



DIVISION OF
CORPORATION FINANCE

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

January 9, 2025

Michael E. Mariani
Cravath, Swaine & Moore LLP

Re: International Business Machines Corporation (the "Company")
Incoming letter dated December 20, 2024

Dear Michael E. Mariani:

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

There appears to be some basis for your view that the Company may exclude the Proposal under Rule 14a-8(f) because the Proponent did not comply with Rules 14a-8(b)(1)(i), 14a-8(b)(1)(ii), and 14a-8(b)(1)(iii). As required by Rule 14a-8(f), the Company notified the Proponent of the problems, and the Proponent failed to adequately correct them. Accordingly, we will not recommend enforcement action to the Commission if the Company omits the Proposal from its proxy materials in reliance on Rules 14a-8(b)(1)(i), 14a-8(b)(1)(ii), 14a-8(b)(1)(iii), and 14a-8(f).

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

Sincerely,

Rule 14a-8 Review Team

cc: Marshall Hoyt

Michael E. Mariani
mmariani@cravath.com
+1-212-474-1007
New York

December 20, 2024

International Business Machines Corporation
Shareholder Proposal of Marshall Hoyt
Securities Exchange Act of 1934—Rule 14a-8

Ladies and Gentlemen:

I am writing on behalf of our client, International Business Machines Corporation, a New York corporation (“IBM” or the “Company”), in accordance with Rule 14a-8(j) of the Securities Exchange Act of 1934, as amended, to respectfully request that the Staff of the Division of Corporation Finance (the “Staff”) of the Securities and Exchange Commission (the “Commission”) concur with our view that IBM may exclude a shareholder proposal and supporting statement (the “Proposal”) submitted by Marshall Hoyt (the “Proponent”) from the proxy materials to be distributed by IBM in connection with its 2025 annual meeting of shareholders (the “2025 Proxy Materials”). A copy of the Proposal is included in Exhibit A. IBM has advised us as to the factual matters set forth below.

In accordance with the Staff announcement published on November 7, 2023, we are submitting this letter electronically to the Staff via the online shareholder proposal form. Pursuant to Rule 14a-8(j), we are:

- submitting this letter no later than 80 calendar days before the Company intends to file its definitive 2025 Proxy Materials with the Commission; and
- concurrently sending copies of this submission to the Proponent.

Rule 14a-8(k) and Staff Legal Bulletin No. 14D (Nov. 7, 2008) provide that shareholder proponents are required to send companies a copy of any correspondence that the proponents elect to submit to the Commission or the Staff. Accordingly, the Company is taking this opportunity to inform the Proponent that if the Proponent elects to submit additional correspondence to the Commission or the Staff with respect to the Proposal, a copy of that correspondence should be furnished concurrently to the undersigned on behalf of the Company and to Jorge E. Mancillas, Senior Attorney of the Company.

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CRAVATH, SWAINE & MOORE LLP

THE PROPOSAL

The text of the Proposal is attached as Exhibit A.

BASES FOR EXCLUSION

On behalf of the Company, we hereby respectfully request that the Staff concur in the Company's view that it may exclude the Proposal from the 2025 Proxy Materials pursuant to:

- Rule 14a-8(b)(1)(i) and Rule 14a-8(f)(1) because the Proponent failed to provide timely and requisite proof of his ownership of Company securities after receiving timely notice of such deficiency.
- Rule 14a-8(b)(1)(ii) and Rule 14a-8(f)(1) because the Proponent failed to provide a written statement that he intends to continue to hold the requisite amount of Company securities through the date of the 2025 annual meeting of shareholders after receiving timely notice of such deficiency.
- Rule 14a-8(b)(1)(iii) and Rule 14a-8(f)(1) because the Proponent failed to provide a written statement regarding his ability to meet with the Company after receiving timely notice of such deficiency.

BACKGROUND

The Proponent submitted the Proposal to the Company in a letter via certified mail on September 9, 2024 that was received by the Company on September 20, 2024. See Exhibit A. The Proponent's submission did not include (i) proof of his ownership of Company securities, (ii) a written statement that he intends to continue to hold the requisite number of Company shares through the date of the Company's 2025 annual meeting of shareholders or (iii) a written statement that he was available to meet with the Company. The Company reviewed its stock records, which did not indicate that the Proponent was the record owner of any of the Company's stock.

