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February 9, 2024

VIA ONLINE SHAREHOLDER PROPOSAL PORTAL

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

Re: *Delta Air Lines, Inc.*
Shareholder Proposal of SOC Investment Group
Securities Exchange Act of 1934—Rule 14a-8

Ladies and Gentlemen:

This letter is to inform you that Delta Air Lines, Inc. ("Delta" or the "Company"), intends to omit from its proxy statement and form of proxy for its 2024 Annual Meeting of Shareholders (collectively, the "Proxy Materials") a shareholder proposal (the "Proposal") and statement in support thereof (the "Supporting Statement") received from the SOC Investment Group (the "Proponent"), by letter dated January 3, 2024.

Pursuant to Rule 14a-8(j) promulgated under the Securities Exchange Act of 1934, as amended (the "Exchange Act"), we have:

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

Rule 14a-8(k) and Staff Legal Bulletin No. 14D (Nov. 7, 2008) ("SLB 14D") provide that shareholder proponents are required to send companies a copy of any correspondence that the proponents elect to submit to the Commission or the staff of the Division of Corporation Finance (the "Staff"). Accordingly, we are 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 such correspondence should be furnished concurrently to the undersigned on behalf of the Company pursuant to Rule 14a-8(k) and SLB 14D.

THE PROPOSAL

The Proposal states:

Resolved: Shareholders request the Board of Directors issue a report on Delta Air Lines, Inc. (the "Company") expenditures that are intended or could be viewed as intended to dissuade employees from joining or supporting unions ("union suppression"). In addition to internal Company expenses made for union suppression, the report should include disclosure of expenditures made to any outside entities, including:

- Disclosure of the for-hire entities' identities, fees, hours, remits and work performed in relation to employee unionization and collective bargaining efforts, as well as other services they are hired to perform for the Company.
- Description of the Board's oversight of these for-hire entities; and
- Disclosure of the for-hire entities' adherence to the Company's policies including reference to any legal and/or regulatory enforcement matters wherein the for-hire entities are involved.

A copy of the Proposal and the Supporting Statement is attached to this letter as Exhibit A.

BASES FOR EXCLUSION

We hereby respectfully request that the Staff concur in our view that the Proposal may be excluded from the Proxy Materials pursuant to:

- Rule 14a-8(i)(3) because it is impermissibly vague and indefinite so as to be inherently misleading, and
- Rule 14a-8(i)(7) because the Proposal relates to the Company's ordinary business operations.

In reliance on the announcement by the Staff, we have omitted all correspondence that is not directly relevant to this no-action request. *See* Announcement Regarding Personally Identifiable and Other Sensitive Information in Rule 14a-8 Submissions and Related Materials, *available at* https://www.sec.gov/corpfin/announcement/announcement-14a-8-submissions-pii-20211217 (last updated Dec. 17, 2021).

BACKGROUND

Delta is proud to help connect people each and every day. This mission also guides the Company's relationship with its employees. To recognize the important work of its employees, and to ensure it continues to attract and retain the best talent, Delta has historically provided its employees with industry-leading total compensation, including competitive base pay, rewards for operational performance, and industry-leading profit-sharing, as well as 401(k) and emergency

savings contributions, health and wellness benefits, flight privileges, recognition programs and career skill-building courses and growth paths.

Delta relies on regular and direct communications with its employees to foster a positive work environment and to ensure that the Company's compensation and benefits are competitive and relevant to their needs. Through surveys, Delta regularly asks employees to reflect and provide feedback on their overall experience at Delta. For 2023, employee feedback fueled its largest-ever investments in well-being. Through Business Resource Groups ("BRGs") and elected bodies like Employee Involvement Groups ("EIGs"), employees can provide perspectives and work directly with leaders to form strategies and solutions that have a significant positive impact on their work life and the Company. Delta's Board of Directors (the "Board") has direct interaction with employees through the Delta Board Council, which includes five rotating representatives from multiple employee groups who attend meetings of the Board and who present employee perspectives to senior leaders and the Board.

Delta's workplace strategy encompasses not only direct communication with employees but also leadership and managerial training, compliance with applicable labor and employment laws to ensure employees' rights are protected, and a culture of respect and cooperation that is woven into the fabric of work life at Delta.

Delta fully supports employees' right to choose if union representation is right for them. In 2023, Delta was the first major U.S. carrier to reach an agreement with its pilots' union, the Air Line Pilots Association, International, which included pay increases and improvements to retirement benefits and work rules. Contrary to implications in the Supporting Statement, Delta complies with its federal reporting requirements. The Company files an annual Form LM-10 with the Department of Labor – reporting on much of the same expenditures made to outside entities as sought by the Proposal.

ANALYSIS

I. The Proposal May Be Excluded Under Rule 14a-8(i)(3) Because It Is Impermissibly Vague And Indefinite So As To Be Inherently Misleading.

A. Background on the Standard.

Rule 14a-8(i)(3) permits the exclusion of a shareholder proposal if the proposal or supporting statement is contrary to any of the Commission's proxy rules or regulations, including Rule 14a-9, which prohibits materially false or misleading statements in proxy soliciting materials. The Staff consistently has taken the position that vague and indefinite shareholder proposals are inherently misleading and therefore excludable under Rule 14a-8(i)(3) because "neither the stockholders voting on the proposal, nor the company in implementing the proposal (if adopted), would be able to determine with any reasonable certainty exactly what actions or measures the proposal requires." See Staff Legal Bulletin No. 14B (Sept. 15, 2004) ("SLB 14B"). See also,

Dyer v. SEC, 287 F.2d 773, 781 (8th Cir. 1961) ("[I]t appears to us that the proposal, as drafted and submitted to the company, is so vague and indefinite as to make it impossible for either the board of directors or the stockholders at large to comprehend precisely what the proposal would entail.") and *Microsoft Corp*. (avail. Oct. 7, 2016) (concurring that a proposal may be excluded under Rule 14a-8(i)(3), as vague and indefinite . . . "[N]either shareholders nor the company would be able to determine with any reasonable certainty exactly what actions or measures the proposal requires").

