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VIA E-MAIL (shareholderproposals@sec.gov)

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

Re: Alaska Air Group, Inc.
Shareholder Proposals of Richard D. Foley
Securities Exchange Act of 1934 Rule 14a-8

Dear Ladies and Gentlemen:

We submit this correspondence on behalf of our client Alaska Air Group, Inc. (the "Company"), in response to correspondence submitted to the staff of the Division of Corporation Finance (the "Division") of the U.S. Securities and Exchange Commission (the "Commission") by Stephen Nieman regarding a request for no-action relief (the "No-Action Request") submitted on behalf of the Company on December 31, 2008.

The No-Action Request and Mr. Nieman's correspondence relate to the following three shareholder proposals (collectively, the "Proposals"), which were submitted to the Company by Richard D. Foley (the "Proponent"):

- a proposal titled "Reforming Securities Class Actions," which was purportedly submitted on behalf of Mr. Nieman (the "Class Action Proposal");
- a proposal titled "Cumulative Voting," which was purportedly submitted on behalf of Terry K. Dayton (the "Cumulative Voting Proposal"); and
- a proposal titled "Shareholder Say on Executive Pay," which was purportedly submitted on behalf of William Davidge (the "Executive Pay Proposal").

In response to the No-Action Request, Mr. Nieman submitted two letters -- the first relating to the exclusion of all three proposals submitted by the Proponent and the second relating specifically to the Class Action Proposal. Mr. Nieman's correspondence requests that the Division not allow the Company to omit all three Proposals or, alternatively, the Class Action

Proposal from the Company's proxy statement and form of proxy (the "2009 Proxy Materials") for its 2009 Annual Meeting of Stockholders (the "2009 Annual Meeting"). Mr. Nieman's January 13, 2009 letters are attached hereto as Exhibit A. The No-Action Request (exhibits omitted) is attached hereto as Exhibit B.

Copies of this correspondence are being sent concurrently to the Proponent and Mr. Nieman, Mr. Dayton, and Mr. Davidge.

I. EXCLUSION OF THE THREE PROPOSALS

We have reviewed Mr. Nieman's January 13, 2009 letter regarding the Proposals and continue to be of the view that the Company may omit them from its 2009 Proxy Materials in reliance on Rule 14a-8(c).

A. The Company's Notice Adequately Provided Notice of the One-Proposal Limitation of Rule 14a-8(c) to the Proponent as Required by Rule 14a-8(f)

Mr. Nieman's letter regarding the three Proposals addresses our view that the Company may omit all three Proposals in reliance on Rules 14a-8(c) and (f). In that correspondence, Mr. Nieman asserts that "the company did not provide adequate information to cure the eligibility or procedural requirements [pursuant to Rule 14a-8(f)]...[because] [t]he company's December 12, 2009 [sic] notice did not claim that Mr. Foley was a beneficial owner and thus the proponents were not given the opportunity to satisfy the company's concern on this point." Mr. Nieman expresses his view that "[h]ad the company given proper notice required under rule 14a-8(f) this clarification would have been made earlier." Attached to Mr. Nieman's letter are three revised grants of proxy authority to the Proponent, provided by each of Mr. Nieman, Mr. Dayton, and Mr. Davidge and dated January 12, January 7, and January 8, 2009, respectively.

As set forth in the No-Action Request:

- The Company received all three Proposals under a single fax cover sheet on November 28, 2008. Each Proposal was accompanied by a grant of proxy authority from a shareholder to the Proponent stating:

  > This is the proxy for Mr. Richard D. Foley and/or his designee to act on my behalf in all shareholder matters, including this Rule 14a-8 proposal for the forthcoming shareholder meeting before, during and after the forthcoming shareholder meeting.

- On December 12, 2008, the Company provided notice to the Proponent that Rule 14a-8(c) precludes any one shareholder from submitting more than one proposal to a company for a particular shareholders' meeting. A copy of Rule 14a-8 was included with the notice. The notice stated that:

- the Company believed "that the proposals that you indicate you have submitted on behalf of the purported proponents should each be viewed as submitted by you";

- the Proponent was "required under Rule 14a-8(c) to select and resubmit a single proposal to be considered for inclusion in the Company's proxy materials"; and

- the "revised submission to the Company must be postmarked, or transmitted electronically, no later than 14 days from the date that you receive this letter."

