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

DIVISION OF
CORPORATION FINANCE

April 8, 2024

Sean M. Ewen
Willkie Farr & Gallagher LLP

Re: Xerox Holdings Corporation (the "Company")
Incoming letter dated January 16, 2024

Dear Sean M. Ewen:

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

The Proposal asks that the board of directors take the necessary action to adopt specific revisions to the director election resignation provisions in the Company's bylaws.

We are unable to concur in your view that the Company may exclude the Proposal under Rule 14a-8(i)(2) or Rule 14a-8(i)(6). In our view, the Company has not met its burden of demonstrating that the proposal, if implemented, would cause the company to violate New York state law. *See* Staff Legal Bulletin No. 14B (Sept. 15, 2004).

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: David Minasian
North Atlantic States Regional Council of
Carpenters

WILLKIE FARR & GALLAGHER LLP

787 Seventh Avenue
New York, NY 10019-6099
Tel: 212 728 8000
Fax: 212 728 8111

January 16, 2024

Rule 14a-8(i)(2)
Rule 14a-8(i)(6)

VIA ONLINE SHAREHOLDER PROPOSAL FORM

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

Re: Xerox Holdings Corporation – Proposal Submitted by the North Atlantic States Carpenters Pension Fund

Ladies and Gentlemen:

On behalf of Xerox Holdings Corporation (the "Company"), we are submitting this letter pursuant to Rule 14a-8(j) under the Securities Exchange Act of 1934 to notify the Securities and Exchange Commission (the "Commission") of the Company's intention to exclude a shareholder proposal (the "Proposal") submitted by the North Atlantic States Carpenters Pension Fund (the "Proponent") from the Company's proxy statement and form of proxy (together, the "2024 Proxy Materials") to be distributed to the Company's shareholders in connection with its 2024 annual meeting of shareholders (the "2024 Annual Meeting"). The Company respectfully requests confirmation that the staff of the Division of Corporation Finance (the "Staff") will not recommend to the Commission that enforcement action be taken if the Company excludes the Proposal from the 2024 Proxy Materials for the reasons discussed below.

In accordance with Staff guidance, this letter is being submitted using the Staff's online Shareholder Proposal Form. Pursuant to Rule 14a-8(j), a copy of this submission also is being sent to the Proponent. Rule 14a-8(k) and SLB No. 14D provide that a shareholder proponent is required to send to the Company a copy of any correspondence the proponent elects to submit to the Commission or the Staff. Accordingly, we hereby inform the Proponent that if the Proponent elects to submit additional correspondence to the Commission or the Staff relating to the Proposal, the Proponent should concurrently furnish a copy of that correspondence to the undersigned on behalf of the Company (by e-mail).

Pursuant to the guidance provided in Section F of Staff Legal Bulletin 14F (October 18, 2011), we ask that the Staff provide its response to this request to the undersigned via e-mail at the address noted in the last paragraph of this letter.

The Company intends to file its definitive 2024 Proxy Materials with the Commission on or about April 8, 2024.

THE PROPOSAL

The Proposal sets forth the following resolution to be voted on by shareholders at the 2024 Annual Meeting:

> **Resolved:** That the shareholders of Xerox Holdings Corporation ("Company") hereby request that the board of directors take the necessary action to amend its director election resignation bylaw that requires each director nominee to submit an irrevocable conditional resignation to the Company to be effective upon the director's failure to receive the required shareholder majority vote support in an uncontested election. The proposed resignation bylaw shall require the Board to accept a tendered resignation absent the finding of a compelling reason or reasons to not accept the resignation. Further, if the Board does not accept a tendered resignation and the director remains a "holdover" director, the resignation bylaw shall stipulate that should a "holdover" director not be re-elected at the next annual election of directors, that director's new tendered resignation will be automatically effective 30 days after the certification of the election vote. The Board shall report the reasons for its actions to accept or reject a tendered resignation in a Form 8-K filing with the U.S. Securities and Exchange Commission.

A copy of the Proponent's complete submission, including the Proposal, supporting statement, and related materials, is attached hereto as Exhibit A. Copies of the related correspondence between the Proponent and the Company are attached hereto as Exhibit B.

BASES FOR EXCLUSION

The Company hereby respectfully requests that the Staff concur in its view that the Proposal may be excluded from the 2024 Proxy Materials pursuant to (i) Rule 14a-8(i)(2) because the Proposal would require the Company to violate New York law and (ii) Rule 14a8(i)(6) because the Company lacks the power to implement the Proposal.

I. Rule 14a-8(i)(2) – The Proposal Would Require the Company to Violate New York Law.

Rule 14a-8(i)(2) permits a company to exclude a proposal if its implementation would cause the company to violate state, federal or foreign law applicable to the company. See *The Goldman Sachs Group, Inc.* (avail. Feb. 1, 2016); *Kimberly-Clark Corp.* (avail. Dec. 18, 2009); *Bank of America Corp.* (avail. Feb. 11, 2009). The Company is incorporated under the laws of the State of New York. As more fully explained below, the Proposal, if approved by shareholders, would cause the Company to violate New York law.

