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SECURITIES  
DIVISION  
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Caterpillar Inc.  
100 NE Adams Street  
Peoria, Illinois 61629 -7310

December 3, 2001

Via Federal Express  
Securities & Exchange Commission  
Office of Chief Counsel  
Division of Corporation Finance  
Attn: Jonathan Ingram  
450 Fifth Street, N.W.  
Washington, D.C. 20549

Public Avail. Date: 1/10/02 0211200240  
Act Section Rule  
1934 14(a) 14a-8

*Re: Shareholder Proposal of Mr. John Chevedden*

Ladies and Gentlemen:

Caterpillar Inc. has received the attached shareholder proposal from Mr. John Chevedden regarding our Shareholder Rights Plan for inclusion in our upcoming proxy materials. For reasons discussed below, we believe that without the amendments suggested below the proposal is excludable under the Rule 14a-8 prohibition against the inclusion of false or misleading information in proxy solicitation materials. We request your concurrence that unless the proponent amends the proposal within a timeframe specified by the Division in accordance with our recommendations you will not recommend enforcement action if we exclude the proposal from our proxy materials.

**False and Misleading Statements in the Proposal**

Rule 14a-8(i)(3) permits the omission of a shareholder proposal if the proposal or its supporting statement is contrary to any of the Commission's proxy rules, including Rule 14a-9, which prohibits materially false or misleading statements in proxy solicitation materials. The Commission has recently confirmed that issuers are permitted to omit proposals containing false and misleading statements that the proponent refuses to amend. *See DT Industries Inc. (August 10, 2001)*. Mr. Chevedden's suffers from this defect in several respects. Accordingly, we believe the proposal may be omitted from the 2002 Proxy Statement pursuant to Rule 14a-8(i)(3).

## 1. Partial Facts about Vote Results

The proposal is misleading because it includes two-year old vote results characterized in a false and misleading manner. The title and closing of Mr. Chevedden's proposal states in large, bold font: "[t]his topic won more than 50% vote at the 2000 annual meeting." This assertion is repeated in two other places in the supporting statement for the proposal and is misleading for at least two reasons. First, the statement is deliberately misleading because it implies that the proposal passed in 2000. In fact, that proposal failed to pass in 2000 because it garnered only 46.8% of the total votes cast. Although proponent provides a parenthetical explanation in two of the four references to the 2000 vote total that the over 50% calculation is based on yes or no votes cast, he omits this explanation from the two most prominent references. We believe the proposal must remove all references to the vote results in 2000 or be recast such that every reference to the 2000 vote accurately states that the reference to "winning" more than 50% is based only on the yes-no vote and not the overall vote.

Second, all the references to voting results on this topic refer to the outcome of the 2000 annual meeting, but are silent as to the results of the 2001 meeting, during which a substantively similar proposal did not "win" 50% of either the overall vote or the yes-no vote. Shareholders may be misled by a proposal referring solely to the outcome of a vote on a similar proposal two years ago without clarifying that a similar proposal garnered less support at the more recent meeting. Mr. Chevedden obviously believes historical vote results to be persuasive to shareholders on the issue of shareholder rights plans. However, to ignore more recent vote result while trumpeting older, more favorable results can only be viewed as an attempt to hoodwink the unsuspecting voter. Only an extremely vigilant shareholder would be expected to read the proposal and understand that the reported vote tally is from two years ago, and even those so diligent would not understand that a similar proposal received less support last year. The Commission has repeatedly affirmed that a statement that omits to state any material fact required to be stated therein or necessary to make the statements therein not misleading is equally as misleading as an affirmatively false statement. Accordingly, we believe that if Mr. Chevedden insists on including references to the vote at the meeting two years ago, then for the sake of accuracy, he must also include, after each reference, the more recent vote result, reflecting decreased support for the proposal.

