



DIVISION OF
CORPORATION FINANCE

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

March 16, 2018

Ronald O. Mueller
Gibson, Dunn & Crutcher LLP
shareholderproposals@gibsondunn.com

Re: Amazon.com, Inc.
Incoming letter dated January 9, 2018

Dear Mr. Mueller:

This letter is in response to your correspondence dated January 9, 2018 and February 21, 2018 concerning the shareholder proposal (the "Proposal") submitted to Amazon.com, Inc. (the "Company") by the AFL-CIO Reserve Fund (the "Proponent") for inclusion in the Company's proxy materials for its upcoming annual meeting of security holders. We also have received correspondence from the Proponent dated February 9, 2018. Copies of all of the correspondence on which this response is based will be made available on our website at <http://www.sec.gov/divisions/corpfin/cf-noaction/14a-8.shtml>. For your reference, a brief discussion of the Division's informal procedures regarding shareholder proposals is also available at the same website address.

Sincerely,

Matt S. McNair
Senior Special Counsel

Enclosure

cc: Brandon J. Rees
American Federation of Labor and Congress of Industrial Organizations
brees@aflcio.org

March 16, 2018

Response of the Office of Chief Counsel
Division of Corporation Finance

Re: Amazon.com, Inc.
Incoming letter dated January 9, 2018

The Proposal urges the board to analyze and report to shareholders on the risks arising from the public debate over the Company's growth and societal impact and how the Company is managing or mitigating those risks.

There appears to be some basis for your view that the Company may exclude the Proposal under rule 14a-8(i)(7). Accordingly, we will not recommend enforcement action to the Commission if the Company omits the Proposal from its proxy materials in reliance on rule 14a-8(i)(7). In reaching this position, we have not found it necessary to address the alternative basis for omission upon which the Company relies.

Sincerely,

William Mastrianna
Attorney-Adviser

DIVISION OF CORPORATION FINANCE
INFORMAL PROCEDURES REGARDING SHAREHOLDER PROPOSALS

The Division of Corporation Finance believes that its responsibility with respect to matters arising under Rule 14a-8 [17 CFR 240.14a-8], as with other matters under the proxy rules, is to aid those who must comply with the rule by offering informal advice and suggestions and to determine, initially, whether or not it may be appropriate in a particular matter to recommend enforcement action to the Commission. In connection with a shareholder proposal under Rule 14a-8, the Division's staff considers the information furnished to it by the company in support of its intention to exclude the proposal from the company's proxy materials, as well as any information furnished by the proponent or the proponent's representative.

Although Rule 14a-8(k) does not require any communications from shareholders to the Commission's staff, the staff will always consider information concerning alleged violations of the statutes and rules administered by the Commission, including arguments as to whether or not activities proposed to be taken would violate the statute or rule involved. The receipt by the staff of such information, however, should not be construed as changing the staff's informal procedures and proxy review into a formal or adversarial procedure.

It is important to note that the staff's no-action responses to Rule 14a-8(j) submissions reflect only informal views. The determinations reached in these no-action letters do not and cannot adjudicate the merits of a company's position with respect to the proposal. Only a court such as a U.S. District Court can decide whether a company is obligated to include shareholder proposals in its proxy materials. Accordingly, a discretionary determination not to recommend or take Commission enforcement action does not preclude a proponent, or any shareholder of a company, from pursuing any rights he or she may have against the company in court, should the company's management omit the proposal from the company's proxy materials.

February 21, 2018

VIA E-MAIL

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

Re: *Amazon.com, Inc.*
Supplemental Letter Regarding Shareholder Proposal of AFL-CIO
Reserve Fund
Securities Exchange Act of 1934—Rule 14a-8

Ladies and Gentlemen:

On January 9, 2018, we submitted a letter (the “No-Action Request”) on behalf of Amazon.com, Inc. (the “Company”) notifying the staff of the Division of Corporation Finance (the “Staff”) of the Securities and Exchange Commission that the Company intends to omit from its proxy statement and form of proxy for its 2018 Annual Meeting of Shareholders (collectively, the “2018 Proxy Materials”) a shareholder proposal (the “Proposal”) and statement in support thereof (the “Supporting Statement”) received from AFL-CIO Reserve Fund (the “Proponent”). The No-Action Request demonstrates that the Proposal—which requests a report on the risks arising from the public debate over the Company’s growth and societal impact—may be properly excluded from the 2018 Proxy Materials pursuant to Rule 14a-8(i)(3) because the scope of the requested report by the Proposal is so broad as to render the Proposal impermissibly vague and indefinite and pursuant to Rule 14a-8(i)(7) because many aspects of the requested report implicate ordinary business matters and the Proposal neither raises nor focuses on a significant policy issue.

On February 9, 2018, the Proponent submitted a letter to the Staff responding to the No-Action Request (the “Response”). As addressed in this letter, the Response fails to properly analyze the Proposal under the Staff’s precedents. Additionally, the Response’s discussion of the Proposal and its scope further demonstrates that the Proposal should be excluded under both of the bases argued in the No-Action Request.

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ANALYSIS

I. The Proposal May Be Excluded Under Rule 14a-8(i)(3) Because The Proposal Is Impermissibly Vague And Indefinite.

- A. *The Scope Of The Proposal Is So Vague And Ill-Defined That Neither Shareholders Nor The Company Can Know What Is To Be Addressed In The Requested Report.*

The Response reinforces our view that the Proposal may be properly excluded because “neither the stockholders voting on the proposal nor the company 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) (“SLB 14B”).

The Response does not attempt to explain how shareholders are to understand the scope of what they are being asked to address when they consider whether to support a proposal asking for a report on “the risks arising from the public debate over Amazon’s growth and societal impact,” or what the Company is supposed to address if it were to seek to report on “how Amazon is managing or mitigating those risks.” Instead, the Response concedes that “[i]t would not be possible to describe every societal impact Amazon has in its myriad operations, geographical domains and lines of business within the confines of a 500-word proposal” and that instead “the Proposal illustrates the concept with examples.”¹ This demonstrates that the Proposal is not addressing one or a few well-defined and interrelated topics, but instead that the “public debate” over the Company’s “growth and societal impact” is an amorphous concept encompassing myriad topics without a unifying theme or subject. Because neither the Proposal nor the Supporting Statement defines or clarifies the scope of what is to be addressed in the requested report, shareholders will not know what they are being asked to vote on.²

The Proposal itself states that the report should address the Company’s “role in providing physical and digital infrastructure, use of and control over data about customers and competitors, increasing reliance on automation and influence on the quality and diversity of content.” The Supporting Statement uses different language and requests that the report address the Company’s “size, dominant platforms and impacts on key constituencies,” as well as its “anti-competitive

¹ Response at page 21.

² The Response attempts to mischaracterize the No-Action Request as focused on whether the term “public debate” is impermissibly vague and indefinite. However, the No-Action Request instead states that the subject of the Proposal—public debate regarding the Company—is so broad and ill-defined that neither the Company nor its shareholders could determine with any reasonable certainty what is encompassed by the Proposal. The Response demonstrates that the phrase “growth and societal impact” does not serve to limit or define the scope of the Proposal and that, in essence, the Proposal encompasses whatever aspect of the Company’s operations that the Proponent wishes to cite.

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behavior.” Although these references are ill-defined and lack coherence unto themselves, the Response states that the scope of the Proposal is even more expansive and that these topics only are intended to “illustrate[] the concept with examples.” The Response asserts that the references in the Proposal and Supporting Statement to “content” are really meant to refer to “cultural influence” and that the references to “access to and use of data” are really meant to refer to “social concerns.”³ To further demonstrate the amorphous and subjective nature of the Proposal, the Response adds that “Amazon could add discussion of risks created by other societal impacts if it believed those were consistent with the scope of the Proposal indicated by the examples.”

Elsewhere, the Response argues that “Amazon’s growth and impact on society” includes its “effects on competition, innovation, data privacy, publishing, and employment, to name a few.”⁴ The Response then claims that examples of “[t]he debate over Amazon’s dominance” (“dominance” presumably being an aspect of either “growth” or “societal impact”) include “the workforce, taxes, publishing and digital platforms.” When elaborating on the scope of these “examples,” the Response addresses numerous topics that are not mentioned in the Proposal or Supporting Statement, including: under the caption “The Workforce,”⁵ Amazon’s impact as an employer, allegations over working conditions for employees, the use of technology to enhance productivity, and the use of automation to support the Company’s operations; and under the caption “Tax Strategies,”⁶ whether tax laws should be revised, conjecture regarding the Company’s historic approach to collecting sales taxes, and the Company’s global tax planning. Over the course of its 23 pages, the Response cites, as examples of the “public debate” that is encompassed by the Proposal, myriad articles, op-ed pieces, and idle speculation, in many cases published three, five, or even seven years ago, and often addressing not only the Company but also other large, successful technology companies.

In short, and as stated in the No-Action Request, the Proposal’s and the Supporting Statement’s (and now, the Response’s) descriptions of what is to be addressed in “a report on the risks arising from the public debate over Amazon’s growth and societal impact” demonstrate that the Proposal is so broad and ill-defined that neither the Company nor its shareholders could determine with any reasonable certainty what is encompassed. The Staff consistently has taken the position that vague and indefinite shareholder proposals are inherently misleading and therefore excludable under Rule 14a-8(i)(3) 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.” SLB 14B. *See also Dyer v. SEC*, 287 F.2d 773, 781 (8th Cir. 1961) (“[I]t appears to us that the proposal, as drafted and submitted to the company, is so vague and indefinite as to make it impossible for

³ *Id.*

⁴ Response at page 5.

⁵ Response at pages 6 through 8.

⁶ Response at pages 9 through 11.

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either the board of directors or the stockholders at large to comprehend precisely what the proposal would entail.”).

The Staff has on numerous occasions concurred that proposals that are dependent on understanding the scope of amorphous or ill-defined terms, such as the terms used in the Proposal, are sufficiently misleading so as to justify exclusion where a company and its shareholders might interpret the proposal differently, such that “any action ultimately taken by the [c]ompany upon implementation [of the proposal] could be significantly different from the actions envisioned by shareholders voting on the proposal.” *Fuqua Industries, Inc.* (avail. Mar. 12, 1991). *See, e.g., AT&T Inc.* (avail. Feb. 21, 2014) (concurring in the exclusion of a proposal requesting that the board review the company’s policies and procedures relating to the “directors’ moral, ethical and legal fiduciary duties and opportunities,” where the phrase “moral, ethical and legal fiduciary” was not defined or meaningfully described); *Bank of America Corp.* (avail. June 18, 2007) (concurring with the exclusion of a proposal calling for the board of directors to compile a report “concerning the thinking of the Directors concerning representative payees” as “vague and indefinite”); *Alaska Air Group, Inc.* (avail. Apr. 11, 2007) (concurring with the exclusion of a proposal requesting that the board amend the company’s governing instruments to “assert, affirm and define the right of the owners of the company to set standards of corporate governance”); *Puget Energy, Inc.* (avail. Mar. 7, 2002) (concurring in the exclusion of a proposal requesting the company’s board of directors to “take the necessary steps to implement a policy of improved corporate governance”). In the same manner as these precedents, the Proposal’s reference to “the risks arising from the public debate over Amazon’s growth and societal impact” do not inform shareholders or the Company what is to be addressed in the requested report, and therefore the Proposal is properly excludable under Rule 14a-8(i)(3).

