



DIVISION OF
CORPORATION FINANCE

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

January 6, 2026

Elizabeth A. Ising
Gibson, Dunn & Crutcher LLP

Re: United Parcel Service, Inc. (the "Company")
Incoming Letter dated December 29, 2025

Dear Elizabeth A. Ising:

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

The Company represents that it has a reasonable basis to exclude the Proposal. Based solely on that representation, we will not object if the Company excludes the Proposal from its proxy materials.

Copies of all of the correspondence on which this response is based will be made available on our website.

Sincerely,

Division of Corporation Finance
Office of Chief Counsel

cc: Stefan Padfield
National Center for Public Policy Research

December 29, 2025

VIA ONLINE SUBMISSION

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

Re: *United Parcel Service, Inc.*
Shareowner Proposal of the National Center for Public Policy Research
Securities Exchange Act of 1934 ("Exchange Act")—Rule 14a-8

Ladies and Gentlemen:

This letter notifies the staff of the Division of Corporation Finance (the "Staff") of the Securities and Exchange Commission (the "Commission") that our client, United Parcel Service, Inc. (the "Company"), intends to omit from its proxy statement and form of proxy for its 2026 Annual Meeting of Shareowners (collectively, the "2026 Proxy Materials") a shareowner proposal and statements in support thereof (the "Proposal") received from the National Center for Public Policy Research (the "Proponent").

Pursuant to 14a-8(j) and the *Statement Regarding the Division of Corporation Finance's Role in the Exchange Act Rule 14a-8 Process for the Current Proxy Season* issued by the Staff on November 17, 2025, we hereby request that the Staff confirm that it will not object if the Company omits the Proposal from the 2026 Proxy Materials. In this regard, the Company represents that it has a reasonable basis to exclude the Proposal under Rule 14a-8, prior published guidance, and/or judicial decisions.

As discussed in greater detail in Exhibit A, the Proposal may be excluded from the 2026 Proxy Materials because:

- implementing the Proposal would cause the Company to violate Delaware law (Rule 14a-8(i)(2)); and
- the Proposal seeks to micromanage the Company (Rule 14a-8(i)(7)).

A copy of the Proposal is attached to this letter as Exhibit B.

Pursuant to Rule 14a-8(j), we have, on behalf of the Company:

- filed this letter with the Commission no later than eighty (80) calendar days before the Company intends to file its definitive 2026 Proxy Materials with the Commission; and
- concurrently sent a copy of this correspondence to the Proponent.

GIBSON DUNN

Rule 14a-8(k) and Staff Legal Bulletin No. 14D (Nov. 7, 2008) (“SLB 14D”) provide that shareowner proponents are required to send companies a copy of any correspondence that the proponents elect to submit to the Commission or the Staff. Accordingly, we are taking this opportunity to inform the Proponent that if the Proponent elects to submit correspondence to the Commission or the Staff with respect to the Proposal, a copy of that correspondence should be furnished concurrently to the undersigned on behalf of the Company pursuant to Rule 14a-8(k) and SLB 14D.

We are available to provide the Staff with any additional information and answer any questions that you may have regarding this matter. If we can be of any assistance, please do not hesitate to call me at (202) 955-8287, or Ryan Swift, the Company’s Assistant Secretary, at (404) 828-8188. Correspondence regarding this letter should be sent to shareholderproposals@gibsondunn.com.

Sincerely,



Elizabeth A. Ising

Enclosures

cc: Ryan Swift, United Parcel Service, Inc.
Stefan Padfield, National Center for Public Policy Research

EXHIBIT A

BASIS FOR UNITED PARCEL SERVICE, INC. EXCLUDING THE PROPOSAL FOR FAILURE TO SATISFY RULE 14A-8

PROPOSAL

The Resolved clause of the Proposal states:

Article IV of the Bylaws of United Parcel Service, Inc. shall be amended by adding the following Section 9:

“Section 9. Notwithstanding any of the foregoing, the Corporation shall have a Risk Committee. The Risk Committee shall at a minimum conduct oversight of the Corporation’s sustainability initiatives. The process by which the Risk Committee shall exercise its oversight shall at a minimum including assessing the extent to which the Corporation’s sustainability initiatives have been authorized on the basis of positive net-present-value calculations and are being maintained on the basis of return-on-investment analysis. The Risk Committee shall annually report to the shareholders on its findings.”

A copy of the Proposal is attached to this letter as Exhibit B.