A. *The Proposal imposes a "compelling reasons" standard for the Board's determinations to accept director resignations that does not take into account the Board's fiduciary duties.*

Section 701 of the New York Business Corporation Statute (the "NYBCS") provides that the business and affairs of a New York corporation are to be managed under the direction of its board of directors, subject to any provisions in the company's certificate of incorporation that provide otherwise. Because the Company's Restated Certificate of Incorporation (the "Charter") does not provide for the management of the Company under the direction of any persons other than directors, the business and affairs of the Company are solely managed under the direction of its Board of Directors (the "Board").

Section 717(a) of the NYBCS provides that a director shall perform his or her duties as a director in good faith and with that degree of care which an ordinarily prudent person in a like position would use under similar circumstances. Under New York law, a director has a duty to act in what he or she believes to be best interests of a corporation and its stockholders. *Dankoff v. Bowling Proprietors Ass'n of America, Inc.*, 1972, 69 Misc.2d 658, 331 N.Y.S.2d 109. The New York courts have held that neither the board of directors of a corporation, nor any individual member or members thereof, may exercise authority to conduct business of the corporation in violation of fiduciary duties owed to the corporation. *TJI Realty, Inc. v. Harris*, 250 A.D.2d 596 (2 Dept. 1998).

The Proposal requests the adoption of a bylaw that, if implemented, would limit the Board's current and future ability to exercise its managerial power and concomitant fiduciary duties to the Company and its shareholders in violation of Section 701 of the NYBCS. The Board cannot unilaterally adopt a bylaw that limits a future board's ability to take actions it believes are in the best interests of the Company and its shareholders. The Proposal would eliminate the power of the Company's current and future directors to reject a director resignation absent a finding of a "compelling reason" or "compelling reasons," even where the Board believes, in the good faith exercise of its fiduciary duties under New York law, that accepting the resignation would be contrary to the interests of the Company and its shareholders.

Imposing a "compelling reasons" standard abrogates the Board's decision-making authority under the NYBCS and the Charter with respect to conditional director resignations. By imposing such a standard, the Proposal impermissibly binds future directors on matters involving the management of the Company. The Board must consider and balance a number of factors in deciding whether to accept a resignation, including the underlying reasons for the director's failure to receive a majority vote for re-election, the tenure and qualifications of the director, the director's past and expected future contributions to the Board, the overall composition of the Board, including whether accepting the resignation would cause the Company to fail to meet the requirements of any law, rule or regulation applicable to the Company and the long-term and short-term interests of the corporation and its shareholders. The Proposal requests the adoption of a bylaw that would mandate current and future directors of the Company to make determinations based on a "compelling reasons" standard that has meaning only if it would require the directors

to accept a resignation in circumstances where proper application of their fiduciary duties would cause them to decide otherwise. Because the bylaw provision contemplated by the Proposal mandates that the Company's current and future directors accept director resignations based on a compelling reasons standard that does not take into account the director's fiduciary duties, it violates New York law.

The Staff has on numerous occasions permitted exclusion under Rule 14a-8(i)(2) of proposals that would cause companies to violate state law by impermissibly infringing on the managerial authority of the Board and prevent directors from discharging their fiduciary duties to the company. For example, the proposal in *Johnson & Johnson* (avail. Feb. 16, 2012) sought to limit the ability of the board of directors to appoint directors to the compensation committee if such directors received a certain number of "no" or "withhold" votes in a director election. The Staff concurred that the proposal could be excluded because its implementation would violate New Jersey law—which provides that decisions regarding committee composition are exclusively left to the board of directors—by limiting the decision-making authority of the board to select such committee members in the exercise of its fiduciary duties.

II. Rule 14a-8(i)(6) – The Company Lacks the Power to Implement the Proposal.

Rule 14a-8(i)(6) allows a company to exclude a proposal if the company would lack the power or authority to implement the proposal. As described above, the Proposal would, if implemented, cause the Company to violate New York law. The Staff has on numerous occasions permitted exclusion under Rule 14a-8(i)(6) of proposals that would cause the company to violate the law of the jurisdiction of its incorporation. *See Arlington Asset Investment Corp.* (April 23, 2021)(permitting exclusion of proposal that would violate Virginia law); *eBay Inc.* (April 1, 2020)(permitting exclusion of proposal that would violate Delaware law); *Trans World Entertainment Corp.* (May 2, 2019)(permitting exclusion of proposal that would violate New York law); *IDACORP, Inc.* (permitting exclusion of proposal that would violate Idaho law)(March 13, 2012); *NiSource Inc.* (March 22, 2010)(permitting exclusion of proposal that would violate New Jersey law); *AT&T, Inc.* (Feb. 19, 2008)(permitting exclusion of a proposal that would violate Delaware law); *Noble Corp.* (Jan 19, 2007)(permitting exclusion of a proposal that would violate Cayman Islands law).