- On December 19, 2008, Mr. Nieman responded to the Company's notice, on behalf of the Proponent, disagreeing with the Company's view that all three Proposals were submitted by the Proponent. In that response, neither the Proponent nor Mr. Nieman took any action to reduce the number of proposals submitted for inclusion in the Company's 2009 Proxy Materials. During the 14-day period provided in the Company's Notice, no other correspondence regarding the Proposals was provided to the Company and no action was taken by the Proponent in response to the Company's notice.

The Company's notice to the Proponent stated the procedural deficiency, stated how the Proponent could cure the deficiency, stated the timeframe in which the Proponent was required to cure the deficiency, stated that only a single proposal submitted within the required timeframe would be considered for inclusion in the Company's proxy materials, and included a copy of Rule 14a-8. As such, the Company's notice provided adequate notice of the one-proposal limitation of Rule 14a-8(c). See General Motors Corporation (Apr. 9, 2007); AmerInst Insurance Group, Ltd. (Apr. 3, 2007); and Downey Financial Corp. (Dec. 27, 2004).

Mr. Nieman argues that the notice provided by the Company was unclear and that Mr. Nieman, Mr. Dayton, and Mr. Davidge were not given the opportunity to satisfy the Company's concerns regarding the Proponent's beneficial ownership of the shares held by the proponents. In this regard, we note that, although the cover letters to each Proposal instructed the Company to "direct all future communications to Mr. Foley," the Company provided the notice to the Proponent and provided copies via certified mail to each of Mr. Nieman, Mr. Dayton, and Mr. Davidge.

Mr. Nieman also states that clarification -- presumably of the grant of proxy authority to the Proponent -- could have been made earlier if the Company's notice had specifically stated that the Proponent was a beneficial owner of all of the relevant shares. However, the procedural deficiency was clearly articulated -- Rule 14a-8(c) "precludes any one shareholder from submitting more than one proposal to a company for a particular shareholders' meeting." Mr. Nieman further states that had the notice noted the beneficial ownership of the Proponent explicitly, the proponents would have provided limited grants of proxy authority to the Proponent in response to such a notification (similar to those provided in Mr. Nieman's correspondence). However, as discussed below, Mr. Nieman is incorrect in his view that providing more limited grants of proxy authority at a later date would have "cured" the procedural deficiency (*i.e.*, the submission of more than one proposal by a single beneficial owner) referenced in the Company's notice.

Rule 14a-8(c) provides that "[e]ach shareholder may submit no more than one proposal to a company for a particular shareholders' meeting." On November 28, 2008, the date the Proponent submitted the Proposals to the Company, the Proponent had been granted proxy authority that, for the reasons discussed in the No-Action Request, caused him to be the beneficial owner of the shares otherwise held by Mr. Nieman, Mr. Dayton, and Mr. Davidge. As such, at the time the Proponent submitted the Proposals, the Proponent was the beneficial owner of the shares that provided eligibility to submit the Proposals. Changing the terms of the grant of proxy authority at a later date would not "cure" the procedural defect noted in the Company's notice to the Proponent -- that is, it would not change the fact that a single shareholder submitted multiple proposals for inclusion in the Company's proxy materials for a particular shareholders' meeting.

Regardless of later actions, on November 28, 2008, a single shareholder -- the Proponent -- submitted three Proposals for inclusion in the Company's proxy materials for a particular shareholders' meeting. Rule 14a-8(c) does not permit a single shareholder to "submit" more than one proposal to a company for a particular meeting. As the Division has stated previously, it is not a sufficient "cure" for a violation of Rule 14a-8(c) (the procedural deficiency identified in the Company's notice) to simply revise the nature of the proponents; rather, the Division has taken the position that the only "cure" for the procedural deficiency of a single shareholder submitting multiple proposals (which was described clearly in the Company's notice) is the resubmission of a single proposal from that shareholder to the company within 14 calendar days of receipt of that notice.[1]

Once the Proponent submitted the three Proposals and the Company provided notice to the Proponent of that defect in his submission, the only means to "cure" that defect would be for the Proponent to timely withdraw two of the three Proposals. Neither the Proponent, nor Mr. Nieman, nor Mr. Dayton, nor Mr. Davidge took either of these actions.[2] Even if the notice had

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1 See Spartan Motors, Inc. (Mar. 12, 2001) (granting request to exclude two proposals under Rule 14a-8(c) that were originally submitted by a single proponent who, upon proper notice from the company, stated that his wife wished to submit the second proposal) and Staten Island Bancorp, Inc. (Feb. 27, 2002) (granting request to exclude five proposals under Rule 14a-8(c) that were originally submitted by a single proponent who, upon proper notice from the company, resubmitted all five proposals with four proposals under the names of nominal proponents).