B. The Proposal Is Excludable Under Rule 14a-8(i)(3) Because It Fails To Provide Sufficient Clarity Or Guidance Such That Stockholders And The Company Would Reach Different Conclusions Regarding Its Implementation.

The Proposal's reliance on a broad and subjective definition of "union suppression" means that it applies to an indefinite range of activities. The Proposal requests that the Board report on the Company's "expenditures that are *intended or could be viewed as intended to* dissuade employees from joining or supporting unions ("union suppression"). In addition to internal Company expenses made for union suppression, the report should include disclosure of expenditures made to any outside entities…" (italics added). Because the scope of the report depends on subjective intentions that are impossible to ascertain, including what the Proponent or another undefined third party could view as Delta's intentions with regard to union suppression, stockholders reading the Proposal would be unable to determine with reasonable certainty exactly the scope or nature of reporting on which they are voting. Similarly, if stockholders were to vote in favor of the Proposal, the Company would be unable to determine with reasonable certainty exactly the scope or nature of reporting to be implemented.

The Proposal is excludable on the same basis as the proposal reviewed by the Staff in *The Walt Disney Co. (Grau)* (avail. Jan. 19, 2022). The Staff concurred that Disney could exclude a proposal requesting the company prohibit communications to cast members and contractors of "politically charged biases regardless of content or purpose." The Staff noted that there "appears to be some basis for your view that the Company may exclude the Proposal under Rule 14a-8(i)(3), as vague and indefinite. We note in particular your view that, in applying this proposal to the Company, neither shareholders nor the Company would be able to determine with reasonable certainty exactly what actions or measures the Proposal requests."

See also, *Apple Inc.* (avail. Dec. 22, 2021) (concurring with the exclusion under Rule 14a-8(i)(3) of a proposal as vague and indefinite when it requested that the company take steps necessary to become a "public benefit corporation" where the Staff noted that "the proposal creates uncertainty regarding the statutory form the [c]ompany must take to implement the proposal"); *Apple Inc. (Zhao)* (avail. Dec. 6, 2019) (concurring that a proposal requesting the company "improve guiding principles of executive compensation" could be excluded under Rule 14a-8(i)(3) and noting that neither shareholders nor the company would be able to determine with reasonable certainty how the proposal seeks to "improve [the] guiding principles of executive compensation"); *AT&T, Inc.* (avail. Feb. 21, 2014) (concurring that a proposal requesting board

of directors' review of "the company's policies and procedures relating to directors' moral, ethical and legal fiduciary duties and opportunities to ensure that the company protects the privacy rights of American citizens" could be excluded under Rule 14a-8(i)(3) as "neither shareholders nor the company would be able to determine with any reasonable certainty exactly what actions or measures the proposal requires"); and *Fuqua Industries, Inc.* (avail. Mar. 12, 1991) (concurring that a proposal that sought to prohibit "any major shareholder . . . which currently owns 25% of the Company and has three board seats from compromising the ownership of the other stockholders," could be excluded under Rule 14a-8(i)(3), where the meaning and application of such terms as "any major shareholder," "assets/interest" and "obtaining control" would be subject to differing interpretations).

Here, like in the foregoing proceedings, the ambiguous scope and nature of the request could lead the Board to produce a variety of materially different but still reasonable reports. The Proposal is inherently subject to differing interpretations on "expenditures that are *intended or could be viewed as intended to* dissuade employees from joining or supporting unions ("union suppression")." (italics added). For example, the report could cover expenditures for a range of employee communications, some more apparently related to union organizing efforts than others: pamphlets or flyers challenging union claims; educational materials on the process for unionization that appear on a Company website; invitations for employees to join BRGs and elected bodies like EIGs, even if the invitations do not reference unions, because the groups present an alternative for employees to communicate with management; promotional videos highlighting the strengths of Delta's current workforce and work environment, even if they do not reference unions, because they potentially weaken the case for unionization. As another example, it is unclear whether the report would be required to include details on Delta's competitive compensation and benefits, such as comparisons to Delta's unionized industry peers, because to some readers, superior compensation or benefits could be viewed as intended to dissuade employees from joining or supporting unions. The second sentence of the Proposal further broadens the range of expenditures that might be reported, to include expenditures made with outside entities who are consulted or engaged in any of the foregoing activities.

As such, stockholders would not be able to determine the scope and nature of the proposed report, and they could not be expected to make an informed decision about the merits of the Proposal. Moreover, the Company would be unable to implement the Proposal in line with a discernible shareholder mandate, because shareholders would likely read and interpret the Proposal differently.