CONCLUSION

For the reasons discussed above, the Company believes that it may omit the Proposal from its 2024 Proxy Materials. We request the Staff's concurrence in our view or, alternatively, confirmation that the Staff will not recommend any enforcement action if the Company excludes the Proposal.

If you have any questions or need additional information, please feel free to contact me at (212) 728-8867. Correspondence regarding this letter may be sent to me by e-mail at: sewen@willkie.com.

Sincerely,

/s/ Sean M. Ewen

Enclosures:

cc: Flor M. Colon, Xerox Holdings Corporation
Eric W. Risi, Xerox Holdings Corporation
Joseph Bryne, United Brotherhood of Carpenters and Joinders of America
David Minasian, North Atlantic States Carpenters Pension Fund

Exhibit A

Proponent's Submission

NORTH ATLANTIC STATES REGIONAL COUNCIL OF CARPENTERS

United Brotherhood of Carpenters and Joiners of America

750 DORCHESTER AVENUE
BOSTON, MA 02125-1132

[redacted]

JOSEPH BYRNE
EXECUTIVE SECRETARY - TREASURER

SENT VIA OVERNIGHT USPS

December 7, 2023

Flor M. Colon
Deputy General Counsel and
Corporate Secretary
Xerox Holdings Corporation
201 Merritt 7
Norwalk, CT 06851

Dear Ms. Colon:

I hereby submit the enclosed shareholder proposal ("Proposal") on behalf of the North Atlantic States Carpenters Pension Fund ("Fund"), for inclusion in the Xerox Holdings Corporation ("Company") proxy statement to be circulated in conjunction with the next annual meeting of shareholders. The Proposal relates to the issue of director resignations and is submitted under Rule 14(a)-8 (Proposals of Security Holders) of the U.S. Securities and Exchange Commission proxy regulations.

The Fund is the beneficial owner of shares of the Company's common stock, with a market value of at least $25,000, which shares have been held continuously for more than a year prior to and including the date of the submission of the Proposal. Verification of this ownership by the record holder of the shares, State Street Bank and Trust Company, will be sent under separate cover. The Fund intends to hold the shares through the date of the Company's next annual meeting of shareholders. Either the undersigned or a designated representative will present the Fund's Proposal for consideration at the annual meeting of shareholders.

If you would like to discuss the Proposal, please contact David Minasian at [redacted] Mr. Minasian will be available to discuss the proposal on Tuesday, December 19, or Tuesday, December 26, from 1:00PM to 5:00PM (ET) either day or other mutually agreeable date and time. Please forward any correspondence related to the proposal to Mr. Minasian, North Atlantic States Regional Council, 29 Endicott Street, Worcester, MA 01610 or at the email address above.

Sincerely,

Joseph Bryne

Joseph Bryne
Fund Trustee

cc. David Minasian
Edward J. Durkin

Enclosure

Director Election Resignation Bylaw Proposal

Resolved: That the shareholders of Xerox Holdings Corporation ("Company") hereby request that the board of directors take the necessary action to amend its director election resignation bylaw that requires each director nominee to submit an irrevocable conditional resignation to the Company to be effective upon the director's failure to receive the required shareholder majority vote support in an uncontested election. The proposed amended resignation bylaw shall require the Board to accept a tendered resignation absent the finding of a compelling reason or reasons to not accept the resignation. Further, if the Board does not accept a tendered resignation and the director remains as a "holdover" director, the resignation bylaw shall stipulate that should a "holdover" director not be re-elected at the next annual election of directors, that director's new tendered resignation will be automatically effective 30 days after the certification of the election vote. The Board shall report the reasons for its actions to accept or reject a tendered resignation in a Form 8-K filing with the U.S. Securities and Exchange Commission.

Supporting Statement: The Proposal requests that the Board amend its director resignation bylaw to enhance director accountability. The Company has established in its bylaws a majority vote standard for use in an uncontested director election, an election in which the number of nominees equal the number of open board seats. Under applicable state corporate law, a director's term extends until his or her successor is elected and qualified, or until he or she resigns or is removed from office. Therefore, an incumbent director who fails to receive the required vote for election under a majority vote standard continues to serve as a "holdover" director until the next meeting of shareholders. A Company resignation bylaw addresses the continued status of an incumbent director who fails to be re-elected by requiring such director to tender his or her resignation for Board consideration.

The proposed new director resignation bylaw will set a more demanding standard of review for addressing director resignations then that contained in the Company's current resignation bylaw. The resignation bylaw will require the reviewing directors to articulate a compelling reason or reasons for not accepting a tendered resignation and allowing an un-elected director to continue to serve as a "holdover" director. Importantly, if a director's resignation is not accepted and he or she continues as a "holdover" director but again fails to be elected at the next annual meeting of shareholders, that director's new tendered resignation will be automatically effective 30 days following the election vote certification. While providing the Board latitude to accept or not accept the initial resignation of an incumbent director that fails to receive majority vote support, the amended bylaw will establish the shareholder vote as the final word when a continuing "holdover" director is not re-elected. The Proposal's enhancement of the director resignation process will establish shareholder director election voting as a more consequential governance right.

