

[INQUIRY LETTER]

November 4, 2005

Direct Dial

(202) 955-8653

Fax No.

(202) 530-9677

Client No.

C 38126-00456

VIA HAND DELIVERY

Office of the Chief Counsel

Division of Corporation Finance

Securities and Exchange Commission

100 F Street, NE

Washington, DC 20549

Re: Stockholder Proposal of United Brotherhood of Carpenters Pension Fund Exchange Act of 1934 –Rule 14a-8

Dear Ladies and Gentlemen:

This letter is to inform you that our client, Hewlett-Packard Company ("HP"), intends to omit from its proxy statement and form of proxy for its 2006 Annual Stockholders Meeting (collectively, the "2006 Proxy Materials") a stockholder proposal and a statement in support thereof (the "Proposal") received from the United Brotherhood of Carpenters Pension Fund (the "Proponent").

Pursuant to Rule 14a-8(j), enclosed herewith are six (6) copies of this letter and its attachments. Also, in accordance with Rule 14a-8(j), a copy of this letter and its attachments is being mailed on this date to the Proponent, informing them of HP's intention to omit the Proposal from the 2006 Proxy Materials. Pursuant to Rule 14a-8(j), this letter is being filed with the Securities and Exchange Commission (the "Commission") no later than eighty (80) calendar days before HP files its definitive 2006 Proxy Materials with the Commission.

On behalf of our client, we hereby respectfully request that the staff of the Division of Corporation Finance (the "Staff") concur in our view that the Proposal may be excluded from the 2006 Proxy Materials pursuant to Rule 14a-8(i)(10) because HP has substantially implemented the Proposal.

THE PROPOSAL

The Proposal requests that HP's Board of Directors "initiate the appropriate process to amend the Company's corporate governance documents (certificate of incorporation or bylaws) to provide that director nominees shall be elected by the affirmative vote of the majority of votes cast at an annual meeting of shareholders." The Proposal's supporting statement indicates that the Proposal is intended to "give shareholders a meaningful role in the director election process." A copy of the Proposal and supporting statement, as well as related correspondence from the Proponent, is attached to this letter as *Attachment A*.

ANALYSIS

The Proposal May Be Excluded under Rule 14a-8(i)(10) Because HP Has Substantially Implemented the Proposal.

A. Background

Rule 14a-8(i)(10) permits a company to exclude a stockholder proposal if the company has substantially implemented the proposal. The Commission stated in 1976 that the predecessor to Rule 14a-8(i)(10) "is designed to avoid the possibility of shareholders having to consider matters which have already been favorably acted upon by the management." See Release No. 34-12598 (July 7, 1976). The Commission has refined Rule 14a-8(i)(10) over the years. In the 1983 amendments to the proxy rules, the Commission indicated:

In the past, the staff has permitted the exclusion of proposals under Rule 14a-8(c)(10) only in those cases where the action requested by the proposal has been fully effected. The Commission proposed an interpretative change to permit the omission of proposals that have been "substantially implemented by the issuer." While the new interpretative position will add more subjectivity to the application for the provision, the Commission has determined the previous formalistic application of this provision defeated its purpose. *Amendments to Rule 14a-8 Under the Securities Exchange Act of 1934 Relating to Proposals by Security Holders*, Release No. 20091, at §II.E.5. (Aug. 16, 1983) (the "1983 Release").

The 1998 amendments to the proxy rules, which (among other things) implemented the current Rule 14a-8(i)(10), reaffirmed this position. See *Amendments to Rules on Shareholder Proposals*, Exchange Act Release No. 40018 at n.30 and accompanying text (May 21, 1998). Consequently, as noted in the 1983 Release, in order to be excludable under Rule 14a-8(i)(10), a stockholder proposal need only be "substantially implemented," not "fully effected."

The Staff has stated "a determination that the company has substantially implemented the proposal depends upon whether [the company's] particular policies, practices and procedures compare favorably with the guidelines of the proposal." *Texaco, Inc.* (available March 28, 1991). In other words, Rule 14a-8(i)(10) permits exclusion of a stockholder proposal when a company has implemented the *essential objective* of the proposal, even where the manner by which a company implements a proposal does not precisely correspond to the actions sought by a stockholder proponent. See Release No. 34-20091 (August 16, 1983); *AMR Corporation* (April 17, 2000); *Masco Corporation* (March 29, 1999); *Erie Indemnity Company* (March 15, 1999).

B. HP's Majority Voting Policy

As announced on November 2, 2005, HP's Board of Directors has adopted a policy providing that "directors who receive a greater number of votes 'withheld' from his or her election than votes 'for' such election shall tender his or her resignation for consideration by" the Nominating and Corporate Governance Committee. A copy of the HP Majority Voting Policy is attached to this letter as *Attachment B*. We believe that the HP Majority Voting Policy substantially implements the purpose and

text of the Proposal and, thus, the Proposal is excludable under Rule 14a-8(i)(10). Specifically, while HP has approached the issue presented by the Proposal in a manner that differs from the Proponent's preferred approach, both the HP Majority Voting Policy and the Proponent's preferred approach "compare favorably" in terms of outcome.

C. Analysis

When a company can demonstrate that it has already adopted policies or taken actions to address each element of a stockholder proposal, the Staff has concurred that the proposal has been "substantially implemented" and may be excluded as moot. *See, e.g., Intel Corp.* (avail. Mar. 11, 2003) (concurring that a proposal requesting that Intel's board submit to a stockholder vote all equity compensation plans and amendments to add shares to those plans that would result in material potential dilution was substantially implemented by a board policy that excepted certain awards from the policy); *Nordstrom Inc.* (avail. Feb. 8, 1995) (concurring that a proposal requesting a report to stockholders on Nordstrom's relationship with suppliers and a commitment to regular inspections was substantially implemented by existing company guidelines and a press release, even though the guidelines did not commit the company to conduct regular or random inspections to ensure compliance).

1. HP Has Implemented the Proposal by Requiring Directors to Tender Their Resignation if They Do Not Receive a Majority of Votes Cast

The Proposal asks that HP "provide that director nominees shall be elected by the affirmative vote of the majority of votes cast at an annual meeting of shareholders." The supporting statement indicates that the Proponent believes that the Proposal should be implemented by changing the legal standard applied in director elections to a majority vote. The Proposal's supporting statement notes that some companies have implemented a majority vote standard through governance policies such as the HP Majority Voting Policy, but states the Proponent's view that the method preferred by the Proponent - changing the legal standard to a majority vote - is "a superior solution." Nonetheless, the supporting statement acknowledges that the Proposal "is not intended to limit the judgment of the Board in crafting the requested governance change."

For the reasons described below, we believe that the HP Majority Voting Policy "compares favorably" with the result that would be obtained if HP had implemented a majority voting standard in the manner preferred by the Proponent (especially since HP allows stockholders to cumulate their votes in director elections, thereby giving stockholders a more meaningful role in the director election process). Specifically, under both the HP Majority Voting Policy and the approach preferred by the Proponent, if a nominee receives a majority of the votes cast, then the nominee is elected without further issue. Under the HP Majority Voting Policy, if a nominee receives a plurality of votes but not a majority, *i.e.*, the nominee receives "for" votes in an uncontested election, but more "withheld" than "for" votes, then that nominee must tender his or her resignation, and HP's Board (through its Nominating and Corporate Governance Committee) will then determine whether or not to accept the resignation. As discussed below, this two-step process under the HP Majority Voting Policy and the result that it produces with respect to nominees who do not receive a majority vote "compare favorably with" the process and result that would occur if HP had taken the approach preferred by the Proponent (changing the voting standard) to implement the Proposal. Examining the director election process in the context of existing state corporation law demonstrates how the process and result under the HP Majority Voting Policy substantially implement the Proposal.

HP is incorporated in Delaware. Under Delaware law and under HP's Certificate of Incorporation, directors serve until the next annual meeting of stockholders and thereafter until their successors are duly elected and qualified, unless they earlier resign or are removed by stockholders. Thus, an incumbent director who is not re-elected, regardless of whether the company uses a plurality or a majority voting standard, continues to serve as a director under Delaware law. A director who "holds over" continues to operate with the same voting rights and powers as an elected director until his or her successor is duly elected and qualified. *See* Delaware General Corporation Law §141(b) ("each director shall hold office until such director's successor is elected and qualified or until such director's earlier resignation or removal.") Delaware law and HP's Certificate of Incorporation also provide that vacancies on the board may be filled by a majority of the remaining directors, the sole remaining director (if applicable), or by the stockholders in certain situations. The Proposal addresses only the standard by which stockholders may elect directors, and does not seek to change the role of the board of directors in naming persons to serve as directors. Because of the operation of Delaware law, the HP Majority Voting Policy is more effective in removing a director opposed by stockholders because it requires the incumbent director who receives a greater number of withheld than for votes to tender his or her resignation.

