30, 2023. However, the Company believes its calculation methodology is consistent with Rule 14a-8(e)(2) and that December 29, 2023 was properly determined as the deadline for purposes of Rule 14a-8(e)(2), for the reasons discussed below. The Company did not receive the Proposal by either the December 29, 2023

From: John Chevedden
To: Tara McMillan; Westerman, Josh; Andrews, Scott; Lorenz, Diana; Cohen, Oliver
Subject: Rule 14a-8 Proposal (EBAY)
Date: Thursday, December 28, 2023 10:34:29 PM
Attachments: Scan2023-12-28_192303.pdf

External Email

Rule 14a-8 Proposal (EBAY)

Dear Ms. McMillan,
Please see the attached rule 14a-8 proposal.
Please confirm that this is the correct email address for rule 14a-8 proposals.
Per SEC SLB 14L, Section F, the Securities and Exchange Commission Staff "encourages both companies and shareholder proponents to acknowledge receipt of emails when requested."
I so request.

Hard copies of any request related to this proposal are not needed as long as you request that I confirm receipt in the email cover message.

The proponent is available for a telephone meeting on the first Monday and Tuesday after 10-days of the proposal submittal date at noon PT.
Please arrange in advance in a separate email message regarding a meeting if needed.
John Chevedden

JC

Begin forwarded message:

From: "Cohen, Oliver" <olcohen@ebay.com>
Subject: eBay - No Action Letter Request
Date: February 2, 2024 at 3:10:21 PM PST
To: John Chevedden [redacted] PII
Cc: "Finn, Molly" <mofinn@ebay.com>, "Dunlap, Kristin" <kdunlap@ebay.com>

Hi Mr. Chevedden,

Please see attached for a No Action Letter Request that was submitted to the SEC this afternoon.

Thank you,

Oliver Cohen
Senior Corporate Counsel, Securities and Governance
eBay Inc.

M: +1 (610) 405-4896 | olcohen@ebay.com

ebay

PDF

eBay - No-Action...on).pdf

February 6, 2024

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

 # 2 Rule 14a-8 Proposal
eBay Inc. (EBAY)
Stockholder Approval of Director Compensation
John Chevedden
516776

Ladies and Gentlemen:

This is an additional counterpoint to the February 2, 2024 no-action request.

I write in response to the notice from eBay that it intends to omit from its proxy statement and form of proxy for its 2024 Annual Meeting of Stockholders my stockholder proposal and supporting statement. We have sent a copy of this correspondence to eBay.

eBay asserts five bases for excluding the proposal:

1. Missed the submission deadline (Rule 14a-8(e)(2))
2. Implementation of the proposal will cause eBay to violate Delaware law (Rule 14a-8(i)(2))
3. eBay lacks the power and authority to implement the proposal (Rule 14a-8(i)(6)
4. The proposal deals with matters related to eBay ordinary business operations (Rule 14a-8(i)(7))
5. The proposal is vague and indefinite (Rule 14a-8(i)(3)).

I sent an earlier letter that rebuts the first basis. This letter rebuts the remaining four bases and urges the SEC to seek an enforcement action if eBay so omits the proposal.

The second and third bases constitute a single basis, namely the proposal will cause eBay to violate Delaware law. In the second listed basis, eBay asserts it lacks the power and authority to implement the proposal because doing so will violate Delaware law. Below, we rebut both bases together in demonstrating that the proposal does not violate Delaware law.
We also address the third and fourth bases, ordinary business operations and vague and indefinite.

1. **Violation of Delaware Law**

eBay Argument

eBay asserts implementing the proposal would cause it to violate Delaware law. Specifically, the proposal will disenfranchise directors that also own eBay shares, since those directors cannot vote those shares in the required stockholder vote on director compensation. It explains that Delaware law generally provides all stockholders with "one vote for every share". Any directors that are also stockholders will then not have the opportunity to vote in the matter of director compensation.

Rebuttal

We acknowledge the bylaw amendment in the proposal disenfranchises corporate directors that also own shares in the corporation. That's the point. As indicated in the Supporting Statement, if the directors do not vote on their own compensation, then the "vote result represents the independent views of stockholders."

Also, it is so patently obvious that there is no greater conflict of interest than when directors design and approve their own compensation that we need not prove this any further. Directors are inherently conflicted in this matter. Delaware law provides a mechanism for overcoming this conflict.

Delaware law restricts how corporate directors, regardless of whether and how many shares they own in the corporation, decide on matters in which they have a material interest. In this instance, we can interpret Delaware law to allow a bylaw term that prevents corporate directors from voting, *as shareholders*, on their own compensation. Delaware law places a higher priority on limiting the impact of that personal interest than on preserving the right of a director to vote, as a shareholder, on that compensation.

Under various circumstances, Delaware law also restricts how shareholders decide on many matters in which they have a material interest. It follows that Delaware law would restrict directors *as shareholders* in how they vote on the specific matter of their own compensation.