Accordingly, on September 26, 2024, within 14 days of the date that the Company received the Proposal, the Company sent the Proponent a letter providing notice of the procedural deficiencies set forth above as required by Rule 14a-8(f)(1) (the "Deficiency Notice"). In the Deficiency Notice, attached as Exhibit B, the Company informed the Proponent of the requirements of Rule 14a-8 and how the Proponent could cure the identified procedural deficiencies. Among other things, the Deficiency Notice:

- included the proof of ownership requirements of Rule 14a-8;
- stated that, according to the Company's transfer agent, the Proponent was not a record owner of Company securities;
- notified the Proponent that he had not provided sufficient evidence of beneficial ownership of Company securities to meet Rule 14a-8's eligibility requirements;
- discussed the type of written statement or documentation necessary to demonstrate beneficial ownership under Rule 14a-8, including that the Proponent could submit a written statement from the record holder of his securities (usually a broker or bank)

verifying, at the time he submitted the Proposal, that he continuously held the requisite amount of Company securities and that in accordance with the SEC's Staff Legal Bulletin 14G, dated October 16, 2012 ("SLB 14G"), such proof of ownership must cover the relevant period preceding and including September 9, 2024, the date the letter containing the Proposal was postmarked;

- included information on what types of brokers and banks are considered record holders for proof of ownership purposes;
- notified the Proponent that he needed to timely provide a written statement that he intends to continue to hold the requisite IBM securities through the date of the Company's 2025 annual meeting of shareholders as required by Rule 14a-8;
- notified the Proponent that Rule 14a-8 requires him to submit a written statement providing his availability to meet with the Company; and
- informed the Proponent that any response to the Deficiency Notice had to be sent to the Company within 14 calendar days of the date he received the Deficiency Notice.

The Deficiency Notice also included links to Rule 14a-8, Staff Legal Bulletin 14F, dated October 18, 2011 ("SLB 14F") and SLB 14G. The Company sent the Deficiency Notice to the Proponent via FedEx on September 26, 2024 and received confirmation that it was received by the Proponent on September 27, 2024. See Exhibit B.

On November 4, 2024, the Company received a letter from the Proponent, dated and postmarked October 31, 2024 (the "Proponent Response Letter"). The Proponent Response Letter, which is attached as Exhibit C, consisted of a cover letter written by the Proponent stating that he was "enclosing the documentation you requested concerning the amount of IBM shares I own and the length of time I have owned them." The enclosed documentation consisted of printed excerpts from the Proponent's brokerage statements.

The Company has received no other correspondence from the Proponent.

ANALYSIS

I. The Proposal may be excluded from the 2025 Proxy Materials pursuant to Rule 14a-8(b)(1)(i) and Rule 14a-8(f)(1) because the Proponent failed to provide timely and requisite proof of his ownership of Company securities after receiving timely notice of such deficiency.

Rule 14a-8(b)(1)(i) provides that to be eligible to submit a proposal for an annual meeting, a shareholder proponent must have continuously held: at least \$2,000 in market value of the company's securities entitled to vote on the proposal for at least three years; or at least \$15,000 in market value of the company's securities entitled to vote on the proposal for at least two years; or at least \$25,000 in market value of the company's securities entitled to vote on the proposal for at least one year. If the proponent is not a registered holder, he or she must provide proof of beneficial ownership of the securities. Under Rule 14a-8(f)(1), a company may exclude a shareholder proposal if the proponent fails to provide evidence that he or she meets the

eligibility requirements of Rule 14a-8(b) so long as the company timely notifies the proponent of the deficiency and the proponent fails to correct the deficiency within the required time.

According to the Company's transfer agent, the Proponent was not a registered holder of the Company stock. The Company therefore timely sought verification from the Proponent of his beneficial ownership of shares by sending the Deficiency Notice. The Deficiency Notice (1) informed the Proponent that he did not establish the required ownership and therefore he would need to establish continuous beneficial ownership of the requisite number of shares of Company common stock for at least the required period by the date the proposal was submitted (September 9, 2024) and (2) explained that to the extent the Proponent owned IBM shares, he was not the registered holder and was therefore required under Rule 14a-8(b) to submit to IBM a written statement from the record holder of the Company's shares of common stock verifying that, at the time the Proponent submitted the Proposal, the Proponent had continuously beneficially held the requisite number of shares of IBM's common stock for at least the required period by the date the proposal was submitted (September 9, 2024). See Exhibit B. The Deficiency Notice further directed the Proponent to Rule 14a-8 and SLB 14F and SLB 14G for guidance with respect to the standard for proof of ownership, and also included links to Rule 14a-8, SLB 14F and SLB 14G. However, the Proponent failed to respond during the applicable 14 day period to respond to the Deficiency Notice under Rule 14a-8. On October 31, 2024, 20 days after the 14 day period to respond to the Deficiency Notice ended, the Proponent sent the Proponent Response Letter (see Exhibit C), which included brokerage statement excerpts.