2 Even if the Division took the view that the notice should have affirmatively stated the Company's view that the Proponent was the beneficial owner of the shares otherwise held by Mr. Nieman, Mr. Dayton, and Mr. Davidge, failure of the notice to state such belief did not result in or contribute to the Proponent's failure to comply with Rules 14a-8(c) and (f). In his response to the Company's No-Action Request, Mr. Nieman did not argue that the original grant of proxy authority did not confer beneficial ownership on the Proponent at the time he submitted all three Proposals; Mr. Nieman merely provided revised grants of proxy authority from himself, Mr. Dayton, and Mr. Davidge that were intended to enable him to make the claim that the Proponent had -- at a date subsequent to the submission of the three Proposals -- ceased to be the beneficial owner of the shares otherwise held by Mr. Nieman, Mr. Dayton, or Mr. Davidge. As stated above, the Division has held that this is not a sufficient cure of a violation of Rule 14a-8(c). See Spartan Motors, Inc. (Mar. 12, 2001). Further, we note that, in certain circumstances, the Division has determined to provide a proponent additional time to cure a defect (e.g., Pfizer Inc. (Feb. 20, 2007) (allowing 7 additional days for the proponent to provide the company with a revised proposal to comply with Rule 14a-8(c) because the

stated the reasons why the Company believed that the Proponent was the beneficial owner of the shares held by each of the nominal proponents, revising the terms of the grants of proxy authority to limit the authority granted to the Proponent would not have been sufficient to "cure" the failure to comply with the one-proposal limitation of Rule 14a-8(c). For these reasons, we continue to believe that the Company may omit all three Proposals from its proxy materials for its 2009 Annual Meeting in reliance on Rules 14a-8(c) and (f).

II. EXCLUSION OF THE CLASS ACTION PROPOSAL

In a separate letter, also dated January 13, 2009, Mr. Nieman expresses his disagreement with the Company's views regarding the alternative bases for excluding the Class Action Proposal. As the views expressed in Mr. Nieman's letter do not change our position regarding the alternative bases for exclusion set forth in the No-Action Request, it continues to be our view that the Company may exclude the Class Action Proposal from its 2009 Proxy Materials for the reasons addressed in that No-Action Request.

A. The Class Action Proposal Consists of More than One Proposal

In Mr. Nieman's separate letter regarding the Class Action Proposal, he expresses his view that the Proposal has a single unifying concept. On pages one and two of his letter, Mr. Nieman states that the Class Action Proposal is "intended to encourage plaintiff's lawyers to 'target officers of the Company who reaped large stock option gains or other incentive compensation as a result of the fraud, thereby penalizing the party actually responsible for the fraud.'" On page two of Mr. Nieman's letter, he states that the "single unifying element is to use Rule 10b-5 FOTM actions to encourage the Company's officers - who are best placed to ensure that the Company's disclosures are not misleading - to comply with Rule 10b-5."

Mr. Nieman's separate letter regarding the Class Action Proposal, in its discussion of whether the proposal is "only one proposal," therefore, provides two alternative intentions of the Class Action Proposal -- it is "intended to encourage plaintiff's lawyers to target officers of the Company" and it is intended to encourage the Company's officers "to comply with Rule 10b-5."

The Supporting Statement includes the following two statements regarding the effect of the Class Action Proposal:

- "This proposal, suggested by Professor Adam Pritchard of the University of Michigan would limit damages in secondary market securities class actions, i.e., suits brought against the Company when it has not sold securities during the time that its common stock was allegedly distorted by a material misrepresentation."

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company failed to clarify the version of the proponent's proposal to which the Rule 14a-8(f) deficiency notice applied)). Neither the Company's notice nor the response of Mr. Nieman warrant such additional time in the current situation, as the only means by which to cure the defect would be withdrawal of two of the three Proposals -- that cure was described clearly to the Proponent in the Notice and the Proponent chose not to avail himself of that cure.

- "The proposed amendment would substantially reduce the incentive of plaintiffs' lawyers to file suit against the Company in response to a drop in the Company stock price."