## 2. Unsupported Allegations

The proposal is also misleading in that it makes bald allegations and representations about "facts" that are not or cannot be substantiated. First, the proposal states that "[w]e believe this proposal topic would have won a majority vote in 2001 had the company not sent multiple solicitations, at shareholder expense." While it may or may not be true that Mr. Chevedden believes this to be true, he refused my repeated requests to provide even a sliver of support for the statement. Proponents should not be permitted to include inflammatory unsupported and unsupportable statements simply by

couching them as opinions. Accordingly, the proposal should be amended to omit this sentence. At minimum, Mr. Chevedden should be instructed to amend this statement to state "Although there is no identifiable factual basis for our belief, we believe this proposal topic would have won a majority vote in 2001 had the company not sent multiple solicitations, at shareholder expense." If this statement is permitted to stand it should also be amended to state whether the reference to "winning" a "majority vote" is intended to mean a majority of the overall vote or just the yes-no vote.

Second, the proposal states that a "poison pill is a formidable defense against potentially attractive take-over overtures." Again, Mr. Chevedden refused to provide support for this summary statement, which is not even couched as an opinion. Instead, he made a passing reference to the "full text" of a book cited to support a statement elsewhere in the proposal. He also failed to address the problem that the proposal includes this bold assertion despite the fact that all the available survey data shows that (1) companies with shareholder rights plans receive a premium in takeover situations, and (2) such plans do not dissuade potentially attractive takeover bids. In light of these facts, the proposal should be amended to omit his assertion or to provide specific support refuting the available survey data.

### 3. Factual Distortion

The proposal is also misleading under 14a-8(3) as it distorts the truth as to a third-party promotion included with Caterpillar's proxy materials last year. The proposal states that "[t]his Caterpillar solicitation also promoted a \$50,000 jackpot contest run by Automatic Data Processing." While this statement is not technically false, it does omit to state facts necessary to make the statement not misleading. By intentionally excluding select facts and context provided by the article in *Barron's* that is the source of the statement, the proponent intentionally conveys the misleading impression that the \$50,000 "jackpot" was somehow connected to an attempt to garner votes against the proposal in 2001. By conveniently omitting details reported in the article, the proposal intentionally obfuscates the real purpose of ADP's offer -- to induce shareholders to sign up for electronic delivery of proxy materials to save issuers (and, by extension, issuer's shareholders) "hundreds of millions of dollars in mailing costs." The proposal also omits the fact reported explicitly in the article that the contest was in no way connected to any particular shareholder proposal and did not state, suggest or even hint that a shareholder needed to vote a certain way on a proposal to be eligible. As ADP's representative plainly states in the article, "[t]he \$50,000 prize isn't for anyone who voted in a particular manner . . . We don't talk to shareholders about any votes at all."

By including a selective quotation about the \$50,000 prize reported in an article while excluding important facts, the proposal attempts intentionally to deceive shareholders into believing that only those voting a certain way would be eligible for the prize. Accordingly, this statement should be excluded or at least amended to include the appropriate facts that (1) the contest was conducted by ADP; (2) the purpose of the

contests was to induce shareholders to sign up for electronic delivery; and (3) eligibility for the prize was in no way connected to an attempt to influence shareholders to vote against any shareholder proposal.

#### 4. False Statement

The proposal also makes the false assertion that "[t]he company failed 3 times to disclose any reason it knew for the high institutional investor support for the topic of this proposal." In connection with our attempts to resolve our differences on this proposal informally, Mr. Chevedden submitted a letter including a series of questions seeking, among other things, legal advice and facts he hoped would retroactively support various unsupported statements in the proposal. However, Mr. Chevedden never included in his "laundry list" of questions a request that the company disclose what the proposal alleges the company refused to disclose. Accordingly, the statement is patently false and must be deleted.

#### Conclusion

For the foregoing reasons, we believe that the proposal may be omitted from Caterpillar's 2002 proxy statement unless it is amended to ameliorate the defects identified herein. We respectfully request that the Staff confirm that it will not recommend any enforcement action if the proposal is omitted unless the proponent amends it as follows:

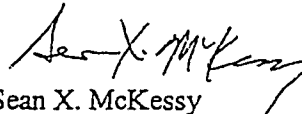
- delete the four statements regarding the proposal receiving 50% of the votes or amending each statement to clarify that (1) the proposal received over 50% of the yes-no vote but only 46.8% of the votes cast in 2000; and (2) the proposal received less than 50% of both the overall and yes-no vote in 2001;
- omit the unsupported and unsupportable statement regarding Mr. Chevedden's "belief" about how the proposal would or should have won a majority vote in 2001, or amend the statement to clarify that there is and could be no factual basis for the belief and to state whether "majority vote" refers to the overall or just the yes-no vote;
- delete the unsupported statement that poison pills defend against potentially attractive take-over overtures or amend the statement to provide sufficient evidence to refute all the available survey data on this point;

