



APPLIED MATERIALS.

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November 3, 2017

Via Electronic Mail to shareholderproposals@sec.gov

U.S. Securities and Exchange Commission
Division of Corporation Finance
Office of Chief Counsel
100 F Street, N.E.
Washington D.C. 20549

Re: Applied Materials, Inc.
Stockholder Proposal Submitted by Jing Zhao, Stockholder

Dear Sir or Madam:

In accordance with Rule 14a-8(j) under the Securities Exchange Act of 1934, as amended (the “**Exchange Act**”), Applied Materials, Inc., a Delaware corporation (the “**Company**”), hereby gives notice of the Company’s intention to omit from its proxy statement for its 2018 annual meeting of stockholders (the “**2018 Proxy Statement**”) a stockholder proposal (the “**Proposal**”) submitted by Jing Zhao (the “**Proponent**”) under cover of letter dated August 18, 2017. A copy of the Proposal, together with the supporting statement included in the Proposal (the “**Supporting Statement**”), is attached hereto as **Exhibit A**.

The Company requests confirmation that the staff of the Division of Corporation Finance (the “**Staff**”) of the Securities and Exchange Commission (the “**Commission**”) will not recommend any enforcement action if the Company omits the Proposal from the 2018 Proxy Statement pursuant to:

- (i) Rule 14a-8(i)(3), because the Proposal is inherently vague and indefinite, and subject to multiple interpretations, such that stockholders voting on the Proposal would not know with any reasonable certainty exactly what actions or measures the Proposal requires; and
- (ii) Rule 14a-8(i)(10), because under certain interpretations of the Proposal, the Company has already substantially implemented the Proposal.

The Company expects to file its definitive 2018 Proxy Statement with the Commission on or about January 24, 2018, and this letter is being filed with the Commission no later than 80 calendar days before such date in accordance with Rule 14a-8(j). Pursuant to Staff Legal Bulletin No. 14D (CF), *Shareholder Proposals* (November 7, 2008), question C, we have submitted this letter and the related correspondence from the Proponent to the Commission via email to shareholderproposals@sec.gov. In accordance with Rule 14a-8(j), a copy of this submission is being forwarded simultaneously to the Proponent. This letter constitutes the Company's statement of the reasons it deems the omission of the Proposal from the 2018 Proxy Statement to be proper.

I. THE PROPOSAL

The resolution included in the Proposal provides as follows:

Resolved: stockholders recommend that Applied Materials, Inc. (the Company) improve the method to disclose the Company's executive compensation information with their actual compensation.

The Supporting Statement included in the Proposal is set forth in Exhibit A.

II. ANALYSIS

A. The Proposal May Be Omitted in Its Entirety in Reliance on Rule 14a-8(i)(3), Because It is Inherently Vague and Indefinite, and Subject to Multiple Interpretations, such that Stockholders Voting on the Proposal Would Not Know with Any Reasonable Certainty What Actions or Measures the Proposal Requires.

Rule 14a-8(i)(3) provides that if a stockholder proposal or supporting statement is contrary to any of the Commission's proxy rules, including Rule 14a-9, it may be omitted. Rule 14a-9, in turn, prohibits materially false or misleading statements in proxy materials. The Staff has interpreted Rule 14a-8(i)(3) to mean that vague and indefinite stockholder proposals may be excluded because "neither the stockholders voting on the proposal, nor the company in implementing the proposal (if adopted), would be able to determine with any reasonable certainty exactly what actions or measures the proposal requires." Staff Legal Bulletin No. 14B (Sept. 15, 2004). A proposal is sufficiently vague and indefinite to justify exclusion where a company and its stockholders might interpret the proposal differently, such that "any action ultimately taken by the company upon implementation of the proposal could be significantly different from the actions envisioned by the shareholders voting on the proposal." *Fuqua Industries, Inc.* (avail. Mar. 12, 1991). On numerous occasions, the Staff has permitted the exclusion of proposals under Rule 14a-8(i)(3) where the proposal was so inherently vague and indefinite that stockholders voting on it would be unable to ascertain with reasonable certainty