It is only in the penultimate sentence of the Supporting Statement that Mr. Nieman mentions any purpose of the Class Action Proposal other than to limit class actions against the Company in reliance on the fraud-on-the-market presumption. In that sentence, the Supporting Statement provides that "[u]nder the proposal, lawsuits would instead target officers of the Company who reaped large stock option gains or other incentive compensation as a result of fraud, thereby penalizing the party actually responsible for the fraud." Mr. Nieman's explanation that the single unifying element of the Class Action Proposal is to be found in this single sentence -- although the Supporting Statement does not discuss the benefits of focusing lawsuits on officers, or that the partial waiver would result in those "lawsuits" not being able to rely on the fraud-on-the-market presumption if damages other than disgorgement were sought, or that, because of the partial waiver, those "lawsuits" would not encourage a company's officers to "comply with Rule 10b-5" in situations where there was no disgorgement to be sought -- only makes clearer that there are multiple, disparate elements to the Class Action Proposal.

It continues to be our view that the Class Action Proposal consists of more than one proposal and that, as such, the Company may exclude the Class Action Proposal in reliance on Rules 14a-8(c) and (f).

B. Adoption of the Class Action Proposal Would Cause the Company to Violate Section 29(a) of the Exchange Act

1. The Class Action Proposal is barred by Section 29(a) because it "weaken[s] the ability to recover under the Exchange Act"

The Class Action Proposal seeks to limit damages to disgorgement where plaintiffs rely on the fraud-on-the market presumption. By Mr. Nieman's own statement, by adopting the Class Action Proposal, "the potential damages available in securities class actions would be substantially scaled back." However, Mr. Nieman also argues in his separate letter regarding the Class Action Proposal that the inclusion in the Class Action Proposal of the Company's agreement to pay plaintiffs' fees for certain Rule 10b-5 actions -- those for which there is reliance on the fraud-on-the-market presumption and damages are limited to disgorgement -- "would facilitate the ability of shareholders to bring actions under Rule 10b-5." It is our view that the elimination of the currently existing ability of shareholders to rely on the fraud-on-the-market presumption to recover their out-of-pocket losses in a private action under Rule 10b-5 would *not* "facilitate the ability of shareholders to bring actions under Rule 10b-5." Indeed, eliminating the existing ability of shareholders to recover out-of-pocket damages in those private Rule 10b-5 claims in which reliance is shown through the fraud-on-the-market presumption -- which, as noted in the Supporting Statement, would virtually eliminate the use of the fraud-on-the-market presumption in private actions against an issuer[3] -- would, by definition, "weaken" a plaintiff's "ability to recover under the Exchange Act."

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[3] As stated in the Supporting Statement: "This proposal, suggested by Professor Adam Pritchard of the University of Michigan would limit damages in secondary market securities class actions, i.e., suits brought

In this regard, we note that the fraud-on-the-market presumption was developed specifically to enhance the ability of investors to recover under the Exchange Act. Because of the unique requirements for certifying a class in a class action, the Supreme Court adopted the fraud-on-the-market presumption as part of "a practical resolution to the problem of balancing the substantive requirement of proof of reliance in securities cases against the procedural requisites" for bringing a class action. Basic v. Levinson, 485 U.S. 224, 242 (1988). Without this presumption, "[r]equiring proof of individualized reliance from each member of the proposed plaintiff class effectively would have prevented respondents from proceeding with a class action, since individual issues then would have overwhelmed the common ones." Id. The Class Action Proposal would reverse the Supreme Court's effort to enhance the ability for investors to recover under the Exchange Act by requiring each plaintiff to show actual reliance to recover out-of-pocket losses, even where the Supreme Court has stated that fraud-on-the-market is sufficient.

2. *Limiting the available measure of damages in all Rule 10b-5 cases asserting the fraud-on-the-market presumption would be barred by Section 29(a)*

Looking to the other causes of action under the Securities Act and the Exchange Act, Mr. Nieman argues that the proper measure of damages in private Rule 10b-5 causes of action is disgorgement and, therefore, the portion of the Class Action Proposal attempting to limit damages in Rule 10b-5 causes of action that rely on the fraud-on-the-market presumption merely "stipulates the measure most consistent with the explicit causes of action provided by the securities laws." As an initial matter, this statement is inconsistent with the statements in the Supporting Statement that "currently, the enormous potential for damages are a powerful incentive for plaintiffs' lawyers to bring even weak suits." Further, this statement is inconsistent with the statement in the Class Action Proposal that "[t]he waiver would *limit* damages to disgorgement..." (emphasis added). Indeed, it appears that this statement represents an aspirational view of the proper measure of damages in private Rule 10b-5 actions, rather than the measure of damages that has been established by the courts.