In the election of directors, stockholders only can vote "for" a particular director nominee or can indicate that they are withholding their votes. The HP Majority Voting Policy looks at the percentage of votes each director receives. If less than 50% of the votes cast with respect to a particular director nominee are withheld, it means that a majority of the votes cast were affirmative votes for the nominee. In that situation, the HP Majority Voting Policy has the same effect as if the Proposal was implemented by amending the legal voting standard; the nominee is elected by a majority of the votes cast. The issue then is whether the manner in which the HP Majority Voting Policy operates "compares favorably" with a voting standard approach (the Proponent's preferred approach) when a nominee does not receive a majority of the votes cast. This situation can arise either in the context of an incumbent director who is nominated for reelection or in the context of a nominee who is not an incumbent director. Each of these situations is discussed below.

- *Operation of the Majority Vote Standard for Incumbent Nominees*

Typically, nominees for election as directors that are proposed by a company's nominating committee are already incumbent directors.¹ If a majority voting standard were implemented in the manner preferred by the Proponent, an incumbent director nominee who did not receive a majority vote of the shares cast would continue to serve as a director until the next election of directors. In contrast, under the HP Majority Voting Policy, if an incumbent director does not receive a majority of the votes cast, he or she would tender his or her resignation for consideration by the HP Board. If the Board accepted the resignation, then the director would no longer serve on the board. If the Board rejected the resignation, the result would be the same as would occur under the procedure preferred by the Proponent - the director would continue to serve until the next election of directors. In this context, therefore, the result obtained under HP's Majority Voting Policy can be more effective in giving stockholders a meaningful role in the director election process than the result obtained under the procedure preferred by the Proponent, because the HP Majority Voting Policy provides a process under which that individual may cease to serve as a director if he or she does not receive the affirmative vote of the majority of votes cast at an annual meeting of stockholders. In contrast, under the Proponent's preferred approach, the director would continue to serve because the board cannot remove directors under Delaware law. In no case will the consequences under the HP Majority Voting Policy of an incumbent director receiving less than the affirmative vote of a majority of the votes cast be any less effective in implementing the stockholder proposal than the procedure preferred by the Proponent.

- *Operation of the Majority Vote Standard for Non-Incumbent Nominees*

In the less common situation of a director nominee who is not an incumbent director, the result of the HP Majority Voting Policy likewise will be substantially the same as the result under the procedure preferred by the Proponent. Specifically, under the procedure preferred by the Proponent, a non-incumbent nominee would not be elected if he or she failed to receive a majority of the votes cast, resulting in a vacancy on the Board. In that situation, a majority of HP's remaining directors would meet to determine what action to take and could determine to fill the vacancy by appointing the nominee to serve as a director until the next election of directors. To the same effect, the HP Majority Voting Policy provides that the new nominee is elected but must tender his or her resignation. If HP's Board accepts the resignation, then the director would no longer serve on the Board. If HP's Board rejects the resignation, the nominee would continue to serve on the Board of Directors, just as he or she would if appointed by the Board to fill a vacancy. Thus, under both the procedure preferred by the Proponent and HP's Majority Voting Policy, when a non-incumbent nominee fails to receive a majority of the votes cast by stockholders, the corporate procedures turn to the board of directors to determine what action to take.

² Moreover, both the HP Majority Voting Policy and the procedure preferred by the Proponent give effect to votes withheld from director nominees: in either case, stockholders cast their votes knowing that votes withheld the nominee will impact whether the nominee serves on the board of directors.

The Staff, in a long line of no-action letters, has recognized that stockholder proposals are excludable where company actions (like the HP Majority Voting Policy) substantially implement the proposals, even if the method chosen by the companies to implement the proposals are not the method preferred by the proponents. For example, in *General Motors Corp.* (avail. Mar. 14, 2005) the Staff concurred, despite the proponent's objections, that the company substantially implemented a stockholder proposal requesting that the company's board "adopt a policy that any future poison pill be redeemed or put to shareholder vote within 4-months after it is adopted." Specifically, the company's board adopted a policy that any such pill would be submitted for stockholder approval (but not necessarily repealed if not ratified) within twelve months of adoption. Similarly, in *Southwest Airlines Co.* (avail. Feb. 10, 2005), the Staff concurred, over the proponent's objections, that a company substantially implemented a stockholder proposal requesting that the company take steps to declassify the board "in the most expeditious manner possible" when the company's board of directors amended the bylaws to phase-in annual director elections over two years. *See also General Motors* (avail. Mar. 4, 1996) (concurring that the company substantially implemented a stockholder proposal requesting adoption of a policy of secret balloting for all votes of stockholders that could be amended only by majority stockholder vote where the company had such a policy, even though it could be amended in various manners). We believe that this precedent is controlling with respect to the Proposal in light of the HP Majority Voting Policy. Moreover, the Proposal's supporting statement appears to recognize this precedent by stating, "Our proposal is not intended to limit the judgment of the Board in crafting the requested governance change." Based on the analysis and precedent set forth above, we believe that this manner of addressing a majority voting standard substantially implements the Proposal.

2. HP Has Implemented the Proposal by Adopting a Corporate Policy

The Proposal asks that HP "initiate the appropriate process to amend the Company's corporate governance documents (certificate of incorporation or bylaws)" to address the standard for electing directors. In response to the ongoing corporate governance dialogue concerning majority voting (as

exemplified by the Proposal), HP's Board determined to address the majority vote issue by adopting a policy. While the Proposal refers parenthetically to the company's "certificate of incorporation or bylaws," the Proposal also refers more generically to "the Company's governance documents," and the supporting statement refers to the Proposal more generally as requesting the Board to initiate "a change in the Company's director election vote standard." Consistent with precedent under Rule 14a-8(i)(10) that is discussed below, the supporting statement later acknowledges that the Proposal "is not intended to limit the judgment of the Board in crafting the requested governance change." We believe that the fact that the HP Majority Voting Policy was adopted as a policy and announced in a press release does not alter the fact that the HP Majority Voting Policy substantially implements the Proposal. Various Commission rules acknowledge that significant corporate governance principles are implemented by means other than a company's certificate of incorporation or bylaws. For example, the significance of board committee charters is recognized under Item 7(d) of Schedule 14A (relating to disclosure of nominating and audit committee charters). Likewise, codes of ethics are governance documents that are recognized under Item 406 of Regulation S-K. The procedure set forth in the HP Majority Voting Policy (requiring directors to tender their resignation for consideration by HP's Board if they do not receive a majority of the votes cast at an annual meeting of stockholders) operates in substantially the same manner regardless of whether it is set forth in a policy or in HP's Amended and Restated By-laws.

Precedent under Rule 14a-8(i)(10) confirms that the manner in which a company elects to implement a proposal is not determinative as to whether it has "substantially implemented" the proposal. For example, in *Intel Corp.* (avail Feb. 14, 2005), the company argued that a policy of expensing stock options had been substantially implemented through FASB's approval of Statement 123(R), whereas the proponent asserted that the proposal should not be considered substantially implemented unless the company "stat[ed]with no qualification that it is going to begin expensing stock options." Although the proponent there argued that a change in financial reporting should be implemented by a company policy, the Staff concurred that an accounting rule change substantially implemented the proposal. *See also Archon Corp* (avail. Mar. 10, 2003) (concurring that a proposal requesting a special election to fill a board vacancy had been substantially implemented when the board had exercised its authority to fill the board vacancy).

Based on this precedent, we believe that implementing the HP Majority Voting Policy through a policy substantially implements the Proposal.

3. HP Substantially Implemented the Proposal In Light of the Ability of HP Stockholders to Cumulative Votes in Director Elections.

We also believe that there are strong policy considerations that support deference to the manner in which the HP Board has determined to implement the Proposal.³ In particular, HP's Certificate of Incorporation allows its stockholders to cumulate their votes in the election of directors, a provision that generally is viewed as stockholder-friendly and that gives stockholders a meaningful role in the election of directors.⁴ HP's Majority Voting Policy (as opposed to the Proponent's preferred approach) provides HP's Board with the necessary flexibility to address the interaction of cumulative voting and majority voting.