C. The Proposal Is Excludable Under Rule 14a-8(i)(3) Because It Fails To Define Key Terms.

The Staff has routinely concurred with the exclusion of proposals that fail to define key terms or otherwise fail to provide sufficient clarity or guidance to enable either stockholders or the company to understand how the proposal would be implemented. In addition to the no-action letters discussed above, see also *The Boeing Co.* (avail. Feb. 23, 2021) (concurring with the

exclusion under Rule 14a-8(i)(3) of a proposal requiring that 60% of the company's directors "must have an aerospace/aviation/engineering executive background" where such phrase was undefined); *The Boeing Co.* (Recon.) (avail. Mar. 2, 2011) (concurring with the exclusion under Rule 14a-8(i)(3) of a proposal because it failed to "sufficiently explain the meaning of 'executive pay rights'"); *International Paper Co.* (avail. Feb. 3, 2011) (concurring with the exclusion under Rule 14a-8(i)(3) of a proposal that requested the adoption of a particular executive stock ownership policy because it did not sufficiently define "executive pay rights"); and *Verizon Communications Inc.* (avail. Feb. 21, 2008) (concurring with the exclusion under Rule 14a-8(i)(3) of a proposal because it failed to define certain critical terms, such as "Industry Peer Group" and "relevant time period").

First, the Proposal inadequately defines "union suppression," because reasonable opinions will differ on which expenditures are "intended or could be viewed as intended" to dissuade employees from joining or supporting unions. Readers could reach fundamentally different determinations of what expenditures should be reported under the Proposal. The Supporting Statement contends that Delta has taken a variety of steps to dissuade employees from joining or supporting unions, including "maintaining a website, playing videos in workplace rest areas, and distributing posters, flyers, and other printed materials to employees." However, the Proposal does not sufficiently define the types of websites, videos and other communications that would constitute "union suppression," in order to distinguish them from the employee communications that companies conduct in the ordinary course of business, and in contexts where individuals would reasonably disagree on whether there is "union suppression." For example, a company might promote its commitment to providing robust employee benefits on its company website – could this expenditure be "intended" or "viewed as intended" to dissuade an employee from joining or supporting unions? Without a clear definition in the Proposal of what expenditures constitute "union suppression," stockholders would vote on the Proposal without a common understanding of the intent of the Proposal, and the Company, in attempting to implement the Proposal, may issue a report that is fundamentally different from what was intended by the stockholders voting in favor of the Proposal.

Second, the Proposal requires the Company to disclose expenditures made to any "outside entities" for purposes of union suppression, without providing a definition of "outside entity" to provide sufficient clarity or guidance to enable either stockholders or the Company to understand how the proposal would be implemented. A reasonable interpretation of the Proposal may include consultants and advisors providing a wide range of support for Delta's human capital management initiatives. Another reasonable interpretation may only include consultants exclusively in the business of dissuading employees from joining or supporting unions. Because the Proposal does not define what is meant by "any outside entities," neither stockholders nor the Company would be able to determine with reasonable certainty exactly what external expenditures should be reported.

In this regard, the Proposal is similar to the proposal in *NYNEX Corp.* (avail. Jan. 12, 1990), requesting that the company not "interfere" in government policies of foreign nations. In

concurring with the exclusion of the proposal as vague and indefinite, the Staff specifically noted that the company would be required to make a highly subjective determination concerning what constitutes "interference" without guidance from the proposal. See also *Bank of America Corp.* (avail. Feb. 25, 2008) (concurring with the exclusion of a proposal requesting a moratorium on activities that "support" MTR coal as vague and indefinite).

The failure to resolve these ambiguities in the Proposal render it so vague as to be materially misleading since "any action ultimately taken by the [c]ompany upon implementation [of the proposal] could be significantly different from the actions envisioned by the shareholders voting on the proposal." See *Fuqua Industries, Inc.* (avail. Mar. 12, 1991). The report could reasonably include a vast amount of expenditure data that satisfies all possible interpretations of the request, but would surely include irrelevant data, as well. Conversely, the report could be minimal and limited to what the Company already reports on its Form LM-10. As the Proposal does not provide workable definitions of the terms "union suppression" or "outside entities," stockholders would have insufficient information to assess the merits of the Proposal and would have difficulty determining whether to vote "for" or "against" the Proposal.

If stockholders were to approve the Proposal pursuant to their individual interpretations of expenditures that are "intended or could be viewed as intended" to dissuade employees from joining or supporting unions, the Company would have no consistent direction or guidelines with respect to how the Proposal should be implemented. Delta's Board would then have to choose among multiple reasonable interpretations for implementing the Proposal, any one of which could be very different from what the stockholders approving the Proposal envisioned.

Furthermore, the Proposal cannot be amended to fix these ambiguities without substantial changes to the definitions of "union suppression" and "outside entities" that change it into a substantially different proposal. According to SLB 14B, the Staff has had "a long-standing practice of issuing no-action responses that permit shareholders to make revisions that are minor in nature and do not alter the substance of the proposal. [It] adopted this practice to deal with proposals that comply generally with the substantive requirements of rule 14a-8, but contain some minor defects that could be corrected easily. [Its] intent to limit this practice to minor defects was evidenced by [its] statement in SLB 14 that [the Staff] may find it appropriate for companies to exclude the entire proposal, supporting statement, or both as materially false or misleading if a proposal or supporting statement would require detailed and extensive editing in order to bring it into compliance with the proxy rules." In this case, the definitions of "union suppression" and "outside entities" would require substantial changes in order for stockholders voting on the Proposal, and the Company in implementing the proposal (if adopted), to be able to determine with any reasonable certainty exactly what actions or measures the proposal requires. Accordingly, the Proposal is inherently vague and indefinite and is excludable under Rule 14-8(i)(3).

II. The Proposal May Be Excluded Under Rule 14a-8(i)(7) Because The Proposal Relates To The Company's Ordinary Business Operations.