The Staff has consistently concurred in exclusion of shareholder proposals under Rule 14a-8(b)(1)(i) and 14a-8(f)(1) where proponents failed to provide proof of ownership during the applicable 14 day period to respond to a company's timely notice of deficiency.¹

In addition to the Proponent Response Letter being untimely, the brokerage statement excerpts provided therein would have been insufficient to prove continuous ownership of a requisite amount of shares for a requisite period of time to satisfy the ownership requirements of Rule 14a-8 in any event. In particular, account statements do not satisfy the requirements of Rule 14a-8(b)(1)(i) because they fail to demonstrate continuous ownership of a company's securities for the requisite period. In Section C.1.c(2) of Staff Legal Bulletin No. 14 (July 13,

¹ See Marvell Technology, Inc. (Apr. 22, 2024) (concurring in exclusion under Rule 14a-8(b) and Rule 14a-8(f) of a proposal where proof of ownership was provided 17 days following receipt of the company's timely deficiency notice); WEX Inc. (Apr. 12, 2024) (concurring in exclusion under Rule 14a-8(b) and Rule 14a-8(f) of a proposal where proof of ownership was not provided following receipt of the company's timely deficiency notice); General Motors Company (Apr. 4, 2023) (concurring in exclusion under Rule 14a-8(b) and Rule 14a-8(f) of a proposal where proof of ownership was provided 15 days following receipt of the company's timely deficiency notice); Astronics Corporation (Mar. 28, 2023) (concurring in exclusion under Rule 14a-8(b) and Rule 14a-8(f) of a proposal where proof of ownership was provided 23 days following receipt of the company's timely deficiency notice); CDW Corporation (Mar. 28, 2023) (concurring in exclusion under Rule 14a-8(b) and Rule 14a-8(f) of a proposal where proof of ownership was provided 15 days following receipt of the company's timely deficiency notice); CVS Health Corporation (Mar. 28, 2023) (concurring in exclusion under Rule 14a-8(b) and Rule 14a-8(f) of a proposal where proof of ownership was not provided following receipt of the company's timely deficiency notice); The Home Depot, Inc. (Mar. 9, 2023) (concurring in exclusion under Rule 14a-8(b) and Rule 14a-8(f) of a proposal where proof of ownership was not provided following receipt of the company's timely deficiency notice); Walgreens Boots Alliance, Inc. (November 8, 2022) (concurring in exclusion under Rule 14a-8(b) and Rule 14a-8(f) of a proposal where proof of ownership was provided 16 days following receipt of the company's timely deficiency notice).

2001) (“SLB 14”), the Staff addressed whether periodic investment statements, like account statements, could satisfy the continuous ownership requirements of Rule 14a-8(b):

(2) Do a shareholder’s monthly, quarterly or other periodic investment statements demonstrate sufficiently continuous ownership of the securities?

No. A shareholder must submit an affirmative written statement from the record holder of his or her securities that specifically verifies that the shareholder owned the securities continuously for a period of one year as of the time of submitting the proposal.

In this case, the brokerage statement excerpts only verify beneficial ownership of IBM common stock in the Proponent’s account for the one month period of January 1, 2019 through January 31, 2019, for the one month period of September 1, 2021 through September 30, 2021, for the one month period from August 1, 2024 through August 31, 2024 and for the one month period of September 1, 2024 through September 30, 2024, respectively. The brokerage statement excerpts do not establish any ownership of IBM common stock on any other dates.

The Staff has on numerous occasions permitted exclusion under Rule 14a-8(f)(1) of proposals on the grounds that the brokerage statement or account statement submitted in support of a proponent’s ownership was insufficient proof of such ownership under Rule 14a-8(b).² While the Company acknowledges that the Staff’s guidance in SLB 14L provides that “companies should identify any specific defects in the proof of ownership letter, even if the company previously sent a deficiency notice prior to receiving the proponent’s proof of ownership if such deficiency notice did not identify the specific defect(s),” the Proponent failed to provide any proof of ownership during the 14 day period to respond to the Company’s timely notice of deficiency and therefore any further verification the Proponent could have submitted would still have been untimely under Rule 14a-8.

If the Proponent fails to follow Rule 14a-8(b), Rule 14a-8(f)(1) provides that the Company may exclude the Proposal, but only after it has notified the Proponent in writing of the procedural or eligibility deficiencies, as well as of the timeframe for the Proponent’s response thereto within 14 calendar days of receiving the Proposal, and the Proponent fails adequately to correct it. The Company sought verification of share ownership from the Proponent by sending the Deficiency Notice on September 26, 2024, which was within 14 calendar days of the Company’s September 20, 2024 receipt of the Proposal. The Company did not receive any response from the Proponent until receipt of the Proponent Response Letter, which was postmarked 20 days (October 31, 2024) after the 14 calendar day deadline (October 11, 2024). Even if the Company had received the Proponent Response Letter in a timely manner, the proof of ownership provided therein would have been insufficient to prove continuous ownership of a requisite