ANALYSIS

I. The Proposal Is Excluded Under Rule 14a-8(i)(2) Because Implementing The Proposal Would Cause The Company To Violate State Law

A. Background On Proposals That Violate Law

Rule 14a-8(i)(2) states that a proposal may be excluded from a company’s proxy materials if implementation of the proposal would “cause the company to violate any state, federal, or foreign law to which it is subject.” See *Chevron Corp. (New York City Carpenters Pension Fund)* (avail. Mar. 29, 2024); *Kimberly-Clark Corp.* (avail. Dec. 18, 2009); *Bank of America Corp.* (avail. Feb. 11, 2009). As discussed below and as explained in the legal opinion provided by Morris, Nichols, Arsht & Tunnell LLP, the Company’s Delaware counsel (the “Delaware Law Opinion,” attached as Exhibit C), implementation of the Proposal would violate Delaware law (the state where the Company is incorporated) because bylaws may not mandate how the Board of Directors (the “Board”) should decide specific substantive business decisions and the Proposal would mandate a review of core business decisions based on the Proponent’s criteria.

The Staff has repeatedly concurred with the exclusion of shareowner proposals where the proposal, if implemented, would violate state law. For example, in *Citigroup Inc. (Harrington)* (avail. Feb. 18, 2009), the Staff concurred with the exclusion of a proposal under Rule 14a-8(i)(2) to amend the company’s bylaws to establish a board committee and authorize the chairman of the board to appoint the members of the committee, where the company argued that the proposal would violate Delaware law in two respects, including by forcing directors to undertake a specific course of action with respect to company management. Likewise, in *CA*,

Inc. (avail. Jul. 17, 2008), the Staff concurred with the exclusion under Rule 14a-8(i)(2) of a proposal that was invalid under Delaware law because the requested bylaw amendment would have required the company's board to take a specific action without regard to the board's fiduciary duty to determine whether the action was in the best interest of shareowners.

Here, the Proposal is a binding proposal that, if approved, would automatically amend the Company's Bylaws to limit the Board's ability to manage or direct the Company's corporate sustainability initiatives, including by requiring that a specifically-designated committee of the Board annually conduct a review of these matters using the Proposal's narrow "net-present-value" and "return-on-investment" formulas, regardless of whether such directors believe that such analysis is appropriate. As such, the Proposal violates Delaware law by impermissibly limiting and encroaching upon the Board's authority to exercise its fiduciary duty and management responsibilities. Accordingly, the Proposal may be excluded under Rule 14a-8(i)(2).

B. Implementation of The Proposal Would Cause The Company To Violate Delaware Law

The Company is incorporated in Delaware and is governed by Delaware law. As discussed in detail in the Delaware Law Opinion, in accordance with Section 141(a) of the Delaware General Corporation Law (the "DGCL"), the Board possesses the full power and authority to manage or direct the business and affairs of the Company. The Proposal, if approved, would automatically result in an amendment to the Company's Bylaws to enact a bylaw forming a Risk Committee of the Board. The Proposal's bylaw amendment would force directors serving on the Risk Committee to "at a minimum conduct oversight of the [Company's] sustainability initiatives . . . including assessing the extent to which the [Company's] sustainability initiatives have been authorized on the basis of positive net-present-value calculations and are being maintained on the basis of return-on-investment analysis." The Committee would also be required to "annually report to the shareholders on its findings." The Proposal also provides that it is intended to provide "shareholders with clear, quantitative assurance that its sustainability projects meet standard financial performance criteria" using the Proponent's "rigorous, value-based oversight."

Section 109 of the DGCL permits shareowners to adopt bylaws for a corporation. See DGCL § 109(a). The bylaws may contain "any provision, not inconsistent with law or with the certificate of incorporation, relating to the business of the corporation, the conduct of its affairs, and its rights or powers or the rights or powers of its stockholders, directors, officers or employees." DGCL § 109(b). Section 141(a) of the DGCL provides that "[t]he business and affairs of every corporation . . . shall be *managed by or under the direction of a board of directors*, except as may be otherwise provided in [the DGCL] or in its certificate of incorporation" (emphasis added). When a bylaw addresses board of director decisions, the Delaware Supreme Court has expressly held that a board's power to make business decisions under Section 141(a) trumps Section 109 and prohibits a bylaw from interfering with the substance of board decisions. See *CA, Inc. v. AFSCME Employees Pension Plan*, 953 A.2d 227 (Del. 2008).

The Proposal's bylaw amendment goes beyond regulating corporate process and procedure. Rather than prescribing *how* directors should make decisions (such as by specifying certain voting thresholds or requiring decisions to be made by the full board instead of a committee), the Proposal's bylaw amendment would require directors to perform a *specific type*

of review and analysis using the Proponent’s specified formulas, regardless of the directors’ own judgment. As discussed above, the Board’s authority to manage or direct the business and affairs of the corporation under Section 141(a) supersedes a shareowner’s ability to adopt bylaws under Section 109. As such, the Proposal’s bylaw amendment, which would require that directors use specific formulas and conduct a specific type of review in connection with a business decision even if the directors may conclude that their efforts should be directed elsewhere or that different or additional evaluation methods or criteria should be used, would, if implemented, cause the Company to violate Delaware law by impermissibly elevating Section 109 above Section 141(a). The Proposal, through the guise of forming a committee, therefore impermissibly limits director discretion and forces directors to perform the review it urges.