- omit the distorted portrayal of the third-party sweepstakes or amend the proposal to include the facts and context provided in the *Barron's* article necessary to render the statement not misleading; and
- delete the false statement that "[t]he company failed 3 times to disclose any reason it knew for the high institutional investor support for the topic of this proposal."

Enclosed are copies of the correspondence attempting to resolve these issues informally. After three opportunities to revise the identified statements, the proponent made it clear he believed the proposal needed no further revision.

A copy of this letter has been provided to Mr. Chevedden. We thank you in advance for your consideration.

Sincerely,



Sean X. McKessy  
Securities Counsel

SX McKessy  
Legal Services Division, AB7310  
Telephone: 309-675-1094  
Facsimile: 309-675-6620  
Enclosure

cc: Mr. John Chevedden (via facsimile)

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July 3, 2001  
**PROPOSAL 3**  
**SHAREHOLDER VOTE ON POISON PILLS**  
**THIS TOPIC WON MORE THAN 50% VOTE**  
**AT THE 2000 ANNUAL MEETING**

This shareholder proposal is submitted by Mr. John Chevedden, 2215 Nelson Avenue, No. 205, Redondo Beach, CA 90278.

**SHAREHOLDER VOTE ON POISON PILLS**  
**ADOPT PROPOSAL TOPIC THAT WON MORE THAN 50% VOTE IN 2000**  
(Greater than 50% vote is based on yes and no votes cast)  
(Greater than 46% vote if abstentions are counted as no votes)

**SHAREHOLDER VOTE ON POISON PILLS**

To increase shareholder value Caterpillar shareholders recommend that a shareholder vote be required to maintain or adopt a poison pill. Shareholders recommend Caterpillar redeem or terminate the current poison pill.

Also, recommend future action on this topic is to be put to shareholder vote - as a separate proposal.

The Investor Responsibility Research Center reported greater than 50% of the yes-no votes approved this proposal topic sponsored by John Chevedden at the 2000 shareholder meeting.

Supporting Statement

**Why submit Caterpillar's poison pill to a simple-majority shareholder vote?**

- The poison pill is an anti-takeover device, which injures shareholders by reducing management accountability. It adversely affects shareholder value.
- Poison pills are a major shift of shareholder rights from shareholders to management. Pills give directors absolute veto power over any proposed business combination, no matter how beneficial it might be for the shareholders.

**POWER AND ACCOUNTABILITY**  
By Nell Minow and Robert Monks

- Poison pills like Caterpillar's are increasingly unpopular. Shareholder proposals to redeem poison pills or subject pills to shareholder vote achieved 57%-approval from shareholders in 2000.
- The Council of Institutional Investors ([www.cii.org](http://www.cii.org)) — an association of institutional investors whose assets exceed \$1 Trillion (with a "T") — recommends poison pills first be approved by shareholders.
- Institutional investors own 65% of Caterpillar stock. Institutional investors have a fiduciary duty to vote in the best interest of shareholders.

We believe the adoption of this proposal to improve an important management rule deserves particular attention because the company has rules and practices that are not competitive — according to many institutional investors:

- A 75% supermajority vote requirement.
- Classified Board.
- No cumulative voting.
- A directors' charitable award program compromises director independence.

#### **Bundles of Shareholder Money Spent**

We believe this proposal topic would have won a majority vote in 2001 had the company not sent multiple solicitations, at shareholder expense. This was an attempt to lower the percentage of votes for this proposal topic. These solicitations, purportedly legal, were described in a *Barron's* April 9, 2001 article. The *Barron's* article was illustrated with a tractor dumping bundles of shareholder money. This Caterpillar solicitation also promoted a \$50,000 jackpot.