² See International Business Machines Corporation (Dec. 13, 2019) (monthly retirement account statements failed to demonstrate one-year continuous ownership); FedEx Corporation (Jun. 28, 2018) (an account statement, broker trade confirmation and a list of stock transactions was insufficient verification of continuous ownership); PepsiCo, Inc. (Jan. 20, 2016) (account statement showing ownership of company shares as of a certain date was insufficient verification of continuous ownership); Rite Aid Corporation (Feb. 14, 2013) (account statement failed to demonstrate one-year continuous ownership); E.I. du Pont de Nemours and Company (Jan. 17, 2012) (one page excerpt from proponent’s monthly brokerage statement was insufficient proof of ownership); Verizon Communications Inc. (Jan. 25, 2008) (broker’s letter which provided current ownership of shares and original date of purchase was insufficient proof of ownership); General Motors Corp. (Apr. 5, 2007) (account summary was insufficient verification of continuous ownership); Yahoo! Inc. (Mar. 29, 2007) (account statements, trade confirmations, email correspondence, webpage printouts and other selected account information was insufficient to specifically verify continuous ownership); General Electric Co. (Jan. 16, 2007) (brokerage statement was insufficient to prove continuous ownership).

amount of shares for a requisite period of time to satisfy the ownership requirements of Rule 14a-8.

Accordingly, the Company requests that the Staff agree with its conclusion that the Company may exclude the Proposal pursuant to Rule 14a-8(b)(1)(i) and Rule 14a-8(f)(1) because, despite receiving timely and proper notice of this deficiency pursuant to Rule 14a-8(f)(1), the Proponent failed to provide timely and requisite proof of his ownership of Company securities.

II. The Proposal may be excluded from the 2025 Proxy Materials pursuant to Rule 14a-8(b)(1)(ii) and Rule 14a-8(f)(1) because the Proponent failed to provide a written statement that he intends to continue to hold the requisite amount of Company securities through the date of the 2025 annual meeting of shareholders after receiving timely notice of such deficiency.

Under Rule 14a-8(b)(1)(ii), a proponent must provide the company with a written statement that the proponent intends to continue to hold the requisite amount of company securities, through the date of the shareholders' meeting for which the proposal is submitted. See also SLB 14 ("The shareholder must provide this written statement regardless of the method the shareholder uses to prove that he or she continuously owned the securities for a period of one year as of the time the shareholder submits the proposal."). Under Rule 14a-8(f)(1), a company may exclude a shareholder proposal if the proponent fails to provide evidence that it meets any of the eligibility requirements of Rule 14a-8(b), which includes Rule 14a-8(b)(1)(ii), following a timely and proper request by the company.

As noted above, the Proposal did not contain a written statement that the proponent intends to continue to hold the requisite amount of Company securities through the date of the shareholders' meeting for which the proposal is submitted as required under Rule 14a-8(b)(1)(ii). The Company satisfied its obligation under Rule 14a-8(f)(1) by sending the Deficiency Notice to the Proponent within 14 calendar days after receipt of the Proposal, which informed the Proponent of his failure to provide the Company with that written statement, including that he needed "to provide the Company with a written statement that you intend to continue to hold the requisite IBM securities through the date of IBM's 2025 annual meeting as required by Rule 14a-8" and that to remedy this defect, he must timely provide the Company with this statement. Despite the information provided by the Company in the Deficiency Notice, the Proponent failed to remedy this defect because he failed to respond to the Deficiency Notice with a written statement as to his intent to continue to hold the requisite amount of Company securities.

The Staff has consistently permitted exclusion under Rule 14a-8(f)(1) of stockholder proposals where a proponent failed to provide a written statement regarding their intent to hold company securities through the date of the annual meeting as required by Rule 14a-8(b)(1)(ii).³

Accordingly, the Company requests that the Staff agree with its conclusion that the Company may exclude the Proposal pursuant to Rule 14a-8(b)(1)(ii) and Rule 14a-8(f)(1) because, despite receiving timely and proper notice of this deficiency pursuant to Rule 14a-8(f)(1), the Proponent

³ See Getty Images Holdings, Inc. (May 2, 2023); The Walt Disney Company (Jan. 12, 2022); Visa Inc. (Oct. 30, 2019); McDonald's Corporation (Feb. 9, 2017); The Dow Chemical Company (Feb. 13, 2015); General Mills, Inc. (June 25, 2013); Verizon Communications Inc. (Jan. 10, 2013); AT&T Inc. (Jan. 3, 2013); Johnson & Johnson (Jan. 9, 2012); CNB Corporation (Feb. 16, 2011); Fortune Brands, Inc. (Feb. 12, 2009; reconsideration denied Apr. 7, 2009); Rite Aid Corporation (Mar. 26, 2009); Exelon Corporation (Feb. 23, 2009); Sempra Energy (Jan. 21, 2009) (in each case, concurring with the exclusion of a shareholder proposal where the proponent did not provide a written statement regarding the proponent's intent to hold company securities through the date of the annual meeting).

did not provide a written statement as to his intent to continue to hold the requisite amount of Company securities as required by Rule 14a-8(b)(1)(ii).

III. The Proposal may be excluded from the 2025 Proxy Materials pursuant to Rule 14a-8(b)(1)(iii) and Rule 14a-8(f)(1) because the Proponent failed to provide a written statement regarding his ability to meet with the Company after receiving timely notice of such deficiency.