For the foregoing reasons, including the Delaware Law Opinion, the Proposal may be excluded under Rule 14a-8(i)(2) because it would cause the Company to violate Delaware law if implemented.

II. The Proposal Is Excluded Under Rule 14a-8(i)(7) Because The Proposal Relates To The Company’s Ordinary Business Operations By Seeking To Micromanage The Company

A. Background On The Ordinary Business Standard

Rule 14a-8(i)(7) permits a company to omit a shareowner proposal from its proxy materials “[i]f the proposal deals with a matter relating to the company’s ordinary business operations.” According to the Commission’s release accompanying the 1998 amendments to Rule 14a-8, the term “ordinary business” “refers to matters that are not necessarily ‘ordinary’ in the common meaning of the word,” but instead the term “is rooted in the corporate law concept providing management with flexibility in directing certain core matters involving the company’s business and operations.” Exchange Act Release No. 40018 (May 21, 1998) (the “1998 Release”).

In the 1998 Release, the Commission explained 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,” and identified two central considerations that underlie this policy. *Id.* The second consideration, which is applicable to the Proposal, is related to “the degree to which the proposal seeks to ‘micro-manage’ the company by probing too deeply into matters of a complex nature upon which shareholders, as a group, would not be in a position to make an informed judgment.” *Id.* (citing Exchange Act Release No. 12999 (Nov. 22, 1976)). As stated in Staff Legal Bulletin No. 14M (Feb. 12, 2025) (“SLB 14M”), “[u]nlike the first consideration, which looks to a proposal’s subject matter, the second consideration looks only to the degree to which a proposal seeks to micromanage.”

The 1998 Release further states, “[t]his consideration may come into play in a number of circumstances, such as where the proposal involves intricate detail, or seeks to impose specific time-frames or methods for implementing complex policies.” In part C.2 of Staff Legal Bulletin No. 14J (Oct. 23, 2018), reinstated by SLB 14M, the Staff explained that “[t]his framework also applies to proposals that call for a study or report. For example, a proposal that seeks an intricately detailed study or report may be excluded on micromanagement grounds.” In addition, the Staff, consistent with Commission guidance, considers the underlying substance of the

matters addressed by the study or report. *Id.* In part B.4 of Staff Legal Bulletin No. 14K (Oct. 16, 2019) (“SLB 14K”), reinstated by SLB 14M, the Staff reiterated this point, stating, “[i]n considering arguments for exclusion based on micromanagement, and consistent with the Commission’s views, we look to whether the proposal seeks intricate detail or imposes a specific strategy, method, action, outcome or timeline for addressing an issue, thereby supplanting the judgment of management and the board.” Instead, the Staff assesses the “level of prescriptiveness of the proposal,” and “if the method or strategy for implementing the action requested by the proposal is overly prescriptive, thereby potentially limiting the judgment and discretion of the board and management, the proposal may be viewed as micromanaging the company.” *Id.*

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

As noted above, the Staff has determined that proposals that seek to impermissibly micromanage a 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” are excludable under Rule 14a-8(i)(7), regardless of whether the proposal addresses a significant social policy. 1998 Release. In assessing whether a proposal micromanages by seeking to impose specific methods for implementing complex policies, the Staff evaluates not just the wording of the proposal but also the action called for by the proposal and the manner in which the action called for under a proposal would affect a company’s activities and management discretion. See part B.4 of SLB 14K, reinstated by SLB 14M; *Deere & Co.* (avail. Jan. 3, 2022) (concurring with exclusion of a broadly phrased request for an annual report that micromanaged the company by imposing a specific method for implementing a complex policy).

For example, in *Evergy, Inc.* (avail. Mar. 21, 2025), the Staff concurred with the exclusion under Rule 14a-8(i)(7) of a proposal that requested that the company “retain an independent third party to project and disclose GHG emissions associated with its 2024 Integrated Resource Plan.” The company argued that the proposal sought to “substitute management’s judgment about the appropriate way to address a complex, multifaceted issue by imposing a prescriptive standard that differs from the approach the [c]ompany believes is best suited to the [c]ompany when measuring and disclosing GHG emissions.” The company further explained that the proposal would “require disclosure at a project-specific level and would remove the [c]ompany’s discretion to report in a different way, including in alignment with standardized methodologies and regulatory requirements. And in *Dominion Energy, Inc. (Amundsen)* (avail. Mar. 17, 2025), the Staff concurred with the exclusion under Rule 14a-8(i)(7) of a proposal that requested that the company develop a Virginia Clean Economy Act-compliant energy plan that provided for an “unobstructed build out of distributed energy,” “long-term storage,” “cost comparisons of the Virginia Clean Economy Act and traditional models that include social cost of carbon,” and “an option where new data centers provide their own renewable energy resources.” The Staff concurred that the proposal sought “to micromanage the company” where the company argued that the proposal sought “to overhaul [the company’s] policies and strategies relating to energy generation” and that such decisions “are based on a number of interrelated factors specific to [the company’s] ordinary business operations.”