B. The Response Demonstrates That Shareholders Cannot Understand The Scope Of The Requested Report From The Terms Of The Proposal And Supporting Statement.

It also is unreasonable to expect shareholders to view the Proposal as calling for a report that addresses the dozens of topics detailed in the Response. As noted above, many of the topics addressed in the Response – such as those described as relating to “The Workforce” or “Tax Strategies” – are not apparent from the text of the Proposal and Supporting Statement. The Staff has concurred with the exclusion of shareholder proposals under Rule 14a-8(i)(3) where a proponent, as the Proponent has done in the Response, indicates that its proposal addresses topics that are not articulated in the Proposal, thereby demonstrating that shareholders voting on the proposal are not able to determine with any reasonable certainty exactly what measures the proposal requires. In *SunTrust Bank, Inc.* (avail. Dec. 31, 2008), the Staff concurred with the exclusion of a proposal requesting that the company institute reforms to its executive compensation program if the company chose to participate in the Troubled Asset Relief Program (“TARP”). In permitting exclusion under Rule 14a-8(i)(3), the Staff stated:

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In arriving at this position, *we note the proponent's statement* that the “intent of the Proposal is that the executive compensation reforms urged in the Proposal remain in effect so long as the company participates in the TARP.” By its terms, however, the proposal appears to impose no limitation on the duration of the specified reforms.

(Emphasis added). Because the proponent's response in *SunTrust Bank* demonstrated that the proposal was intended to have a different scope than articulated in the proposal, the proposal was deemed excludable as vague and indefinite. Similarly, in *The Ryland Group, Inc.* (avail. Feb. 7, 2008), the Staff concurred that a proposal could be excluded under Rule 14a-8(i)(3) where the resolved clause sought an advisory vote on the executive compensation policies included in the Compensation Discussion and Analysis and on approval of the board's Compensation Committee Report, yet the proponent's correspondence stated that the effect of the proposal would be to provide a vote on the adequacy of the disclosures in the Compensation Discussion and Analysis.

Just as in the foregoing precedents, the Response's explanation of the scope of the Proposal is not evident from the terms of the Proposal or the Supporting Statement. The Response recognizes this fault when it states, “[i]t would not be possible to describe every societal impact Amazon has in its myriad operations, geographical domains and lines of business within the confines of a 500-word proposal.” By stating this, the Proposal clearly demonstrates that the requested report is intended to address more than what is described in the Proposal. The flaws of the Proposal are addressed directly in Staff Legal Bulletin No. 14G (Oct. 16, 2012), where the Staff explained that “[i]n evaluating whether a proposal may be excluded” for being impermissibly vague or misleading, it “consider[s] only the information contained in the proposal and supporting statement and determine[s] whether, based on that information, shareholders and the company can determine what actions the proposal seeks.” There is no reasonable way to read the Proposal as addressing the scope of the detailed, far-reaching twenty-three pages of the Response. As such, the Proposal is so vague and indefinite that “any action ultimately taken by the Company upon implementation could be significantly different from the actions envisioned by shareholders voting on the proposal” and therefore is excludable under well-established Rule 14a-8(i)(3) precedent.

II. The Proposal May Be Excluded Under Rule 14a-8(i)(7) Because It Deals With Matters Relating To The Company's Ordinary Business.

A. The Proposal Does Not Raise Or Focus On A Significant Policy Issue.

The Proposal does not raise a significant policy issue. Although the Response asserts that the wide-ranging “examples” of topics discussed in the Response “[t]aken together, . . . establish that Amazon's growth and societal impact is a significant social policy issue,” the myriad aspects of the Company's operations addressed in the Response demonstrate that the subject of the Proposal is not a single issue or a few discrete and interrelated topics. Instead, the Proposal

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addresses many disparate aspects of the Company's day-to-day operations that do not implicate a significant policy issue.

The Response misinterprets Rule 14a-8(i)(7) by incorrectly stating that “[i]f the subject of the Proposal is a significant policy issue, the fact that aspects of the Proposal would otherwise be deemed ordinary business is irrelevant.” The quoted language does not address the situation where the subject of a proposal itself encompasses both ordinary business issues and significant policy issues.⁷ Because the Staff does not bifurcate the language of a proposal, a proposal is excludable when its subject addresses ordinary business matters, even if it also may touch upon a significant policy issue. For example, in *Mattel Inc.* (avail. Feb. 10, 2012), the Staff concurred in the exclusion of a proposal that requested the company to require its suppliers to publish a report detailing their compliance with the International Council of Toy Industries Code of Business Practices. The Staff noted the company's view that the Code of Business Practices addressed in the proposal “has a broad scope that covers several topics that relate to the [c]ompany's ordinary business operations and are not significant policy issues.”

Here, just as in *Mattel* and the precedents discussed on pages 5 and 6 of the No-Action Request (which the Response does not address or attempt to distinguish), the Proposal has a broad scope that addresses numerous aspects of the Company's ordinary business operations that are not significant policy issues. Accordingly, regardless of whether some aspects of the Company's growth or society impact may touch upon a significant policy issue, the Proposal does not identify or focus on such matters, and therefore properly may be excluded pursuant to Rule 14a-8(i)(7).

B. The Proposal Is Excludable Because It Relates To The Company's Ordinary Business.

The Response also reinforces our view that the Proposal relates to numerous aspects of the Company's ordinary business matters. The No-Action Request demonstrates that the Proposal involves the Company's public relations and product display, both of which are ordinary business matters that do not raise any significant policy issues. The Response makes clear that the Proposal also relates to other aspects of the Company's ordinary business by addressing the Company's tax policies and choice of technology. The Response also demonstrates that the subject of the Proposal and Supporting Statement encompass other ordinary business matters such as how the Company markets its products and services and the Company's decisions

⁷ Likewise, the Response's discussion of *AT&T Inc.* (avail. Feb. 10, 2012) and *AT&T Inc.* (avail. Feb. 2, 2011) is inapposite to the Proposal, because those letters address a situation where the Staff in 2012 first determined that the level of “public debate over the last several years concerning net neutrality and the Internet” was sufficient to newly recognize net neutrality as a significant policy issue, even though the Staff previously had determined that net neutrality had not risen to the level of being a significant policy issue.

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regarding location of its offices. As discussed below, the Response's discussion of various topics covered by the Proposal each involve ordinary business matters.

- "Tax Strategies":⁸ This section of the Response addresses various allegations and assertions regarding the Company's approach to tax planning and tax strategies, which necessarily implicates the Company's management of its tax expense. For example, the Response addresses the Company's payment of state and local sales taxes and international tax planning. The Staff consistently has concurred that proposals addressing a company's management of its tax expense implicate ordinary business matters. In *General Electric Co.* (avail. Feb. 3, 2012), the Staff concurred with the exclusion of a proposal asking that the board "annually prepare a report disclosing the financial, reputational and commercial risks related to changes in, and changes in interpretation and enforcement of, US federal, state, local, and foreign tax laws and policies." The Staff noted that the proposal could be excluded under Rule 14a-8(i)(7) as relating to the company's ordinary business operations because the "proposal relates to decisions concerning the company's tax expenses and sources of financing." Similarly, in *The TJX Companies, Inc.* (avail. Mar. 29, 2011), *Amazon.com, Inc.* (avail. Mar. 21, 2011), *Wal-Mart Stores, Inc.* (avail. Mar. 21, 2011), *Lazard Ltd.* (avail. Feb. 16, 2011) and *Pfizer Inc.* (avail. Feb. 16, 2011), the Staff concurred that under Rule 14a-8(i)(7) the companies could exclude proposals requesting that they annually assess the risks created by actions they allegedly took to avoid or minimize U.S. federal, state and local taxes, and that they report to shareholders on the assessment. *See also Allergan plc* (avail. Feb. 7, 2018) (concurring with exclusion of a proposal asking the board to respond to rising public pressure to limit offshore tax avoidance strategies by adopting and disclosing to shareholders a set of principles to guide the company's tax practices).
- "The Workforce":⁹ In this section, the Response directly implicates the Company's choice of technology when it states that the Proposal encompasses the Company's logistical infrastructure, production targets, and use of automation. On numerous occasions, the Staff has permitted the exclusion of a proposal under Rule 14a-8(i)(7) because the proposal relates to a company's choice of technologies. In *CSX Corp.* (avail. Jan. 24, 2011), the Staff concurred in the exclusion of a proposal requesting that the company develop a kit that would allow the company to convert the majority of its locomotive fleet to a more efficient system as relating to the company's ordinary business, noting that "[p]roposals that concern a company's choice of technologies for use in its operations are generally excludable under rule 14a-8(i)(7)." Similarly, in *WPS Resources Corp.* (avail. Feb. 16, 2001), the Staff permitted the exclusion of a proposal requesting, *inter alia*, that the company develop some or all of eight specified plans (including "deploying small-scale cogeneration technologies" to "improve the overall energy efficiency of private and public sector building customers")

⁸ Response at pages 9 through 11.

⁹ Response at pages 6 through 8.

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because the proposal dealt with “ordinary business operations,” and specifically related to “the choice of technologies.”

- “Platform Dominance”:¹⁰ In this section, the Response delves into the Company’s pricing strategies, product display, and product offerings. The Staff consistently has recognized that proposals concerning decisions by retailers regarding pricing and the promotional aspect of their operations relate to a company’s ordinary business operations and thus may be excluded under Rule 14a-8(i)(7). As noted in the No-Action Request, the Staff has long recognized that decisions regarding a company’s display or advertising of products it sells and a company’s communications with customers relate to a company’s ordinary business operations and thus may be excluded under Rule 14a-8(i)(7). *See also Amazon.com, Inc.* (avail. Jan. 18, 2018) (concurring that a proposal specifying how the Company presents certain products on its retail websites is excludable because it seeks to micromanage the Company). The Response attempts to distinguish this topic as it relates to the Company by arguing that “access to data distinguishes platform dominance from ordinary market dominance.”¹¹ However, in *The Allstate Corp.* (avail. Mar. 20, 2015), the Staff concurred that a company could exclude under Rule 14a-8(i)(7) a proposal requesting a report on “civil rights risks related to the company’s use of big data,” because the proposal—as with the Proposal here—related to the manner in which the company may use customer information to make pricing determinations. In *Wal-Mart Stores, Inc. (Porter)* (avail. Mar. 26, 2010), the Staff concurred in the exclusion under Rule 14a-8(i)(7) of a proposal “to adopt a policy requiring all products and services offered for sale in the United States of America by Wal-Mart and Sam’s Club stores shall be manufactured or produced in the United States of America,” with the Staff noting that “the proposal relates to the products and services offered for sale by the company.” In *Vertex Pharmaceuticals Inc.* (avail. Feb. 10, 2017), the Staff concurred in exclusion under Rule 14a-8(i)(7) of a proposal seeking a report on the rationale and criteria used for setting prices of the company’s top selling prescription pharmaceutical products. Each of the foregoing precedents, and many others like them, demonstrate that proposals addressing a company’s pricing and product marketing decisions are excludable under Rule 14a-8(i)(7).
- Location of Corporate Offices:¹² Both the Supporting Statement and the Response speculate about and express concerns with the implications of the Company’s decision on where the Company locates its second headquarters. For example, in *Tenneco Inc.* (issued Dec. 28, 1995), the Staff concurred in the exclusion under Rule 14a-8(i)(7) of a proposal requesting a report on various cost and other implications of relocating the corporate headquarters from Texas to Connecticut. In concurring with the exclusion, the Staff noted “that the proposal is

¹⁰ Response at pages 13 through 18.