The difficult issues presented by the combination of cumulative voting and a majority vote provision implemented in the manner preferred by the Proponent have been widely recognized. For example, in a discussion paper published by The Committee on Corporate Laws (the "Committee") of the Section of

Business Law of the American Bar Association entitled "Committee On Corporate Laws Discussion Paper On Voting By Shareholders For The Election Of Directors" (June 22, 2005), the Committee specifically stated that the various alternative approaches for implementing a majority vote standard through a change in state law would not apply to companies with cumulative voting. Similarly, the Council of Institutional Investors has suggested that the Committee amend the Model Business Corporation Act to require majority voting except where stockholders may cumulate votes in the election of directors. See http://www.cii.org/library/correspondence/080105_veasey.htm. Moreover, the Institutional Shareholder Services Institute for Corporate Governance published a paper on majority voting earlier this year in which it stated that "[c]umulative voting implies plurality voting, since the former only makes sense with the latter." Majority Voting in Director Elections: *From the Symbolic to the Democratic* (2005).

Thus, the HP Board determined to address stockholder concerns about the standard for electing directors through the HP Majority Voting Policy. Based on the analysis and precedent set forth above, we believe that this manner of addressing majority voting in the election of directors substantially implements the Proposal.

CONCLUSION

With the HP Majority Voting Policy, HP has favorably acted upon each element of the Proposal - it has adopted a policy requiring nominees who receive more withhold votes than for votes to tender their resignation for consideration by the Nominating and Governance Committee. This policy gives stockholders a meaningful role in the director election process. The manner chosen by HP's Board of Directors to implement the Proposal merely addresses more comprehensively the consequences under each possible scenario when a nominee does not receive a majority of the votes cast. In those circumstances, under both the procedure preferred by the Proponent and under HP's Majority Voting Policy, the nominee will not serve as a director unless the remaining directors act to provide otherwise. Thus, the HP Majority Voting Policy renders the Proposal moot.

Based upon the foregoing analysis, we respectfully request that the Staff of the Commission concur that it will take no action if HP excludes the Proposal from its 2006 Proxy Materials pursuant to Rule 14a-8(i)(10). Consistent with the provisions of Rule 14a-8(j), we are concurrently providing copies of this correspondence to the Proponent. We recognize that the Staff has not interpreted Rule 14a-8 to require proponents to provide HP and its counsel a copy of any correspondence that the proponent submits to the Staff. Therefore, in the interest of a fair and balanced process, we request that the Staff notify the undersigned if it receives any correspondence on the Proposal from the Proponent or other persons, unless that correspondence has specifically confirmed to the Staff that HP or its undersigned counsel have timely been provided with a copy of the correspondence. If we can provide 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 (202) 955-8653 or Lynda M. Ruiz, HP's Senior Attorney, at (650) 857-3760.

Sincerely,

/s/

Amy L. Goodman

ALG/eai/rom

Enclosures

cc: Lynda M. Ruiz, Senior Attorney, Hewlett-Packard Company

Edward J. Durkin, United Brotherhood of Carpenters Pension Fund

[INQUIRY LETTER]

[SENT VIA MAIL AND FACSIMILE 650-857-4837]

October 7, 2005

Ann O. Baskins

Senior Vice President, General Counsel and Secretary

Hewlett-Packard Company

3000 Hanover Street

Palo Alto, California 94304

Dear Ms. Baskins:

On behalf of the United Brotherhood of Carpenters Pension Fund ("Fund"), I hereby submit the enclosed shareholder proposal ("Proposal") for inclusion in the Hewlett-Packard Company ("Company") proxy statement to be circulated to Company shareholders in conjunction with the next annual meeting of shareholders. The Proposal relates to the issue of the vote standard in director elections. The Proposal is submitted under Rule 14(a)-8 (Proposals of Security Holders) of the U.S. Securities and Exchange Commission proxy regulations.

The Fund is the beneficial owner of approximately 49,700 shares of the Company's common stock that have been held continuously for more than a year prior to this date of submission. The Fund intends to hold the shares through the date of the Company's next annual meeting of shareholders. The record holder of the stock will provide the appropriate verification of the Fund's beneficial ownership by separate letter. Either the undersigned or a designated representative will present the Proposal for consideration at the annual meeting of shareholders.

If you have any questions or wish to discuss the Proposal, please contact Ed Durkin, at (202) 546-6206 ext. 221 or at edurkin@carpenters.org. Copies of any correspondence related to the proposal should be forwarded to Mr. Durkin at United Brotherhood of Carpenters, Corporate Affairs Department, 101 Constitution Avenue, NW, Washington D.C. 20001 or faxed to 202-543-4871.

Sincerely,

/s/

Douglas J. McCarron

Fund Chairman

cc. Edward J. Durkin

Enclosure

[APPENDIX]

Director Election Majority Vote Standard Proposal

Resolved: That the shareholders of Hewlett-Packard Company ("Company") hereby request that the Board of Directors initiate the appropriate process to amend the Company's governance documents (certificate of incorporation or bylaws) to provide that director nominees shall be elected by the affirmative vote of the majority of votes cast at an annual meeting of shareholders.

Supporting Statement: Our Company is incorporated in Delaware. Delaware law provides that a company's certificate of incorporation or bylaws may specify the number of votes that shall be necessary for the transaction of any business, including the election of directors. (DGCL, Title 8, Chapter 1, Subchapter VII, Section 216). The law provides that if the level of voting support necessary for a specific action is not specified in a corporation's certificate or bylaws, directors "shall be elected by a plurality of the votes of the shares present in person or represented by proxy at the meeting and entitled to vote on the election of directors."

Our Company presently uses the plurality vote standard to elect directors. This proposal requests that the Board initiate a change in the Company's director election vote standard to provide that nominees for the board of directors must receive a majority of the vote cast in order to be elected or re-elected to the Board.

We believe that a majority vote standard in director elections would give shareholders a meaningful role in the director election process. Under the Company's current standard, a nominee in a director election can be elected with as little as a single affirmative vote, even if a substantial majority of the votes cast are "withheld" from that nominee. The majority vote standard would require that a director receive a majority of the vote cast in order to be elected to the Board.

The majority vote proposal received high levels of support last year, winning majority support at Advanced Micro Devices, Freeport McMoRan, Marathon Oil, Marsh and McLennan, Office Depot, Raytheon, and others. Leading proxy advisory firms recommended voting in favor of the proposal.

Some companies have adopted board governance policies requiring director nominees that fail to receive majority support from shareholders to tender their resignations to the board. We believe that

these policies are inadequate for they are based on continued use of the plurality standard and would allow director nominees to be elected despite only minimal shareholder support. We contend that changing the legal standard to a majority vote is a superior solution that merits shareholder support.

Our proposal is not intended to limit the judgment of the Board in crafting the requested governance change. For instance, the Board should address the status of incumbent director nominees who fail to receive a majority vote under a majority vote standard and whether a plurality vote standard may be appropriate in director elections when the number of director nominees exceeds the available board seats.

We urge your support for this important director election reform.

[INQUIRY LETTER]

[SENT VIA HAND DELIVERY & FACSIMILE 202-772-9201]

December 8, 2005

Mr. Mark Vilaro

Office of Chief Counsel

Division of Corporation Finance

U.S. Securities and Exchange Commission

100 F Street, NE

Washington, DC 20549

Re: Response to Hewlett-Packard Company's Request for No-Action Advice Concerning the United Brotherhood of Carpenters Pension Fund's Shareholder Proposal

Dear Sir or Madam:

The United Brotherhood of Carpenters Pension Fund ("Fund") hereby submits this letter in reply to Hewlett-Packard Company's ("HP" or "Company") Request for No-Action Advice to the Security and Exchange Commission's Division of Corporation Finance staff ("Staff") concerning the Fund's Director Election Majority Vote Standard shareholder proposal ("Proposal") and supporting statement submitted to the Company for inclusion in its 2006 proxy materials. The Fund respectfully submits that the Company has failed to satisfy its burden of persuasion and should not be granted permission to exclude the Proposal. Pursuant to Rule 14a-8(k), six paper copies of the Fund's response are hereby included and a copy has been provided to the Company.

We note at the outset that the Proposal is identical to previous director election vote standard proposals submitted by the Fund for the last two years that have been unsuccessfully challenged. *See, e.g., AT&T Wireless Services, Inc. (Feb. 13, 2004), Citigroup, Inc. (Feb. 14, 2005), JPMorgan Chase &*

Co. (Feb. 22, 2005). We submit that the Staff should follow the clear precedent and deny the Company's request for noaction relief.