what actions or policies the company should undertake if the proposal was enacted. *See e.g., Walgreens Boots Alliance, Inc.* (avail. Oct. 7, 2016) (concurring with the exclusion of a proposal under Rule 14a-8(i)(3) requesting that the board make a determination, before taking any action whose primary purpose is to prevent the “effectiveness of a shareholder vote,” of whether there is a compelling “justification” for such action); *Alaska Air Group, Inc.* (avail. Mar. 10, 2016) (excluding a proposal under Rule 14a-8(i)(3) that would require the company’s management to “strictly honor shareholders rights to disclosure identification and contact information to the fullest extent possible by technology” and “in all communication or reports to its shareholders...provide complete identification information on all consenting individuals or parties reported therein”); *The Dow Chemical Company* (avail. Feb. 4, 2013) (concurring with the exclusion of a proposal under Rule 14a-8(i)(3) requesting that the company submit the “eBook Proposal” for a stockholder vote, along with other matters); *Yahoo! Inc.* (avail. Mar. 26, 2008) (excluding a proposal under Rule 14a-8(i)(3) requiring the board of directors to “establish a new policy of doing business in China”); *Bank of America Corp.* (avail. Feb. 25, 2008) (concurring with the exclusion of a proposal under Rule 14a-8(i)(3) requesting that the company “amend its GHG emissions policies”); *The Procter & Gamble Co.* (avail. Oct. 25, 2002) (excluding a proposal requesting the company establish a fund to “provide lawyer’s, clerical help witness protection, and records protection and other appropriate help” for victims based on their status as stockholders of publicly owned companies); *Puget Energy, Inc.* (avail. May 7, 2002) (concurring with the omission of a proposal as vague and indefinite where the proposal requested a policy of “improved corporate governance”).

In the context of stockholder proposals related to executive compensation matters, as is the case with the Proposal, the Staff has also consistently permitted the exclusion of proposals on Rule 14a-8(i)(3) grounds when the proposals have failed to define certain terms necessary to implement them. For example, in *Boeing Co. (Recon.)* (avail. Mar. 2, 2011), the Staff permitted the exclusion of a proposal that requested that Boeing negotiate with its senior executives to “relinquish, for the common good of all shareholders, preexisting executive pay rights, if any, to the fullest extent possible.” The Staff agreed that Boeing could exclude the proposal under Rule 14a-8(i)(3), noting “in particular [Boeing’s] view that the proposal does not sufficiently explain the meaning of ‘executive pay rights’ and that, as a result, neither stockholders nor the company would be able to determine with any reasonable certainty exactly what actions or measures the proposal requires.” *See, e.g., General Motors Corp.* (avail. Mar. 26, 2009) (concurring with the exclusion under Rule 14a-8(i)(3) of a proposal to “eliminate all incentives for the CEOs and the Board of Directors” that did not define “incentives”); *Verizon Communications Inc.* (avail. Feb. 21, 2008) (proposal prohibiting certain compensation unless Verizon’s returns to stockholders exceeded those of its undefined “Industry Peer Group” was excludable under Rule 14a-8(i)(3)); *General Electric Co.* (avail. Feb. 5, 2003) (concurring with the exclusion of a proposal regarding stockholder approval for all compensation for senior executives and board members exceeding certain thresholds because stockholders would not be able to determine what the terms “compensation” and “average wage” referred to and thus would not be able to understand which types of compensation the proposal would have affected).

As discussed below, several of the Proposal's key terms are so inherently vague and indefinite that neither stockholders nor the Company would be able to determine with any reasonable degree of certainty what actions or measures the Proposal would require. Similar to the proposals in *Walgreens*, *Puget Energy*, *Boeing*, *General Motors* and *General Electric* among others, the Proposal does not define or explain the meaning of any of these key terms, and the Supporting Statement provides little guidance on the Proposal's intended meaning or anticipated consequences. As a result, the Company and its stockholders could reasonably come to conflicting interpretations as to the specific actions required by the Proposal.