Similarly, the Proposal seeks to second-guess the Board’s management or direction of the business affairs of the Company by prescribing a specific approach for how the Company should manage, evaluate, and report on its sustainability initiatives. The Proposal argues that the Company’s “long-term value depends on effective risk oversight, disciplined capital allocation, and the credibility of its sustainability claims” and claims that the Company “does not

currently provide shareholders with... quantitative assurance that its sustainability projects meet standard financial performance criteria.” To address this issue, the Proposal seeks to amend the Company’s Bylaws to (1) require the establishment of a Risk Committee of the Board, (2) assign oversight responsibility of the Company’s sustainability initiatives to that committee, (3) require that the committee “at a minimum... assess[] the extent to which the [Company’s] sustainability initiatives have been authorized on the basis of positive net-present-value calculations and are being maintained on the basis of return-on-investment analysis,” and (4) require the committee to “annually report to the shareholders on its findings.” Like the proposals in *Evergy* and *Dominion Energy*, the Proposal seeks to micromanage the Company by mandating how the Company should oversee its sustainability initiatives and prescribing what information the Company discloses regarding those initiatives. In the words of SLB 14M, in reinstating part B.4 of SLB 14K, the Proposal “seeks intricate detail” and “imposes a specific strategy, method, action, [or] outcome” for addressing the Company’s sustainability initiatives, “thereby supplanting the judgment of management and the board.”

Moreover, similar to the proposal in *Evergy*, the Proposal seeks to “substitute management’s judgment about the appropriate way to address a complex, multifaceted issue by imposing a prescriptive standard that differs from the approach the [c]ompany believes is best suited to the [c]ompany.” In this regard, the Proposal, if approved, would automatically result in an amendment to the Company’s Bylaws to dictate how the Company evaluates its sustainability initiatives, requiring an “annual assessment of whether [the Company’s] sustainability projects are supported by NPV calculations and monitored through ROI analysis.” However, the Proposal ignores the fact that business and investment decisions, such as which sustainability initiatives the Company should pursue and how the performance of such initiatives should be analyzed, are highly complex and based on a range of considerations related to the day-to-day operations of the business, such as business strategy, government regulations, and brand reputation. Additionally, the Proposal’s prescriptive approach to the oversight of sustainability initiatives limits not only the metrics that the Company should use to evaluate these programs, but also who should be responsible for this evaluation. Rather than allowing the Board to determine how best to manage the Company’s sustainability initiatives, the Proposal requires that the Board establish and maintain a Risk Committee and delegate specific oversight responsibilities to that committee, specifically requiring that committee to annually conduct net-present-value calculations and return-on-investment analyses for each of the Company’s sustainability initiatives. As with *Dominion Energy*, where the proposal sought to “overhaul [the company’s] policies and strategies relating to energy generation,” the Proposal seeks to completely overhaul the Company’s policies and strategies relating to the oversight of sustainability initiatives.

Thus, as in *Evergy* and *Dominion Energy*, the Proposal seeks to micromanage the Company by seeking to impose a specific method for addressing the complex issues related to the oversight of the Company’s sustainability initiatives, without providing the Company with any discretion to decide who should be responsible for such oversight and how such initiatives should be evaluated. The Proposal seeks to interject shareowners into the complex decision-making process of how best to oversee the Company’s sustainability initiatives, “thereby supplanting the judgment of management and the board” in evaluating, reporting on, and managing these matters. Accordingly, we believe that the Proposal micromanages the Company’s fundamental day-to-day decisions and policies with respect to its sustainability initiatives and therefore may be excluded pursuant to Rule 14a-8(i)(7).

CONCLUSION

Accordingly, consistent with the precedent cited above, the Proposal may be excluded under Rule 14a-8(i)(2), because implementing the Proposal would cause the Company to violate state law, and under Rule 14a-8(i)(7), because the Proposal seeks to impermissibly micromanage the Company.

EXHIBIT B



November 17, 2025

Corporate Secretary
United Parcel Service, Inc.
55 Glenlake Parkway, N.E.
Atlanta, Georgia 30328
Via email to: investor@ups.com

Dear Corporate Secretary,

I hereby submit the enclosed shareholder proposal (“Proposal”) for inclusion in the United Parcel Service, Inc. (the “Company”) proxy statement to be circulated to Company shareholders in conjunction with the next annual meeting of shareholders. The Proposal is submitted under Rule 14(a)-8 (Proposals of Security Holders) of the United States Securities and Exchange Commission’s proxy regulations.