The Company Fails to Satisfy Its Burden of Persuasion that the Proposal May be Excluded Under Rules 14a-8(i)(10) because HP Has Not Substantially Implemented the Proposal

The Company's request for no-action relief is based on its assertion that the Proposal has been substantially implemented. The Company bears the burden of persuasion to show that it has substantially implemented the Proposal - a burden we will show it fails to meet.

It is the Company's contention that it has substantially implemented the Proposal because its Board of Directors announced a policy providing that "directors who receive a greater number of votes 'withheld' from his or her election than votes 'for' such election shall tender his or her resignation for consideration by the Nominating and Corporate Governance Committee." Thus, according to the Company, "while HP has approached the issue presented by the Proposal in a manner that differs from the Proponent's preferred approach, both the HP Majority Voting Policy and the Proponent's preferred approach 'compare favorably' in terms of outcome."

The Company's entire argument rests on a flawed assumption that misconstrues the intent of the Proposal and the role prescribed for the Board in the requested implementation of the Proposal. It argues that an informal governance policy, which presumably the Board could revise at any time, requiring that a director nominee who receives a majority "withhold" vote in a director election must tender his resignation produces essentially the same outcome as the Fund's Proposal requests. However, the clear focus of the Proposal is a Board-initiated process to amend HP's bylaws or certificate of incorporation to change its legal director election vote standard from a plurality vote standard to a majority of votes cast standard. The Proposal does not seek to prescribe any particular post-election treatment of directors that fail to receive the requisite vote.

The Company presumes - incorrectly - that the intent of the Proposal is to compel a certain outcome when a director nominee fails to receive a majority of the vote cast. In fact, the Proposal is not focused on achieving a certain election outcome, but on giving shareholders a legally significant vote in the election of directors by asking the Board to initiate an amendment to the bylaws or certificate that provides a majority vote standard will be the legal standard for being elected director. The adoption of a majority vote standard would provide Company shareholders a vote in director elections that has a legal consequence. Director nominees that fail to receive a majority of the vote cast would not be elected or re-elected. The Company's adoption of a post-election policy calling for the resignation of a director legally elected despite receiving a "withhold" vote under a plurality vote standard is a fundamentally different proposition. The Proposal intends exactly what it says, that the legal standard for director elections be a majority vote. The director resignation policy fails to accomplish that end. The Supporting Statement acknowledges that the Board will have discretion to implement the Proposal, but that discretion is limited to the exercise of its judgment within the context of initiating a process to amend the certificate or bylaws to change to a majority vote standard.

The Precedent Clearly Supports Inclusion of the Proposal

The Company cites many no-action letters in support of its argument. As we will show below, those cases all presented very different fact patterns in which the companies were granted relief under Rule 14a-8(i)(10) because they either actually implemented the shareholder proposal or essentially did so. However, there are a series of cases directly on point in which this exact shareholder proposal was

challenged on 14a-8(i)(10) grounds and the Staff denied the requested relief and found that the shareholder proposal should be included. *See, e.g., AT&T Wireless Services, Inc. (Feb. 13, 2004), Citigroup, Inc. (Feb. 14, 2005), JPMorgan Chase & Co. (Feb. 22, 2005).*

For example, in *JPMorgan Chase & Co. (February 22, 2005)*, the same proponent - the United Brotherhood of Carpenters Pension Fund - presented exactly the same proposal as that submitted to Hewlett Packard. JP Morgan Chase challenged on several grounds, including arguing substantial implementation under Rule 14a-8(i)(10). While it did not argue that it had a director resignation policy that mooted the proposal, it did make essentially the same argument as HP now makes. JP Morgan Chase argued that the proposal sought to achieve the outcome of "removing" directors who fail to receive a majority vote at an election of directors and premised its substantial implementation argument on this presumption. The Staff rejected JPMorgan Chase's arguments.

HP uses its director resignation policy to argue the other side of the same coin. It argues that under its policy a director nominee who fails to get a majority vote would have to tender his resignation, thus accomplishing even more effectively than the Proposal the goal of "removing" directors. Like JPMorgan Chase, HP ignores the true intent of the Proposal. And like JPMorgan Chase, the Company's request should be denied.

Proponent understood when it submitted its proposal to JPMorgan Chase, and continues to understand, that Delaware law provides a specific procedure for removing directors and that nominees failing to receive a majority vote would "hold over" and not be immediately removed. Such an outcome was not the intent of the Proposal in JPMorgan Chase, nor is it in the instant case. The goal was, and remains, to give shareholders a meaningful role in the election of directors by adopting a legal vote standard that would mean shareholders' votes count. HP has not substantially implemented the Proposal and so should be denied its requested relief under Rule 14a-8(i)(10).

The Proposal's Intent is that the Certificate of Incorporation or Bylaws be Amended to Establish the Majority Vote Standard as the Legal Standard for Electing Directors.

A careful review of the Proposal demonstrates that the Proposal does not seek to mandate a specific outcome to an election, but rather to revise the legal standard for being elected to the Board of Directors. The Proposal requests that the Board initiate a process to amend the Company's certificate of incorporation or bylaws so that the legal standard for being elected a director will be a majority of votes cast at an annual meeting rather than the current plurality standard the Company uses. The Proposal and Supporting Statement provide in pertinent part:

Resolved: That the shareholders of Hewlett-Packard Company ('Company') hereby request that the Board of Directors initiate the appropriate process to amend the Company's governance documents (certificate of incorporation or bylaws) to provide that director nominees shall be elected by the affirmative vote of the majority of votes cast at an annual meeting of shareholders.

Supporting Statement:

Our company presently uses the plurality vote standard to elect directors. This proposal requests that the Board initiate a change in the Company's director election vote standard to provide that nominees for the board of directors must receive a majority of the vote cast in order to be elected or re-elected to the Board.

We believe that a majority vote standard in director elections would give shareholders a meaningful role in the director election process. Under the Company's current standard, a nominee in a director election can be elected with as little as a single affirmative vote, even if a substantial majority of the votes cast are 'withheld' from that nominee. The majority vote standard would require that a director receive a majority of the vote cast in order to be elected to the Board.

Some companies have adopted board governance policies requiring director nominees that fail to receive majority vote support from shareholders to tender their resignations to the board. We believe that these policies are inadequate for they are based on continued use of the plurality standard and would allow director nominees to be elected despite only minimal shareholder support. We contend that changing the legal standard to a majority vote is a superior solution that merits shareholder support.

Our proposal is not intended to limit the judgment of the Board in crafting the requested governance change. For instance, the Board should address the status of incumbent director nominees who fail to receive a majority vote under a majority vote standard and whether a plurality vote standard may be appropriate in director elections when the number of director nominees exceeds the available board seats.

The Proposal has not been substantially implemented by HP because HP has failed to do what the Proposal requested, or even come close. Adopting an informal post-election Board policy that can be changed whenever the Board wants to require directors to tender their resignations in no way approximates a formal change in the legal standard for electing directors via an amendment to HP's certificate of incorporation or bylaws. Accepting the Company's argument requires concluding that there is no consequence to whether a nominee has actually been elected to the Board of Directors. Under the Company's logic, it matters not whether the legal standard to be elected is a majority vote or a plurality system which allows for the election of a nominee with as little as a single vote in the case of an uncontested election.

This logic cannot prevail. In sponsoring the Proposal, the Fund recognized certain irrefutable facts. First, it recognized that in the vast majority of cases management and the Board select the nominees to run for director. Second, that in the overwhelming majority of cases, those nominees run unopposed. Third, that under a plurality standard, shareholders' votes to elect directors as their representatives have no legal consequence. The Proposal was not motivated by a desire to remove directors that failed to get a majority vote. The Fund's intent in submitting the Proposal, as is explicitly stated, is to achieve an amendment to the certificate or bylaws revising the legal standard for being elected a director. HP has failed to do that.

The Cases Cited by HP Can be Readily Distinguished

HP cites *Texaco, Inc.* (March 28, 1991) to establish the standard for determining whether a proposal has been substantially implemented. As the Company noted, in *Texaco* the Staff stated "a determination that the company has substantially implemented the proposal depends upon whether [the company's] particular policies, practices and procedures compare favorably with the guidelines of the proposal." Applying this standard, it is clear that HP has not substantially implemented the Proposal.