#### **Caterpillar Not Receptive to an Attractive Offer to Shareholders?**

The combination of the Caterpillar staggered 3-year director terms and poison pill is a formidable defense against potentially attractive take-over overtures. In order to repeal the Caterpillar poison pill and push through a take-over, a group must win virtually all board seats up for election at 2 consecutive annual meetings. Few groups are willing to undertake this process due to the time and expense required.

#### **Good governance rules can improve stock price:**

A survey by McKinsey & Co., international management consultant shows that institutional investors are prepared to pay an 18% premium for good corporate governance.

McKinsey warns that companies that fail to reform will find themselves at a competitive disadvantage in attracting capital to finance growth.

*Wall Street Journal*

June 19, 2000

The Caterpillar 1999 proxy statement said: "At Caterpillar, we make decisions based on their potential to enhance shareholder value."

To increase shareholder value vote yes for:  
**SHAREHOLDER VOTE ON POISON PILLS**  
**ADOPT PROPOSAL TOPIC THAT WON MORE THAN 50% VOTE IN 2000**  
**YES ON 3**

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The company is respectfully requested to insert the correct proposal number based on the date of proposal submittal.

JUL - 3 - 2001

JOHN CHEVEDDEN

2215 Nelson Avenue, No. 205  
Redondo Beach, CA 90278-2453

PH & FX  
310/371-7872

FX: 309/675-6620  
FX: 309/675-5815

July 3, 2001  
Via facsimile

Mr. Glen A. Barton  
Chairman  
Caterpillar Inc.  
100 NE Adams Street  
Peoria, IL 61629

Dear Mr. Barton and Directors of Caterpillar Inc.,

This Rule 14a-8 proposal is respectfully submitted for the 2002 annual meeting or next shareholder meeting. Rule 14a-8 requirements are and/or will be met.

Sincerely,



John Chevedden  
Caterpillar Inc. shareholder  
Share-holding information remains as provided earlier.

cc:  
R. Rennie Atterbury III  
Corporate Secretary  
FX: 309/675-8886



JOHN CHEVEDDEN

2215 Nelson Avenue, No. 205  
Redondo Beach, CA 90278PH & FX  
310/371-7872FX: 202/942-9525  
6 Copies

December 4, 2001

Office of Chief Counsel  
Mail Stop 4-2  
Division of Corporation Finance  
Securities and Exchange Commission  
450 Fifth Street, NW  
Washington, DC 20549

**Caterpillar Inc. (CAT)**  
**Preliminary Shareholder Response to Company No Action Request**

Ladies and Gentlemen:

Under the criteria in the company 2002 no action request, and also under grounds of irresponsible reasoning, the company 2001 proxy response to this same shareholder proposal topic would be disqualified for a number of reasons:

- 1) The company 2001 response uses "believes" 3 times. Apparently the company claims the word "believes" is only "inflammatory" when a shareholder uses it in a proposal - not when the company uses it in the response statement that receives less regulatory review.
- 2) Important fact excluded in 2001 company response: While a pill does not prevent bidders for the company, it makes it virtually impossible for bidders to succeed if opposed by management.
- 3) Straw-man: Claims that the 2001 shareholder proposal is for "quick gain" shareholders. Inflammatory company language?
- 4) Straw-man and false/misleading: Claims the 2001 shareholder proposal advocates "irresponsible, short-term actions to achieve quick results." Inflammatory company language?
- 5) The company fails to reveal (or in the company's words "excluded important facts") that a Georgetown survey should receive careful review since Georgetown receives more funding from companies than from shareholders.
- 6) No support in company 2001 response statement: The Board believes that many shareholder proposal statements are "outdated or out of context, or both."

The question arises, based on the company claim, why the company expects an independent regulator to hold a shareholder proposal to a higher standard than a company response statement.

Also the company no action request has the same type deficiencies that it claims to be opposed to:

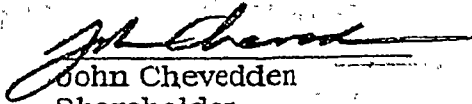
- 1) No support is given for "all the available survey data."
- 2) Shareholders would normally not be aware that the company funded a vote-no campaign against the 2001 proposal that could have impacted the vote

results. Apparently it was the company intention to lower the vote results or why did the company spend the money when there was no vote-yes campaign. Only the "extremely vigilant shareholder" would be aware of the company vote-no campaign in 2001 and its potential impact.