¹¹ Response at page 16.

¹² Response at page 11.

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directed at matters relating to the conduct of the Company's ordinary business operations (i.e., determination of the location of corporate headquarters)." *See also Pacific Gas and Electric Co.* (issued Jan. 3, 1986) (concurring in exclusion of a proposal requesting a feasibility study leading to relocation of the company's corporate headquarters).

As demonstrated by the foregoing discussion, the Proposal is not focused on a significant policy issue. The "widespread public debate" referenced in the Proposal and the Response is instead a disparate collection of newspaper articles, op-ed pieces, and speculative works issued over the past seven years on a wide range of issues relating to the Company's operations or the operations of the Company and other successful technology companies. The Proposal, in essence, requests a report on how the Company is managing the day-to-day risks and challenges of operating a large and successful business. The subject of the Proposal, as set forth in the Proposal and Supporting Statement, and as expanded by the Response, relates to many facets of the Company's ordinary business operations. For these reasons, the Proposal properly is excludable under Rule 14a-8(i)(7).

CONCLUSION

Based upon the foregoing analysis and the No-Action Request, we respectfully request that the Staff concur that it will take no action if the Company excludes the Proposal from its 2018 Proxy Materials. In accordance with Rule 14a-8(j), a copy of this supplemental letter is being sent on this date to the Proponent.

We would be happy to provide you with any additional information and answer any questions that you may have regarding this subject. Correspondence regarding this letter should be sent to shareholderproposals@gibsondunn.com. If we can be of any further assistance in this matter, please do not hesitate to call me at (202) 955-8671 or Mark Hoffman, the Company's Vice President & Associate General Counsel and Assistant Secretary, at (206) 266-2132.

Sincerely,



Ronald O. Mueller

cc: Mark Hoffman, Amazon.com, Inc.
Brandon Rees, AFL-CIO Fund



AFL-CIO

AMERICA'S UNIONS

**American Federation
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February 9, 2018

Via e-mail at shareholderproposals@sec.gov

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

***Re: Request by Amazon.com to omit a shareholder proposal
submitted by the AFL-CIO Reserve Fund***

Dear Sir or Madam:

Pursuant to Rule 14a-8 under the Securities Exchange Act of 1934, the AFL-CIO Reserve Fund (the "Fund") submitted a shareholder proposal (the "Proposal") to Amazon.com Inc. ("Amazon" or the "Company"). The Proposal asks Amazon's Board of Directors to analyze and report to shareholders on the risks arising from the public debate over Amazon's growth and societal impact and how Amazon is managing or mitigating those risks.

In a letter to the Division dated January 9, 2018 (the "No-Action Request"), Amazon stated that it intends to omit the Proposal from its proxy materials to be distributed to shareholders in connection with the Company's 2018 annual meeting of shareholders. Amazon argues that it is entitled to exclude the Proposal in reliance on Rule 14a-8(i)(7), on the ground that the Proposal deals with Amazon's ordinary business operations; and Rule 14a-8(i)(3), claiming that the Proposal is impermissibly vague and indefinite. As discussed more fully below, Amazon has not met its burden of proving its entitlement to exclude the Proposal in reliance on either ground and the Fund respectfully requests that Amazon's request for relief be denied.

The Proposal

The Proposal states:

“RESOLVED, that shareholders of Amazon.com Inc. (“Amazon”) urge the Board of Directors (the “Board”) to analyze and report to shareholders on the risks arising from the public debate over Amazon's growth and societal impact and how Amazon is managing or mitigating those risks.

The report should address risks related to Amazon’s role in providing physical and digital infrastructure, use of and control over data about customers and competitors, increasing reliance on automation and influence on the quality and diversity of content.

The report should be prepared at reasonable expense and omitting confidential or proprietary information.”

Ordinary Business

Rule 14a-8(i)(7) permits a company to omit a proposal that “deals with a matter relating to the company’s ordinary business operations.” Amazon claims the Proposal is about one of various smaller aspects of the larger subject of Amazon’s growth and societal impact. But the fact that each of these aspects, standing alone, has been found to implicate ordinary business in other contexts does not compel a conclusion that Amazon’s growth and societal impact is not a significant social policy issue.

The Proposal’s Subject is Not How Amazon Conducts its Public Relations

Seizing on the fact that the Proposal implicates public perceptions of Amazon, the Company tries to reframe the Proposal as addressing Amazon’s public relations function. That conception of the Proposal is far too narrow, however. The Proposal’s reference to the “public debate over Amazon’s growth and societal impact” does not confine the Proposal’s scope to public relations efforts.

The language of the Proposal and supporting statement make clear that the Proposal’s focus is on the broad issue of how concerns over Amazon’s growth and societal impact are affecting Amazon’s business, strategy and stakeholder relationships. Public opinion certainly plays a role in generating public debate and responses to Amazon’s business practices.¹ But concerns have been raised in many other quarters. For example, Amazon’s competitors have expressed reservations about the potential uses to which Amazon may put data it collects about purchases from third-party sellers. And the risks facing Amazon are more concrete than mere public disapprobation: They involve regulatory and enforcement action, changes in customer behavior and responses by municipalities to Amazon’s siting decisions, to name a few. The Proposal asks Amazon to report on this variety of risks and potential consequences, which go far beyond mere public relations.

Amazon cites a group of determinations from the 2017 proxy season in support of its characterization of the Proposal. The proposals in those determinations (the “religious freedom risk assessment proposals”) asked the companies to “prepare a report detailing the known and potential risks and costs to the company caused by pressure campaigns to oppose religious freedom laws (or efforts), public accommodation laws (or efforts), freedom of conscience laws (or efforts) and campaigns against candidates from Title IX exempt institutions, detailing the

¹ For this reason, it is likely that any subject qualifying as a significant social policy issue will implicate a company’s public relations function to some extent.

known and potential risks and costs to the company caused by these pressure campaigns supporting discrimination against religious individuals and those with deeply held beliefs, and detailing strategies that the company may deploy to defend the company's employees and their families against discrimination and harassment that is encouraged or enabled by such efforts."² The Staff agreed with the companies' argument that the proposals were excludable on ordinary business grounds.

The determinations allowing omission of the religious freedom risk assessment proposals do not support Amazon's framing of the Proposal or Amazon's conclusion that it may omit the Proposal, for several reasons. First, the Staff did not state in its determinations that it was allowing exclusion because the proposals dealt with the companies' public relations function. Instead, the determinations simply stated that the proposals "relat[e] to [the company's] ordinary business operations."

All three companies made other ordinary business arguments in their requests for no-action relief. They all argued that the proposals dealt with management of the workforce, as they asked for reporting on how the companies planned to defend their employees against the effects of public pressure not to discriminate in the name of religious freedom. J&J contended that exclusion of the religious freedom risk assessment proposal was consistent with the considerations set forth in the Commission's 1998 release—avoiding interference with day-to-day management of the business and taking into account shareholders' capacity to understand the subject matter and cast informed votes. Best Buy and Home Depot challenged the notion that the proposal addressed a significant social policy issue. It is thus not reasonable to assume that the Staff's determinations rested on the "public relations" argument.

As well, there was not a nexus in each case between the significant social policy issue the proponents articulated—the "debate over religious freedom and freedom of conscious [sic] initiatives"³—and the companies at which the religious freedom risk assessment proposals were submitted. The supporting statements were generic; they contained no information suggesting that the issue had any relevance or urgency for these particular companies. Here, by contrast, the subject that the Fund asserts is a significant social policy issue is itself defined by reference to Amazon, so the requisite nexus exists.

Amazon claims that the Proposal is excludable, even if Amazon's growth and societal impact is a significant social policy issue (which it is, as discussed below), because it "also encompasses" ordinary business matters such as public relations and content. (No-Action Request, at 6) Amazon has it exactly backwards. If the subject of the Proposal is a significant social policy issue, the fact that aspects of the Proposal would otherwise be deemed ordinary business is irrelevant.

The Commission's 1998 release⁴ explains this relationship clearly: "However, proposals **relating to [ordinary business] matters but focusing on sufficiently significant social policy issues**

² Johnson & Johnson (Feb. 23, 2017); The Home Depot Inc. (Feb. 23, 2017); Best Buy Co., Inc. (Feb. 23, 2017)

³ Home Depot, supra.

⁴ Exchange Act Release No. 40018 (May 26, 1998).

(e.g., significant discrimination matters) generally would not be considered to be excludable, because the proposals would transcend the day-to-day business matters and raise policy issues so significant that it would be appropriate for a shareholder vote.” (emphasis added)

Amazon’s position is also belied by many Staff determinations. A comparison of two proposals on net neutrality, submitted in 2011 and 2012, illustrates how the existence of a significant social policy issue trumps the ordinary business aspects of a proposal. A proposal submitted to AT&T in the 2011 proxy season asked the company to “publicly commit to operate its wireless broadband network consistent with Internet network neutrality principles - i.e., operate a neutral network with neutral routing along the company’s wireless infrastructure such that the company does not privilege, degrade or prioritize any packet transmitted over its wireless infrastructure based on its source, ownership or destination.”⁵

AT&T challenged the proposal on ordinary business grounds, arguing that the proposal addressed “matters of internet network management,” which are “an integral part of AT&T’s day-to-day business operations.” The proponent urged that net neutrality was a significant policy issue, citing the widespread media coverage leading up to the Federal Communications Commission’s 2010 issuance of net neutrality rules, the strong Republican opposition to those rules and AT&T’s extensive lobbying activities related to the issue. The Staff concurred with AT&T that “the proposal relates to AT&T’s network management practices” and further reasoned that “although net neutrality appears to be an important business matter for AT&T and the topic of net neutrality has recently attracted increasing levels of public attention, we do not believe that net neutrality has emerged as a consistent topic of widespread public debate such that it would be a significant policy issue for purposes of rule 14a-8(i)(7).”