Rule 14a-8(b)(1)(iii) requires each proponent to provide a written statement that he or she is 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. This written statement must include the proponent's contact information as well as business days and specific times that the proponent is available to discuss the proposal with the company. The proponent must identify times that are within the regular business hours of the company's principal executive office or, if those hours are not disclosed in the company's proxy statement for the prior year's annual meeting, the proponent 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. Under Rule 14a-8(f)(1), a company may exclude a shareholder proposal if the proponent fails to provide evidence that it meets any of the eligibility requirements of Rule 14a-8(b), which includes Rule 14a-8(b)(1)(iii), following a timely and proper request by the company.

As noted above, the Proposal did not contain the information concerning the Proponent's availability to meet with the Company as required under Rule 14a-8(b)(1)(iii). The Company satisfied its obligation under Rule 14a-8(f)(1) by sending the Deficiency Notice to the Proponent within 14 calendar days after receipt of the Proposal, which informed the Proponent of his failure to provide the Company with a written statement that he is 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 and how to remedy that defect, in particular that he "must timely provide the Company with this statement, which must include your contact information as well as business days and specific times that you are available to discuss the Proposal with the Company." Despite the information provided by the Company in the Deficiency Notice, the Proponent failed to remedy this defect because he failed to respond to the Deficiency Notice with a written statement as to his availability to meet with the Company.

In accordance with these requirements, the Staff has consistently permitted the exclusion of shareholder proposals where a proponent fails to provide a written statement of the proponent's availability to discuss the proposal after receiving a timely deficiency notice from the company under Rule 14a-8(b)(1)(iii) and Rule 14a-8(f)(1).⁴

Accordingly, the Company requests that the Staff agree with its conclusion that the Company may exclude the Proposal pursuant to Rule 14a-8(b)(1)(iii) and Rule 14a-8(f)(1) because, despite receiving timely and proper notice of this deficiency pursuant to Rule 14a-8(f)(1), the Proponent did not provide a written statement regarding his ability to meet with the Company as required by Rule 14a-8(b)(1)(iii).

⁴ See Culp, Inc. (Apr. 23, 2024); The Hershey Company (Feb. 21, 2024); CDW Corporation (Mar. 28, 2023); OGE Energy Corp. (Mar. 27, 2023); The Allstate Corporation (Jan. 23, 2023); Textron, Inc. (Jan. 23, 2023); Molina Healthcare, Inc. (Jan. 17, 2023); Deere & Company (Dec. 5, 2022); PPL Corporation (Mar. 9, 2022); The Allstate Corporation (Feb. 8, 2022); American Tower Corp. (Feb. 8, 2022) (in each case, concurring with the exclusion of a shareholder proposal where the proponent did not provide a written statement of the proponent's availability to discuss the proposal after receiving a timely deficiency notice from the company).

CONCLUSION

Based on the foregoing analysis, the Company respectfully requests that the Staff confirm that it will take no enforcement action if IBM excludes the Proposal from its 2025 Proxy Materials for one or more of the reasons set forth above. We would be pleased to provide the Staff with any additional information, and answer any questions that you may have regarding this letter. I can be reached at (212) 474-1007 or mmariani@cravath.com. Please copy Jorge E. Mancillas, Senior Attorney of the Company, on any related correspondence at jorge.mancillas@ibm.com.

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

Very truly yours,



Michael E. Mariani

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

VIA SEC ONLINE PORTAL

Encls.

Copies w/encls to:

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

VIA EMAIL: Jorge.Mancillas@ibm.com

Marshall Hoyt

VIA FEDEX

Exhibit A
to IBM's No-Action Letter Request

Shareholder Proposal of Marshall Hoyt

International Business Machines Corporation

The Proposal

Stockholder Proposal Requesting a Change to IBM's Outside Director Stock Ownership Guidelines

Whereas, some outside directors don't own (or beneficially own) any shares of IBM stock, a change to the stock ownership guidelines is needed to correct this perceived loophole.

Resolved: IBM stockholders request that the Directors and Corporate Governance Committee change the rules for outside director stock ownership to make owning personal shares of IBM stock mandatory in some significant amount, after some amount of time.

Supporting Statement:

It is distressing to see some directors who, year after year, don't personally own a single share of IBM stock. That means every stockholder has more of a current financial stake in IBM than that director.

The stock ownership guidelines for directors state that "... within five years of initial election to the Board, non-management directors are expected to have stock-based holdings in IBM equal in value to eight times the equity portion of the annual retainer initially payable to such director. Stock-based holdings mean (i) IBM shares owned personally or by members of the immediate family sharing the same household, and (ii) DCEAP PFS. Stock-based holdings do not include unexercised stock options."

Because of this wording, a director can meet this obligation with only their DCEAP PFS shares. These are shares that the director cannot sell until after they retire from the Board, and are "bought"

automatically by the director through his or her director compensation.

The lack of personally owned shares shows no faith in the company or interest of the director in the interests of the stockholders.

