

April 11, 2017

Mr. Michael Jesselson
Lead Independent Director
Board of Directors
XPO Logistics, Inc.
c/o Secretary
XPO Logistics, Inc.
Five Greenwich Office Park
Greenwich, CT 06831

Dear Mr. Jesselson:

I am writing on behalf of the Council of Institutional Investors (CII) to request that the board reconsider its recent decision to adopt an amendment to the bylaws of XPO Logistics, Inc. (XPO) to include a forum selection provision.¹

CII is a nonprofit, nonpartisan, association of employee benefit plans, foundations, and endowments with combined assets under management exceeding with \$3 trillion. Our member funds include major long-term shareowners with a duty to protect the retirement savings of millions of workers, retirees, and their families. CII also has associate (nonvoting) members that include a range of asset manager firms with more than \$20 trillion in assets under management.²

While we acknowledge that the forum selection provision adopted by the board on March 14, 2017, is generally consistent with the requirements of Delaware law,³ we believe the provision is in conflict with corporate governance best practices and the following CII membership approved policy:

Companies should not attempt to restrict the venue for shareowner claims by adopting charter or bylaw provisions that seek to establish an exclusive forum.⁴

Our policy is based on the view that long-term shareowners should not be forced to accept a single court as the sole venue for legal claims because doing so could potentially limit investors'

¹ 8-K – Form 8-K – XPO Logistics, Inc., Exhibit 3.1 (adopted Mar. 14, 2017), available at http://getfilings.com/sec-filings/170317/XPO-Logistics-Inc_8-K/d349438dex31.htm.

² For more information about the Council of Institutional Investors (CII) and its members, please visit CII's website at http://www.cii.org/about_us.

³ See, e.g., Del. Code tit. 8, § 115 Forum Selection Provisions, available at <http://delcode.delaware.gov/title8/c001/sc01/>.

⁴ CII, Corporate Governance Policies, § 1.9 Judicial Forum (updated Sept. 13, 2016), available at http://www.cii.org/files/policies/09_30_16_corp_gov_policies.pdf.

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ability to succeed in the pursuit of compensation for meritorious claims. The result could be the insulation of corporate officers and directors from shareowner accountability.⁵

We are particularly troubled that the XPO exclusive forum bylaw provision appears to include an option in favor of XPO. More specifically, the provision appears to provide XPO the right to waive the forum designation in Delaware courts by consenting “to the selection of an alternative forum.” Thus, it is our understanding that if XPO is facing a relatively strong legal action by a shareowner in the Delaware courts, and a related but relatively weaker legal action by a shareowner in the Idaho courts, XPO could potentially waive the forum selection bylaw, enter into a quick settlement in the Idaho courts, and then move to dismiss the Delaware court action on *res judicata*. Under this fact pattern, it is unclear to us how the XPO exclusive forum bylaw provision enhances accountability to shareowners.

More broadly, while Delaware might currently be the best place for shareowners to pursue fiduciary duty litigation and certain other legal claims in many circumstances, we believe it is inappropriate for corporate boards to effectively take the forum selection decision out of the hands of the shareowners.⁶

For all of the above reasons, we respectfully request that the unilateral forum selection amendment to XPO’s bylaws be reconsidered.

Thank you for considering our views. If we can answer any questions you may have, please do not hesitate to contact me at 202.822.0800 or jeff@cii.org.

Sincerely,



Jeff Mahoney
General Counsel

⁵ See, e.g., Letter from Jeff Mahoney, General Counsel, CII to The Honorable Bryan Townsend 3 (May 6, 2015) (“respectively request[ing] that the forum election language . . . be removed prior to enactment of” Senate Bill No. 75 invalidating fee shifting provisions), available at http://www.cii.org/files/issues_and_advocacy/correspondence/2015/05_06_15_CII%20letter%20to%20DE_fee_shifting_bylaws.pdf.

⁶ *Id.* We note that according to ISS Analytics from 2014 to 2017 when shareowners have been asked to vote on exclusive forum provisions, they have generally approved such provisions with an average passage rate of approximately 67% of the votes cast.