The proponent submitted a nearly identical proposal to AT&T the following year. Again, AT&T contended that the proposal dealt with “matters of network management.” The proponent and AT&T vigorously debated whether events that had transpired since the Staff’s 2011 determination had pushed net neutrality into significant policy issue territory.⁶

Despite those similarities, the Staff came to a different conclusion in 2012 than it had in 2011. The Staff declined to allow AT&T to omit the proposal on ordinary business grounds, stating, “In view of the sustained public debate over the last several years concerning net neutrality and the Internet and the increasing recognition that the issue raises significant policy considerations, we do not believe that AT&T may omit the proposal from its proxy materials in reliance on rule 14a-8(i)(7).” The 2012 proposal contained the same language relating to network management that had led the Staff to allow exclusion of the 2011 proposal. What had changed was the larger context. Once the Staff found that the broader issue of net neutrality was a significant social policy issue, the fact that the proposal dealt with network management was no longer enough to justify exclusion.

⁵ AT&T Inc. (Feb. 2, 2011)

⁶ AT&T Inc. (Feb. 10, 2012)

Similar outcomes have occurred in the context of proposals on pharmaceutical pricing.⁷ In the 2015 proxy season, proposals seeking disclosure on risks “from rising pressure to contain U.S. specialty drug prices” were submitted to three pharmaceutical companies. The companies objected that the proposals dealt with the ordinary business matters of pricing, marketing and public relations, which were fundamental to the companies’ day-to-day operations. The proponent countered that the widespread debate made high drug prices a significant policy issue. The Staff declined to allow exclusion on ordinary business grounds despite the proposals’ focus on pricing, which in other contexts had been deemed an ordinary business matter.⁸

Amazon’s Growth and Societal Impact is a Significant Social Policy Issue

Amazon skirts the question of whether the Proposal addresses a significant social policy issue by claiming that even if the Proposal does deal with such an issue, it is nonetheless excludable. The Fund dispatched that argument above. Amazon’s growth and impact on society—through effects on competition, innovation, data privacy, publishing, and employment, to name a few—is a “sustained” and “consistent topic of widespread public debate,” the standard the Staff has applied in determining whether a proposal deals with a significant social policy issue.⁹

Amazon’s influence in the economy can be seen in the fact that 10% of earnings calls for the second quarter of 2017—not calls held by technology firms or retailers but all calls—mentioned Amazon.¹⁰ The Company’s market dominance, anti-competitive practices, and impact on a wide range of stakeholders have led to public debate and increasing attention from the media, academia, legislators and regulators. As discussed below, many of Amazon’s negative effects stem from practices critical to its business strategy. Amazon’s ability to create long-term sustainable value will thus turn on the Company’s management of these risks.

The increased focus on the negative aspects of the largest technology firms—Amazon, Facebook, Google and Apple—has been characterized as a “backlash” or “techlash.”¹¹ As The Economist recently put it, Google, Facebook and Amazon are “accused of being BAADD—big,

⁷ The proposal in the 2004 Johnson & Johnson determination Amazon cites appears to be something of an outlier, in light of the determinations issued at around the same time declining to allow exclusion of proposals requesting a policy of drug price restraint and the 2015 determinations discussed above. The 2004 proposal may be distinguishable because it specifically asked the company to review its marketing and pricing policies before reporting on risks and thus dealt more directly with marketing and public relations (Johnson & Johnson (Jan. 12, 2004))

⁸ See Vertex Pharmaceuticals Inc. (Feb. 25, 2015); Gilead Sciences, Inc. (Feb. 23, 2015); Celgene Corporation (Mar. 19, 2015)

⁹ See Exchange Act Release No. 40018 (May 21, 1998); Comcast Corp. (Mar. 4, 2011); Verizon Communications Inc. (Feb. 13, 2012).

¹⁰ Alex Lykken, “Bezos is Coming: Mapping Amazon’s Growing Reach,” Pitchbook, Sept. 15, 2017 (<https://pitchbook.com/news/articles/bezos-is-coming-mapping-amazons-growing-reach>)

¹¹ “The Techlash Against Amazon, Facebook and Google—and What They Can Do,” The Economist, Jan. 20, 2018 (<https://www.economist.com/news/briefing/21735026-which-antitrust-remedies-welcome-which-fight-techlash-against-amazon-facebook-and>); Levi Sumagaysay, “Google, Amazon Mocked on ‘Saturday Night Live’ Amid Wider Tech Backlash,” The Mercury News (Silicon Beat), Jan. 22, 2018 (<http://www.siliconbeat.com/2018/01/22/google-amazon-mocked-saturday-night-live-amid-wider-tech-backlash/>)

anti-competitive, addictive and destructive to democracy. Regulators fine them, politicians grill them and one-time backers warn of their power to cause harm.”¹²

The debate over Amazon’s dominance is so wide-ranging it is impractical to document comprehensively, but examples involving the workforce, taxes, publishing and digital platforms illustrate the breadth of concerns over Amazon’s impact. Taken together, they establish that Amazon’s growth and societal impact is a significant social policy issue.

The Workforce

Amazon’s impact as an employer, directly or through subcontracting firms, has generated significant controversy. Amazon has been expanding its logistics infrastructure, the labor-intensive part of its operations, rapidly: According to one report, “Between the summer of 2015 and the summer of 2016, Amazon’s network of distribution facilities doubled in number, as it rolled out 14 of its massive fulfillment centers, 11 new sortation centers, and 60 smaller facilities like delivery stations and Prime Now hubs.”¹³

Working conditions at Amazon’s warehouses have been extensively investigated and covered in the media¹⁴; one article characterized them as “a culture of industrialized brutality” in which the work is physically grueling (sometimes to the point of injury), overtime is mandatory and workers’ conduct is closely monitored and controlled.¹⁵ Outside the U.S., 2,000 German warehouse workers struck during the 2017 holiday shopping season over working conditions, and a one-day strike was called in Italy over bonuses.¹⁶

¹² “The Techlash Against Amazon, Facebook and Google—and What They Can Do,” *The Economist*, Jan. 20, 2018 (<https://www.economist.com/news/briefing/21735026-which-antitrust-remedies-welcome-which-fight-techlash-against-amazon-facebook-and>)

¹³ Olivia LeVecchia & Stacy Mitchell, “Amazon’s Stranglehold: How the Company’s Tightening Grip is Stifling Competition, Eroding Jobs and Threatening Communities,” Institute for Local Self-Reliance, Nov. 2016, at 33 (https://ilsr.org/wp-content/uploads/2016/11/ILSR_AmazonReport_final.pdf)

¹⁴ E.g., Alan Selby, “Timed Toilet Breaks, Impossible Targets and Workers Falling Asleep on Feet: Brutal Life Working in Amazon Warehouse,” *The Sunday Mirror*, Nov. 25, 2017 (<https://www.mirror.co.uk/news/uk-news/timed-toilet-breaks-impossible-targets-11587888>); Mario Ledwith, “Tagged by Their Bosses, Zero-Hour Amazon Workers: Employees Wear Monitoring Devices and Are Not Guaranteed Any Income,” *The Daily Mail*, Aug. 1, 2013 (<http://www.dailymail.co.uk/news/article-2382800/Tagged-bosses-zero-hour-Amazon-workers-Employees-guaranteed-income.html>); Channel 4 News, “Anger at Amazon Working Conditions,” Aug. 1, 2013 (<https://www.channel4.com/news/anger-at-amazon-working-conditions>); BBC News, “Amazon Drivers ‘Work Illegal Hours,’” Nov. 11, 2016 (<http://www.bbc.com/news/uk-england-37708996>); <http://gawker.com/inside-an-amazon-warehouse-the-relentless-need-to-mak-1780800336>

¹⁵ <http://www.wbur.org/cognoscenti/2018/01/29/amazon-labor-miles-howard>; https://www.salon.com/2014/02/23/worse_than_wal_mart_amazons_sick_brutality_and_secret_history_of_ruthless_y_intimidating_workers/; Emily Jane Fox, “Amazon Reportedly Has Scoreboards to Shame its Workers,” *Vanity Fair*, Mar. 8, 2016 (<https://www.vanityfair.com/news/2016/03/amazon-warehouse-theft>); <http://gawker.com/inside-an-amazon-warehouse-the-relentless-need-to-mak-1780800336>; Angelo Young, “Amazon.com’s Workers Are Low-Paid, Overworked and Unhappy: Is This the New Employee Model for the Internet Age?” Dec. 19, 2013 (<http://www.ibtimes.com/amazoncoms-workers-are-low-paid-overworked-unhappy-new-employee-model-internet-age-1514780>); <http://gawker.com/a-few-more-true-stories-from-amazon-workers-1043216113>

¹⁶ David Schrieberg, “Amazon Takes Early Holiday Hits in Europe Over Labor Conditions,” *Forbes*, Nov. 30, 2017 (<https://www.forbes.com/sites/davidschrieberg1/2017/11/30/amazon-in-europe-takes-early-holiday-hits-over>)

Workers have described unrealistic production targets,¹⁷ which some suspect are in place to justify terminations. Heat-related illness among Allentown-area warehouse employees during hot weather; Amazon's decision to station ambulances nearby, rather than open loading dock doors; and an emergency-room doctor's notification to OSHA of an unsafe work environment at the warehouse were reported on in the media.¹⁸

Accounts of working in Amazon warehouses describe extensive employee surveillance, including the use of satellite navigation computers to track employees and determine whether productivity targets are met.¹⁹ It was widely reported when Amazon recently filed for patents on wristbands that can track workers' hand movements.²⁰

Although Amazon touts its job creation,²¹ its impact on brick-and-mortar retailers has resulted in a net job loss estimated at about 148,000 at the end of 2015.²² Many Amazon warehouse workers are actually employed by a staffing agency, and their jobs are not permanent.²³ News reports have highlighted homeless workers among Amazon's seasonal labor force.²⁴ And Amazon's presence in an area seems to negatively affect other, non-Amazon workers: A recent analysis by The Economist found that Amazon's presence in a county is associated with lower wages for warehouse workers.²⁵

The plight of white-collar Amazon workers has also received much attention.²⁶ A 2015 article in The New York Times described a "bruising" workplace that "many workers call an intricate

labor-conditions/#279fc4f42020) (describing a "growing rumble of opposition [to Amazon] in Europe because of its size, dominance and treatment of its sharply growing labor force")

¹⁷ <http://gawker.com/true-stories-of-life-as-an-amazon-worker-1002568208>

¹⁸ Spencer Soper, "Inside Amazon's Warehouse," The Morning Call (Allentown), Aug. 17, 2015

(<http://www.mcall.com/news/local/amazon/mc-allentown-amazon-complaints-20110917-story.html#page=1>)

¹⁹ Sarah O'Connor, "Amazon Unpacked," Financial Times, Feb. 8, 2013 (<https://www.ft.com/content/ed6a985c-70bd-11e2-85d0-00144feab49a>);

https://www.salon.com/2014/02/23/worse_than_wal_mart_amazons_sick_brutality_and_secret_history_of_ruthlessl_y_intimidating_workers/

²⁰ Danika Fears, "Amazon Files Patents For Wristbands That Track Workers," New York Post, Feb. 2, 2018

(<https://nypost.com/2018/02/02/amazon-files-patents-for-wristbands-that-track-workers/>).