I submit the Proposal as Executive Director of the Free Enterprise Project of the National Center for Public Policy Research (NCPPR). NCPPR has continuously owned Company stock with a value exceeding \$2,000 for at least 3 years prior to and including the date of this Proposal and intends to hold these shares through the date of the Company’s next annual meeting of shareholders.

Pursuant to interpretations of Rule 14(a)-8 by the Securities and Exchange Commission staff, I initially propose a time for a meeting to discuss this proposal Dec. 4, 2025, or Dec. 5, 2025, from 1-4 PM ET on each date. If these times prove inconvenient, I hope that the Company will provide alternative dates within the window proposed by Rule 14(a)-8(b)(iii). Please feel free to contact me at [REDACTED] so that we can determine the mode and method of that discussion. This letter constitutes notice that we intend to reserve the right to record any related meetings.

As you know, SEC guidance has admonished corporations against seeking no-action relief on grounds that could have been resolved by clear and open correspondence between the parties and a good-faith willingness on all sides to reach a mutually satisfactory resolution and to implement whatever revisions may be agreed to. We herewith express our openness to consider in good faith

any specific objections to this proposal that you may raise, and a hereby express our commitment to work earnestly towards an acceptable adjustment in all instances that objections are raised that are demonstrably supported by SEC regulation, staff guidance, or other relevant explications of specific rules governing the situation at hand.

Copies of correspondence or a request for any “no-action” letter should be delivered to me at the National Center for Public Policy Research, 2005 Massachusetts Ave. NW, Washington D.C., 20036 and emailed to [REDACTED]

Sincerely,

/s/ Stefan Padfield

Stefan Padfield
Executive Director, Free Enterprise Project
National Center for Public Policy Research

Enclosures: Shareholder Proposal

Sustainability Oversight

RESOLVED:

Article IV of the Bylaws of United Parcel Service, Inc. shall be amended by adding the following Section 9:

“**Section 9.** Notwithstanding any of the foregoing, the Corporation shall have a Risk Committee. The Risk Committee shall at a minimum conduct oversight of the Corporation’s sustainability initiatives. The process by which the Risk Committee shall exercise its oversight shall at a minimum including assessing the extent to which the Corporation’s sustainability initiatives have been authorized on the basis of positive net-present-value calculations and are being maintained on the basis of return-on-investment analysis. The Risk Committee shall annually report to the shareholders on its findings.”

Supporting Statement

UPS’s long-term value depends on effective risk oversight, disciplined capital allocation, and the credibility of its sustainability claims. Investors increasingly evaluate large public companies not only by their environmental or social goals but also by whether those initiatives produce measurable financial returns aligned with fiduciary duty. Yet UPS does not currently provide shareholders with clear, quantitative assurance that its sustainability projects meet standard financial performance criteria.

For example, the 2024 UPS Sustainability and Social Impact Report's "Delivering for Our Planet"¹ section reveals several red flags regarding the absence of net-present-value (NPV) or return-on-investment (ROI) analyses for its decarbonization initiatives. First, the seven-pillar strategy, including a 40% alternative fuel target by 2025 (87% achieved) and net-zero emissions by 2050, is outlined without any cost estimates, capital requirements, or projected financial returns. Second, the asset transition pillar highlights testing over 1,000 sustainable vehicles and operational efficiencies yielding a 2.1% emissions reduction, yet omits details on investment payback periods or economic viability. Third, renewable electricity goals—15.2% achieved toward 25% by 2025 and 100% by 2035—are promoted alongside carbon offset strategies, but lack quantification of incremental costs versus long-term savings or shareholder value impact. These omissions suggest potential governance lapses in justifying sustainability spending.

The proposed bylaw amendment would strengthen corporate governance by codifying the responsibility of the Risk Committee to apply rigorous, value-based oversight to sustainability initiatives. The proposal does not dictate particular environmental policies or outcomes; rather, it ensures that such initiatives are subject to the same financial scrutiny as other corporate investments.

By requiring annual assessment of whether sustainability projects are supported by NPV calculations and monitored through ROI analysis, the amendment promotes transparency and accountability. Where such affirmation cannot be made, the Committee has the opportunity to explain why—ensuring shareholders receive material information necessary to properly value their shares.

Seeking sound financial evaluation of sustainability projects should not be viewed as an attack on environmental and social responsibility. Requiring explicit NPV and ROI review simply ensures that corporate resources advance both ethical and economic objectives in accordance with fiduciary duties.