A. Background on the Standard.

Rule 14a-8(i)(7) permits a company to omit from its proxy materials a shareholder proposal that relates to the company's "ordinary business" operations. According to the Commission's release accompanying the 1998 amendments to Rule 14a-8, the term "ordinary business" refers to matters that are not necessarily "ordinary" in the common meaning of the word, but instead the term "is rooted in the corporate law concept [of] providing management with flexibility in directing certain core matters involving the company's business and operations." Exchange Act Release No. 34-40018 (May 21, 1998) (the "1998 Release"). In the 1998 Release, the Commission stated that the underlying policy of the ordinary business exclusion is "to confine the resolution of ordinary business problems to management and the board of directors, since it is impracticable for shareholders to decide how to solve such problems at an annual shareholders meeting."

The Commission explained that the ordinary business exclusion rests on two central considerations. The first consideration is the subject matter of the proposal: that "[c]ertain tasks are so fundamental to management's ability to run a company on a day-to-day basis that they could not, as a practical matter, be subject to direct shareholder oversight." The second consideration is the degree to which the proposal attempts to "micro-manage" the company by "probing too deeply into matters of a complex nature upon which shareholders, as a group, would not be in a position to make an informed judgment." *Id.*

As explained in the 1998 Release, examples of subject matters that may be excluded under the first consideration include "*the management of the workforce*, such as the hiring, promotion, and termination of employees…." *Id.* (italics added). However, the Staff has historically taken the position that shareholder proposals relating to such matters but "focusing on sufficiently significant social policy issues…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." *Id*. In determining whether a proposal presents a policy issue that transcends the ordinary business of the company, the Staff noted in Staff Legal Bulletin No. 14L (Nov. 3, 2021) ("SLB 14L"), that it will focus on "the social policy significance of the issue that is the subject of the shareholder proposal. In making this determination, the [S]taff will consider whether the proposal raises issues with a broad societal impact, such that they transcend the ordinary business of the company," regardless of whether a nexus exists between the policy issue and the company.

A shareholder proposal being framed in the form of a request for a report does not change the nature of the proposal. The Commission has stated that a proposal requesting the dissemination of a report may be excludable under Rule 14a-8(i)(7) if the subject matter of the proposed report is within the ordinary business of the issuer. See Exchange Act Release No. 34-20091 (Aug. 16,

1983); and *Johnson Controls, Inc.* (avail. Oct. 26, 1999) ("[Where] the subject matter of the additional disclosure sought in a particular proposal involves a matter of ordinary business . . . it may be excluded under [R]ule 14a-8(i)(7).").

B. The Proposal Is Excludable Because It Relates To The Ordinary Business Of Workforce Management.

The Proposal requests that the Board report on the Company's "expenditures that are *intended or could be viewed as intended to* dissuade employees from joining or supporting unions ("union suppression"). In addition to internal Company expenses made for union suppression, the report should include disclosure of expenditures made to any outside entities…." (italics added). While what is "intended or could be viewed as intended" is inherently vague and indefinite, depending on whose viewpoint is being considered, the Proponent and undefined parties may view investments that make Delta a great place to work with skepticism, and through the lens of union suppression. These expenditures, which implicate complex but routine business and operational considerations, may have no apparent connection to dissuading employees from joining or supporting unions. The Company may undertake these expenditures with the goal of recruiting and retaining a talented workforce, staying competitive with peer companies and motivating employees.

If the Proposal were implemented, in order to collect information for the report, managers throughout the Company would be required to evaluate whether the Company, the Proponent or other undefined parties may consider a broad range of day-to-day workforce management activities and related expenditures to constitute "union suppression," no matter how tenuous the connection.

- A wide range of employee communications, promoting the Company and its compensation and benefits programs, are effective recruiting and retention tools which have been characterized as discouraging unionization and thus "union suppression" under the Proposal's definition, even where the communications make no reference to an employee choice to unionize. For example:
    - Pay raises and Company-sponsored pizza parties have been characterized as "anti-union tactics."[1]
    - Delta's decision to increase per diem benefits and vacation time has been characterized as "changes in hopes of dissuading" union activity.[2]

[1] See empire_strikes.pdf (iamdelta.net). "Delta is preparing their anti-union campaign. Here's what to expect in the coming months. Pizza parties. Nice, but pizza doesn't pay the bills. A pay raise this summer. Cool, but NOTHING CLOSE to the 33% that the pilots got. Guess why? The pilots have a UNION." See also, Top hourly pay for some not all Delta Flight Attendants | Delta AFA. "Don't be surprised when management announces another raise for Flight Attendants. It's a reaction to the momentum of our organizing and an attempt to stop a requirement that management negotiate with us for a contract that truly is 'industry leading.'"

[2] See We're done with management deciding when we deserve improvements | Delta AFA.