Other companies specifically want their directors to be aligned with the interests of the stockholders. Personally owning shares of IBM would show this alignment with stockholder interests and faith in the company.

September 9, 2024

Board of Directors
IBM
1 New Orchard Road
Armonk, NY 10504

Greetings,

I am the owner of 300 shares of IBM stock, and I am submitting a proposal concerning the owning of shares of IBM stock. I hope this proposal makes sense to you and doesn't need to be voted on by all stockholders.

On a personal note, I grew up in Armonk, and picked up blow-down apples in the orchard where you are now located. When the company arrived, my family went on a tour of the headquarters, so I got to see all the corner offices, etc. that were there. I remember my family being impressed that the secretaries deliberately had windows to look out and see the weather, etc.

Sincerely,

A handwritten signature in cursive script that reads "Marshall Hoyt". The signature is written in dark ink and is positioned above the printed name.

Marshall Hoyt

CERTIFIED MAIL®

Mr. Marshall Hoyt



7022 0410 0002 2494 1695

9 SEP 2024 PM 1 L



Office of the Secretary
International Business Machines Corp.
1 New Orchard Rd.
Mail Drop 301
Armonk, NY 10504

U.S. POSTAGE PAID
FCM LETTER
STEELTON, PA 17113
SEP 09, 2024



PLACE STICKER AT TOP OF ENVELOPE TO THE RIGHT
OF THE RETURN ADDRESS, FOLD AT DOTTED LINE

RICOH



10FF966501

Date Received: 09/20/2024 10:11 AM

Research, Armonk ARM1

Armonk - HQ

FLR:TE

Mailroom - Unknown

USPS

70220410000224941695

Routing #:10FF966501



Retail

RDC 99

Exhibit B
to IBM's No-Action Letter Request

Shareholder Proposal of Marshally Hoyt
International Business Machines Corporation
The Deficiency Notice



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

VIA FEDEX



September 26, 2024

Dear Mr. Hoyt,

I have been asked by Ms. Jane Edwards, Vice President, Assistant General Counsel and Secretary of International Business Machines Corporation ("IBM" or the "Company"), to write to you: (i) to acknowledge IBM's timely receipt on September 20, 2024 of your stockholder proposal "Requesting a Change to IBM's Outside Director Stock Ownership Guidelines" (hereinafter the "Proposal") and a signed cover letter dated September 9, 2024, (ii) to ask you to confirm that you are submitting the Proposal pursuant to 17 CFR §240.14a-8 ("Rule 14a-8") and, assuming the Proposal is submitted pursuant to Rule 14a-8, (iii) to notify you of certain deficiencies under Rule 14a-8. A full copy of Rule 14a-8 can be found in the Code of Federal Regulations, which is available in many public reference libraries. For convenience, you may also access this rule directly on the Internet at the following link: <https://www.ecfr.gov/current/title-17/chapter-II/part-240/section-240.14a-8>.

Since this submission involves a matter relating to IBM's 2025 proxy statement and assuming the Proposal is submitted pursuant to Rule 14a-8, we are formally sending you this letter under the federal proxy rules to ensure that you both understand and timely satisfy all requirements in connection with this submission as outlined in this letter. Please understand that in order to be eligible to submit the Proposal for consideration at our 2025 Annual Meeting, Rule 14a-8 of Regulation 14A of the United States Securities and Exchange Commission ("SEC") requires that you must have (i) continuously held at least \$2,000 in market value of the Company's securities entitled to be voted on the Proposal at the meeting for at least three years by the date you submitted the Proposal, (ii) continuously held at least \$15,000 in market value of the Company's securities entitled to be voted on the Proposal at the meeting for at least two years by the date you submitted the Proposal or (iii) continuously held at least \$25,000 in market value of the Company's securities entitled to be voted on the Proposal at the meeting for at least one year by the date you submitted the Proposal.

You must continue to hold those securities through the date of the meeting. To avoid any confusion, please be advised that in accordance with SEC Division of Corporation Finance Staff Legal Bulletin 14G dated October 16, 2012, the SEC considers your submission of this Proposal to have been made on September 9, 2024, because this is the date your letter was postmarked. See Staff Legal Bulletin 14G at: <https://www.sec.gov/interps/legal/cfslb14g.htm>.

The steps that a shareholder must take to verify his or her eligibility to submit a proposal depend on how the shareholder owns the securities. There are two types of security holders in the U.S. -- registered owners and beneficial owners. Registered owners have a direct relationship with the issuer because their ownership of shares is listed on the records maintained by the issuer or its transfer agent. If a shareholder is a registered owner, the Company can independently confirm that the shareholder's holdings satisfy Rule 14a-8(b)'s eligibility requirement.