²¹ See Jon Swartz, "Amazon is Creating 100,000 U.S. Jobs, But At What Cost?" USA Today, Jan. 13, 2017

(<https://www.usatoday.com/story/tech/columnist/2017/01/13/amazons-jobs-creation-plan-comes-amid-labor-pains/96488166/>)

²² Olivia LeVecchia & Stacy Mitchell, "Amazon's Stranglehold: How the Company's Tightening Grip is Stifling

Competition, Eroding Jobs and Threatening Communities," Institute for Local Self-Reliance, Nov. 2016, at 35

(https://ilsr.org/wp-content/uploads/2016/11/ILSR_AmazonReport_final.pdf)

²³ Alana Semuels, "What Amazon Does to Poor Cities," The Atlantic, Feb. 1, 2018

(<https://www.theatlantic.com/business/archive/2018/02/amazon-warehouses-poor-cities/552020/>)

²⁴ Jana Kasperkevic, "Homeless and Working for Amazon: The Trap of the Seasonal Job Cycle," The Guardian,

May 4, 2014 (<https://www.theguardian.com/money/2014/may/04/amazon-seasonal-work-homeless-jobs-unemployment>)

²⁵ "What Amazon Does to Wages," The Economist, Jan. 20, 2018 (<https://www.economist.com/news/united-states/21735020-worlds-largest-online-retailer-underpaying-its-employees-what-amazon-does-wages>)

²⁶ See, e.g., <http://gawker.com/amazon-insiders-tell-the-good-the-bad-and-the-ugly-1570866439>

machine propelling them to achieve Mr. Bezos' ever-expanding ambitions."²⁷ Over 6,600 comments were posted on the online version of the article, which topped the "most emailed" and "most viewed" lists for days.²⁸ The ensuing debate questioned whether the practices depicted in the article, in which employees "are pushed to the breaking point in a survival-of-the-fittest climate where they tend to burn out and leave quickly," were part of Amazon's business model and, if they were, whether that model would produce long-term value.²⁹

Media accounts have described Amazon's increasing use of automation to replace workers. "Perhaps no company," a recent New York Times article stated, "embodies the anxieties and hopes around automation better than Amazon."³⁰ In 2012, Amazon bought Kiva Systems, which makes robots that perform warehouse tasks,³¹ and it has gone from 45,000 robots at the end of 2016 to 120,000 by the end of 2017.³²

Although Amazon asserts that robots now perform only the most "monotonous" tasks, some predict that technological improvements will "eventually displace a lot of people in those warehouses."³³ Amazon has also begun delivering packages via drone.³⁴

²⁷ Jodi Kantor & David Streitfeld, "Inside Amazon: Wrestling Big Ideas in a Bruising Workplace," The New York Times, Aug. 15, 2015 (<https://www.nytimes.com/2015/08/16/technology/inside-amazon-wrestling-big-ideas-in-a-bruising-workplace.html>).

²⁸ Marie Tae McDermott, "A Deluge of Comments From Readers With an Opinion About Amazon," The New York Times, Aug. 18, 2015 (<https://www.nytimes.com/2015/08/18/insider/a-deluge-of-comments-from-readers-with-an-opinion-about-amazon.html?action=click&contentCollection=Technology&module=RelatedCoverage®ion=EndOfArticle&pgtype=article>).

²⁹ Ed Fraumeni & Robert Levering, "What Amazon's Workplace Controversy Says About the Future of Work," Fortune, Aug. 21, 2015 (<http://fortune.com/2015/08/21/amazon-workplace-culture-jeff-bezos/>); see also Daina Beth Solomon, "Amazon Sparks Tech Workplace Debate," Los Angeles Times, Aug. 17, 2015

(<http://www.latimes.com/business/technology/la-fi-tn-amazon-tech-workplace-20150817-story.html>); <http://gawker.com/i-do-not-know-one-person-who-is-happy-at-amazon-1572478351>; Lindsay McGregor & Neel Doshi, "Amazon's No Outlier: The Science Behind Broken Work Cultures," Fast Company, Aug. 24, 2015

(<https://www.fastcompany.com/3050251/amazons-no-outlier-the-science-behind-broken-work-cultures>).

³⁰ Nick Wingfield, "As Amazon Pushes Forward With Robots, Workers Find New Roles," The New York Times, Sept. 10, 2017 (<https://www.nytimes.com/2017/09/10/technology/amazon-robots-workers.html>)

³¹ Sam Shear, "Amazon Now Has 45,000 Robots in its Warehouses," Business Insider, Jan. 3, 2017 (<http://www.businessinsider.com/amazons-robot-army-has-grown-by-50-2017-1>)

³² Dave Edwards & Helen Edwards, "There Are 170,000 Fewer Retail Jobs in 2017—and 75,000 More Amazon Robots," Quartz, Dec. 4, 2017 (<https://qz.com/1107112/there-are-170000-fewer-retail-jobs-in-2017-and-75000-more-amazon-robots/>)

³³ Nick Wingfield, "As Amazon Pushes Forward With Robots, Workers Find New Roles," The New York Times, Sept. 10, 2017 (<https://www.nytimes.com/2017/09/10/technology/amazon-robots-workers.html>); see also Michael Pooler, "Amazon Robots Bring a Brave New World to the Warehouse," Financial Times, Aug. 25, 2017 (<https://www.ft.com/content/916b93fc-8716-11e7-8bb1-5ba57d47eff7>) ("These changes raise profound questions about what will happen to jobs.")

³⁴ Sam Shear, "Amazon Now Has 45,000 Robots in its Warehouses," Business Insider, Jan. 3, 2017 (<http://www.businessinsider.com/amazons-robot-army-has-grown-by-50-2017-1>)

Tax Strategies

The impact of Amazon's tax strategies on government treasuries and competition in its sector has also generated a great deal of debate and legislative activity. For several years, Amazon refused to collect sales tax on orders shipped to all but a few states in which it had a physical presence. Major news outlets regularly reported on Amazon's conduct and the efforts states were making to require sales tax collection. The Wall Street Journal reported in 2011 on Amazon's "extreme measures" to avoid collecting sales tax.³⁵ The Alliance for Main Street Fairness, which counted Target, Wal-Mart and Best Buy among its members, ran full-page advertisements in major newspapers in 2011 advocating laws requiring Amazon to collect sales tax³⁶; such laws were dubbed "Amazon laws."³⁷ At the federal level, the "Main Street Fairness Act" imposing a national sales tax collection requirement for online retailers, was first introduced in the Senate in 2010 and passed the Senate in 2013.³⁸

As Amazon increased its emphasis on delivery speed, which required more distribution facilities, it began to shift its sales tax approach from outright refusal to negotiating exemptions in exchange for facility location.³⁹ For example, Amazon became involved in a dispute with the state of South Carolina, when the state balked at exempting Amazon from collecting sales taxes on purchases shipped there, in exchange for building a warehouse in the state. The South Carolina fight, which ended in legislative capitulation, was "one of many confrontations Amazon has faced in its national fight to hang on, for as long as possible, to one of its major advantages over brick-and-mortar retailers."⁴⁰

The competitive advantage Amazon enjoyed over brick and mortar stores during the years in which Amazon did not collect sales tax—it did not agree to do so in all states until March 2017⁴¹--was an important element of the debate.⁴² A 2016 op-ed in The New York Times

³⁵ Stu Woo, "Amazon Battles States Over Sales Tax," The Wall Street Journal, Aug. 3, 2011 (<https://www.wsj.com/articles/SB10001424053111904772304576468753564916130>).

³⁶ Miguel Bustillo & Stu Woo, "Retailers Push Amazon on Taxes," The Wall Street Journal, Mar. 17, 2011 (<https://www.wsj.com/articles/SB10001424052748704396504576204791377862836>).

³⁷ E.g., <https://taxfoundation.org/trend-5-amazon-taxes/>; <http://www.grassicpas.com/tax/new-yorks-court-of-appeals-sustains-constitutionality-of-amazon-tax/>;
https://www.schiffhardin.com/Templates/Media/Files/Publications/HTML/tax_042712index2.html.

³⁸ <https://nrf.com/blog/court-or-congress-states-pushing-collect-online-sales-tax>

³⁹ See, e.g., Alison Griswold, "Amazon is Now Collecting Sales Tax in Florida," Slate, May 1, 2014 (http://www.slate.com/blogs/moneybox/2014/05/01/amazon_and_sales_tax_the_online_retailer_began_collecting_sales_tax_in_florida.html) ("The change comes because Amazon is planning two new warehouses in Florida, which will give it the so-called physical presence required for the state to mandate that it tack sales tax onto orders."); "Tax in Cyberspace," The Economist, May 4, 2013 (<https://www.economist.com/news/business/21577071-online-retailers-may-soon-have-collect-sales-tax-amazon-oddly-gloating-tax>)

⁴⁰ Jim Brunner, "States Fight Back Against Amazon.com's Tax Deals," The Seattle Times, Apr. 9, 2012 (<https://www.seattletimes.com/seattle-news/states-fight-back-against-amazoncoms-tax-deals/>)

⁴¹ Darla Mercado, "The Holiday is Over: Amazon Will Collect Sales Tax Nationwide on April 1," CNBC, Mar. 24, 2017 (<https://www.cnn.com/2017/03/24/the-holiday-is-over-amazon-will-collect-sales-taxes-nationwide-on-april-1.html>)

⁴² See, e.g., "Podcast: Avoiding Their Share: The Controversy Over Amazon and Online Sales Taxes," Center on Budget and Policy Priorities, Mar. 30, 2010 (<https://www.cbpp.org/research/podcast-avoiding-their-share-the-controversy-over-amazon-and-online-sales-taxes>) ("Amazon is especially aggressive about not collecting sales

highlighted the disparity between Amazon’s 13% tax rate and the average tax rate of brick and mortar retailers of over 30%.⁴³ The Economist characterized Amazon’s sales tax stance as a threat to “fair competition.”⁴⁴

Some commentators have concluded that Amazon’s rapid growth was fueled in large part by its tax practices. A 2016 study finding that Amazon’s sales decreased by 8.3% (and even greater percentages for pricier items) after the implementation of state laws requiring Amazon to collect sales tax was widely covered and an article in The Washington Post stated that the study “perhaps offers some insight on how Amazon has pulled off such explosive growth in sales and market share.”⁴⁵

Even after Amazon began to collect taxes on its own sales, it did not do so for sales by third-party sellers on its Marketplace. In July 2017, Washington, Amazon’s home state, passed a law requiring the company to collect taxes on Marketplace sales shipped to that state. Amazon is fighting efforts by South Carolina to collect taxes the state says it owes. Other states are pursuing Amazon’s sellers. Amazon’s failure to collect sales taxes on Marketplace sales is estimated to deprive states and cities of about \$5 billion per year in tax revenue.⁴⁶

President Trump has attacked Amazon’s tax strategies several times. In May 2016, he tweeted, “Amazon is getting away with murder tax-wise. [CEO Jeff Bezos is] using the *Washington Post* for power so that the politicians in Washington don’t tax Amazon like they should be taxed.”⁴⁷ A year later, Trump opined on Twitter that Amazon “should pay ‘internet taxes’”⁴⁸ and that “Amazon is doing great damage to tax paying retailers”; the latter tweet led to a \$5 billion

tax.”); Thomas Cafcas & Greg Leroy, “Will Amazon Fool Us Twice?”, at 5 (Dec. 2016) (“For years, Amazon relied on a controversial tactic to keep its prices lower than bricks-and-mortar competitors: avoiding the collection of the sales tax.”)