Shareholders are urged to vote FOR this bylaw amendment to enhance UPS's accountability, transparency, and long-term value creation.

¹ <https://about.ups.com/us/en/our-impact/ups-sustainability-and-social-impact-report/delivering-for-our-planet.html>

EXHIBIT C

MORRIS, NICHOLS, ARSHT & TUNNELL LLP

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

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

December 28, 2025

United Parcel Service, Inc.
55 Glenlake Parkway, N.E.
Atlanta, Georgia 30328

Ladies and Gentlemen:

This letter confirms our opinion regarding a stockholder proposal (the “Proposal”) submitted to United Parcel Service, Inc., a Delaware corporation (the “Company”), by the National Center for Public Policy Research (the “Proponent”), for inclusion in the Company’s proxy statement and form of proxy for its next annual meeting of stockholders. It is our opinion that the Proposal, if implemented, would cause the Company to violate Delaware law.

I. Summary of the Proposal.

The Proposal, if approved, would automatically result in an amendment to the Company’s Bylaws to enact a bylaw (the “Bylaw”) forming a Risk Committee (the “Committee”) of the Company’s Board of Directors (the “Board”). The Bylaw would require directors serving on the Committee to “at a minimum conduct oversight of the [Company’s] sustainability initiatives ... including assessing the extent to which the [Company’s] sustainability initiatives have been authorized on the basis of positive net-present-value calculations and are being maintained on the basis of return-on-investment analysis.” The Committee would also be required to “annually report to the shareholders on its findings.”¹ In the Proponent’s Supporting Statement, it states that the Proposal is intended to provide “shareholders with clear, quantitative assurance that its sustainability projects meet standard financial performance criteria” using the Proponent’s “rigorous, value-based oversight.”

The Board already has a standing Risk Committee, but that committee is charged with overseeing certain enterprise risks, including the Company’s risk management program, strategic

¹ The Proposal would add the following paragraph as a new Section of Article IV of the Bylaws:

Section 9. Notwithstanding any of the foregoing, the Corporation shall have a Risk Committee. The Risk Committee shall at a minimum conduct oversight of the Corporation’s sustainability initiatives. The process by which the Risk Committee shall exercise its oversight shall at a minimum including assessing the extent to which the Corporation’s sustainability initiatives have been authorized on the basis of positive net-present-value calculations and are being maintained on the basis of return-on-investment analysis. The Risk Committee shall annually report to the shareholders on its findings.

enterprise risks facing the Company and information security matters.² The Board has charged its Nominating and Governance Committee with overseeing environmental sustainability matters and risks that are relevant to the Company.³ Authority for day-to-day management and sustainability matters are delegated to management, including a Chief Sustainability Officer. Each year the Company publishes and makes available on its website sustainability reports describing the goals, recent achievements and challenges for balancing economic, environmental and social aspects of the Company's business.⁴

II. Summary of Opinion.

The Bylaw is not permitted by Delaware law. Bylaws may regulate the process and procedures that directors follow to make a decision, like establishing quorum and voting requirements or requiring the full board (instead of a committee) to make certain decisions. Bylaws may not “mandate how the board should decide specific business decisions.”⁵

The Bylaw is about specific substantive business decisions. For example, sustainability initiatives involve how the Company fuels and operates its fleet of aircraft and vehicles. Sustainability decisions also require judgment calls on how the Company complies with legal and regulatory requirements and how the Company promotes its reputation and brand to consumers. The Bylaw would impermissibly encroach on Board authority by forcing directors to conduct a standalone review of these decisions based on the Proponent's narrow “net-present-value” and “return-on-equity” criteria. Directors cannot be forced to undertake a review that they do not deem to be advisable.

III. Analysis.

Our analysis of the Proposal is based on two provisions of the Delaware General Corporation Law (the “DGCL”):

- Section 109 of the DGCL permits stockholders to adopt bylaws for a corporation.⁶ The bylaws may contain “any provision, not inconsistent with law or with the certificate of incorporation, relating to the business of the corporation, the conduct of its affairs, and its rights or powers or the rights or powers of its stockholders, directors, officers or employees.”⁷

² See Art. II, §§ 1 & 2 of Risk Committee Charter, effective November 6, 2025 (available at <https://investors.ups.com/corporategovernance>).

³ See Art. II, § 24 of Nominating and Corporate Governance Committee Charter, effective November 6, 2025 (available at <https://investors.ups.com/corporategovernance>).

⁴ The recitation of the facts set forth herein and the description of the Company's documents referenced herein have been reviewed by the Company's management for accuracy.

⁵ *CA, Inc. v. AFSCME Employees Pension Plan*, 953 A.2d 227 (Del. 2008).

⁶ DGCL, § 109(a).

⁷ DGCL, § 109(b).