Section 10(b) does not specify the measure of damages in private causes of action under that Section. Case law has, however, determined that the measure of such damages is not limited to disgorgement of ill-gotten profits. For example:

> Out-of-pocket damages are the typical measure of damages awarded in securities fraud cases brought under Section 10(b) and Rule 10b-5. They are measured as "the difference between the purchase price and the true value of the stock."

See In re Credit Suisse First Boston Corp. Sec. Litig., No. 97 Civ. 4760 (S.D.N.Y. Oct. 20, 1998).

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against the Company when it has not sold securities during the time that its common stock was allegedly distorted by a material misrepresentation."

3. Section 29(a) applies to a waiver of the fraud-on-the-market presumption

a. The fraud-on-the-market presumption is substantive

Mr. Nieman states correctly that Section 29(a) prohibits only the waiver of substantive, not procedural, sections of the Exchange Act. See Shearson/American Express, Inc. v. McMahon, 482 U.S. 220, 228 (1987). However, Mr. Nieman makes the unsupported statement in his separate letter regarding the Class Action Proposal that "[t]he duty not to make misrepresentations is substantive; the FOTM presumption is procedural, relating only to means by which the reliance element can be satisfied." It is our view that this is merely Mr. Nieman's statement of the operation of Section 29(a); it is not that of a court or the Commission. Further, such a statement is contrary to the Supreme Court's view that the fraud-on-the-market presumption is substantive. In Basic v. Levinson, the Supreme Court acknowledged "that the presumption of reliance created by the fraud-on-the-market theory provide[s] 'a practical resolution to the problem of balancing the *substantive* requirement of proof of reliance in securities cases against the procedural requisites of [Federal Rule of Civil Procedure] 23." Basic, 485 U.S. at 242 (emphasis added). Mr. Nieman's assertion that the fraud-on-the-market presumption is procedural, in that it is a means by which to prove reliance, is directly contrary to the Supreme Court's statement that proving reliance in securities cases is a *substantive* requirement.

b. Limiting damages to disgorgement under the fraud-on-the-market presumption undermines the substantive rights of the Exchange Act

Mr. Nieman expresses the position that, despite the waiver sought in the Class Action Proposal, "in sum, the limited waiver would not affect the duty of the Company and its officers to comply with Rule 10b-5."

It appears that Mr. Nieman bases this argument on the Supreme Court's statement in McMahon that the "anti-waiver provision of § 29(a) forbids enforcement of agreements to waive 'compliance' with the provisions of the [Exchange Act]." McMahon, 482 U.S. at 228. Mr. Nieman expresses the position that damages can, therefore, be limited in private Rule 10b-5 actions involving the fraud-on-the-market presumption because it will not limit "compliance" by the Company under the Exchange Act. However, the Supreme Court's statement regarding waiver of compliance with the provisions of the Exchange Act must be read in context with the Court's continuing discussion in McMahon explaining that the waiver of *any provision* that undermines the substantive rights in the Exchange Act is void under Section 29(a).

In McMahon, the Supreme Court confirmed its prior holding in Wilko v. Swan, 346 U.S. 427 (1953), that where a waiver results in a situation that is inadequate to "protect the substantive rights" of the Securities Act, a waiver will not be enforceable under Section 14 of the Securities Act.[4] McMahon, 482 U.S. at 228. The Supreme Court held in McMahon that the

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[4] Section 14 of the Securities Act, like Section 29(a) of the Exchange Act, declares void any stipulation "to waive compliance with any provision" of the Securities Act.

waiver of Section 27 of the Exchange Act, which grants jurisdiction to United States district courts, was permissible under Section 29(a) only because it determined that the alternate forum agreed to by the plaintiffs was adequate to protect the substantive rights of the Exchange Act -- i.e., the private Section 10(b) claim brought by the plaintiffs. Unlike the waiver in McMahon, a waiver of damages recoverable under the fraud-on-the-market presumption is not adequate to protect the substantive rights of the Exchange Act, as the waiver in itself undermines the private 10b-5 claim brought by the plaintiff by limiting the existing ability to recover under the Exchange Act. It is irrelevant whether waiver of the fraud-on-the-market provision affects government actions, as asserted by Mr. Nieman. Instead, where the waiver limits the ability to recover under a private Section 10(b) claim, as stated in McMahon, that waiver is impermissible because it is inadequate to protect the substantive rights of the Exchange Act.