- Delta's widely publicized announcement[3] that it shares more of the Company's profits with employees than any other company in America and the airline industry, has been characterized as a "union busting tactic."[4]
- Advertising competitive wages and benefits, especially if they are more generous than at Delta's competitors, is an effective recruiting and retention tool which has been characterized as discouraging unionization and thus "union suppression" under the Proposal's definition. In 2022, Delta became the first U.S. carrier – and still only major U.S. carrier – to provide flight attendants with boarding premium pay, meaning that these employees start getting paid once they board the plane, not when the aircraft door closes. While Delta has discussed this decision in its communications with employees regarding unions, premium boarding pay was driven by a need to have flight attendants board flights earlier, for operational and customer service reasons, with the added benefit of distinguishing Delta's compensation package from those of its competitors. Yet, the United Airlines flight attendants' union characterized these boarding premium payments as union suppression.[5]

- Initiatives on operating hours, schedules and work conditions are essential for workplace management but have also been characterized as "union suppression" under the Proposal's definition. For example, annual healthcare enrollment communications, including wellness initiatives, have been described as a "classic carrot-and-stick union busting approach."[6]
- Decisions on hiring, promotions and terminations are essential to workplace management. Certain decisions involving employees who have expressed pro-union sentiments, even if the sentiments are unknown to the Company, have been characterized as "union suppression" under the Proposal's definition. While Delta employees have legal rights to bring claims for retaliation and wrongful termination, a report that includes internal expenditures related to these potential claims interferes with the Company's ability to manage hiring, promotion and termination decisions.
- Disciplinary proceedings against employees are another essential workplace management function that have been characterized as "union suppression" under the Proposal's definition, even if the decisions were based on valid reasons unrelated to unionization efforts.

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[3] See Delta's profit sharing investment in people makes multimillion-dollar impact in communities across US | Delta News Hub.
[4] See We make the profits. Let's lock in our share. | Delta AFA. "Management uses profit sharing as part of their "Delta Difference" union busting tactics."
[5] See AFA United MEC - Boarding Pay Introduced by Delta... | Facebook. "Further, this [boarding premium] decision is unquestionably tied to AFA's ongoing effort in organizing Delta Flight Attendants. In fact, it can be argued this is Delta's effort to beat back the Amazon and Starbucks trend at the airline."
[6] See Healthcare we didn't bargain for | Delta AFA. "Don't let management fool you into thinking any 'new investments in [our] wellbeing' are a good deal. This is a classic carrot-and-stick union busting approach."

These expenditures are fundamental to management's ability to manage a workforce and offer competitive benefits. They implicate complex considerations that are not appropriately addressed through the shareholder proposal process. The Proposal thus implicates a quintessentially routine business management consideration and therefore is excludable under Rule 14a-8(i)(7) as relating to the Company's ordinary business operations.

The Commission and Staff have long held that shareholder proposals relating to the management of the company's workforce, including the relationship with its employees, are excludable under Rule 14a-8(i)(7). Notably, in *United Technologies Corp.* (avail. Feb. 19, 1993), the Staff provided the following examples of excludable ordinary business categories: "employee health benefits, general compensation issues not focused on senior executives, management of the workplace, employee supervision, labor-management relations, employee hiring and firing, conditions of the employment and employee training and motivation." See also, *PepsiCo, Inc.* (avail Mar. 24, 1993) (same). In the 1998 Release, the Commission subsequently recognized that the "management of the workforce, such as the hiring, promotion, and termination of employees" constitute "tasks . . . so fundamental to management's ability to run a company on a day-to-day basis that they could not, as a practical matter, be subject to direct shareholder oversight." Consistent with the Commission's statement in the 1998 Release and the Staff's statement in *United Technologies Corp.* categorizing proposals that address "management of the workforce" as relating to a company's "ordinary business" operations, the Staff has long held that proposals addressing workforce management matters are excludable under Rule 14a-8(i)(7).

For example, in *Intel Corp.* (avail. Mar. 18, 1999), the Staff concurred with the exclusion of a proposal seeking adoption of an "Employee Bill of Rights," which would have established various protections for the company's employees, including limited workhour requirements, relaxed starting times, and a requirement that employees treat one another with dignity and respect. The Staff noted that the foregoing was excludable as "relating, in part, to Intel's ordinary business operations (i.e. management of the workforce)." *The Kroger Company* (avail. Apr. 12, 2023) (concurring with the exclusion of a proposal to issue a public report detailing the potential risks associated with omitting "viewpoint" and "ideology" from the company's written equal employment opportunity (EEO) policy); *Amazon, Inc. (*avail. Apr. 7, 2022) (concurring with the exclusion of a proposal asking the board of directors to oversee the preparation of a report "on the risks to the company related to ensuring adequate staffing of Amazon's business and operations," including "a discussion of the extent to which Amazon relies on part-time, temporary and contracted workers in each of its three operating segments"); *JPMorgan Chase & Co. (*avail. Mar. 25, 2022) (concurring with the exclusion of a proposal to issue a report, annually, of pay and total estimated compensation for each role, broken down by location, for the prior year); *Apple, Inc.* (avail. Nov. 16, 2015) (concurring with the exclusion of a proposal asking the company's compensation committee to adopt new compensation principles responsive to the U.S.'s "general economy, such as unemployment, working hour and wage inequality," as relating to compensation that may be paid to employees generally"); *Bank of America Corp.* (avail. Feb. 14, 2012) (concurring with the exclusion of a proposal requesting that a company policy be amended to include "protection to engage in free speech outside the job context, and to

participate freely in the political process without fear of discrimination or other repercussions on the job"); *W.R. Grace & Co.* (avail. Feb. 29, 1996) (concurring with the exclusion of a proposal requesting that the company implement a "high-performance" workplace based on policies of workplace democracy and worker participation); *Starwood Hotels & Resorts Worldwide, Inc.* (avail. Feb. 14, 2012) (concurring with the exclusion of a proposal requesting that the company require verified U.S. citizenship for all workers in the United States and minimize required training for foreign workers in the United States, with the Staff noting that it "relates to procedures for hiring and training employees"); and *Wells Fargo & Co.* (avail. Feb. 22, 2008) (concurring with the exclusion of a proposal requesting a policy to not employ individuals who worked at a credit rating agency within the last year as related to "ordinary business operations (i.e., the termination, hiring, or promotion of employees)").

