

**STEVE NIEMAN, President**  
**The Ownership Union® | [www.ourunion.org](http://www.ourunion.org)**  
**15204 NE 181st Loop, Brush Prairie, WA 98606**  
**[steveniemann@mac.com](mailto:steveniemann@mac.com) | home (360) 687-3187 | fax (360) 666-6483**

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March 23, 2009

John E. Schadl, Esq.  
Legal Dept – ERISA & Fiduciary Services  
The Vanguard Group  
400 Devon Park Drive  
Wayne, PA 19087

Re: Request for clarification for naming a proxy for ALK 401k Plan ("Plan") shares

Attachments: Documents regarding this dispute can be viewed at [www.votepal.com](http://www.votepal.com)

Via: email [john\\_e\\_schadl@vanguard.com](mailto:john_e_schadl@vanguard.com); fax (610) 503-6743 and registered letter via USPS

Dear Mr. Schadl:

On Nov. 28, 2008 I sent the corporate secretary of Alaska Air Group, Inc. (the "company" or "Alaska Air") my 2009 shareholder proposal entitled "Reforming Securities Class Actions." As I travel a lot, I also named Richard D. Foley as my proxy to help me prepare, send and communicate with company management my proposal to ensure that it was voted on by my fellow shareholders at the 2009 annual meeting. Two other 401k worker shareholders submitted proposals under identical circumstances: Bill Davidge and Terry Dayton.

On Dec. 12, 2008, company management via its law firm O'Melveny & Myers LLP sent the U.S. SEC a request for no-action to omit my proposal from their proxy materials. On Dec. 31, 2008 and again on Jan. 23, 2009 the company management via O'Melveny sent further correspondence to the SEC trying to void my proposal.

The argument against Mr. Dayton, Mr. Davidge and my proposals was that we had transferred voting and/or investment power to Richard D. Foley thereby making him "effectively" the beneficial owner. Therefore, Mr. Foley was making more than the single proposal allowed by any individual stockholder per SEC rules. I responded to the Commission in a letter dated Jan. 13, 2009. On March 5, 2009, the staff at the U.S. SEC granted the company's request for no-action. On March 13, 2009, the company published its preliminary form of proxy with the SEC, where my proposal indeed was omitted (as was Mr. Dayton's; Mr. Davidge withdrew his proposal).

I need you to clarify my right to assign a proxy, because I believe the actions by company management and staff of the U.S. SEC violated rights and duties under ERISA.

## **ARGUMENT**

Alaska Air Group, Inc. management misinformed the SEC and represented that I had unlawfully given my proxy voting and/or investment power of my 401k shares. The company knew that each of these worker shareholders held their qualifying shares

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within the company 401k Plan. Such Plan participants are not permitted to vote in any manner except through the Trustee designated by the company, currently Vanguard. Therefore, it is an impossibility for any 401k shareholder to assign any voting and/or investment power proxy of their shares to do anything except exercise the communication requirements to properly make a shareholder proposal.

In my opinion, Alaska Air management knows this for in 2004 they rewrote the Plan when they switched the Designated Trustee from Putnam to Vanguard in 2005. The major change was apparently to remove "mechanical/ proportional voting," which to my knowledge is the only accepted ERISA standard. In my opinion, the company making and Vanguard accepting this change did not eliminate the fiduciary duty of the Designated Trustee to vote the uncast votes in the "best financial interests" of the Plan participants who had not exercised their right to vote.

It is my opinion that company management hoped to do away with the proportional voting because in 2003 a group of workers began running consecutive proxy contests. Since most workers fail to vote their shares, the worker CHALLENGERS would have gotten most of the 5% worker vote, approximately the percentage of shares workers own at Alaska Air. In a plurality vote of a contested director election, this is a significant number.

When these changes became evident, I filed an objection with the U.S. Dept. of Labor's Employee Benefits Security Administration. I sent them numerous documents and personally met with two staff investigators on June 30, 2006. Per EBSA regulations, the investigators said they could not inform me of how/when their investigation might proceed. I do not know whether this investigation is ongoing at this time. Whether Vanguard, in some manner, failed in its fiduciary duty to the plan participants by accepting the company's instruction to eliminate proportional voting remains an unanswered question.

Vanguard management subsequently has gone the extra mile to make sure that Alaska Air Plan participants actually receive their proxy materials in a timely manner. Starting in 2007, Vanguard also set up the use of electronic voting for 401k workers stockholders for Alaska Air CHALLENGER nominees and proposals via the CHALLENGER Voting Instruction Form.

The worker shareholders at Alaska Air made legal proposals and made legal assignments of proxy. By the nature of the ownership structure designed by the company for its shares held in trust in the participants' 401k Plan, these proxies were limited. These shareholder proponents never had the legal authority to assign voting or investment power to Mr. Foley or any other person, nor did they attempt to do so.

As a representative of the Designated Trustee under my 401k Plan, please clarify whether my proxy designation was proper.

As an aside, the CHALLENGERS plan another contested solicitation in 2009. All five of our candidates and five proposals (including mine) will appear in the CHALLENGERS'

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proxy statement. As you know, we have filed preliminary proxy materials with the U.S. SEC, and staff is currently reviewing our filings as we prepare to go definitive and begin actively soliciting proxies from both worker 401k shareholders and beneficial holders. Obviously, as Designated Trustee, you will be hearing from Alaska Air worker 401k stockholders as they try to vote for us and our proposals.

I respectfully request an expedited oral and written answer. We will communicate your response to the U.S. SEC, Alaska Air stockholders, and the 401 K plan participants.

Sincerely,



email cc: Mr. Richard Foley  
Mr. Bill Davidge  
Mr. Terry Dayton