⁴³ David Leonhardt, “The Big Companies That Avoid Taxes,” The New York Times, Oct. 18, 2016 (<https://www.nytimes.com/2016/10/18/opinion/the-big-companies-that-avoid-taxes.html>)

⁴⁴ “The Techlash Against Amazon, Facebook and Google—and What They Can Do,” The Economist, Jan. 20, 2018 (<https://www.economist.com/news/briefing/21735026-which-antitrust-remedies-welcome-which-fight-techlash-against-amazon-facebook-and>)

⁴⁵ Sarah Halzack, “The True Cost to Amazon of the ‘Amazon Tax’”, The Washington Post, Jan. 13, 2016 (https://www.washingtonpost.com/news/business/wp/2016/01/13/the-true-cost-to-amazon-of-the-amazon-tax/?utm_term=.cd54079b7871); see also Robert W. Wood, “Tax Hater Amazon’s Luxembourg Deal Attacked as Illegal,” Forbes, Jan. 17, 2015 (<https://www.forbes.com/sites/robertwood/2015/01/17/tax-hater-amazons-luxembourg-tax-deal-attacked-as-illegal/#6d6a6d6b4e26>) (“Amazon got bigger and more nimble than anyone else by betting on America’s love of tax avoidance.”)

⁴⁶ Spencer Soper et al., “Trump’s Bruising Tweet Highlights Amazon’s Lingering Tax Fight,” Bloomberg, Aug. 17, 2017 (<https://www.bloomberg.com/news/articles/2017-08-17/trump-s-bruising-tweet-highlights-amazon-s-lingering-tax-fight>)

⁴⁷ Damien Sharkov, “Trump Accuses Amazon of ‘Getting Away With Murder’ on Taxes,” Newsweek, May 13, 2016 (<http://www.newsweek.com/trump-accuses-amazon-getting-away-murder-taxes-459518>)

⁴⁸ Joseph Lawyer, “Trump Wades Back Into Internet Sales Tax Fight With Amazon Tweet,” Washington Examiner, June 28, 2017 (<http://www.washingtonexaminer.com/trump-wades-back-into-internet-sales-tax-fight-with-amazon-tweet/article/2627301>)

drop in Amazon's stock price.⁴⁹ Treasury Secretary Steve Mnuchin reinforced that message in January 2018, indicating that Trump would support a national internet sales tax.⁵⁰

Tax avoidance outside the U.S. has also been a source of friction. The release of the Paradise Papers in late 2017 reignited coverage of Amazon's global tax strategies, which have included moving its European headquarters to the tax haven of Luxembourg and transferring intellectual property rights to its Luxembourg subsidiary.⁵¹ Amazon's reputation has deteriorated following coverage of its U.K. tax avoidance.⁵² The European Commission determined in October 2017 that Luxembourg had provided "undue tax benefits" worth 250 million Euros (plus interest) to Amazon, which must be recovered under EU rules.⁵³

Amazon's announcement that it was looking for a location for a second headquarters has spurred debate over the wisdom of incentives and subsidies for a company as successful as Amazon.⁵⁴ One proposal suggested that the 20 "short list" cities and regions should prevent a "race to the bottom" by agreeing not to offer any incentives.⁵⁵ The possibility of a "gentrification bomb" going off in the second headquarters city was posited after a study showed that rent increases of up to 2% per year could be expected in whichever city is chosen.⁵⁶

Publishing

Amazon's dominance of the market for books and e-Books has led to well-publicized accusations of anti-competitive behavior and a negative impact on the quality and variety of books. Amazon has a 82% share of the market for e-Books and a 55% share of the market for books.⁵⁷ It has used this power, critics charge, to extract fees from publishers, such as contributions to a "marketing development fund;" negotiate ever-greater discounts; and

⁴⁹ "Amazon Lost \$5 Billion in Value After a Sort-of Accurate Trump Tweet," Fast Company, Aug. 16, 2017 (<https://www.fastcompany.com/40454722/amazon-lost-5-billion-in-value-after-a-sort-of-accurate-trump-tweet>)

⁵⁰ Chris Mills, "Trump 'Supports the Idea' of a Nationwide Internet Sales Tax, Treasury Secretary Says," BGR, Jan. 31, 2018 (<http://bgr.com/2018/01/31/national-internet-sales-tax-collection-trump/>)

⁵¹ Jonathan Chew, "7 Corporate Giants Accused of Evading Billions in Taxes," Fortune, Mar. 11, 2016 (<http://fortune.com/2016/03/11/apple-google-taxes-eu/>)

⁵² Ben Chapman, "Amazon and Starbucks Take Reputation Hit from Tax Avoidance Publicity," The Independent, July 26, 2017 (<https://www.independent.co.uk/news/business/news/amazon-and-starbucks-take-reputation-hit-after-tax-avoidance-backlash-a7861631.html>); <https://www.managementtoday.co.uk/tax-avoidance-allegations-harmed-amazon-starbucks-uk/reputation-matters/article/1440677>

⁵³ http://europa.eu/rapid/press-release_IP-17-3701_en.htm

⁵⁴ E.g., Jill Cowan, "Amazon HQ2 Shortlist Reignites Tax Incentives Debate in Dallas-Fort Worth," Dallas News, Jan. 19, 2018 (<https://www.dallasnews.com/business/amazon/2018/01/19/amazon-news-reignites-incentives-debate-dallas-fort-worth/>); Sarina Trangle, "Amazon HQ2 Bid Has Soe New Yorkers Worried About Wages, Incentives," AM New York, Oct. 19, 2017 (<https://www.amny.com/news/amazon-hq2-nyc-1.14528070>)

⁵⁵ Zaid Jilani, "Why Don't the 20 Cities on Amazon's HQ2 Shortlist Collectively Bargain Instead of Collectively Beg?" The Intercept, Jan. 22, 2018 (<https://theintercept.com/2018/01/22/amazon-headquarters-shortlist-hq2/>)

⁵⁶ Leanna Garfield, "Amazon Could Detonate a Gentrification 'Prosperity Bomb' in the City It Chooses for its Second Headquarters," Business Insider, Jan. 11, 2018 (<http://www.businessinsider.com/amazon-new-headquarters-reaction-problems-2017-9>)

⁵⁷ Danika Fears, "Amazon Files Patents For Wristbands That Track Workers," New York Post, Feb. 2, 2018 (<https://nypost.com/2018/02/02/amazon-files-patents-for-wristbands-that-track-workers/>).

unilaterally set prices charged to customers.⁵⁸ Amazon’s hardball tactics with Macmillan in 2010—after the publisher sought to move to a different pricing model, Amazon removed the “buy” button from all of its books—and with Hachette in 2014 in a dispute over e-Book pricing generated substantial media coverage.⁵⁹

The stakes in the Hachette dispute were high, according to an article in The Atlantic: “the future of ideas in America.”⁶⁰ Although that statement might have been a bit overdramatic, it reflects concerns over how Amazon’s dominance influences what gets published. Some have warned that publishers’ dwindling share of the bookselling pie will lead to fewer of the kinds of books that take longer to research and write, and thus are riskier and costlier for publishers.⁶¹

High-profile authors have blasted Amazon on numerous occasions. Bestselling writer Scott Turow, for example, posted an open letter to Authors Guild members in 2012, opining that Amazon is “getting so large and they compete so ruthlessly that there’s a lot of fear for what the world with Amazon in charge is going to look like.”⁶² Turow speculated that Amazon’s low pricing of e-Books was a way to discourage e-reader competition, which would solidify Amazon’s dominance in the e-Book market, and he predicted that low prices would not last once Amazon had established a monopoly position.⁶³ A year later, Turow called Amazon’s acquisition of book review site Goodreads “a truly devastating act of vertical integration” and “a textbook example of how modern Internet monopolies can be built.”⁶⁴ Sherman Alexie stated during the Hachette dispute, “Like all repressive regimes, Amazon wants to completely control your access

⁵⁸ Franklin Foer, “Amazon Must be Stopped,” New Republic, Oct. 9, 2014 (<https://newrepublic.com/article/119769/amazons-monopoly-must-be-broken-radical-plan-tech-giant>) Amazon sold many e-Books at cost or at a loss when the Kindle was first on the market. Keith Gessen, “The War of the Words,” Vanity Fair, Dec. 2014 (<https://www.vanityfair.com/news/business/2014/12/amazon-hachette-ebook-publishing>)

⁵⁹ Keith Gessen, “The War of the Words,” Vanity Fair, Dec. 2014 (<https://www.vanityfair.com/news/business/2014/12/amazon-hachette-ebook-publishing>); Jeremy Greenfield, “How the Amazon-Hachette Fight Could Shape the Future of Ideas,” The Atlantic, May 28, 2014 (<https://www.theatlantic.com/business/archive/2014/05/how-the-amazon-hachette-fight-could-shape-the-future-of-ideas/371756/>); Natasha Bertrand, “How Amazon’s Ugly Fight With a Publisher Actually Started,” Business Insider, Oct. 7, 2014 (<http://www.businessinsider.com/how-did-the-amazon-feud-with-hachette-start-2014-10>); David Streitfeld, “Amazon and Hachette Resolve Dispute,” The New York Times, Nov. 13, 2014 (<https://www.nytimes.com/2014/11/14/technology/amazon-hachette-ebook-dispute.html>); “Amazon vs. Hachette: The Whole Story,” Publishers Weekly, July 14, 2014 (<https://www.publishersweekly.com/pw/by-topic/industry-news/bookselling/article/63304-amazon-versus-hachette-the-whole-story.html>) Jeffrey Trachtenberg & Greg Bensinger, “Amazon, Hachette End Publishing Dispute,” The Wall Street Journal, Nov. 13, 2014 (<https://www.wsj.com/articles/amazon-hachette-end-publishing-dispute-1415898013>)