Because of its broad and subjective definition of "union suppression," the Proposal's request could be reasonably interpreted to require a report encompassing how the Company manages its workforce on a day-to-day basis, implicating ordinary business considerations such as compensation and benefits policies; employee communications; recruitment and retention; hiring, promotion and termination of employees; disciplinary actions; as well as other ordinary business decisions aimed at making the Company a desirable place to work. Like the proposals excluded in the precedents discussed above, the Proposal relates to the types of complex but routine workplace-oriented matters that Rule 14a-8(i)(7) is intended to address and is therefore excludable as relating to the Company's ordinary business operations.

C. The Proposal Does Not Focus On A Significant Social Policy Issue That Transcends The Company's Ordinary Business Operations.

In the 1998 Release, the Commission reaffirmed the standards for when proposals are excludable under the "ordinary business" provision that the Commission had initially articulated in Exchange Act Release No. 12999 (Nov. 22, 1976) (the "1976 Release"). In the 1998 Release, the Commission also distinguished proposals pertaining to ordinary business matters that are excludable under Rule 14a-8(i)(7) from those that "focus on" significant social policy issues. The Commission stated, "proposals relating to [ordinary business] matters 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." *Id.*

In contrast, as Staff precedent has established, referencing aspects of a topic that might include significant social policy issues, but which do not define the scope of actions addressed in a proposal and do not limit the principal focus of a proposal, does not transform an otherwise ordinary business proposal into one that transcends ordinary business. For example, the proposal in *Union Pacific Corp.* (avail. Feb. 25, 2008) addressed safety concerns in the course of the company's operations. The proposal requested disclosures of the company's efforts to safeguard the company's operations from terrorist attacks and "other homeland security incidents." The

company argued that the proposal was excludable because the proposal related to the company's day-to-day efforts to safeguard its operations—including not only terrorist attacks, but also earthquakes, floods, and other routine operating risks that were overseen by the Department of Homeland Security but were incident to the company's ordinary business operations. The Staff's response noted that the proposal was excludable because it included matters relating to the company's ordinary business operations despite the fact that safeguarding against terrorist attacks might be viewed as not part of the company's ordinary business. See also, *PetSmart, Inc.* (avail. Mar. 24, 2011) (concurring with the exclusion of a proposal requesting that the board require suppliers to certify that they had not violated animal cruelty-related laws, finding that while animal cruelty is a significant social policy issue, the scope of laws covered by the proposals was too broad); *Dominion Resources, Inc.* (avail. Feb. 3, 2011) (concurring with the exclusion of a proposal requesting that the company promote "stewardship of the environment" by initiating a program to provide financing to home and small business owners for installation of rooftop solar or renewable wind power generation, noting that even though the proposal touched upon environmental matters, the subject matter of the proposal actually related to "the products and services offered for sale by the company"); *Apache Corp.* (avail. Mar. 5, 2008) (concurring with the exclusion of a proposal requesting the implementation of equal employment opportunity policies based on certain principles and noting that "some of the principles relate to [the company's] ordinary business operations"); and *General Electric Co.* (avail. Feb. 10, 2000) (concurring with the exclusion of a proposal relating to the accounting and use of funds for the company's executive compensation program because it both touched upon the significant social policy issue of senior executive compensation, and involved the ordinary business matter of choice of accounting method).

Here, the Proposal's broad application to expenditures that are "intended or could be viewed as intended" for "union suppression" may reasonably encompass matters incident to the Company's ordinary business operations, ranging from employee communications; compensation and benefits policies; recruitment and retention; hiring, promotion and termination of employees; disciplinary actions; and other matters related to the Company's management of its workforce. The fact that the Proposal characterizes these activities as "union suppression" does not make the subject matter of the Proposal any less grounded in the day-to-day operations of the Company's business.

In SLB 14L, the Staff stated that it "will realign its approach for determining whether a proposal relates to 'ordinary business' with the standard the Commission initially articulated in [the 1976 Release] . . . and which the Commission subsequently reaffirmed in the 1998 Release." As such, the Staff stated that it will focus on the issue that is the subject of the shareholder proposal and determine whether it has "a broad societal impact, such that [it] transcend[s] the ordinary business of the company." The Staff noted further that "proposals squarely raising human capital management issues with a broad societal 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" (citing to the 1998 Release and *Dollar General Corp.* (avail. Mar. 6,

2020) and providing "significant discrimination matters" as an example of an issue that transcends ordinary business matters).

This guidance does not affect the excludability of the Proposal because, unlike *Dollar General*, the indefinite scope and subjective nature of the report requested by the Proposal, if implemented, will cover a range of ordinary business activities and decisions that the Staff has consistently determined over the years do not transcend ordinary business. See, e.g., *Intel Corp.* (avail. Mar. 8, 1999) (concurring with the exclusion of a proposal seeking adoption of an "Employee Bill of Rights," which would have established various "protections" for the company's employees, including limited work-hour requirements, relaxed starting times, and a requirement that employees treat one another with dignity and respect, noting that the foregoing was excludable as relating to "management of the workforce") and *Amazon.com, Inc.* (*Domini Impact Equity Fund and the New York State Common Retirement Fund)* (avail. Mar. 28, 2019) (concurring that although the proposal might have touched on significant sustainability concerns, the proposal was so broadly worded that the Staff concurred that the proposal did not focus on any single issue that transcended the company's ordinary business).