There is no guidance, in Delaware statue or case law, that pertains to corporate directors voting on their own compensation *as shareholders*. To our knowledge, the law that pertains to shareholder votes on director compensation do not address in any way how directors *as shareholders* can vote on director compensation. Thus, we must infer how Delaware law would apply to this bylaw term from other similar instances of how that law would apply. We consider how Delaware law applies to specific director compensation votes and to general director conflicts.

Specific director compensation votes

Delaware law does prescribe how corporate directors vote on their own compensation, *as directors* rather than *as shareholders*. It also provides some guidance about how all shareholders vote on director compensation. Overall, this law prescribes strict limits on these votes.

Director votes on director compensation

Statute: Delaware statute does allow corporations to compensate directors (DGCL Section 141(h)). This section also allows corporate bylaws to restrict this compensation, as this proposal provides. Otherwise, statute is silent as to director compensation.

Case law: Delaware case law also limits how directors can approve their own compensation. These limits pertain to directors approving this compensation as a voting member of the corporate board of directors, rather than as a shareholder. In many of these cases the director is also a shareholder, and the court still restricts the directors' discretion to approve their own compensation.

Typically, the limit involves having independent shareholders approve director compensation. The general principle is, "a majority of fully informed, uncoerced, and *disinterested* stockholders" (our emphasis) are needed to approve director compensation, as stated most recently and forcefully in *Investors Bancorp*. Directors that are stockholders in the corporation would not be disinterested, and thus would not have a vote on their own compensation.

Shareholder votes on director compensation

Statute: Delaware statute makes no provision for shareholders to vote on director compensation. Instead, it allows corporate bylaws to restrict director compensation in whatever way shareholders deem appropriate, including with a binding shareholder vote on compensation, as in this proposal.

Case law: Like statute, there are very few cases that pertain to whether, when, and how shareholders vote on director compensation. *Investors Bancorp* is the most recent and forceful case. As noted above, that case does provide for a binding vote of disinterested shareholders to approve compensation.

General director independence and conflicts

Delaware law addresses director independence in many ways. Overall, it places a high priority on assuring directors decide in ways that favor the corporation interest over their own, including not voting on the decision. Delaware law addresses those votes in the director capacity as a member of the board of directors, rather than as a shareholder.

Delaware law also provides for assuring shareholders with conflicts decide matters in ways that do not unduly favor their own interest relative to other shareholders. To our knowledge, Delaware law does not provide for limits on directors voting *as shareholders* on matters where they may have a conflict, beyond the general limits on all shareholders on such matters.

As a voting member of the board of directors

Statute: For decisions where a director may have a conflict, Delaware statute clearly requires approval of only "disinterested" directors (DGCL Section 144(a)(1)). While statute is not specific about the nature and kinds of decisions, it refers to "transactions" with directors, and director compensation is clearly a "transaction". It follows that since directors are not "disinterested" in deciding on their own compensation, then shareholders may prevent, through the corporate bylaws, directors from voting on that compensation.

Case law: Delaware cases further emphasizes director independence. Numerous cases address the process by which directors decide on many matters, and all limit or prevent conflicted directors from voting on such decisions.

As a shareholder

Delaware law compels a shareholder to abstain from a vote in certain cases of a direct and material conflict of interest. In this sense, the proposal codifies this law in eBay bylaws in the matter of director compensation.

Statute: Delaware statute is largely silent as to whether, when, and how shareholders can vote on a matter in which the shareholder has a conflict.

Case law: Numerous cases limit or prevent a shareholder from voting on a corporate matter in which they have a specific conflict. Almost all cases involve defining the nature and extent of conflict, and the extent of ownership needed to put a shareholder in a position of having a material influence over a shareholder vote. Directors that are also shareholders have a clear conflict in voting on their own compensation, and these cases would serve to limit a director voting, as a shareholder, on their own compensation.

Conclusion

We concur this proposal will disenfranchise eBay directors as shareholders. At the same time, directors have a clear, inherent conflict of interest in designing and approving their own compensation.

Delaware law will allow a bylaw amendment that prevents directors from voting, *as shareholders*, on their own compensation. Statue and case law favors addressing this clear conflict over whatever rights directors have as shareholders. That law allows eBay to codify in its bylaws a standard practice of directors and shareholders abstaining from decisions for which they have a conflict of interest.

Thus, proposal does not violate Delaware law. We expect Delaware Chancery Court would find the bylaw valid.

2. Ordinary Business

eBay asserts the bylaw term will "micromanage the company". It thus allegedly represents ordinary business, subject to exclusion under Rule 14a-8(i)(7). Either eBay did not read the proposal closely, or misstates and misunderstands, inadvertently or willfully, the contents of the proposal. eBay fails to show how the specific bylaw term, providing for a shareholder vote on director compensation, represents ordinary business.