⁶⁰ Jeremy Greenfield, “How the Amazon-Hachette Fight Could Shape the Future of Ideas,” The Atlantic, May 28, 2014 (<https://www.theatlantic.com/business/archive/2014/05/how-the-amazon-hachette-fight-could-shape-the-future-of-ideas/371756/>)

⁶¹ Jeremy Greenfield, “How the Amazon-Hachette Fight Could Shape the Future of Ideas,” The Atlantic, May 28, 2014 (<https://www.theatlantic.com/business/archive/2014/05/how-the-amazon-hachette-fight-could-shape-the-future-of-ideas/371756/>)

⁶² Laura Miller, “Scott Turow on Why We Should Fear Amazon, Salon, Mar. 13, 2012 (https://www.salon.com/2012/03/13/scott_turow_on_why_we_should_fear_amazon/)

⁶³ Laura Miller, “Scott Turow on Why We Should Fear Amazon, Salon, Mar. 13, 2012 (https://www.salon.com/2012/03/13/scott_turow_on_why_we_should_fear_amazon/)

⁶⁴ <https://www.authorsguild.org/industry-advocacy/turow-on-amazongoodreads-this-is-how-modern-monopolies-can-be-built/>

to books.”⁶⁵ Richard Russo accused Amazon of believing that books are not “different” and “special,” but rather are commodities.⁶⁶

The acrimony continued even after Amazon and Hachette settled.⁶⁷ Ursula K. LeGuin used her speech accepting the Medal for Distinguished Contribution to American Letters from the National Book Awards to criticize Amazon, a “commodity profiteer,” for “sell[ing] us like deodorant” and “tell[ing] us what to publish and what to write.”⁶⁸

Most recently, Amazon and publishers have butted heads over Amazon’s decision to allow third-party book sellers to “win the buy button,” i.e., become the seller whose book is the default choice when a customer clicks “add to cart.” Unlike books sold directly by Amazon, books sold by third-party sellers are not obtained from publishers; they may be promotional copies or slightly damaged books. As a result, they do not generate profit for the publisher or royalties for authors. Further squeezing publishers, some warn, “means fewer people will be able to invest the time and effort it takes into becoming a writer, which means a lot of talented writers — especially working-class writers and writers of color — will go unheard.”⁶⁹

Platform Dominance

The debate over Amazon’s dominance of platforms goes to the core of its competitive advantage and business strategy. Amazon is best known as an online retailer, but its long-term success is tied not simply to selling more, but to its control over key physical and technology platforms.⁷⁰ (A platform is “an infrastructure that connects two or more groups and enables them to interact.”⁷¹)

⁶⁵ David Streitfeld, “Writers Feel an Amazon-Hachette Spat,” The New York Times, May 9, 2014 (<https://www.nytimes.com/2014/05/10/technology/writers-feel-an-amazon-hachette-spat.html>)

⁶⁶ Alex Shephard, “Richard Russo: Amazon Does Not Think ‘Books Are Different and Special,’” July 15, 2014 (<https://www.mhpbooks.com/richard-russo-amazon-does-not-think-books-are-different-and-special/>)

⁶⁷ David Streitfeld, “Accusing Amazon of Antitrust Violations, Authors and Booksellers Demand Inquiry,” The New York Times, July 13, 2015 (<https://www.nytimes.com/2015/07/14/technology/accusing-amazon-of-antitrust-violations-authors-and-booksellers-demand-us-inquiry.html>); Giuseppe Macri, “Bestselling Author Says Amazon’s the Darth Vader of the Literary World,” Insidesources, Jan. 13, 2016 (<http://www.insidesources.com/14445-2/>).

⁶⁸ Adam Sherwin, “Author Ursula K. LeGuin Lashes Out at Amazon and Sell-outs in Awards Speech,” The Independent, Nov. 20, 2014 (<https://www.independent.co.uk/arts-entertainment/books/news/author-ursula-k-le-guin-lashes-out-at-amazon-and-sell-outs-in-awards-speech-9873599.html>).

⁶⁹ Constance Grady, “Amazon Made a Small Change to the Way it Sells Books. Publishers are Terrified,” Vox, May 19, 2017 (<https://www.vox.com/culture/2017/5/19/15596050/amazon-buy-box-publishing-controversy>)

⁷⁰ Farhad Manjoo, “Tech’s ‘Frightful Five’ Will Dominate Digital Life for Foreseeable Future,” The New York Times, Jan. 20, 2016 (<https://www.nytimes.com/2016/01/21/technology/techs-frightful-5-will-dominate-digital-life-for-foreseeable-future.html>); see also “How to Tame the Tech Titans,” The Economist, Jan. 18, 2018 (<https://www.economist.com/news/leaders/21735021-dominance-google-facebook-and-amazon-bad-consumers-and-competition-how-tame>) (“Increasingly, [Google, Facebook and Amazon] are the market itself, providing the infrastructure (or “platforms”) for much of the digital economy.”)

⁷¹ Nick Srnicek, “We Need to Nationalize Google, Facebook and Amazon. Here’s Why,” The Guardian, Aug. 30, 2017 (<https://www.theguardian.com/commentisfree/2017/aug/30/nationalise-google-facebook-amazon-data-monopoly-platform-public-interest>)

The technology reporter for The New York Times has opined that control over platforms distinguishes today's handful of leading tech companies, including Amazon, from the others. That control helps insulate the companies from challenge and allows them to have more "expansive" visions that include forays into entertainment, health care and virtual reality.⁷² The structural benefits of platform dominance make Amazon "unique in the history of global commerce" and allow it to "grow stronger and less assailable with each purchase."⁷³ U.S. Senator Elizabeth Warren has endorsed the idea that Amazon's platforms "can become a tool to snuff out competition."⁷⁴

Amazon operates three major platforms, two supporting e-Commerce and one providing "cloud computing" resources. Amazon's online commerce platform Marketplace allows third-party sellers to use Amazon's site to sell their products alongside those sold by Amazon itself. Estimates peg the proportion of Amazon's sales attributable to third-party sellers at 70% for 2017.⁷⁵ Fulfillment-by-Amazon, which allows sellers to use Amazon's warehouses and delivery operations, is a physical platform for online commerce.

Amazon's profitable cloud computing division, Amazon Web Services ("AWS") is the third platform. It boasts more than triple the market share of its closest competitor⁷⁶ and provides the storage and hardware infrastructure for digital heavyweights such as Netflix.⁷⁷

Until recently, platform dominance was viewed as benign because platforms eliminated frictions and prices were low. Network effects, in which the value of a platform for an individual participant is increased as more participants join,⁷⁸ were considered helpful as, for example, additional customer reviews and data led to better recommendations. Attention has now turned, however, to the "dark side" of Amazon's dominance of platforms. The advantages they confer "unnerve observers from the far left to the White House and even at the pro-market

⁷² Farhad Manjoo, "Tech's 'Frightful Five' Will Dominate Digital Life for Foreseeable Future," The New York Times, Jan. 20, 2016 (<https://www.nytimes.com/2016/01/21/technology/techs-frightful-5-will-dominate-digital-life-for-foreseeable-future.html>). Manjoo notes, though, that "the threat of regulation or other forms of government intervention" could threaten these companies' hegemony.

⁷³ Michael J. Coren, "There's Precedent for Amazon Competing With So Many Companies. It Doesn't End Well." Quartz, Oct. 8, 2017 (<https://qz.com/1107328/theres-precedent-for-amazon-competing-with-so-many-companies-it-doesnt-end-well/>)

⁷⁴ Mario Trujillo, "Warren Targets Amazon, Apple, Google in Anti-Monopoly Speech," The Hill, June 29, 2016 (<http://thehill.com/policy/technology/285989-warren-targets-amazon-apple-google-in-speech-against-monopolies>)

⁷⁵ Laura Stevens, "Amazon Snips Prices of Other Sellers' Items Ahead of Holiday Onslaught," The Wall Street Journal, Nov. 5, 2017 (<https://www.wsj.com/articles/amazon-snips-prices-on-other-sellers-items-ahead-of-holiday-onslaught-1509883201>)

⁷⁶ Dan Weil, "Amazon the Great," Institutional Investor, Nov. 3, 2017 (<https://www.institutionalinvestor.com/article/b15gc4306v5cv0/amazon-the-great>)

⁷⁷ Farhad Manjoo, "Tech's 'Frightful Five' Will Dominate Digital Life for Foreseeable Future," The New York Times, Jan. 20, 2016 (<https://www.nytimes.com/2016/01/21/technology/techs-frightful-5-will-dominate-digital-life-for-foreseeable-future.html>)

⁷⁸ Greg Ip, "The Antitrust Case Against Facebook, Google and Amazon," The Wall Street Journal, Jan. 16, 2018

University of Chicago, which spawned the big-isn't-necessarily-bad legal shift under President Reagan.”⁷⁹

Platforms are increasingly seen as a special, and especially effective, barrier to entry, stifling competition and innovation.⁸⁰ Marketplace leverages Amazon’s customer base—55% of product searches now start on Amazon, rather than a search engine⁸¹—to draw third-party sellers to Amazon, giving Amazon a cut of their sales. Many of these sellers compete with Amazon: “By controlling this critical infrastructure, Amazon both competes with other companies and sets the terms by which these same rivals can reach the market.”⁸² Third-party sellers complain that Amazon has extensive leverage to set terms and rules once a seller is on Marketplace. As one seller explained, “You completely rely on Amazon’s rules and those rules tend to change a lot.”⁸³ In 2013, for example, Amazon hiked fees by up to 70%, sparking outrage among sellers, who were nonetheless unwilling to speak for attribution due to fear of Amazon’s reaction. A UK seller was quoted as saying he was “very worried,” but “Is there anything we can do about it? No, they’re Amazon.”⁸⁴

Amazon introduced “Discounts by Amazon” on certain third-party sellers’ items late last year, without those sellers’ consent (or in some cases, knowledge), in order to keep prices lower than those charged on rival sites. Some sellers worried that the lower prices caused them to violate agreement with manufacturers or other marketplaces related to minimum prices or pricing parity.⁸⁵ Amazon thus compromised sellers’ interests to benefit itself. By having private label versions of many products, Amazon’s hand is strengthened in negotiating with third-party sellers.⁸⁶

⁷⁹ Jed Graham, “The Amazon Monopoly Problem: Prime Time For Anti-trust Action vs. Internet Giants,” Investors Business Daily, Sept. 18, 2017 (<https://www.investors.com/news/technology/amazon-monopoly-problem-antitrust-action-vs-amazon-facebook-google/>)

⁸⁰ E.g., Jed Graham, “The Amazon Monopoly Problem: Prime Time For Anti-trust Action vs. Internet Giants,” Investors Business Daily, Sept. 18, 2017 (<https://www.investors.com/news/technology/amazon-monopoly-problem-antitrust-action-vs-amazon-facebook-google/>) (“Economists and technologists worry that these internet companies’ dominance will snuff out innovation.”)