HP then proceeds to cite a number of no-action decisions, but all are easily distinguished on the facts. In *Texaco* a shareholder submitted a proposal requesting that the company subscribe to the "Valdez

Principles." As the Staff wrote in its decision responding to the company's request for reconsideration and subsequent ruling granting the requested no-action relief:

After considering your request, there appears to be some basis for your view that the proposal may be excluded pursuant to rule 14a-8(c)(10). That provision allows the omission of a proposal that has been rendered moot. A proposal may be considered moot if the registrant has 'substantially implemented' the action requested. Securities Exchange Act Release No. 19135 (08/16/83). The proposal presents the question of whether the Company should subscribe to a set of environmental guidelines which suggest implementing operational and managerial programs as well as making provision for periodic assessment and review. You indicate that the Company has adopted policies, practices and procedures with respect to the environment and provide a detailed summary comparing the Company's policies, practices and procedures with the guidelines under the proposal.

Texaco was allowed to exclude a proposal requesting it adopt a specific set of environmental guidelines because it was able to prove it had done just that.

In *AMR Corporation* (April 17, 2000) the shareholder proposal requested that all key board committees; i.e. audit, nominating and compensation, have all independent directors. The company responded that all members of those board committees met the specified criteria and so was granted permission to exclude the proposal under Rule 14a-8(i)(10). In *Masco Corporation* (March 29, 1999) the proposal requested that outside directors meet certain criteria. The proposal read as follows:

RESOLVED, that Masco Outside Directors: (1) shall possess skills and experience of particular value to the Company; (2) shall not be employed directly or indirectly by the Company and/or its present or former affiliates, or by an entity benefiting from a relationship therewith, and, (3) shall not be related, by blood or marriage, to any member of management or any director of the Company and/or its present or former affiliates.

The company responded by adopting such a policy, as noted in its request for no-action relief:

In the company's letter of January 28, 1999, a copy of which is attached, the Company indicated that its Board would be asked to approve a resolution adopting, in substantially the same form submitted by the Proponent, criteria for Outside Directors. This letter is being submitted to inform the Division that the Company's Board approved the resolution on February 17, 1999, in the form set forth in the January 28, 1999, letter. The resolution reads as follows:

RESOLVED, that Masco Outside Directors (1) shall possess skills and experience of particular value to the Company; (2) shall not be employed directly or indirectly by the Company or by any of its affiliates, or by an entity benefiting from a material relationship therewith; and (3) shall not be related, by blood or marriage, to any member of management or any director of the Company or any of its affiliates. For purposes of clause (2), a material relationship shall not be deemed to exist if, in the judgment of the other Outside Directors, the financial benefit to the entity employing the Outside Director is immaterial to that entity.

The actions taken by Masco in adopting the requested policy clearly represent substantial implementation.

In *Erie Indemnity Corporation* (March 15, 1999), the proponent requested the company amend its bylaws to indicate that gifts to directors are benefits within the meaning of Erie Indemnity's conflict of interest policy. The company requested no-action relief under 14a-8(i)(10) and stated that "the

Company's Board of Directors on March 9, 1999 adopted an amendment to the Company's Bylaws to add a conflict of interest provision that substantially conforms to the Bylaw provision sought to be implemented under the Hagen Proposal." Again, the company proved substantial compliance and so prevailed. *Contrast, also, Intel Corp.* (March 11, 2003) (shareholder proposal requests that all equity compensation plans that would result in material potential dilution be put to shareholder vote and company proves that it is only allowed to adopt or amend an equity compensation plan resulting in material potential dilution if shareholders approve it.); *Nordstrom Inc.* (Feb. 8, 1995) (shareholder proposal requests company adopt a code of conduct for overseas suppliers and report on it; company proves that it has done so, and Staff grants no-action relief.); *General Motors Corp.* (March 14, 2005) (shareholder proposal requests the company to adopt a policy that future poison pills be put to shareholder vote within 4 months, and company adopts such a policy, but within 12 months of adoption); *Southwest Airlines Co.* (Feb. 10, 2005) (shareholder proposal requests company declassify the board in an expeditious manner and company agrees to phase-in a declassified board over a two-year period); and *General Motors* (March 4, 1996) (shareholder proposal requests a policy of secret ballots for shareholder votes and company successfully argues that proposal is moot because it has a policy of secret balloting for all stockholder votes).

The Board of Directors' Discretion Under the Proposal is Limited to Implementing a Majority Vote Standard as the Legal Standard Under Either the Certificate or Bylaws

The Proposal has been submitted to offer a system in which shareholders do have a meaningful vote in uncontested elections. The Proposal recognizes that the Board will have discretion as it initiates the process to amend the bylaws or certificate to establish a majority vote as the legal standard for being elected a director. This recognition does not mean that an informal director resignation policy supplants the need to change to a majority vote standard. Indeed, we believe that such a policy would be an appropriate supplement to the majority vote standard. However, it certainly does not represent substantial implementation of a majority vote standard.

Cumulative Voting Does Not Provide Shareholders a "More Meaningful Role" in the Case of Uncontested Elections

HP contends that its policy compares favorably with the Proposal "since HP allows stockholders to cumulate their votes in director elections, thereby giving stockholders a more meaningful role in the director election process." HP fails to observe that cumulative voting under a plurality standard has no practical effect in uncontested elections, that is, when the number of director nominees equals the number of available seats, which constitute the overwhelming majority of elections. Cumulative voting allows votes to be cumulated for a particular candidate, not against. In uncontested elections under a plurality standard, even with cumulative voting, the result is assured, that is, each nominee will be elected since he or she is running unopposed and only one vote is required to be elected.

Conclusion

The Proposal requests a formal change in the Company's certificate or bylaws establishing a majority vote as the legal standard to be elected to the board of directors. HP has not substantially implemented the Proposal. Rather, it has adopted a post-election director resignation policy that leaves in place the

plurality standard as the legal vote standard for director elections. The Company's entire argument rests on the incorrect presumption that the Proposal's intent was to mandate a specific post-election outcome, when in fact the intent of the Proposal is to give shareholders a meaningful role in director elections by revising formally the legal standard for being elected director.

For all these reasons we believe the company has failed to satisfy its burden of persuasion under Rule 14a-8(i)(10) and its request should be denied. If you have any questions about this matter or would like any additional information, please contact me at (202) 546-6206 x 221. Additionally, should you disagree with the conclusions set forth in this response to the Company's Request for No-Action Advice, I respectfully request the opportunity to confer with you prior to the issuance of the Staff's final determination. I would appreciate receiving a copy of the Staff's response to the Company's Request by fax at (202) 543-4871 when it is available.

Sincerely,

/s/

Edward J. Durkin

Director, Corporate Affairs Department

cc: Douglas J. McCarron - Fund Chair

Ann O. Baskins, Senior Vice President, General Counsel, Hewlett-Packard Company

Amy L. Goodman, Gibson, Dunn&Crutcher, LLP

[INQUIRY LETTER]

December 27, 2005

Direct Dial (202) 955-8653

Fax No. (202) 530-9677

Client No. C38126-00456

VIA HAND DELIVERY

Office of the Chief Counsel

Division of Corporation Finance

Securities and Exchange Commission

100 F Street, NE

Washington, DC 20549

Re: Hewlett-Packard Company Supplemental Letter In Response to a Stockholder Proposal of United Brotherhood of Carpenters Pension Fund Exchange Act of 1934 –Rule 14a-8

Dear Ladies and Gentlemen:

By a letter dated November 4, 2005 (the "Initial Letter"), we informed you that our client, Hewlett-Packard Company ("HP"), intends to omit from its proxy statement and form of proxy for its 2006 Annual Stockholders Meeting (collectively, the "2006 Proxy Materials") a stockholder proposal and a statement in support thereof (the "Proposal") received from the United Brotherhood of Carpenters Pension Fund (the "Proponent"). The Initial Letter set forth the basis for our view that the Proposal may be excluded from the 2006 Proxy Materials pursuant to Rule 14a-8(i)(10) because HP has substantially implemented the Proposal.

We write to respond to correspondence dated December 8, 2005 (the "Proponent's Response") from the Proponent regarding the Initial Letter. The Proponent's Response essentially argues that the Proposal is not focused on achieving any particular result but instead asks for specific action, and that anything short of that specific action fails to "substantially implement" the Proposal. For the reasons addressed below, we believe that the Proponent's Response misconstrues the applicable standard for the exclusion of stockholder proposals under Rule 14a-8(i)(10).