Exhibit B

Related Correspondence

December 21, 2023

VIA E-MAIL

Mr. Joseph Bryne
750 Dorchester Avenue
Boston, MA 02125-1132
[redacted]

Mr. David Minasian
[redacted]
PII
[redacted]

Re: Shareholder Proposal for Xerox Holdings Corporation

Dear Mr. Bryne and Mr. Minasian:

We hereby acknowledge receipt of a delivery to Flor Colon of an email sent by Mr. Bryne on December 7, 2023, submitting a shareholder proposal on behalf of the North Atlantic States Carpenters Pension Fund (the "Fund") relating to the director election resignation bylaw proposal (the "Proposal") for inclusion in the 2024 proxy statement of Xerox Holdings Corporation (the "Company"). The proxy letter states that the verification of ownership by the record holder of the shares of the Company will be sent under separate cover.

We write to inform you that in accordance with Rule 14a-8 of the Securities Exchange Act of 1934, as amended ("Rule 14a-8"), regarding the inclusion of shareholder proposals in a company's proxy statement, you have failed to provide proof of your eligibility to submit the Proposal for the following reasons:

- At the time you submit your proposal you must provide your eligibility to the Company by providing a written statement from the "record" holder of your securities (usually a broker or bank) verifying that, at the time the Proposal was submitted, the Fund 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, which calculation need not be performed by the bank or broker providing proof of the Fund's ownership but can be done by the Fund and presented to the Company; your documentation did not include a written statement from the "record" holder of your shares verifying your ownership or any statements or calculation as to the market value of the shares.

If you do not provide the Company with the proper written evidence remediating the above issues that is postmarked or transmitted electronically to the Company within 14 calendar days of

receiving this letter, the Proposal will be automatically ineligible for inclusion in the Company's proxy statement for its 2024 Annual Meeting under Rule 14a-8(f). For your information, we have attached copies of Rule 14a-8, which governs shareholder proposals and Staff Legal Bulletin 14L, which describes the documentation that must be submitted when a shareholder submits proposals through a representative.

If we are mistaken and you have submitted your written evidence, please let us know and re-submit to us, as we are unable to locate any correspondence from you with the required evidence.

Sincerely,

Flor Colon

§ 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.

Announcement

Shareholder Proposals: Staff Legal Bulletin No. 14L (CF)

Division of Corporation Finance
Securities and Exchange Commission

Action: Publication of CF Staff Legal Bulletin

Date November 3, 2021

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. This bulletin, like all staff guidance, has no legal force or effect: it does not alter or amend applicable law, and it creates no new or additional obligation for any per on

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

A. The Purpose of This Bulletin

The Division is rescinding Staff Legal Bulletin Nos. 14I, 14J and 14K (the "rescinded SLBs") after a review of staff experience applying the guidance in them. In addition, to the extent the views expressed in any other prior Division staff legal bulletin could be viewed as contrary to those expressed herein, this staff legal bulletin controls.

This bulletin outlines the Division's views on Rule 14a-8(i)(7), the ordinary business exception, and Rule 14a-8(i)(5), the economic relevance exception. We are also republishing, with primarily technical, conforming changes, the guidance contained in SLB Nos. 14I and 14K relating to the use of graphics and images, and proof of ownership letters. In addition, we are providing new guidance on the use of e-mail for submission of proposals, delivery of notice of defects, and responses to those notices.

In Rule 14a-8, the Commission has provided a means by which shareholders can present proposals for the shareholders' consideration in the company's proxy statement. This process has become a cornerstone of shareholder engagement on important matters. Rule 14a-8 sets forth several bases for exclusion of such proposals. Companies often request assurance that the staff will not recommend enforcement action if they omit a proposal based on one of these exclusions ("no-action relief"). The Division is issuing this bulletin to streamline and implify our proce for reviewing no action reque t , and to clarify the tandard taff will apply when evaluating the e reque t

B. Rule 14a-8(i)(7)

1. Background

Rule 14a-8(i)(7), the ordinary business exception, is one of the substantive bases for exclusion of a shareholder proposal in Rule 14a-8. It permits a company to exclude a proposal that "deals with a matter relating to the company's ordinary business operations." The purpose of the exception is "to confine the resolution of ordinary business problems to management and the board of directors, since it is impracticable for shareholders to decide how to solve such problems at an annual shareholders meeting."[1]

2. Significant Social Policy Exception

Based on a review of the rescinded SLBs and staff experience applying the guidance in them, we recognize that an undue empha i wa placed on evaluating the ignificance of a policy i ue to a particular company at the e pen e of whether the propo al focu e on a ignificant ocial policy,[2] complicating the application of Commission policy to proposals. In particular, we have found that focusing on the significance of a policy issue to a particular company has drawn the staff into factual considerations that do not advance the policy objectives behind the ordinary business exception. We have also concluded that such analysis did not yield consistent, predictable results.