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

You have not provided sufficient evidence of your IBM stockholdings to meet Rule 14a-8(b)'s eligibility requirements. As a result, I could not confirm your eligibility to file the Proposal under such rule. I therefore had our stockholder relations department check with Computershare, our transfer agent, on any potential IBM stockholdings held of record by you. However, Computershare was unable to locate any shares held of record by you. Therefore, to facilitate compliance with Rule 14a-8 and confirm eligibility, I am now formally requesting that you provide the Company with proper proof of your IBM stockholdings, as required under the SEC's rules and regulations.

If you are an IBM stockholder of record under an account at Computershare which we have somehow missed, we apologize for not locating you in our own records. If this is the case, I will need for you to advise me precisely how the IBM shares are listed on our records.

However, if you are not a registered stockholder, please understand that the Company does not know that you are a stockholder, or how many shares you own. In this case, you must prove eligibility to the Company in one of two ways: The first way is to submit to the Company a written statement from the "record" holder of your securities (usually a broker or bank) verifying, at the time you submitted the Proposal, that you continuously held the requisite amount of IBM securities as set forth above. To be clear, in accordance with the SEC's Staff Legal Bulletin 14G, dated October 16, 2012, the proof of ownership must cover the relevant period preceding and including September 9, 2024, the date the letter containing your Proposal was postmarked.

The second way to prove ownership applies only if you have filed a Schedule 13D (17 CFR §240.13d-101), Schedule 13G (17 CFR §240.13d-102), Form 3 (17 CFR §249.103), Form 4 (17 CFR §249.104) and/or Form 5 (17 CFR §249.105), or amendments to those documents or updated forms, reflecting your ownership of the requisite amount of IBM securities as of or before the date on which the applicable eligibility period begins. If you have filed one of these documents with the SEC, you may demonstrate your eligibility by submitting to the Company: (A) a copy of the schedule and/or form, and any subsequent amendments reporting a change in your ownership level; and (B) your written statement that you continuously held the requisite amount of IBM securities for the applicable period preceding and including September 9, 2024.

On October 18, 2011, the staff of the Division of Corporation Finance released Staff Legal Bulletin 14F, containing a detailed discussion of the meaning of brokers and banks that constitute “record” holders under Rule 14a-8(b)(2)(i) for purposes of verifying whether a beneficial owner is eligible to submit a proposal. You may access a copy of this Bulletin at: <https://www.sec.gov/interps/legal/cfslb14f.htm>.

In this bulletin, the staff explained that most large U.S. brokers and banks deposit their customers’ securities with, and hold those securities through, the Depository Trust Company (“DTC”), a registered clearing agency acting as a securities depository. Such brokers and banks are often referred to as “participants” in DTC. The staff went on to note that DTC holds the deposited securities in “fungible bulk,” meaning that there are no specifically identifiable shares directly owned by the DTC participants. Rather, each DTC participant holds a *pro rata* interest or position in the aggregate number of shares of a particular issuer held at DTC. Correspondingly, each customer of a DTC participant -- such as an individual investor -- owns a *pro rata* interest in the shares in which the DTC participant has a *pro rata* interest.

The staff then went on to explain that the names of these DTC participants, however, do not appear as the registered owners of the securities deposited with DTC on the list of shareholders maintained by the company or, more typically, by its transfer agent. Rather, DTC’s nominee, Cede & Co., appears on the shareholder list as the sole registered owner of securities deposited with DTC by the DTC participants. Pointing to Exchange Act Rule 17Ad-8, the staff noted that a company can request from DTC a “securities position listing” as of a specified date, which identifies the DTC participants having a position in the company’s securities and the number of securities held by each DTC participant on that date.

The staff also explained the difference between an introducing broker and a clearing broker. An introducing broker is a broker that engages in sales and other activities involving customer contact, such as opening customer accounts and accepting customer orders, but is not permitted to maintain custody of customer funds and securities. Instead, an introducing broker engages another broker, known as a “clearing broker,” to hold custody of client funds and securities, to clear and execute customer trades, and to handle other functions such as issuing confirmations of customer trades and customer account statements. Clearing brokers generally are DTC participants; introducing brokers generally are not.

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

Given the foregoing, and with this information in hand, for any shares of IBM that are held by you in street name, the staff has provided specific guidance which you will need to follow in order to satisfy

the Rule 14a-8 proof of ownership requirements in connection with your submission. That guidance is as follows:

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

Shareholders and companies can confirm whether a particular broker or bank is a DTC participant by checking DTC's participant list, which is currently available on the Internet at: <http://www.dtcc.com/client-center/dtc-directories>.

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

The shareholder will need to obtain proof of ownership from the DTC participant through which the securities are held. The shareholder should be able to find out who this DTC participant is by asking the shareholder's broker or bank. The staff has also clarified that in accordance with the Net Capital Rule, Release No. 34-31511 (Nov. 24, 1992) (57 FR 56973) ("Net Capital Rule Release"), at Section II.C.(iii), if the shareholder's broker is an introducing broker, the shareholder's account statements should include the clearing broker's identity and telephone number. The clearing broker will generally be a DTC participant.