After an exhaustive recitation of the precedent about the ordinary business exception (p. 12-13), eBay says the proposal will "remove a fundamental tool of the Board's discretion – the ability to determine the compensation of directors…" If we take "determine" to mean "approving", then this is true: approving director compensation will lie exclusively with shareholders, who will have final, restrictive authority over that compensation.

eBay then makes two arguments, following two general principles the SEC uses in assessing whether a proposal represents "ordinary business". First, it asserts the proposal "removes … discretion entirely." Second, the proposal is "too complex" for shareholders to decide on.

Board discretion: As for the first principle, eBay asserts the proposal will "remove a fundamental tool of the Board's discretion – the ability to determine the compensation of directors…". If we take "determine" to mean design and recommend, in whatever structure

and amount it wishes, in whatever detail the Board desires, the proposed director compensation for a fiscal year, then the proposal does not remove any such discretion. The Board can design whatever compensation plan it wishes, without any restriction from shareholders. It must then disclose whatever it designs, submit that design to a vote, and win a majority of shares voting. The bylaw term does not prescribe any element or detail of director compensation, nor does it provide in any way for shareholders to so prescribe. It merely provides for shareholders to vote on and approve whatever compensation the Board discloses.

Too complex for shareholders: As for the second principle, eBay asserts "[d]iversified stockholders, who lack the extensive Company- and market-specific knowledge necessary to make informed and carefully considered decisions, are not well positioned to substitute their judgment for the Board's judgment on these matters." eBay fails to show in any way how director compensation is too complex a subject for shareholders to vote on. We note shareholders now vote annual on executive compensation, a subject of at least as much and probably deeper complexity.

3. <u>Vague and Indefinite</u>

Again, either eBay did not read the proposal closely, or misstates and misunderstands, inadvertently or willfully, the contents of the proposal. eBay fails to show how the specific bylaw term, providing for a shareholder vote on director compensation, is vague and indefinite.

eBay asserts the bylaw term "creates significant uncertainty about whether or how it would apply to the compensation of directors who are also executive officers…" and "is not limited to the compensation of non-employee directors…" That uncertainty would preclude "stockholders from understanding the Proposal…"

The proposal is quite clear. The bylaw term refers to only "compensation of directors". It makes no reference to executive officers. If executive officers now or in the future receive additional compensation as directors, besides what they receive as executives, then that additional compensation would fall within the bounds of the bylaw term. To our knowledge, eBay executive officers do not receive compensation for service on the Board, as is the customary practice in US corporations. Otherwise, a fair reading of the plain text of the bylaw term refers only to compensation of directors, as directors.

Sincerely,

John Chevedden

cc: Oliver Cohen

[EBAY: Rule 14a-8 Proposal, December 28, 2023]
[This line and any line above it – *Not* for publication.]

Proposal 4 – Bylaw Amendment: Stockholder Approval of Director Compensation

The Bylaws of eBay Inc. are amended as follows:

Article II Section 2.12 is deleted and replaced in its entirety as follows:

Compensation of Directors. The Board shall not have any authority to fix the compensation of directors. The compensation of directors the Corporation pays shall be fixed at $1 in a fiscal year; provided, however, the Corporation may pay, grant, or award compensation greater than $1 in a fiscal year if such compensation has been (1) disclosed to stockholders in advance of the fiscal year in which the Corporation will pay, grant, or award such compensation; (2) submitted to an approval vote of stockholders at an annual or special meeting of stockholders in advance of the fiscal year in which the Corporation will pay, grant, or award such disclosed compensation; and (3) approved by a majority of stockholder votes present in person or represented by proxies and entitled to vote cast in favor of the disclosed annual compensation at an annual or special meeting of stockholders in advance of the fiscal year in which the Corporation will pay, grant, or award such compensation, which majority shall include only stockholder votes of stockholders that are not directors of the Corporation.

Supporting statement

EBay stockholders seek an independent Board, one that has as its sole objective representing stockholders without conflict of interest. One interest pertains to compensation and how EBay compensates directors for board service. Stockholders seek the authority to approve compensation that directors receive from EBay.

Stockholders want and need authority over how and how much EBay compensates directors. If stockholders approve compensation, then directors have the greatest incentive to work in the sole interest of stockholders. Currently, directors design and approve compensation with no approval from stockholders. Directors receive whatever compensation they desire. This bylaw amendment corrects this problem.

The bylaw amendment provides for a stockholder vote on director compensation. Directors can continue to design and propose compensation structure and amount, including the mix and amount of cash and equity. Stockholders will have final approval over whether directors receive what directors propose. Stockholders will vote on director compensation as disclosed in the proxy statement for a stockholder meeting before the fiscal year in which directors receive that compensation. Stock owned by directors will not count in the vote, so the vote result represents the independent views of stockholders.

I urge stockholders to approve this bylaw amendment and assume proper authority over the compensation of directors who represent us.