Going forward, the staff will realign its approach for determining whether a proposal relates to "ordinary business" with the standard the Commission initially articulated in 1976, which provided an exception for certain proposals that raise significant social policy issues,[3] and which the Commission subsequently reaffirmed in the 1998 Release. This exception is essential for preserving shareholders' right to bring important issues before other shareholders by means of the company's proxy statement, while also recognizing the board's authority over most day-to-day business matters. For these reasons, staff will no longer focus on determining the nexus between a policy i ue and the company, but will in tead focu on the ocial policy ignificance of the i ue that i the ubject of the hareholder propo al In making thi determination, the taff will con ider whether the propo al rai e i ue with a broad societal impact, such that they transcend the ordinary business of the company.[4]

Under this realigned approach, proposals that the staff previously viewed as excludable because they did not appear to rai e a policy i ue of ignificance for the company may no longer be viewed a e cludable under Rule 14a 8(i)(7) For e ample, propo al quarely rai ing human capital management i ue with a broad ocietal impact would not be subject to exclusion solely because the proponent did not demonstrate that the human capital management issue was significant to the company.[5]

Becau e the taff i no longer taking a company pecific approach to evaluating the ignificance of a policy i ue under Rule 14a 8(i)(7), it will no longer e pect a board analy i a de cribed in the re cinded SLB a part of demonstrating that the proposal is excludable under the ordinary business exclusion. Based on our experience, we believe that board analysis may distract the company and the staff from the proper application of the exclusion. Additionally, the "delta" component of board analysis – demonstrating that the difference between the company's existing actions addressing the policy issue and the proposal's request is insignificant – sometimes confounded the application of Rule 14a-8(i)(10)'s substantial implementation standard.

3. Micromanagement

Upon further consideration, the staff has determined that its recent application of the micromanagement concept, a outlined in SLB No 14J and 14K, e panded the concept of micromanagement beyond the Commi ion' policy directive Specifically, we believe that the re cinded guidance may have been taken to mean that any limit on company or board discretion constitutes micromanagement.

The Commission has stated that the policy underlying the ordinary business exception rests on two central con ideration The fir t relate to the propo al' ubject matter; the econd relate to the degree to which the

proposal “micromanages” 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.”[6] The Commission clarified in the 1998 Relea e that pecific method , timeline , or detail do not nece arily amount to micromanagement and are not di po itive of e cludability

Consistent with Commission guidance, the staff will take a measured approach to evaluating companies’ micromanagement arguments – recognizing that proposals seeking detail or seeking to promote timeframes or method do not per e con titute micromanagement In tead, we will focu on the level of granularity ought in the propo al and whether and to what e tent it inappropriately limit di cretion of the board or management We would expect the level of detail included in a shareholder proposal to be consistent with that needed to enable investors to assess an issuer’s impacts, progress towards goals, risks or other strategic matters appropriate for shareholder input.

Our recent letter to ConocoPhillip Company[7] provide an e ample of our current approach to micromanagement. In that letter the staff denied no-action relief for a proposal requesting that the company set targets covering the greenhouse gas emissions of the company’s operations and products. The proposal requested that the company set emission reduction targets and it did not impose a specific method for doing so. The staff concluded this proposal did not micromanage to such a degree to justify exclusion under Rule 14a-8(i)(7).

Additionally, in order to assess whether a proposal probes matters “too complex” for shareholders, as a group, to make an informed judgment,[8] we may consider the sophistication of investors generally on the matter, the availability of data, and the robustness of public discussion and analysis on the topic. The staff may also consider references to well-established national or international frameworks when assessing proposals related to disclosure, target setting, and timeframes as indicative of topics that shareholders are well-equipped to evaluate.

This approach is consistent with the Commission’s views on the ordinary business exclusion, which 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. As the Commission stated in its 1998 Release:

> [In] the Proposing Release we explained that one of the considerations in making the ordinary business determination was the degree to which the proposal seeks to micro-manage the company. We cited examples such as where the proposal seeks intricate detail, or seeks to impose specific time-frames or to impose specific methods for implementing complex policies. Some commenters thought that the examples cited seemed to imply that all proposals seeking detail, or seeking to promote time-frames or methods, necessarily amount to ‘ordinary business.’ We did not intend such an implication. Timing questions, for in tance, could involve ignificant policy where large difference are at take, and propo al may eek a rea onable level of detail without running afoul of the e con ideration

While the analysis in this bulletin may apply to any subject matter, many of the proposals addressed in the rescinded SLBs requested companies adopt timeframes or targets to address climate change that the staff concurred were e cludable on micromanagement ground [9] Going forward we would not concur in the e clu ion of imilar propo al that ugge t target or timeline o long a the propo al afford di cretion to management a to how to achieve such goals.[10] We believe our current approach to micromanagement will help to avoid the dilemma many proponents faced when seeking to craft proposals with sufficient specificity and direction to avoid being excluded under Rule 14a-8(i)(10), substantial implementation, while being general enough to avoid exclusion for “micromanagement.”[11]

C. Rule 14a-8(i)(5)

Rule 14a-8(i)(5), the “economic relevance” exception, permits a company to exclude a proposal that “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.”