As in the *Puget Energy* and *Walgreens* proposals, where the proponents made general references to "improved corporate governance" and "not preventing the effectiveness of shareholder vote," respectively, the Proponent asks stockholders to recommend that the Company "improve the method to disclose the Company's executive compensation information with their actual compensation," without explaining the intended future implementation of the Proposal. The Proposal is vague and indefinite with respect to both how the disclosure is implemented as well as what information is being requested in such disclosure.

First, it is not clear what actions the Company might be required to take to "improve the method to disclose" its executive compensation. The Proposal appears to call for the disclosure of "actual compensation", but the nature of the desired disclosure and how it is intended to relate to the Company's current disclosure practices is unclear. Currently, the Company's executive compensation disclosure complies with the requirements set out in the federal securities laws, which require the disclosure of the amounts and types of compensation paid to the CEO, CFO and certain other highly compensated executive officers. It is not clear from the Proposal whether the recommendation is for the Company to replace its current executive compensation disclosure with disclosure of "actual compensation,"¹ to disclose "actual compensation" in addition to the disclosure required by federal securities laws, to provide such "actual compensation" disclosure in the Company's proxy statement or through a separate disclosure document, or to implement some other method of disclosure not contemplated here. Thus, the vague and indefinite nature of this request to "improve" the "method" of disclosure is susceptible to any number of different interpretations of how such improvement could be implemented.

In addition, the Proposal's failure to define the critical term "actual compensation" makes it impossible for stockholders and for the Company to ascertain with any reasonable certainty what executive compensation information the Proponent would like to see disclosed if the Proposal were implemented successfully. The Supporting Statement's references to "realized pay" do not clarify the ambiguity in the Proposal's request. It is not clear from the text of the Supporting Statement whether the Proponent intends the term "realized pay" to serve as a

¹ To the extent the Proposal is read in this manner, the Company would have further grounds on which to exclude the Proposal under Rule 14a-8(i)(2) because its implementation would cause the Company to violate federal securities law.

synonym for, or an example of, “actual compensation.”² Regardless, neither “actual compensation” nor “realized pay” are terms of art with an ascertainable technical definition, nor do such terms have an ordinary, commonly understood meaning within the context of executive compensation disclosure.

In fact, the Commission has attempted to address the ambiguity around this issue with its proposed pay-versus-performance rules (the “**Proposed Rules**”) that would, among other things, require companies to provide disclosure about “compensation actually paid” to the CEO and the average “compensation actually paid” for the other named executive officers. The Commission’s proposed definition of “compensation actually paid” adjusts the executive’s total compensation from the Summary Compensation Table by replacing the change in actuarial present value of pension benefits and the grant date fair value of equity awards granted during the year as reported in the Summary Compensation Table with, respectively, the actuarial present value of benefits (under defined benefit or pension plans) attributable to services rendered by the executive officer during the year and the fair value of equity awards that vested (whether or not actually exercised) during the year, determined as of the vesting date, under accounting rules and guidance.

In contrast to the approach taken by the Commission under the Proposed Rules, some companies that choose to report “realized pay” only include the value of exercisable equity awards if they were actually exercised – not just vested – during the year, and exclude indirect compensation elements such as the change in pension value from the realized pay calculations. *See, e.g.*, the Proxy Statement for the 2017 Annual Meeting of Shareholders for Exxon Mobil Corporation (stating that “realized pay” includes the “net spread on stock option exercises” and “excludes...change in pension value...as well as any retirement-related payouts from pension or nonqualified compensation plans.”) and the Proxy Statement for the 2017 Annual Meeting of Shareholders for M.D.C. Holdings, Inc. (defining “realized compensation” as including “the value realized from the exercise of stock options during the year”). There are other approaches to calculating “realized pay” as well; for example, companies may vary in terms of whether and to what extent the value attributable to the vesting or exercise of equity awards granted in previous years is included in “realized pay” for a given year. In fact, “the lack of a single, accepted approach to defining realized pay” is listed as one of the limitations of using “realized pay” compared to other methods of quantifying executive compensation in “Defining Pay in Pay for

² If the latter, the Staff has concurred that providing examples does not suffice to define a key term in a proposal. *See, e.g., Cascade Financial Corp.* (avail. Mar. 4, 2010) (concurring with the exclusion of a proposal requesting the board adopt a policy that the company eliminate all “non-essential expenditures” because the proposal was vague and indefinite when it did not define “non-essential expenditures” and instead offered a list of examples); *Bank of America Corp.* (avail. Feb. 22, 2010) (concurring with the exclusion of a proposal that called for the creation of a board committee on “US Economic Security” because the proposal did not define the term “US Economic Security” and offered only an illustrative list of factors for the committee to review).