While the Proponent contends that significant considerations of union suppression are implicated by the Proposal, it is actually a proposal on the management of the Company's workforce and not distinguishable from the precedents above. In its Supporting Statement, the Proposal requests a report on, among other matters, wide-ranging aspects of the Company's day-to-day communications with employees, including "creating and maintaining a website, playing videos in workplace rest areas, and distributing posters, flyers and other printed materials to employees." The Proposal relates to the Company's ordinary business operations and policies for its day-to-day operations, and is therefore excludable from the Company's Proxy Materials under Rule 14a-8(i)(7).

D. The Proposal Seeks to Micromanage the Company.

Even where the Staff concurs that a proposal addresses a significant social policy, the 1998 Release identified that such a proposal could still "probe too deeply" where "the proposal involves intricate detail, or seeks to impose specific time-frames or methods for implementing complex policies" thereby seeking to micromanage the Company. In SLB 14L, the Staff clarified that the determination of whether a proposal impermissibly micromanages the company "will focus on the level of granularity sought in the proposal and whether it inappropriately limits the discretion of the board or management." The Staff further clarified that 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." *Id.*

Given the indefinite range of expenditures throughout Delta's operations that could be characterized by the Proponent or others as "expenditures that are intended or could be viewed as intended to dissuade employees from joining or supporting unions," and therefore require inclusion in the requested report, the level of granularity requested by the Proposal

inappropriately limits the discretion of management to communicate with and make decisions related to the Company's workforce. The level of granularity is particularly acute with regard to internal expenditures. For example, if the Company produces a flyer discussing union dues, would it need to determine what portion of salaries for employees that worked on the flyer should be reported as expenditures for the report? Similarly, would the Company need to account for the incremental cost of ink and copying? The report could also have a chilling effect on communications, contradictory to Delta's approach to transparent communication with its employees. Managers and employees would be discouraged from communicating with other employees, sharing workplace information, responding to union claims, comparing Delta's compensation and benefits versus unionized peer companies, highlighting positive aspects of working at Delta, disciplining employees and making other day-to-day decisions if they are construed as "union suppression" under the Proposal's broad and subjective definitions.

The Staff has consistently concurred with the exclusion of proposals that inappropriately limit management's discretion. In *Deere & Co.* (avail. Jan. 3, 2022), the Staff concurred that the proposal micromanages the Company by probing too deeply into matters of a complex nature by seeking disclosure of intricate details regarding the Company's employment and training practices. See also, *AT&T Inc.* (Mar. 15, 2023) (concurring with exclusion of a proposal requesting the board adopt a policy of obtaining shareholder approval for any future "golden coffin" arrangements); *Chubb Limited* (Mar. 27, 2023) (concurring with the exclusion of a proposal that would require the board to adopt and disclose a policy for the timebound phase out of underwriting risks associated with new fossil fuel exploration and development projects); *The Kroger Co.* (Apr. 25, 2023) (concurring with the exclusion of a proposal requesting the company pilot participation in the Fair Food Program for tomato purchases in order to mitigate severe risks of forced labor and other human rights violations in the company's produce supply chain); *Amazon.com, Inc.* (Apr. 7, 2023) (concurring that a proposal requiring the company measure and disclose scope 3 greenhouse gas emissions across its full value chain and all products that it sells directly and by third party vendors micromanaged the company); and *Coca Cola Co.* (avail. Feb. 16, 2022) (concurring that a proposal requiring the company to submit any proposed political statement to the next shareholder meeting for approval prior to issuing the subject statement publicly micromanaged the company).

Furthermore, the complexity of the type of assessment the Proposal requests is simply beyond the knowledge and expertise of Delta's stockholders and therefore seeks to micromanage the Company. Workforce management matters are multi-faceted, complex and based on a range of considerations, and they are the subject of laws of multiple states and foreign countries. In some cases, they bear directly on terms and conditions of employment. These are fundamental business matters for the Company's management at multiple levels of the Company and require an understanding of the business implications that could result from changes made to workforce policies. Given the inherent complexity of these matters, the expenditures that the Proposal seeks to influence are properly within the discretion of the Company's management and should not be the subject of direct stockholder oversight.

The Staff has consistently granted no-action relief for shareholder proposals that probe matters too complex for shareholders by substituting shareholder judgment for that of management with respect to complex day-to-day business operations that are beyond the knowledge and expertise of shareholders. See, e.g., *Verizon Communications, Inc.* (avail. Mar. 17, 2022) (concurring that a proposal requesting the company to annually publish content of diversity, inclusion, equity or related employee-training materials micromanaged the company by probing too deeply into matters of a complex nature by seeking disclosure of intricate details regarding the company's employment and training practices); *GameStop Corp. (*Apr. 24, 2023) (concurring with exclusion of a proposal requesting the company to create a service and provide a daily report on certain shareholding information, a service that was not related to any existing business offering of the company); *Phillips 66* (Mar. 20, 2023) and *Valero Energy Corporation* (Mar. 20, 2023) (in each case concurring with exclusion of a proposal requesting the company to disclose specific and detailed information related to the undiscounted expected value to settle obligations for asset retirement obligations with indeterminate settlement dates).

Accordingly, the Proposal is excludable pursuant to Rule 14a-8(i)(7) because it seeks to micromanage the Company by inappropriately limiting management's discretion and probing too deeply into matters which shareholders are not in a position to make an informed judgment, namely a range of workforce management decisions at every level of the Company, including employee communications; competitive compensation and benefits policies; recruitment and retention; hiring, promotion and termination of employees; and disciplinary actions. The Proposal, by its broad and subjective request for all "expenditures that are intended or could be viewed as intended to dissuade employees from joining or supporting unions," is actually a workforce management proposal, directly relating to the Company's ordinary business operations and policies. Accordingly, and consistent with the precedents cited above, the Company believes that the Proposal may properly be excluded from its Proxy Materials.