The company no action letter arguably should be considered for careful review - if there was an enforceable means for the company to pledge to not repeat the deficiencies in its 2001 definitive proxy response.

The opportunity to submit more data is requested.

Sincerely,



John Chevedden  
Shareholder  
Caterpillar Inc.

JOHN CHEVEDDEN

2215 Nelson Avenue, No. 205  
Redondo Beach, CA 90278

PH & FX  
310/371-7872

FX: 202/942-9525  
6 Copies

December 31, 2001

Office of Chief Counsel  
Mail Stop 4-2  
Division of Corporation Finance  
Securities and Exchange Commission  
450 Fifth Street, NW  
Washington, DC 20549

**Caterpillar Inc. (CAT)  
Shareholder Response to Company No Action Request  
Established Corporate Governance Proposal**

Ladies and Gentlemen:

This is respectfully submitted in response to the Caterpillar Inc. no action request (NAR). It is believed that Caterpillar must meet the burden of proof under rule 14a-8.

- 1) The company claims that the proposal is misleading even though Proposal 3 states, and even understates, the 46.8% vote that the company touts.
- 2) For some unknown reason the company asks that Proposal 3 be changed to match text that it already contains: "50% of the yes and no votes cast."
- 3) The company could implicitly impugn its own shareholders in the public record by suggesting here that shareholders could be "hoodwinked."
- 4) The company seems intent to mislead shareholders into overlooking the potential impact of the company vote-no campaign of 2001. There was no vote-no campaign in 2000.
- 5) Furthermore there was no vote-yes shareholder campaign in 2000 or 2001 to explain the order to spend shareholder money on a company vote-no campaign against a shareholder proposal.
- 6) The company does not even offer an opinion on the impact of the 2001 company vote-no campaign and then claims that the shareholder must be denied expressing a common sense belief on the impact.
- 7) The company does not even explain how this vote-no campaign money was well-spent in terms of impacting the voting percentage. Shareholders could expect the company to be clearly forthcoming in explain a justifiable expenditure of shareholder money against a strongly supported shareholder proposal topic.
- 8) The company claims that the shareholder must provide complete supporting information. Implicitly the company claims this supporting information rule should not apply to the company. For example, the company gives no support to back-up its citing of "all the available survey data."
- 9) The company failed to answer the same question 3 times on explaining the voting results
- 10) The company apparently proposes that it get a free pass if it can bundle this question as a request for "legal advise."

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The opportunity to submit additional supporting material is requested.  
If the company submits further material, it is respectfully requested that 5 working days be allowed to respond to the company material.  
The opportunity to submit additional shareholder supporting material is requested.

Sincerely,



John Chevedden  
Shareholder  
Caterpillar Inc.  
cc:  
Caterpillar Inc.

January 10, 2002

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

Re: Caterpillar Inc.  
Incoming letter dated December 3, 2001

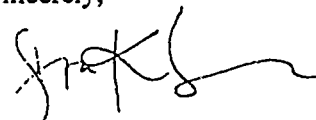
The proposal requests that Caterpillar redeem any previously issued poison pill unless it is approved by shareholders.

We are unable to concur in your view that Caterpillar may exclude the entire proposal under rule 14a-8(i)(3). However, there appears to be some basis for your view that portions of the supporting statement may be materially false or misleading under rule 14a-9. In our view, the proponent must:

- delete the statement that begins "Bundles of Shareholder . . ." and ends ". . . Automatic Data Processing (ADP)";
- recast the sentence that begins "The combination of . . ." and ends ". . . take-over overtures" as the proponent's opinion; and
- delete the statement that begins "The company failed . . ." and ends ". . . of this proposal."

Accordingly, unless the proponent provides Caterpillar with a proposal and supporting statement revised in this manner, within seven calendar days after receiving this letter, we will not recommend enforcement action to the Commission if Caterpillar omits only these portions of the supporting statement from its proxy materials in reliance on rule 14a-8(i)(3).

Sincerely,



Grace K. Lee  
Attorney-Advisor