Overall, Mr. Nieman appears to ask the Company and the Commission to rely on two positions in determining that the Class Action Proposal complies with Section 29(a):

- First, that -- regardless of the language of the Supreme Court in McMahon that any waiver that would "weaken [the] ability to recover under the [Exchange] Act" is void under Section 29(a) -- an agreement to limit the manner in which the cause of action may be shown in private actions under Rule 10b-5 (*i.e.*, no reliance on the fraud-on-the-market presumption where out-of-pocket damages are sought) or, put differently, an agreement to limit the amount of damages that may be sought in private actions under Rule 10b-5 (*i.e.*, no ability to seek out-of-pocket damages where the fraud-on-the-market presumption is relied on) is not void under Section 29(a); and

- Second, that -- regardless of the specific language of the waiver sought by the Class Action Proposal, the language in the Supporting Statement, and the fact that the waiver would prohibit private Rule 10b-5 actions that currently are permitted (private actions against issuers, officers, and directors that seek out-of-pocket damages in reliance on the fraud-on-the-market presumption) -- the waiver sought by the Class Action Proposal would not "weaken [the] ability to recover under the [Exchange] Act."

Neither of these positions changes our view that Section 29(a) does not permit the waiver sought by the Class Action Proposal. First, the Supreme Court in McMahon made clear the application of Section 29(a) to waivers that would weaken the ability to recover under the Exchange Act (particularly under Rule 10b-5); as the Class Action Proposal would have this effect, we believe that it would be void under Section 29(a). Second, the statements of the Supreme Court in McMahon demonstrate clearly its application to waivers that would limit private Rule 10b-5 actions in the manner sought by the Class Action Proposal.

c. Amending the Articles of Incorporation to include the partial waiver does not adequately "sever the link" to rebut the fraud-on-the-market presumption

Mr. Nieman expresses his view that a partial waiver of the fraud-on-the-market presumption in the Company's articles of incorporation will put future purchasers of the

Company's stock on notice that they can collect only disgorgement, and that this notice effectively rebuts the fraud-on-the-market presumption as permitted in Basic. In this regard, the Supreme Court stated in Basic that "any showing that severs the link between the alleged misrepresentation and either the price received (or paid) by the plaintiff or his decision to trade at a fair market price will be sufficient to rebut the presumption of reliance." Basic at 248. The Supreme Court provided the following acceptable means by which to rebut the presumption:

- Market-makers knew the truth about a misrepresentation, therefore the market price was not affected by the misrepresentation.

- Despite an effort to manipulate a market price, the "truth" credibly entered the market and dissipated the effects of the misstatements.

- A showing that a plaintiff in fact believed that the specific statements made by the Company were misleading, and believed that the stock was artificially underpriced, but sold anyway.

Basic at 248-49.

These examples are easily distinguished from the Class Action Proposal, which seeks a blanket waiver to forever disclaim that the market price accurately reflects the status of the Company. The opportunity for rebuttal is intended for those situations in which a plaintiff relies on a specific misrepresentation put forth by the company; it is not a tool to disclaim all future reliance on anything said by the company. In this regard, we note the following statement of the Supreme Court:

> The presumption of reliance employed in this case is consistent with, and, by facilitating Rule 10b-5 litigation, supports, the congressional policy embodied in the [Exchange] Act. In drafting that Act, Congress expressly relied on the premise that securities markets are affected by information, and enacted legislation to facilitate an investor's reliance on the integrity of those markets . . . . Indeed, nearly every court that has considered the proposition has concluded that, where materially misleading statements have been disseminated into an impersonal, well-developed market for securities, the reliance of individual plaintiffs on the integrity of the market price may be presumed.

Basic at 245-47.

C. *The Company May Exclude the Class Action Proposal in Reliance on Rule 14a-8(i)(3) Because it is Materially False and Misleading and, Therefore, Contrary to Rule 14a-9*

1. *The Class Action Proposal is materially false and misleading because it purports to provide a means by which the Company may partially waive the fraud-on-the-market presumption of reliance when such a waiver would be void under Section 29(a) of the Exchange Act*

Mr. Nieman expresses his view that the No-Action Request is "wasting the staff's time by raising" this argument. We respectfully disagree with Mr. Nieman's statement. Based on the foregoing and the discussion in the No-Action Request, it continues to be our view that the Company may exclude the Class Action Proposal in reliance on Rule 14a-8(i)(3).