THE PROPOSAL

The Proposal reads as follows:

"Resolved: That the shareholders of Hewlett-Packard Company ("Company") hereby request that the Board of Directors initiate the appropriate process to amend the Company's corporate governance documents (certificate of incorporation or bylaws) to provide that director nominees shall be elected by the affirmative vote of the majority of votes cast at an annual meeting of shareholders."

The Proponent's Response seeks a number of times to characterize the Proposal. The Proponent's Response states:

- "In fact, the Proposal is not focused on achieving a certain election outcome, but on giving shareholders a legally significant vote in the election of directors by asking the Board to initiate an amendment to the bylaws or certificate that provides a majority vote standard will be the legal standard for being elected director." (Proponent's Response, page 2)
- "The Proposal intends exactly what it says, that the legal standard for director elections be a majority vote." (Proponent's Response, page 2)
- "The goal was, and remains, to give shareholders a meaningful role in the election of directors by adopting a legal vote standard that would mean shareholders' votes count." (Proponent's Response, page 3)
- "The Proposal requests that the Board initiate a process to amend the Company's certificate of

incorporation or bylaws so that the legal standard for being elected a director will be a majority of votes cast at an annual meeting rather than the current plurality standard the Company uses." (Proponent's Response, pages 3-4)

- "The Fund's intent in submitting the Proposal, as is explicitly stated, is to achieve an amendment to the certificate or bylaws revising the legal standard for being elected a director." (Proponent's Response, page 5)

As discussed in our Initial Letter, HP's Board of Directors has adopted a policy (the "HP Majority Voting Policy") providing that "directors who receive a greater number of votes 'withheld' from his or her election than votes 'for' such election shall tender his or her resignation for consideration by" the Nominating and Corporate Governance Committee. The Proponent's Response asserts that because HP has failed to do exactly what the Proponent asks, in exactly the manner preferred by the Proponent, it has *ipso facto* failed to substantially implement the Proposal.

ANALYSIS

A Company Need Not Have Exactly Implemented a Proposal in the Manner Preferred by the Proponent to Satisfy the "Substantially Implements" Standard under Rule 14a-8(i)(10)

Based on Commission statements and Staff no-action letter precedents, we believe that the "substantially implements" standard under Rule 14a-8(i)(10) is not to be applied in a superficial manner but instead requires a careful, fact-specific analysis of what the proposal requests and the policies, practices and procedures that the company has implemented. In this regard, the Commission stated in the 1983 amendments to the proxy rules:

In the past, the staff has permitted the exclusion of proposals under Rule 14a-8(c)(10) only in those cases where the action requested by the proposal has been fully effected. The Commission proposed an interpretative change to permit the omission of proposals that have been "substantially implemented by the issuer." While the new interpretative position will add more subjectivity to the application for the provision, the Commission has determined the previous formalistic application of this provision defeated its purpose. *Amendments to Rule 14a-8 Under the Securities Exchange Act of 1934 Relating to Proposals by Security Holders*, Release No. 20091, at §II.E.5. (Aug. 16, 1983) (the "1983 Release").

Because this "more subjective" standard is applied under Rule 14a-8(i)(10), we believe that the three "precedents" cited on pages 1 and 3 of the Proponent's Response¹ - in which the Staff refused to concur that the identical proposal could be excluded - are not pertinent. As the Proponent's Response acknowledges, in none of those cases had the companies adopted a policy along the lines of the HP Majority Voting Policy, which forms the basis for our view that HP has substantially implemented the Proposal. Thus, Staff letters addressing situations where companies have not taken any action to implement a proposal are not determinative of whether specific actions taken by another company substantially implement the same proposal.

The 1998 amendments to the proxy rules, which (among other things) implemented the current Rule 14a-8(i)(10), reaffirmed the 1983 interpretation of the "substantially implements" standard under Rule

14a-8(i)(10).² Consequently, as noted in the 1983 Release, in order to be excludable under Rule 14a-8(i)(10), a stockholder proposal need only be "substantially implemented," not "fully effected." Thus, by definition, the "substantially implements" standard means that a company need not implement a proposal in exactly the manner set forth in a proposal.

Applying this standard, the Staff has stated "a determination that the company has substantially implemented the proposal depends upon whether [the company's] particular policies, practices and procedures compare favorably with the guidelines of the proposal." *Texaco, Inc.* (available March 28, 1991) (involving a proposal requesting the company to adopt a set of environmental guidelines which involve implementing operational and managerial programs as well as making provision for periodic assessment and review).³

Thus, under Rule 14a-8(i)(10), the Staff does not evaluate whether a company has implemented every aspect of a proposal or whether a proposal has been implemented in the manner preferred by the proponent, but instead the Staff evaluates whether the relevant policies, practices and procedures of the company "compare favorably" with what would be achieved under the proposal. For example, in *Intel Corp.* (avail Feb. 14, 2005), the company had received a proposal asking that it "establish a policy" of expensing all future stock options. The company argued that the proposal had been substantially implemented through FASB's approval of Statement 123(R), and the Staff concurred that the new accounting rule had substantially implemented the proposal. *See also Eastman Kodak Co.* (avail. Feb. 1, 1991) (proposal requesting that the company disclose certain environmental compliance information substantially implemented by company representation that it complies fully with Item 103 of Regulation S-K, which requires disclosure of substantially similar information); *Intel Corp.* (avail. Mar. 11, 2003) (concurring that a proposal requesting that Intel's board submit to a stockholder vote all equity compensation plans and amendments to add shares to those plans that would result in material potential dilution was substantially implemented by a board policy requiring a stockholder vote on most, but not all, forms of company stock plans). Based on these well-established precedents, the fact that HP has not done "exactly what the proposal says" is not dispositive of whether HP has substantially implemented the Proposal.

Rule 14a-8(i)(10) Precedent Involving Proposals that Address the Election of Directors Demonstrate that It Is Necessary to Compare the Outcome of the Governance Process Implemented by the Company with that Advocated under the Proposal

On at least two prior occasions, in letters cited in our Initial Letter but not addressed in the Proponent's Response, the Staff has concurred that under Rule 14a-8(i)(10), when evaluating whether a company can exclude a proposal that addresses the election of directors, it is appropriate to compare the outcome of the governance process implemented by the company with that advocated under the proposal, and that the standard is not simply whether the company implemented the proposal in exactly the manner preferred by the proponent.

In *Archon Corp.* (avail. Mar. 10, 2003), the company had received a shareowner proposal stating, "RESOLVED: that the stockholders of Archon Corporation ('Company') urge the Board of Directors take the necessary steps, in compliance with state law, to provide for a special election in conjunction with the upcoming annual meeting to fill the vacate [sic] special director position on the Board of Directors representing the Preferred Stock." After receiving that proposal, the Archon Board of Directors elected a new director to fill the vacant position on the Board. In responding to the company's no-action letter, the Staff concurred that the proposal could be excluded under Rule 14a-8(i)(10) as

having been substantially implemented, and in stating this conclusion the Staff noted in particular "that the vacancy has been filled."

Similarly, in *Nash-Finch Co.* (avail. Mar. 15, 1978), the proposal requested that the company nominate no fewer than two persons who were not current or former employees of the company to be directors. The company responded that the Board had named two such individuals as directors, and on that basis the Staff advised that it would not recommend any enforcement action if the company excluded the proposal from its proxy materials.

In each of the foregoing two letters, the proposal related to the selection of directors and the process by which board positions were filled. In *Archon* the proposal called for a special election; in *Nash-Finch* the proposal requested the company's board to nominate director candidates meeting specified standards. However, in both cases the company took an alternative approach to address the board positions that differed from that requested in the proposals, and in both cases the Staff concurred that the proposal had been substantially implemented.

Thus, in order to determine whether the HP Majority Voting Policy substantially implements the Proposal, a two-step analysis is necessary. First, one must evaluate what would happen if the Proposal were implemented exactly as written. Second, one must determine whether the Company's particular policies, practices and procedures compare favorably with the outcome under the Proposal.

The Company's Particular Policies, Practices and Procedures Compare Favorably with the Outcome under the Proposal

As discussed in our Initial Letter, under the HP Majority Voting Policy as adopted by HP's Board of Directors, "directors who receive a greater number of votes 'withheld' from his or her election than votes 'for' such election shall tender his or her resignation for consideration by" the Nominating and Corporate Governance Committee. The Proponent's Response asserts at page 2 that in the Initial Letter we "presume - incorrectly - that the intent of the Proposal is to compel a certain outcome when a director nominee fails to receive a majority of the votes cast." The Proponent's Response continues, "In fact, the Proposal is not focused on achieving a certain election outcome, but on giving shareholders a legally significant vote in the election of directors by asking the Board to initiate an amendment to the bylaws or certificate that provides a majority vote standard will be the legal standard for being elected director."