Performance,” an article posted on the Harvard Law School Forum on Corporate Governance and Financial Regulation blog on October 5, 2012 (the “**Defining Pay Article**”).

In addition to “realized pay,” there is a similar but distinct concept of “realizable pay.” Like “realized pay,” “realizable pay” includes cash amounts for salary, bonus and other cash incentive awards that were actually earned. However, unlike “realized pay,” the treatment of equity awards under the “realizable pay” approach focuses on the amounts that an executive can realize based on actual stock performance as of a specified date. According to the Defining Pay Article, “realizable pay” includes the “intrinsic values of equity awards outstanding as of the end of the relevant period, whether or not they are exercised (in the case of options or SARs) or paid or vested (in the case of restricted stock and other full-value equity awards).” As with “realized pay,” companies define and calculate “realizable pay” differently and “there is no one defined or accepted approach to defining realizable pay.” *See also* “Trends in Realized/Realizable Pay Disclosure, Top 250 Companies,” a report by Frederic W. Cook & Co., Inc. (analyzing trends in the approaches by various public companies in their 2013 proxy statements with respect to defining and disclosing “realized pay” or “realizable pay” and stating that “due to the absence of regulatory mandates requiring such disclosure and there being no standardized definitions of ‘actual (realized/realizable) pay’, companies have so far been able to customize their own definitions of ‘actual pay.’”)

In light of the foregoing, the Company believes that the Proposal’s failure to define “actual compensation” creates real potential for stockholder confusion regarding the content of the requested disclosure. Based on the references in the Supporting Statement, some stockholders may think that the Proposal calls for the disclosure of “realized pay,” though, as discussed above, stockholders may still have differing ideas of what such term actually entails. Given the similarity in the names of the terms, the overlap in the types of compensation included in both terms and the lack of uniform definition for both terms, some stockholders might even interpret the references to “realized pay” as “realizable pay” without recognizing the error. It is also possible that some stockholders who may be aware of the Proposed Rules may interpret the Proposal to call for the disclosure of the “compensation actually paid” concept as defined in the Proposed Rules. Other stockholders may interpret the Proposal to simply call for disclosure that is sufficient to provide them with an understanding of the amounts and types of executive compensation.³ Yet other stockholders may interpret “actual compensation” as including cash compensation only, or some other variation of the current total compensation required in the Summary Compensation Table. Thus, as in the case of *General Electric*, among others, the failure to define “actual compensation” in the absence of any widely accepted definition of such term makes it even more difficult for stockholders to determine with any reasonable certainty what disclosure changes they are voting on.

³ Under this interpretation, the Company believes that the Proposal should also be excluded on the grounds of substantial implementation under Rule 14a-8(i)(10), as discussed further in Section II(B) below.

Given the lack of clarity as to the nature and scope of the Proposal's request, it is also possible that a stockholder may read the Proposal as requiring a course of action different from any of the interpretations of the method and substance of the requested disclosure outlined in the paragraphs above. As there are multiple plausible interpretations of what actions the Company is being asked to undertake to "improve" its executive compensation disclosure with "actual compensation," neither stockholders nor the Company will be able to determine with any reasonable certainty what actions or measures the Proposal requires. Thus, as in *Fuqua*, "any action ultimately taken by the company upon implementation of the proposal could be significantly different from the actions envisioned by the shareholders voting on the proposal." As a result, the Company submits that the Proposal should be omitted in its entirety under Rule 14a-8(i)(3).

B. The Proposal May be Omitted In Its Entirety in Reliance on Rule 14a-8(i)(10) Because Under Certain Interpretations of the Proposal, the Company Has Already Substantially Implemented the Proposal.