Based on a review of the rescinded SLBs and staff experience applying the guidance in them, we are returning to our longstanding approach, prior to SLB No. 14I, of analyzing Rule 14a-8(i)(5) in a manner we believe is consistent with Lovenheim v Iroquoi Brand , Ltd [12] A a re ult, and con i tent with our pre SLB No 14I approach and Lovenheim, propo al that rai e i ue of broad ocial or ethical concern related to the company' bu ine may not be excluded, even if the relevant business falls below the economic thresholds of Rule 14a-8(i)(5). In light of this approach, the staff will no longer expect a board analysis for its consideration of a no-action request under Rule 14a-8(i)(5).

D. Rule 14a-8(d)[13]

1. Background

Rule 14a 8(d) i one of the procedural ba e for e clu ion of a hareholder propo al in Rule 14a 8 It provide that a "proposal, including any accompanying supporting statement, may not exceed 500 words."

2. The Use of Images in Shareholder Proposals

Questions have arisen concerning the application of Rule 14a-8(d) to proposals that include graphs and/or images. [14] The taff ha e pre ed the view that the u e of "500 word " and ab ence of e pre reference to graphic or image in Rule 14a 8(d) do not prohibit the inclu ion of graph and/or image in propo al [15] Ju t a companie include graphics that are not expressly permitted under the disclosure rules, the Division is of the view that Rule 14a-8(d) does not preclude shareholders from using graphics to convey information about their proposals.[16]

The Divi ion recognize the potential for abu e in thi area The Divi ion believe , however, that the e potential abu e can be addre ed through other provi ion of Rule 14a 8 For e ample, e clu ion of graph and/or image would be appropriate under Rule 14a-8(i)(3) where they:

- make the proposal materially false or misleading;
- render the proposal so inherently vague or indefinite that neither the stockholders voting on the proposal, nor the company in implementing it, would be able to determine with any reasonable certainty exactly what actions or measures the proposal requires;
- directly or indirectly impugn character, integrity or personal reputation, or directly or indirectly make charges concerning improper, illegal, or immoral conduct or association, without factual foundation; or
- are irrelevant to a con ideration of the ubject matter of the propo al, uch that there i a trong likelihood that a reasonable shareholder would be uncertain as to the matter on which he or she is being asked to vote.[17]

E clu ion would al o be appropriate under Rule 14a 8(d) if the total number of word in a propo al, including word in the graphic , e ceed 500

E. Proof of Ownership Letters[18]

In relevant part, Rule 14a-8(b) provides that a proponent must prove eligibility to submit a proposal by offering proof that it "continuously held" the required amount of securities for the required amount of time.[19]

In Section C of SLB No. 14F, we identified two common errors shareholders make when submitting proof of ownership for purposes of satisfying Rule 14a-8(b)(2).[20] In an effort to reduce such errors, we provided a suggested format for shareholders and their brokers or banks to follow when supplying the required verification of ownership.[21] Below, we have updated the suggested format to reflect recent changes to the ownership thre hold due to the Commi ion' 2020 rulemaking [22] We note that broker and bank are not required to follow thi format

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

Some companies apply an overly technical reading of proof of ownership letters as a means to exclude a proposal. We generally do not find arguments along these lines to be persuasive. For example, we did not concur with the excludability of a proposal based on Rule 14a-8(b) where the proof of ownership letter deviated from the format set forth in SLB No 14F [23] In tho e ca e , we concluded that the proponent nonethele had upplied documentary upport ufficiently evidencing the requi ite minimum owner hip requirement , a required by Rule 14a 8(b) We took a plain meaning approach to interpreting the text of the proof of ownership letter, and we expect companies to apply a similar approach in their review of such letters.

While we encourage hareholder and their broker or bank to u e the ample language provided above to avoid thi i ue, uch formulation i neither mandatory nor the e clu ive mean of demon trating the owner hip requirements of Rule 14a-8(b).[24] We recognize that the requirements of Rule 14a-8(b) can be quite technical. Accordingly, companies should not seek to exclude a shareholder proposal based on drafting variances in the proof of ownership letter if the language used in such letter is clear and sufficiently evidences the requisite minimum ownership requirements.

We also do not interpret the recent amendments to Rule 14a-8(b)[25] to contemplate a change in how brokers or banks fulfill their role. In our view, they may continue to provide confirmation as to how many shares the proponent held continuously and need not separately calculate the share valuation, which may instead be done by the proponent and presented to the receiving issuer consistent with the Commission's 2020 rulemaking.[26] Finally, we believe 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 pecific defect( )

F. Use of E-mail

Over the past few years, and particularly during the pandemic, both proponents and companies have increasingly relied on the use of emails to submit proposals and make other communications. Some companies and proponents have expressed a preference for emails, particularly in cases where offices are closed. Unlike the use of third party mail delivery that provide the ender with a proof of delivery, partie hould keep in mind that method for the confirmation of email delivery may differ Email delivery confirmation and company erver log may not be sufficient to prove receipt of emails as they only serve to prove that emails were sent. In addition, spam filters or incorrect email addresses can prevent an email from being delivered to the appropriate recipient. The staff therefore suggests that to prove delivery of an email for purposes of Rule 14a-8, the sender should seek a reply e-mail from the recipient in which the recipient acknowledges receipt of the e-mail. The staff also encourages both companies and shareholder proponents to acknowledge receipt of emails when requested. Email read receipts, if received by the sender, may also help to establish that emails were received.