CONCLUSION

For the foregoing reasons, please confirm that the Staff will not recommend any enforcement action to the Commission if the Proposal is omitted from the Proxy Materials. Should the Staff disagree with our conclusions regarding the omission of the Proposal, or should any additional information be desired in support of the Company's position, we would appreciate an opportunity to confer with the Staff concerning these matters prior to the issuance of the Staff's Rule 14a-8 response. If we can provide any additional correspondence to address any questions that the Staff may have with respect to this no-action request, please do not hesitate to call me at (404) 715-4704 or via email at alan.t.rosselot@delta.com.

Sincerely,

Alan T. Rosselot

Enclosures

cc: Louis Malizia, SOC Investment Group

Exhibit A
Proposal and Supporting Statement

SOC INVESTMENT GROUP

UNITING WORKERS' CAPITAL

January 3, 2024

Via UPS

Attention: Corporate Secretary
Delta Air Lines, Inc.
Department 981
1030 Delta Boulevard
Atlanta, Georgia 30354

Re: Shareholder proposal for 2024 Annual Shareholder Meeting

Dear Corporate Secretary,

The SOC Investment Group is submitting the attached proposal (the "Proposal") pursuant to the Securities and Exchange Commission's Rule 14a-8 to be included in the proxy statement of Delta Air Lines, Inc. (the "Company") for its 2024 annual meeting of shareholders.

The SOC Investment Group has continuously beneficially owned, for at least 3 years as of the date hereof, at least $2,000 worth of the Company's common stock. Verification of this ownership will be sent under separate cover. The SOC Investment Group intends to continue to hold such shares through the date of the Company's 2024 annual meeting of shareholders.

The Proposal requests the Board of Directors furnish a report on the Company's expenditures that are intended or could be viewed as intended to dissuade employees from joining or supporting unions. We support this proposal because of the Company's historically negative responses to unionization which we believe sparked human capital management and reputational risks over expenditures related to the Company's position.

The SOC Investment Group is available to meet with the Company via teleconference on January 19, 2024 from 10:00am-12:30pm and January 24, 2024 from 1:30pm-4:00pm. Please contact Louis Malizia, [redacted] or via phone [redacted] to schedule a meeting, or with any questions.

Sincerely,

Tejal Patel
Executive Director
SOC Investment Group

Resolved: Shareholders request the Board of Directors issue a report on Delta Air Lines, Inc. (the "Company") expenditures that are intended or could be viewed as intended to dissuade employees from joining or supporting unions ("union suppression"). In addition to internal Company expenses made for union suppression, the report should include disclosure of expenditures made to any outside entities, including:

- Disclosure of the for-hire entities' identities, fees, hours, remits and work performed in relation to employee unionization and collective bargaining efforts, as well as other services they are hired to perform for the Company.
- Description of the Board's oversight of these for-hire entities; and,
- Disclosure of the for-hire entities' adherence to the Company's policies including reference to any legal and/or regulatory enforcement matters wherein the for-hire entities are involved.

Supporting Statement: Since 2019, Delta employees have engaged in union organizing efforts, and Delta has taken a variety of steps to dissuade employees from joining or supporting unions, including: creating and maintaining a website, playing videos in workplace rest areas, and distributing posters, flyers, and other printed materials to employees. In addition to the direct expenses entailed in developing and distributing these communications, Delta has been criticized for the content of these materials, including a flyer that urged employees to spend money on video games rather than union dues.

These actions by Delta potentially create legal, regulatory, and reputational risks for the Company. U.S. public support for unions is at historic levels. Investors increasingly recognize that effective human capital management may lead to greater diversity, lower turnover, higher productivity, and improved regulatory compliance, which are important to long-term shareholder value. Moreover, as one union avoidance consultant puts it, even if a company blocks unionization, "a lot of damage is done to the employer-employee relationship. You cannot overtly or obscurely threaten people and expect them to remain committed to the organization. A culture of intimidation is created, and that type of culture will lower productivity, create workplace stress, and increase turnover."[1] Accounts of employer efforts to dissuade workers from unionizing support this assessment.[2]

Companies are required to file public reports on certain financial dealings with their employees and unions, as well as their expenditures to persuade employees about exercising their rights to organize and bargain collectively. However, the only filings Delta has made since 2006 refer to office space used by the pilots' union. Additionally, while third-party entities, such as labor consultants who are hired by an employer to develop and execute union suppression efforts, are also required to file similar documentation, no filings reflecting such work for Delta appear.

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[1] https://projectionsinc.com/unionproof/staying-union-free-strategies/

[2] https://www.huffpost.com/entry/workers-wanted-a-union-then-the-mysterious-men-showed-up_n_64b7dd60e4b0dcb4cab68347?gmc

- Press reports indicate that employers are often slow to file required reports with the U.S. Department of Labor, if they ever do so.[3] Shareholders are entitled to know how their Company is utilizing the capital they have entrusted to it, to assess its appropriateness. We urge you to vote FOR this resolution.

[3] https://prospect.org/labor/companies-required-to-report-their-union-busting-many-dont/; https://prospect.org/justice/2023-10-05-lawyers-not-persuaders-littler-mendelson/; https://www.huffpost.com/entry/why-we-know-so-little-about-the-us-union-busting-industry_n_64c28622e4b03ad2b897077f