- Section 141(a) of the DGCL provides that “[t]he business and affairs of every corporation . . . shall be managed by or under the direction of a board of directors, except as may be otherwise provided in [the DGCL] or in its certificate of incorporation.”

When a bylaw like the one prescribed by the Proposal addresses board of director decisions, the Delaware Supreme Court has expressly held that a board’s power to make business decisions under Section 141(a) trumps Section 109 and prohibits a bylaw from interfering with the substance of board decisions.⁸ In *CA, Inc. v. AFSCME Employees Pension Plan*, the Delaware Supreme Court framed the relationship between stockholder-adopted bylaws and board decisions as follows:

- “Traditionally, the bylaws have been the corporate instrument used to set forth the rules by which the corporate board conducts its business. To this end, the DGCL is replete with specific provisions authorizing the bylaws to establish the procedures through which board and committee action is taken [T]here is a general consensus that bylaws that regulate the process by which the board acts are statutorily authorized.”⁹ The Court provided examples of process bylaws, including bylaws fixing the number of directors, establishing quorum and voting requirements for board action, prohibiting director action through board committees, prohibiting action by consent in lieu of a meeting, and requiring directors to meet at specific locations.¹⁰
- But “[i]t is well established that a proper function of bylaws is not to mandate how the board should decide specific substantive decisions[.]”¹¹ For example, a stockholder-adopted bylaw is invalid under Section 141(a) of the DGCL if the bylaw would “commit the board of directors to a course of action that would preclude them from fully discharging their fiduciary duties to the corporation and its shareholders.”¹²

The bylaw at issue in *CA* would have required the directors to cause the corporation to reimburse stockholders for the expenses they incur in soliciting proxies to elect their candidates as directors in certain circumstances. The Court held the bylaw would be invalid if it were adopted because the bylaw would prevent the directors “from exercising their full managerial power in circumstances where their fiduciary duties would otherwise require them to deny reimbursement to a dissident slate.”¹³

⁸ *CA*, 953 A.2d at 232.

⁹ *Id.* at 234-35 (quoting *Hollinger International, Inc. v. Black*, 844 A.2d 1022, 1078-79 (Del. Ch. 2004)).

¹⁰ *Id.* at 235-36.

¹¹ *Id.* at 234-35.

¹² *Id.* at 238.

¹³ *Id.* at 239-40. Following the *CA* decision, the Delaware General Assembly amended the DGCL to expressly authorize a corporation’s bylaws to include (i) proxy expense reimbursement provisions akin to the provision at issue in *CA* (DGCL, § 113) and (ii) proxy access provisions requiring the company to include in its proxy materials nominees submitted by eligible stockholders (DGCL, § 112). Commentators observed that Sections 112 and 113 were intended to be enabling provisions, allowing proxy expense reimbursement or proxy access

The Bylaw goes beyond addressing process and procedure. It does not merely regulate the manner in which a director decision is made by, for example, addressing the vote required for specific decisions or by requiring the full board (instead of a committee) to make decisions.¹⁴ Instead, the Bylaw would force the directors to perform a specific type of review and analysis based on the Proponent's criteria.¹⁵

The Risk Committee that would be formed by the Proposal clearly relates to the types of "specific substantive business decisions" that the Court in *CA* held could not be regulated by bylaws. Sustainability initiatives touch on several fundamental areas of Company management authority. The Company is a global package and delivery logistics provider that provides transportation and delivery services through an integrated air and ground network, distribution, contract logistics, ocean freight, airfreight, customs brokerage and insurance.¹⁶ The Company owns and operates a well-known fleet of aircraft and vehicles. The Company's sustainability initiatives relate to issues like conserving electricity, fuel and water at Company facilities, efforts to improve fuel efficiency of aircraft and vehicles through preventative maintenance, technology and fuel conservation practices and using network and mode optimizations to minimize the miles travelled and energy consumed by Company vehicles.¹⁷ All of these issues call for business decisions, such as how much to invest in new technologies, whether to acquire new types of vehicles or other products and when to achieve energy conservation through facility design, operational practices and retrofitting.

bylaws to be adopted by the board or the stockholders. See Jeffrey R. Wolters & James D. Honaker, *Analysis of the 2009 Amendments to the Delaware General Corporation Law* (Aspen 2009).

¹⁴ The Proponent could have, perhaps, asked the stockholders to adopt a bylaw vesting a board committee with the power to decide whether or not to conduct the review urged by the Proponent. Under Section 141(c) of the DGCL, a bylaw may set forth the authority of a board committee. But the Delaware courts have not yet addressed whether this provision of Section 141(c), like Section 109, "is limited by the board's management prerogatives under Section 141(a)." *Id.* at 232. Put differently, the Delaware courts have not yet decided whether a stockholder-adopted bylaw purporting to affirmatively delegate *board* authority "improperly intrude[s] upon the directors' power to manage corporation's business and affairs under Section 141(a)." *Id.* at 234. In any event, even if a committee of the board may be established and empowered through a stockholder-adopted bylaw, a committee cannot function without the assent of the directors because only the directors can designate the committee members, and only the directors serving on the committee possess the power to decide whether or not to exercise the authority granted to the committee in the bylaws.