1. Submission of Proposals

Rule 14a 8(e)(1) provide that in order to avoid controver y, hareholder hould ubmit their propo al by mean , including electronic mean , that permit them to prove the date of delivery Therefore, where a di pute ari e 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. Additionally, in those instances where the company does not disclose in its proxy statement an email address for submitting proposals, we encourage shareholder proponents to contact the company to obtain the correct email address for submitting proposals before doing so and we encourage companies to provide such email addresses upon request.

2. Delivery of Notices of Defects

Similarly, if companies use email to deliver deficiency notices to proponents, we encourage them to seek a confirmation of receipt from the proponent or the representative in order to prove timely delivery. Rule 14a-8(f)(1) provides that the company must notify the shareholder of any defects within 14 calendar days of receipt of the proposal, and accordingly, the company has the burden to prove timely delivery of the notice.

3. Submitting Responses to Notices of Defects

Rule 14a-8(f)(1) also provides that a shareholder's response to a deficiency notice must be postmarked, or transmitted electronically, no later than 14 days from the date of receipt of the company's notification. If a hareholder u e email to re pond to a company' deficiency notice, the burden i on the hareholder or repre entative to u e an appropriate email addre (e g , an email addre provided by the company, or the email address of the counsel who sent the deficiency notice), and we encourage them to seek confirmation of receipt.

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[1] Relea e No 34 40018 (May 21, 1998) (the "1998 Relea e") Stated a bit differently, the Commi ion ha explained that "[t]he 'ordinary business' exclusion is based in part on state corporate law establishing spheres of authority for the board of directors on one hand, and the company's shareholders on the other." Release No. 34-39093 (Sept. 18, 1997).

[2] For e ample, SLB No 14K e plained that the taff "take a company pecific approach in evaluating significance, rather than recognizing particular issues or categories of issues as universally 'significant.'" Staff Legal Bulletin No. 14K (Oct. 16, 2019).

[3] Relea e No 34 12999 (Nov 22, 1976) (the "1976 Relea e") (tating, in part, "propo al of that nature [relating to the economic and afety con ideration of a nuclear power plant], a well a other that have major implications, will in the future be considered beyond the realm of an issuer's ordinary business operations").

[4] 1998 Release ("[P]roposals . . . focusing on sufficiently significant social policy issues. . .generally would not be con idered to be e cludable, becau e the propo al would tran cend the day to day bu ine matter and rai e policy i ue o ignificant that it would be appropriate for a hareholder vote")

[5] *See, e.g., Dollar General Corporation* (Mar. 6, 2020) (granting no-action relief for exclusion of a proposal requesting the board to issue a report on the use of contractual provisions requiring employees to arbitrate employment related claim becau e the propo al did not focu on pecific policy implication of the u e of arbitration at the company) We note that in the 1998 Relea e the Commi ion tated "[P]ropo al relating to [workforce management] but focusing on sufficiently significant social policy issues (e.g., significant discrimination matters) generally would not be considered to be excludable, because the proposals would transcend the day-to-day business matters and raise policy issues so significant that it would be appropriate for a shareholder vote." Matters related to employment discrimination are but one example of the workforce management proposals that may rise to the level of transcending the company's ordinary business operations.

[6] 1998 Release.

[7] *ConocoPhillips Company* (Mar 19, 2021)

[8] *See* 1998 Release and 1976 Release.

[9] *See, e.g.*, *PayPal Holdings, Inc.* (Mar. 6, 2018) (granting no-action relief for exclusion of a proposal asking the company to prepare a report on the feasibility of achieving net-zero emissions by 2030 because the staff concluded it micromanaged the company); *Devon Energy Corporation* (Mar. 4, 2019) (granting no-action relief for exclusion of a proposal requesting that the board in annual reporting include disclosure of short-, medium- and long-term greenhouse gas targets aligned with the Paris Climate Agreement because the staff viewed the proposal as requiring the adoption of time-bound targets).

[10] *See ConocoPhillips Company* (Mar. 19, 2021).

[11] To be more specific, shareholder proponents have expressed concerns that a proposal that was broadly worded might face exclusion under Rule 14a-8(i)(10). Conversely, if a proposal was too specific it risked exclusion under Rule 14a-8(i)(7) for micromanagement.

[12] 618 F. Supp. 554 (D.D.C. 1985).

[13] This section previously appeared in SLB No. 14I (Nov. 1, 2017) and is republished here with only minor, conforming change

[14] Rule 14a-8(d) is intended to limit the amount of space a shareholder proposal may occupy in a company's proxy statement. *See* 1976 Release.