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

In addition to providing proof of ownership as described above, I am also notifying you that you need to provide the Company with a written statement that you intend to continue to hold the requisite IBM securities through the date of IBM's 2025 annual meeting as required by Rule 14a-8. To remedy this defect, you must timely provide the Company with this statement.

Finally, Rule 14a-8(b) requires you to 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 have not provided such a statement. To remedy this defect, you must timely provide the Company with this statement, which 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.

I have provided you with this letter detailing the specific SEC rules, staff guidance and other information related to Rule 14a-8 in order to afford you with an opportunity to obtain and furnish me with the proper proof of ownership and address the deficiencies noted above on a timely basis. Please note that all of the information I've requested in this letter must be sent directly to my attention at the mailing address set forth above or to my e-mail address: Jorge.Mancillas@ibm.com, within 14 calendar days of the date you receive this request, and that the Company reserves the right to omit the Proposal under the applicable provisions of Regulation 14A. Thank you for your interest in IBM and this matter.

Sincerely,

A handwritten signature in black ink, consisting of a stylized 'J' followed by 'E. Mancillas'.

Jorge E. Mancillas
Senior Attorney



December 19, 2024

Dear Customer,

The following is the proof-of-delivery for tracking number: 279969654231

Delivery Information:

Status:	Delivered	Delivered To:	Residence
Signed for by:	Signature not required	Delivery Location:	
Service type:	FedEx Priority Overnight		
Special Handling:	Deliver Weekday; Residential Delivery		
		Delivery date:	Sep 27, 2024 10:27

Shipping Information:

Tracking number:	279969654231	Ship Date:	Sep 26, 2024
		Weight:	0.5 LB/0.23 KG



Recipient:	Shipper:
	New York, NY, US,


Reference	002281-00441-11582
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Proof-of-delivery details appear below; however, no signature is available for this FedEx Express shipment because a signature was not required.

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The holiday countdown has begun. Get gifts in time with free 2-day shipping.



SHOP NOW

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Signed for by: Signature not required



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Exhibit C
to IBM's No-Action Letter Request

Shareholder Proposal of Marshall Hoyt
International Business Machines Corporation
The Proponent Response Letter

October 31, 2024

Mr. Jorge E. Mancillas
International Business Machines Corporation
Corporate Law Department
One New Orchard Road Mail Stop 301
Armonk, NY 10504

Dear Mr. Mancillas,

I am enclosing the documentation you requested concerning the amount of IBM shares I own and the length of time I have owned them.

I am not an active trader. I have had shares in IBM for many years. I looked at a printout from Charles Schwab for 2010, and I didn't see the IBM shares on it. Therefore I had them with Computershare at least until 2010. I'm not sure exactly when I converted them from Computershare to Charles Schwab.

If you need further documentation about my shares of IBM, please let me know.

Sincerely,

A handwritten signature in cursive script that reads "Theron Marshall Hoyt". The signature is written in dark ink and is positioned above the printed name.

Theron Marshall Hoyt



Schwab One® Account of
THERON MARSHALL HOYT

Account Number
[REDACTED]

Statement Period
January 1-31, 2019

Investment Detail: Equities (continued)

IBM CORP	250.0000	134.42000	20,814.60 33,605.00	9%	(1,367.91) ⁱ	4.67%	1,570.00
SYMBOL: IBM			6,695.24 ⁱ				



Schwab One® Account of
THERON MARSHALL HOYT

Account Number



Statement Period
September 1-30, 2021

Investment Detail - Equities (continued)

	Quantity	Market Price	Market Value <i>Cost Basis</i>	% of Account Assets	Unrealized Gain or (Loss)	Estimated Yield	Estimated Annual Income
Equities (continued)							
IBM CORP	300.0000	138.93000	41,679.00	11%	(411.93) ⁱ	4.72%	1,968.00
SYMBOL: IBM			12,864.50 ⁱ				

Schwab One® Account of

THERON MARSHALL HOYT

Statement Period
August 1-31, 2024

Summary

				Change in	Ending Value		Unrealized	
IBM CORP	300.0000	202.13000	60,639.00	12,324.20	5,793.12	3.3%	2,004.00	15%



Schwab One® Account of

THERON MARSHALL HOYT

Statement Period

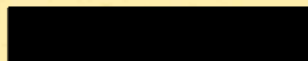
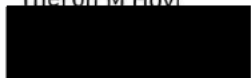
September 1-30, 2024

Equities (continued)

Description	Quantity	Price(\$)	Market Value(\$)	Cost Basis(\$)	Unrealized Gain/(Loss)(\$)	Est. Yield	Est. Annual Income(\$)	% of Acct
IBM CORP	300.0000	221.08000	66,324.00	12,324.20	7,491.64	3.02%	2,004.00	16%



Theron M Hoyt



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31 OCT 2024 PM 3 L



Mr. Jorge Mancillas
JBM
Corporate Law Department
One New Orchard Rd. Mail Stop 301
Armonk, NY 10504