¹⁵ We note that Section 122(18) of the DGCL empowers corporations to enter into agreements with one or more stockholders in exchange for consideration received by the corporation. These agreements may include covenants that directors will take, or refrain from taking, specified actions. However, the Proposal contemplates a bylaw, not an agreement in exchange for consideration from stockholders. *Cf.* Del. S.B. 313 syn. § 1, 152nd Gen. Assem. (2024) ("§ 122(18) would not change the outcome in cases that invalidated bylaws, and other arrangements, where consideration had not been provided to the corporation and the provisions at issue conflicted with § 141(a) of Title 8.").

¹⁶ See Item 1 of the Company's Annual Report for the year ended December 31, 2024 (available on <https://investors.ups.com/sec-filings>).

¹⁷ See, e.g., Environmental Policy Statement and Environmental Guidance Statements (available at: <https://about.ups.com/us/en/our-impact/reporting.html>).

The Proponent’s Bylaw would mandate a review of these core business decisions through the lens of the Proponent’s net-present-value and return-on-investment criteria. Under Delaware law, a bylaw cannot require directors to conduct any specific form of review with respect to a business decision . In addition to the precedent cited above, several Delaware cases support our conclusion.

- The Delaware Court of Chancery has stated that “[u]ltimately, it is the responsibility and duty of the elected board to determine corporate goals, to approve strategies and plans to achieve those goals and to monitor progress toward achieving them.”¹⁸ The Proposal would, if implemented, cause the Company to violate Delaware law because the directors are entitled to develop *their own goals* on sustainability and *their own* methods to monitor progress to achieve those goals.
- The Delaware Supreme Court has also noted that “[a] board may have regard for various constituencies in discharging its responsibilities, provided there are rationally related benefits accruing to the stockholders.”¹⁹ The Board is therefore entitled to review its sustainability measures based on such factors it determines to be appropriate and consistent with its fiduciary duties, such as its relationships with (and reputation held by) customers, unions, employees, retirees and governmental entities. The Board and its Nominating Committee may weigh these factors in any manner calculated to promote long-term stockholder value, and Delaware law requires deference to the directors’ judgment so long as this “rationally related” test is satisfied.²⁰ The Proposal would supplant this deferential standard with the Proponent’s criteria.
- At a minimum, the Proposal would require the directors to expend time and resources to evaluate sustainability issues and issue a report that is driven solely by the criteria favored by the Proponent. But, under *CA*, a stockholder-adopted bylaw may not limit a board’s *full* managerial responsibilities. In *CA*, the Court concluded that the proposal violated Delaware law because the proposed bylaw would have prevented the board from denying corporate expenditures for proxy contests that do not promote the interests of the corporation.²¹ Similarly, the Bylaw would be invalid if adopted because it denies the Company directors their full power to exercise their fiduciary duties to refrain from undertaking the narrow review urged by the Proponent if the directors believe a different use of corporate resources and director time is more appropriate for promoting the Company’s best interests.

¹⁸ *Grimes v. Donald*, 1995 WL 54441, at *11 (Del. Ch. Jan. 11, 1995), *aff’d*, 673 A.2d 1207 (Del. 1996).

¹⁹ *Revlon Inc. v. MacAndrews & Forbes Holdings, Inc.*, 506 A.2d 173, 182 (Del. 1986).

²⁰ *Cf. Simeone v. The Walt Disney Company*, 302 A.3d 956,971 (Del. Ch. 2023) (“A board may conclude in the exercise of its business judgment that addressing interests of corporate stakeholders—such as the workforce that drives a company’s profit—is rationally related to building long-term value.”).

²¹ *See CA*, 953 A.2d at 240.

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The Proponent is free to communicate its views on sustainability to the Company and the other stockholders. But the Proponent cannot adopt a bylaw that, through the guise of forming a committee, forces the directors to perform the review it urges. If such a bylaw were valid, a group of investors could force the directors to consider any number of topics, or focus on a set of criteria, that would supplant the Board's authority and responsibilities by turning director focus away from overseeing the affairs of the Company in manner they believe in good faith is necessary to promote the Company's interests. The directors must ration their time, like any other resource, in a manner they believe will advance the best interests of the Company.

For the foregoing reasons, it is our opinion that the Proposal would, if implemented, cause the Company to violate Delaware law.

Very truly yours,

Norris, Nichols, Aronson & Tunnell LLP