[15] *See General Electric Co.* (Feb. 3, 2017, Feb. 23, 2017); *General Electric Co.* (Feb. 23, 2016). These decisions were consistent with a longstanding Division position. *See Ferrofluidics Corp.* (Sept. 18, 1992).

[16]Companie hould not minimize or otherwi e dimini h the appearance of a hareholder' graphic For example, if the company includes its own graphics in its proxy statement, it should give similar prominence to a shareholder's graphics. If a company's proxy statement appears in black and white, however, the shareholder proposal and accompanying graphics may also appear in black and white.

[17] *See General Electric Co* (Feb 23, 2017)

[18] This section previously appeared in SLB No. 14K (Oct.16, 2019) and is republished here with minor, conforming changes. Additional discussion is provided in the final paragraph.

[19] Rule 14a-8(b) requires proponents to have 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.

[20]Staff Legal Bulletin No. 14F (Oct. 18, 2011).

[21]The Divi ion ugge ted the following formulation "A of [date the propo al i ubmitted], [name of hareholder] held, and ha held continuou ly for at lea t one year, [number of ecuritie] hare of [company name] [cla of securities]."

[22] Release No. 34-89964 (Sept. 23, 2020) (the "2020 Release").

[23] *See Amazon.com, Inc.* (Apr. 3, 2019); *Gilead Sciences, Inc.* (Mar. 7, 2019).

[24] *See* Staff Legal Bulletin No 14F, n 11

[25] *See* 2020 Release.

[26] 2020 Release at n.55 ("Due to market fluctuations, the value of a shareholder's investment in a company may vary throughout the applicable holding period before the shareholder submits the proposal. In order to determine whether the shareholder satisfies the relevant ownership threshold, the shareholder should look at whether, on any date within the 60 calendar days before the date the shareholder submits the proposal, the shareholder's investment is valued at the relevant threshold or greater. For these purposes, companies and shareholders should determine the market value by multiplying the number of ecuritie the hareholder continuou ly held for the relevant period by the highe t elling price during the 60 calendar day before the hareholder ubmitted the proposal. For purposes of this calculation, it is important to note that a security's highest selling price is not necessarily the same as its highest closing price.") (citations omitted).

Modified: Nov. 3, 2021

From: David Minasian
To: Colon, Flor (OGC-Legal)
Subject: RE: Shareholder Proposal to Xerox Holdings Corporation - North Atlantic States Carpenters Pension Fund
Date: Friday, December 22, 2023 7:16:19 AM
Attachments: image001.png
image002.png
image003.png
image004.png
image005.png
image006.png

Dear Ms. Colon,

I am acknowledging receipt of the letter. Our response will be sent in the coming days.

-David

From: Colon, Flor (OGC-Legal) [redacted]
Sent: Thursday, December 21, 2023 4:12 PM
To: David Minasian [redacted]
Subject: Shareholder Proposal to Xerox Holdings Corporation - North Atlantic States Carpenters Pension Fund

Dear Mr. Minasian, please see attached letter.

Flor M. Colón
Deputy General Counsel, Corporate Secretary & Chief Ethics Officer
Office of General Counsel

Xerox Corporation
800 Phillips Road, Bldg. 208
Webster, NY 14580
p [redacted]

From: Chris Mason
To: Colon, Flor (OGC-Legal)
Cc: [redacted]; David Minasian; Nick Favorito; Suzanne Smith
Subject: Xerox Record Letter - North Atlantic States Carpenters Pension Fund
Date: Tuesday, January 2, 2024 1:41:17 PM
Attachments: image001.png
Xerox State Street Ownership Verification Letter 2023.pdf

Good afternoon,

Attached is requested Xerox Record Letter for the North Atlantic States Carpenters Pension Fund.

Thank you,

Chris

Christopher S. Mason
Finance/Investment Manager
[redacted]

North Atlantic States Carpenters Benefit Funds
350 Fordham Road
Wilmington, MA 01887

Sent Via Electronic Mail ([redacted])

January 2, 2024

Flor M. Colon
Deputy General Counsel, Corporate Secretary
And Chief Ethics Officer
Xerox Corporation
800 Phillips Road, Bldg. 208
Webster, NY 14580

RE: Shareholder Proposal Ownership Verification Letter

Dear Ms. Colon:

State Street Bank and Trust Company ("State Street"), a Depository Trust & Clearing Corporation participant, serves as custodian for the North Atlantic States Carpenters Pension Fund ("Fund"). At the request and instruction of the Fund, State Street confirms that as custodian it is the record holder of shares of Xerox Corporation common stock (CUSIP# 98421M106) held for the benefit of the Fund.

As of December 7, 2023, the date of the submission of the Fund's Director Election Resignation Bylaw shareholder proposal, the Fund held, and has held continuously for at least one year, at least 9400 shares of Xerox Corporation common stock.

If there are any questions concerning this matter, please do not hesitate to contact me directly at [redacted] or at [redacted].

Sincerely,

William C. Collins
Vice President
State Street Bank and Trust Company

cc. Joseph Byrne, Fund Trustee
David Minasian
Edward J. Durkin