The Commission stated in 1976 that the predecessor to Rule 14a-8(i)(10) was "designed to avoid the possibility of shareholders having to consider matters which already have been favorably acted upon by the management." Exchange Act Release No. 12598 (July 7, 1976). In applying Rule 14a-8(i)(10), when a company can demonstrate that it already has taken actions to address the underlying concerns and essential objective of a stockholder proposal, the Staff has concurred that the proposal has been "substantially implemented" and may be excluded as moot. *See, e.g., Wal-Mart Stores, Inc.* (avail. Mar. 16, 2017); *Northrop Grumman Corp.* (avail. Feb. 17, 2017); *Amazon.com, Inc.* (avail. Mar. 3, 2016); *Alaska Air Group, Inc.* (avail. Feb. 12, 2016); *Exelon Corp.* (avail. Feb. 26, 2010); *Exxon Mobil Corp. (Burt)* (avail. Mar. 23, 2009); *Anheuser-Busch Companies, Inc.* (avail. Jan. 17, 2007); *ConAgra Foods, Inc.* (avail. July 3, 2006); *Johnson & Johnson* (avail. Feb. 17, 2006); *Talbots Inc.* (avail. Apr. 5, 2002); *Exxon Mobil Corp.* (avail. Jan. 24, 2001); *Masco Corp.* (avail. Mar. 29, 1999); *The Gap, Inc.* (avail. Mar. 8, 1996).

A company need not implement a proposal in exactly the same manner set forth by the proponent. *See* Exchange Act Release No. 40018 at n.30 (May 21, 1998) and accompanying text. The Staff has granted no-action relief under Rule 14a-8(i)(10) when a company has satisfied the "essential objective" of a proposal, even if the company did not take the exact action requested by the proponent, did not implement the proposal in every detail, addressed aspects of implementation on which a proposal is silent or exercised discretion in determining how to implement the proposal.

As discussed above, the Company believes that the Proposal is so vague and indefinite so as to be misleading within the meaning of Rule 14a-9. However, if the Proposal's essential objective is interpreted as a request for the Company to provide sufficient disclosure for stockholders to understand the amounts and types of executive compensation paid by the Company (which, in any case, necessarily involves reading additional meaning beyond the plain

language of the text of the Proposal), the Company believes that the Proposal has been substantially implemented and therefore, may properly be excluded under Rule 14a-8(i)(10).

As stated on the executive compensation page of the “Fast Answers” section of the Commission’s website (the “**SEC Website**”), “the federal securities laws require clear, concise and understandable disclosure about compensation paid to CEOs, CFOs and certain other high-ranking executive officers of public companies.” Specifically, per the SEC Website, “the federal securities laws require disclosure of the amount and type of compensation paid to the company’s CEO and other highly-compensated executive officers.” The Summary Compensation Table requires disclosure of the amounts of each type of compensation paid to such executive officers, with additional details regarding the various types of compensation provided in additional supporting tables and narrative disclosure in the Compensation Discussion and Analysis section of the proxy statement. Given that the Company’s method of disclosing its executive compensation information is to provide disclosure that complies with the requirements of federal securities laws, the Company believes that it has already satisfied the essential objective of the Proposal.

In the Supporting Statement, the Proponent describes the total compensation and stock award compensation reported for the CEO in the Summary Compensation Table in the Company’s proxy statement for its 2017 annual meeting of stockholders and seems to take issue with the stock award amounts as described in the first sentence of footnote 3 to the Summary Compensation Table, the entire text of which reads:

“Amounts shown do not reflect compensation actually received by the executive officer. Instead, the amounts reported represent the aggregate grant date fair value of stock awards granted in the respective fiscal years, as determined pursuant to ASC 718 (but excluding the effect of estimated forfeitures for performance-based awards). The assumptions used to calculate the value of awards are set forth in Note 10 of the Notes to Consolidated Financial Statements included in Applied’s Annual Report on Form 10-K for fiscal 2016 filed with the SEC on December 15, 2016.”