Under this characterization of the Proposal, the HP Majority Voting Policy substantially implements the Proposal because the effect of the stockholders' vote (and in particular, the effect of stockholders not casting a majority of affirmative votes for a nominee) compares favorably with the effect given to stockholders' vote if the Proposal were implemented in the manner preferred by the Proponent. A comparison of the two approaches in a variety of election situations is discussed below.

● *Incumbent Nominees who Fail to Receive a Majority of Votes Cast*

As noted in our Initial Letter, in most situations nominees for election as directors that are proposed by a company's nominating committee are already incumbent directors. If a company adopts a formal change in the legal standard for electing directors via an amendment to its bylaws or certificate of incorporation, as preferred by the Proponent (referred to herein as a "Charter Majority Vote Provision"), and a nominee who is an incumbent director does not receive the affirmative vote of a majority of the

votes cast, there would be no immediate effect of that vote. Due to the hold-over provision under Delaware law, the incumbent director nominee would continue to serve as a director until the next election of directors.⁴

Likewise, under the HP Majority Voting Policy, if an incumbent director nominee does not receive a majority vote of the shares cast, that nominee's status as a director will not be immediately affected (however, as described in the following paragraph, the HP Majority Voting Policy provides a mechanism for the HP Board to promptly address the stockholder vote). Thus, in this context, the result of the stockholders' vote is no different under the HP Majority Voting Policy than what would arise if HP had implemented the Proposal in the manner preferred by the Proponent.

It is important to note that in the foregoing situation, under the HP Majority Voting Policy (but not under the Charter Majority Vote Provision), the director must immediately tender his or her resignation for consideration by the HP Board. If the Board accepts the resignation, then the director would no longer serve on the Board. In contrast, under the Proposal's hold-over situation, unless the Board acts to call a special meeting for the election of directors, the incumbent director who failed to satisfy the majority voting legal requirement would continue to serve as a director until the next election of directors. Thus, in the common situation of an incumbent nominee, the result obtained under the HP Majority Voting Policy can be more effective than the Proponent's procedure in giving stockholders a meaningful role in determining who serves as a director of the Company because the HP Majority Voting Policy forces the HP board to respond to the vote of the stockholders.

● *Non-Incumbent Nominees Who Fail to Win a Majority of Votes Cast*

In the far less common situation of a director nominee who is not an incumbent director, the operation and result of the HP Majority Voting Policy will be substantially the same as if the Proposal were implemented in the manner preferred by the Proponent through a Charter Majority Vote Provision. Under a Charter Majority Vote Provision, a non-incumbent nominee would not be elected as a director if he or she failed to receive an affirmative vote of a majority of the votes cast. The nominee would not serve as a director, unless the HP Board acted to name that person to the Board.⁵

To the same effect, under the HP Majority Voting Policy, the non-incumbent nominee would become a director but would be required to promptly tender his or her resignation. A majority of HP's directors, excluding the particular nominee, would meet to determine what action to take. If they accept the resignation, then the stockholders' vote has been of the same effect as under the procedure preferred by the Proponent. The nominee would not serve as a director unless the HP Board acted to keep that person on the Board. Thus, under both the Proponent's procedure and the HP Majority Voting Policy, the effect of the stockholders' vote when a non-incumbent nominee fails to receive a majority of the votes cast is the same; the nominee will not serve as a director unless the Board were to determine to have the person serve as a director notwithstanding the stockholders' vote.⁶

● *Director Nominees Who Receive a Majority of Votes Cast*

Of course, under both the HP Majority Voting Policy and the Proponent's approach, if a director nominee, incumbent or non-incumbent, receives the affirmative vote of a majority of the votes cast, then the nominee will serve as a director without further issue.

Thus, in examining whether there is legal significance given to the vote of stockholders, and particularly to the failure of stockholders to cast a majority of affirmative votes for a nominee, the HP Majority Voting Policy compares favorably with the Proposal preferred by the Proponent: stockholders are given a meaningful role in the election of directors, and the stockholders' vote (including particularly when they fail to cast a majority of affirmative votes for a nominee) is given significance.

The Proponent's Response faults the HP Majority Voting Policy as being a "post-election Board policy." In fact, the HP Majority Voting Policy is triggered by the stockholders' vote; as discussed above, it gives effect and significance to the stockholder vote just as a Charter Majority Voting Provision would. It is well established that the manner and timing of implementing a proposal can differ from that advocated by a proponent and nonetheless substantially implement the proposal.⁷ The Proponent's Response likewise asserts that "The Supporting Statement acknowledges that the Board will have discretion to implement the Proposal, but that discretion is limited to the exercise of its judgment within the context of initiating a process to amend the certificate or bylaws to change to a majority vote standard." (Proponent's Response at page 2) Again, this assertion is inconsistent with the well-established precedent under Rule 14a-8(i)(10) discussed above; there is not a formalistic application to determine whether a proposal was implemented in exactly or nearly the same manner advocated by the Proponent, but instead Rule 14a-8(i)(10) requires a careful analysis to see if all of the relevant policies, practices and procedures of the company "compare favorably" with those under the proposal.

It Would Undermine the "Substantially Implements" Standard if Calling for a Certificate of Incorporation or Bylaw Amendment Prevents a Company from Excluding a Proposal

The Commission stated in 1976 that the predecessor to Rule 14a-8(i)(10) "is designed to avoid the possibility of shareholders having to consider matters which have already been favorably acted upon by the management." *See* Release No. 34-12598 (July 7, 1976). As noted above, precedent under Rule 14a-8(i)(10) confirms that the standard for determining whether a proposal has been "substantially implemented" is not dependent on the means by which implementation is achieved. For example, when it initially adopted the predecessor of Rule 14a-8(i)(10), the Commission specifically determined not to require that a proposal had to be implemented "by action of management," observing, "it was brought to the attention of the Commission by several commentators that mootness can be caused for reasons other than the actions of management, such as statutory enactments, court decisions, business changes and supervening corporate events."⁸

In *General Motors Corp.* (avail. Mar. 4, 1996), the proponent made the same assertion with respect to General Motors' response to a proposal as the Proponent makes in the Proponent's Response - that General Motors had not implemented the proposal in exactly the manner requested by the proponent. In *General Motors*, a proponent had submitted a proposal that a policy of secret balloting be implemented for all votes of the stockowners, "such policy to be amendable only by a majority vote of stockowners." General Motors demonstrated to the Staff that the company had a long-standing policy, stated in each year's proxy statement, providing for secret balloting and argued that this substantially implemented the "essential objective" of the proposal, even though the policy could be amended other than by a majority vote of stockowners. Notably, the company observed, "[T]he Staff has not required that a registrant implement the action requested exactly in all detail but has been willing to issue noaction letters under paragraph (c)(10) in situations where the essential objective of the proposal had been satisfied. (citations omitted) If the mootness requirement of paragraph (c)(10) were applied too strictly, the intention of paragraph (c)(10) - permitting exclusion of 'substantially implemented' proposals - could be evaded

merely by including some element in the proposal that differs from the registrant's policies or practice." Based on these arguments, the Staff concurred that General Motors could exclude the proposal.

As with the case of the proponent in *General Motors*, the Proponent faults the HP Majority Voting Policy as a "policy that can be changed whenever the Board wants." However, based on the precedent in *General Motors*, where the proposal itself specifically included a provision that would have required a majority vote of stockholders to amend the policy, this distinction does not prevent the Proposal from having been "substantially implemented." Moreover, it is important to note that even if HP had implemented the HP Majority Voting Policy or the change in legal voting standard preferred by the Proponent through a bylaw amendment, the HP Board would have the power to amend that bylaw.

Precedent under Rule 14a-8(i)(10) confirms that the manner in which a company elects to implement a proposal is not determinative as to whether it has "substantially implemented" the proposal. For example, in *Intel Corp.* (avail Feb. 14, 2005), the company argued that a policy of expensing stock options had been substantially implemented through FASB's approval of Statement 123(R), whereas the proponent asserted that the proposal should not be considered substantially implemented unless the company "stat[ed] with no qualification that it is going to begin expensing stock options." Although the proponent there argued that a change in financial reporting should be implemented by a company policy, the Staff concurred that an accounting rule change substantially implemented the proposal. *See also Archon Corp* (avail. Mar. 10, 2003) (concurring that a proposal requesting a special election to fill a board vacancy had been substantially implemented when the board had exercised its authority to fill the board vacancy).