2. *The Class Action Proposal is materially false and misleading because it is so inherently vague and indefinite that shareholders will be unable to determine with reasonable certainty the effect of the actions sought by the proposal*

We continue to be of the view that the Company may exclude the Class Action Proposal in reliance on Rule 14a-8(i)(3), as it is materially false and misleading because it is so inherently vague and indefinite that shareholders will be unable to determine with reasonable certainty the effect of the actions sought by the proposal.

As the Supreme Court stated in Basic, "[r]equiring proof of individualized reliance from each member of the proposed plaintiff class effectively would have prevented respondents from proceeding with a class action, since individual issues then would have overwhelmed the common ones." Basic v. Levinson, 485 U.S. 224, 242 (1988). The Class Action Proposal, in "altering the effects of" the fraud-on-the-market presumption likely would, as stated by the Court, "prevent[] [shareholders] from proceeding with a class action" under Rule 10b-5 against any party in which out-of-pocket damages are sought in reliance on the fraud-on-the-market presumption. Shareholders currently are permitted to bring such a private action under Rule 10b-5 and that ability would be eliminated by the Class Action Proposal. Neither the Class Action Proposal nor the Supporting Statement provide any means by which reasonable, current shareholders could understand the effect of the Class Action Proposal in eliminating a private right of action under the Exchange Act which they currently possess. In this regard, the Class Action Proposal states merely that "[t]he waiver would limit damages to disgorgement of the defendants' unlawful gains from their violation of Rule 10b-5."

Contrary to Mr. Nieman's assertion in his separate letter regarding the Class Action Proposal, the Division has stated that the relevant question in determining whether a shareholder proposal is so vague and indefinite as to be misleading is the following -- will shareholders in voting on the proposal, and the company in implementing the proposal (if adopted), be able to determine with any reasonable certainty exactly what actions or measures the proposal requires. See Philadelphia Electric Company (Jul. 30, 1992). As noted in the No-Action Request, we

believe that the Class Action Proposal does not satisfy this standard. Due to the failure of the Class Action Proposal and Supporting Statement to explain to shareholders the effect of the Class Action Proposal on their existing private right of action under Rule 10b-5 -- for example, the potential damages that are being eliminated by the waiver or the effect of the waiver where there are no "unlawful gains" by officers or directors -- shareholders could not reasonably understand the scope or effect of the action they are being asked to take.

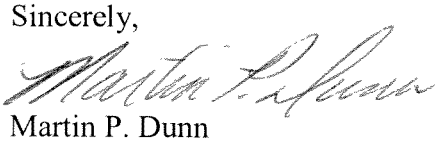
III. CONCLUSION

Based on the foregoing and the discussion set forth in the No-Action Request, we believe that the Company may exclude all three of the Proposals from its 2009 Proxy Materials in reliance on Rules 14a-8(c) and (f). As such, on behalf of the Company, we respectfully request that the Division concur in our view and not recommend enforcement action to the Commission if the Company excludes the three Proposals from its 2009 Proxy Materials.

Based on the foregoing and the discussion set forth in the No-Action Request, we believe that the Company may exclude the Class Action Proposal from its 2009 Proxy Materials in reliance on Rules 14a-8(c) and (f), Rule 14a-8(i)(2), and Rule 14a-8(i)(3). As such, if the Division is unable to concur in our view that the Company may exclude all three Proposals in reliance on Rules 14a-8(c) and (f), we respectfully request on behalf of the Company that the Division concur in our view and not recommend enforcement action to the Commission if the Company excludes the Class Action Proposal from its 2009 Proxy Materials.

If we can be of further assistance in this matter, please do not hesitate to contact me at (202) 383-5418.

Sincerely,



Martin P. Dunn
of O'Melveny & Myers LLP

Enclosures

cc: Ms. Karen Gruen, Alaska Air Group, Inc.
Mr. Andor Terner, O'Melveny & Myers LLP
Ms. Shelly Heyduk, O'Melveny & Myers LLP
Mr. Richard D. Foley
Mr. Stephen Nieman (via email to Mr. Richard D. Foley)
Mr. Terry K. Dayton (via email to Mr. Richard D. Foley)
Mr. William Davidge (via email to Mr. Richard D. Foley)