As evidenced by the rest of the footnote, the stock award amounts in question reflect the aggregate grant date fair value of the stock awards as determined pursuant to FASB ASC Topic 718, in accordance with the requirements of Item 402(c)(2)(v) of Regulation S-K and the accompanying instructions. According to Release no. 33-9089 (December 16, 2009), these requirements became effective on February 28, 2010 pursuant to amendments issued by the Commission in response to comments “previously received from a variety of sources that the information that investors would find most useful and informative in the Summary Compensation Table and Director Compensation Table is the full grant date fair value of equity awards made during the covered fiscal year.” Consistent with the Commission’s responsibility to

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ensure “that the investing public is provided with full and fair disclosure of material information on which to base informed investment and voting decisions,” as set forth on the SEC Website, the Commission adopted these amendments to ensure that stockholders receive sufficient disclosure about the amount of executive compensation paid in stock awards during the relevant time periods.

In addition, to the extent the Proponent takes issue with the fact that the stock award compensation reported in the Summary Compensation Table does not reflect the value of the stock awards actually received during the course of the year, the Company notes that this information is provided in the Option Exercises and Stock Vested table, which sets out both the number of shares the executive has acquired due to the vesting of stock awards during the relevant fiscal year as well as the value realized by the executive upon such vesting.

Accordingly, the Company believes that it has already satisfied the essential objective of providing stockholders with sufficient disclosure by complying with the requirements of federal securities laws and has thus substantially implemented the Proposal. As a result, the Company submits that the Proposal should therefore be excludable under Rule 14a-8(i)(10).

///CONCLUSION

For the foregoing reasons, the Company respectfully requests that the Staff confirm that it will not recommend enforcement action if the Company omits the Proposal from its 2018 Proxy Statement.

If you have any questions or require any additional information, please do not hesitate to contact me at (408) 563-0164. If the Staff is unable to agree with our conclusions without additional information or discussions, we respectfully request the opportunity to confer with members of the Staff prior to issuance of any written response to this letter.

Sincerely,

Handwritten signature of Christina Y. Lai in blue ink, with the initials 'TAN' written at the end of the signature.

Christina Y. Lai
Vice President, Corporate Legal Affairs

Enclosures

cc: Jing Zhao, via email at ***
Sandra L. Flow, Cleary Gottlieb Steen & Hamilton LLP

Exhibit A

The Proposal

See attached.

August 18, 2017

Thomas F. Larkins
Corporate Secretary
Applied Materials, Inc.
3225 Oakmead Village Drive, M/S 1241
P.O. Box 58039
Santa Clara CA 95052
[via post mail and corporatesecretary@amat.com]

Re: Stockholder Proposal on Executive Compensation Information

Dear Mr. Larkins:

Enclosed please find my stockholder proposal for inclusion in our proxy materials for the 2018 annual meeting of stockholders and a letter confirming my Applied Materials shares. I will continuously hold these shares until the 2018 annual meeting.

Should you have any questions, please contact me at *** or

Yours truly,



Jing Zhao

Enclosure: Stockholder proposal
Letter of shares

Stockholder Proposal on Executive Compensation Information

Resolved: stockholders recommend that Applied Materials, Inc. (the Company) improve the method to disclose the Company's executive compensation information with their actual compensation.

Supporting Statement

The Summary Compensation Table disclosed from our 2017 Proxy Statement shows that our CEO was awarded total compensation \$16,425,005 in 2014, \$18,092,808 in 2015, and \$19,680,422 in 2016, of which the stock awards were \$10,818,374 (60%) in 2015, \$11,111,985 (56%) in 2016 (p.38). However, this information is not based on realized pay. The Stock Awards in the Summary Compensation Table "Amounts shown do not reflect compensation actually received by the executive officer" (note (3)). According to the Wall Street Journal: "Summary compensation tables massively understate what executives earn and don't tell investors what they need to know." "In 2015—the last year for which full data is available—the average pay of the 500 highest-paid U.S. executives was \$17.1 million according to fair-value estimates, but \$32.6 million according to realized pay." (*Better Ways to Measure Your Boss's Pay* by Stephen Wilmot, July 4, 2017.)

What is the meaning of the corporate governance and social responsibility without the disclosure of the Company executives' actual compensation?