We are aware that in some instances the Staff has not concurred that a company could exclude a proposal that requested that a governance change be effected through a certificate of incorporation or bylaw when the company sought to effect the governance change through another mechanism. *See, e.g., PG&E Corp.* (avail. Feb. 28, 2002). We believe that reliance on those letters would fail to take into account the fact that the Commission has now recognized, through various rules,⁹ that significant corporate governance principles may be implemented by means other than a company's certificate of incorporation or bylaws.

Moreover, as stated in the *General Motors* letter discussed in part I.B. above, if the "substantially implemented" standard under Rule 14a-8(i)(10) were applied too stringently, such that the only thing a proponent had to do to avoid having a proposal excluded were to request that it be implemented in a specific way, the "substantially implements" standard would be eviscerated. Therefore, we believe that the location of the governance change should not be dispositive of whether a proposal has been substantially implement, particularly where, as here, the supporting statement grants discretion to "the judgment of the Board in crafting the requested governance change." As stated by the Staff in the *Texaco* letter discussed above, a determination on whether a company has substantially implemented a proposal should depend upon "whether [the company's] particular policies, practices and procedures compare favorably with the guidelines of the proposal," not on where those policies, practices or procedures are embodied. Based on the analysis and precedent set forth above, we believe that HP's manner of addressing majority voting in the election of directors through the adoption of the HP Majority Voting Policy substantially implements the Proposal.

CONCLUSION

With the HP Majority Voting Policy, HP has favorably acted upon each element of the Proposal - it has adopted a policy that implements and gives significance to stockholders' votes in the election of directors. The manner chosen by HP's Board of Directors to implement the Proposal merely addresses more comprehensively the consequences under various possible scenarios when a nominee does not receive a majority of the votes cast. Thus, the HP Majority Voting Policy renders the Proposal moot.

Based upon the foregoing analysis, we respectfully request that the Staff of the Commission concur that it will take no action if HP excludes the Proposal from its 2006 Proxy Materials pursuant to Rule 14a-8(i)(10). Consistent with the provisions of Rule 14a-8(j), we are concurrently providing copies of this correspondence to the Proponent. We recognize that the Staff has not interpreted Rule 14a-8 to require proponents to provide HP and its counsel a copy of any correspondence that the proponent submits to the Staff. Therefore, in the interest of a fair and balanced process, we request that the Staff notify the undersigned if it receives any correspondence on the Proposal from the Proponent or other persons, unless that correspondence has specifically confirmed to the Staff that HP or its undersigned counsel have timely been provided with a copy of the correspondence. If we can provide 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 (202) 955-8653 or Lynda M. Ruiz, HP's Senior Attorney, at (650) 857-3760.

Sincerely,

/s/

Amy L. Goodman

ALG/eai/rom

Enclosures

cc: Lynda M. Ruiz, Senior Attorney, Hewlett-Packard Company

Edward J. Durkin, United Brotherhood of Carpenters Pension Fund

[STAFF REPLY LETTER]

January 5, 2006

Response of the Office of Chief Counsel *Division of Corporation Finance*

Re: Hewlett-Packard Company Incoming letter dated November 4, 2005

The proposal requests that the board initiate the appropriate process to amend HP's governance documents to provide that director nominees shall be elected by the affirmative vote of the majority of votes cast.

We are unable to concur in your view that HP may exclude the proposal under rule 14a-8(i)(10).

Accordingly, we do not believe that HP may omit the proposal from its proxy materials in reliance on rule 14a-8(i)(10).

Sincerely,

/s/

Ted Yu

Special Counsel

¹ This is because they were previously elected by stockholders or named by the board to fill a vacancy.

² Under either process, the Board could determine to name a different individual to serve as director or could determine to reduce the size of the Board to eliminate the vacancy.

³ As noted above, the Proposal's supporting statement states: "Our proposal is not intended to limit the judgment of the Board in crafting the requested governance change." Thus, the Proposal acknowledges the need for flexibility in this regard and that the Proposal can be implemented (or substantially implemented) through a variety of means.

⁴ HP's Certificate of Incorporation and By-laws contain other provisions that "give shareholders a meaningful role in the director election process," such as annual director elections.

¹ *AT&T Wireless Services, Inc. Feb. 13, 2004*; *Citigroup, Inc.* (avail. Feb. 14, 2005) and *JPMorgan Chase & Co.* (avail. Feb 22, 2005).

² *See Amendments to Rules on Shareholder Proposals* (the "1998 Release"), Exchange Act Release No. 40018 at n.30 and accompanying text (May 21, 1998).

³ The Proponent's Response characterizes the *Texaco* letter by stating, "Texaco was allowed to exclude a proposal requesting it adopt a specific set of environmental guidelines because it was able to prove that it had done just that." This mischaracterizes the situation in *Texaco*. There, the proponents argued that Texaco had fallen far short of implementing the specific set of environmental guidelines advocated by the proponents, because the proponent asserted that Texaco had not satisfied the inspection, public disclosure or substantive commitments that the proposal specifically sought. Instead of evaluating whether Texaco had adopted "the specific set of environmental guidelines" advocated in the proposal, as asserted in the Proponent's Response, the Staff evaluated the policies, practices and procedures adopted by Texaco with those advocated by the proposal, and determined that the proposal had been substantially implemented because Texaco's policies, practices and procedures "compared favorably" with the guidelines of the proposal. In the other precedents cited in the Initial Letter, the companies likewise had not implemented the proposals in exactly the manner that the proponents sought or argued was necessary in order to substantially implement the proposals.

⁴ It is important to note that the "hold-over issue" only arises if the Proposal is implemented in the manner preferred by the Proponent, through a Charter Majority Voting Provision. As discussed in our Initial Letter, under Delaware law and HP's By-Laws, directors who serve on the board ("incumbent directors") hold office until the next annual meeting of stockholders and thereafter until their successors are duly elected and qualified. *See* Delaware General Corporation Law §141(b) ("Each director shall

hold office until such director's successor is elected and qualified or until such director's earlier resignation or removal."). If a Charter Majority Voting Provision is in place, an incumbent who is not reelected is generally referred to as a "hold-over" director. A hold-over director continues to operate with the same fiduciary duties, voting rights and powers as any other director until his or her successor is duly elected and qualified.

⁵ This is because, if there is a vacancy on the board, regardless of whether it is because the stockholders have not elected a director to fill a position or because the Board has expanded its size, the Board may elect a person to fill the vacancy. *See* Delaware General Corporation Law §223(a)(1) ("Vacancies and newly created directorships resulting from any increase in the authorized number of directors elected by all of the stockholders having the right to vote as a single class may be filled by a majority of the directors then in office"). As with a hold-over director, a director elected by the Board to fill a vacancy has the same fiduciary duties, voting rights and powers as a director elected by the stockholders until his or her successor is duly elected and qualified.

⁶ Under either process, the Board could determine to name a different individual to serve as director or could determine to reduce the size of the Board to eliminate the vacancy.

⁷ These precedents are cited on page 6 of the Initial Letter. *See General Motors Corp.* (avail. Mar. 14, 2005) (Staff concurred, despite the proponent's objections, that the company substantially implemented a stockholder proposal requesting that the company's board "adopt a policy that any future poison pill be redeemed or put to shareholder vote within 4-months after it is adopted," when the company's board adopted a policy that any such pill would be submitted for stockholder approval (but not necessarily repealed if not ratified) within twelve months of adoption); *Southwest Airlines Co.* (avail. Feb. 10, 2005) (Staff concurred, over the proponent's objections, that a company substantially implemented a stockholder proposal requesting that the company take steps to declassify the board "in the most expeditious manner possible" when the company's board of directors amended the bylaws to phase-in annual director elections over two years).

⁸ *Adoption of Amendments Relating to Proposals by Security Holders*, Exchange Act Rel. No. 19771 (Nov. 22, 1976). Although the Commission, when it adopted existing Rule 14a-8(i)(10), revised the language of the rule to use plain English instead of a passive voice, it did not at that time indicate that it intended to change this aspect of the Rule, 1998 release, *supra* note 2, at n.30, a point that was recently confirmed in the *Intel* letter cited in the text above.

⁹ For example, the significance of board committee charters is recognized under Item 7(d) of Schedule 14A (relating to disclosure of nominating and audit committee charters). Likewise, codes of ethics are governance documents that are recognized under Item 406 of Regulation S-K.