⁸¹ Jason Del Rey, “55 Percent of Online Shoppers Start Their Product Searches on Amazon,” Recode, Sept. 27, 2016 (<https://www.recode.net/2016/9/27/13078526/amazon-online-shopping-product-search-engine>)

⁸² Olivia LeVecchia & Stacy Mitchell, “Amazon’s Stranglehold: How the Company’s Tightening Grip is Stifling Competition, Eroding Jobs and Threatening Communities,” Institute for Local Self-Reliance, Nov. 2016, at 5 (https://ilsr.org/wp-content/uploads/2016/11/ILSR_AmazonReport_final.pdf)

⁸³ Olivia LeVecchia & Stacy Mitchell, “Amazon’s Stranglehold: How the Company’s Tightening Grip is Stifling Competition, Eroding Jobs and Threatening Communities,” Institute for Local Self-Reliance, Nov. 2016, at 21 (https://ilsr.org/wp-content/uploads/2016/11/ILSR_AmazonReport_final.pdf)

⁸⁴ Simon Bowers, “Amazon’s Fees Hike for Third-Party Traders Provokes Fury,” The Guardian, Mar. 28, 2013 (<https://www.theguardian.com/technology/2013/mar/28/amazon-fees-hike-third-party>)

⁸⁵ Laura Stevens, “Amazon Snips Prices of Other Sellers’ Items Ahead of Holiday Onslaught,” The Wall Street Journal, Nov. 5, 2017 (<https://www.wsj.com/articles/amazon-snips-prices-on-other-sellers-items-ahead-of-holiday-onslaught-1509883201>)

⁸⁶ Olivia LeVecchia & Stacy Mitchell, “Amazon’s Stranglehold: How the Company’s Tightening Grip is Stifling Competition, Eroding Jobs and Threatening Communities,” Institute for Local Self-Reliance, Nov. 2016, at 25 (https://ilsr.org/wp-content/uploads/2016/11/ILSR_AmazonReport_final.pdf)

AWS was at first just a platform allowing users to have access to Amazon's computing power and storage. More recently, Amazon has begun using AWS to launch other services, such as artificial intelligence and database, leveraging its dominance in the cloud to dominate other markets.⁸⁷ AWS is also being deployed in service of Amazon's voice-assistant technology Alexa: AWS will host developers of Alexa "skills" for free, as long as their user bases are small enough.⁸⁸

Amazon determines products' rank in search results and display, giving it another opportunity to favor its own products over those of its competitors⁸⁹ and extract fees from sellers for favorable placement.⁹⁰ A high-profile investigation by ProPublica in 2016 of 250 frequently-purchased products showed that Amazon's algorithms often gave preferential presentation to Amazon's own products rather than cheaper listings for the same product from other sellers.⁹¹ An article in The Wall Street Journal related a finding by a company that investigates anti-competitive behavior that when a shopper views an Amazon private label item, the items displayed below under "Customers Who Bought This Item Also Bought" were dominated by Amazon private label items as well.⁹²

An important set of concerns around platform dominance relate to the data Amazon obtains from providing platforms. Many observers claim that access to data distinguishes platform dominance from ordinary market dominance.

Amazon's own customer orders as well as those from third-party seller platform Marketplace give the company access to large amounts of data about customer purchases. Amazon competes directly with many of these sellers, and, as with the terms it sets for Marketplace, the company can use this data to benefit itself at the expense of other sellers.

A 2012 article in The Wall Street Journal described Marketplace as "a vast laboratory" for Amazon to "spot new products to sell, test sales of potential new goods, and exert more control

⁸⁷ Jason Bloomberg, "Why Amazon Web Services is the Mother of All Candy Stores," Forbes, Dec. 3, 2017 (<https://www.forbes.com/sites/jasonbloomberg/2017/12/03/why-amazon-web-services-is-the-mother-of-all-candy-stores/#22ba72c85d18>)

⁸⁸ Alex Hern, "Amazon Web Services: The Secret to the Online Retailer's Future Success," The Guardian, Feb. 2, 2017 (<https://www.theguardian.com/technology/2017/feb/02/amazon-web-services-the-secret-to-the-online-retailers-future-success>)

⁸⁹ Olivia LeVecchia & Stacy Mitchell, "Amazon's Stranglehold: How the Company's Tightening Grip is Stifling Competition, Eroding Jobs and Threatening Communities," Institute for Local Self-Reliance, Nov. 2016, at 12 (https://ilsr.org/wp-content/uploads/2016/11/ILSR_AmazonReport_final.pdf)

⁹⁰ Olivia LeVecchia & Stacy Mitchell, "Amazon's Stranglehold: How the Company's Tightening Grip is Stifling Competition, Eroding Jobs and Threatening Communities," Institute for Local Self-Reliance, Nov. 2016, at 12 (https://ilsr.org/wp-content/uploads/2016/11/ILSR_AmazonReport_final.pdf)

⁹¹ Julia Angwin & Surya Mattu, "Amazon Says it Puts Customers First. But its Pricing Algorithm Doesn't." ProPublica, Sept. 20, 2016 (<https://www.propublica.org/article/amazon-says-it-puts-customers-first-but-its-pricing-algorithm-doesn-t>)

⁹² Greg Ip, "The Antitrust Case Against Facebook, Google and Amazon," The Wall Street Journal, Jan. 16, 2018 (<https://www.wsj.com/articles/the-antitrust-case-against-facebook-google-amazon-and-apple-1516121561>)

over pricing.”⁹³ A former Amazon merchandising director recounted how Amazon learned how to compete in direct retailing in new categories by using the Marketplace platform to analyze data about third-party sellers.⁹⁴ In a recent survey, 45% of third-party sellers said their “biggest worry” was about Amazon competing with them.⁹⁵ A third-party seller of pet care products on Marketplace summed up this dynamic: “If we find a nice product that starts selling well, you can bet that within six months Amazon will start selling it and undercut us.”⁹⁶ Amazon also has access to massive amounts of data from AWS. Concerns have been raised that Amazon could use that data to harm its competitors.⁹⁷

Amazon’s ability to squeeze its competitors hurts innovation and product diversity. There were 108,000 fewer independent retailers in 2016 than in 2001, a 40% drop,⁹⁸ and many observers link that decrease to Amazon’s growth.⁹⁹ An article in New Republic relates that “Wall Street analysts have compiled a ‘Death by Amazon’ index to track the retail companies most likely to be killed off by the online giant.”¹⁰⁰

The disappearance of independent retailers, in turn, keeps new products from entering the market. According to one report, “Manufacturers are alarmed at the prospect of a future where this market diversity gives way to a single online platform, and they say Amazon’s dominance is already reducing their ability to invent and launch new products.”¹⁰¹ Similar concerns have been raised regarding innovation and diversity of grocery products as Amazon moves to centralize Whole Foods’ operations.¹⁰² An article in The Wall Street Journal advocating policy action said

⁹³ Greg Bensinger, “Competing With Amazon on Amazon,” The Wall Street Journal, June 27, 2012 (<https://www.wsj.com/articles/SB10001424052702304441404577482902055882264>)

⁹⁴ Olivia LeVecchia & Stacy Mitchell, “Amazon’s Stranglehold: How the Company’s Tightening Grip is Stifling Competition, Eroding Jobs and Threatening Communities,” Institute for Local Self-Reliance, Nov. 2016, at 18 (https://ilsr.org/wp-content/uploads/2016/11/ILSR_AmazonReport_final.pdf)

⁹⁵ Tom Ryan, “Should Amazon’s Third-Party Sellers Worry About Amazon?” Retailwire, May 1, 2017 (<http://www.retailwire.com/discussion/should-amazons-third-party-sellers-worry-about-amazon/>)

⁹⁶ Jennifer Rankin, “Third-Party Sellers and Amazon—a Double-Edged Sword in E-Commerce,” The Guardian, June 23, 2015 (<https://www.theguardian.com/technology/2015/jun/23/amazon-marketplace-third-party-seller-faustian-pact>)

⁹⁷ Jay Greene & Laura Stevens, “Wal-Mart to Vendors: Get Off Amazon’s Cloud,” The Wall Street Journal, June 21, 2017 (<https://www.wsj.com/articles/wal-mart-to-vendors-get-off-amazons-cloud-1498037402>)

⁹⁸ <https://ilsr.org/monopoly-power-and-the-decline-of-small-business/>

⁹⁹ E.g., Adam Hartung, “How the ‘Amazon Effect’ Will Change Your Life and Investments,” Forbes, Feb. 28, 2017 (<https://www.forbes.com/sites/adamhartung/2017/02/28/how-the-amazon-effect-will-change-your-life-and-investments/#148026585e76>)

¹⁰⁰ Matt Stoller, “The Return of Monopoly,” New Republic, July 13, 2017 (<https://newrepublic.com/article/143595/return-monopoly-amazon-rise-business-tycoon-white-house-democrats-return-party-trust-busting-roots>)

¹⁰¹ Olivia LeVecchia & Stacy Mitchell, “Amazon’s Stranglehold: How the Company’s Tightening Grip is Stifling Competition, Eroding Jobs and Threatening Communities,” Institute for Local Self-Reliance, Nov. 2016, at 13 (https://ilsr.org/wp-content/uploads/2016/11/ILSR_AmazonReport_final.pdf)

¹⁰² Deirdre Bosa, “One Month After Amazon Bought Whole Foods, Some Investors and Suppliers Are Losing Enthusiasm,” CNBC, Set. 28, 2017 (<https://www.cnbc.com/2017/09/28/amazon-whole-foods-some-investors-suppliers-less-enthusiastic.html>)

of Amazon and other tech giants: “If they’re imposing a cost, it may not be what customers pay but the products they never see.”¹⁰³

The number of new businesses started each year is the lowest in 30 years. One persuasive explanation is that the largest tech firms, including Amazon, are so impervious to competition that funding has dried up. One article on this phenomenon quoted a startup founder saying “People are not getting funded because Amazon might one day compete with them . . . If it was startup versus startup, it would have been a fair fight, but startup versus Amazon and it’s game over.”¹⁰⁴ And although high-growth startups--those whose founders want to create a big company and which make “disproportionately large contributions” to job creation--are being founded at the same rate, they are not succeeding as frequently; the “increased power of established incumbents” has been suggested as a possible reason.¹⁰⁵

AWS’s market dominance, and the amount of web traffic affected by an AWS outage, has spurred a debate.¹⁰⁶ In February 2017, Amazon’s cloud storage service experienced what the company called “high error rates,” leading to problems with many prominent sites and applications hosted by AWS. As Wired pointed out after the outage, “The “winner takes all” dynamic of the tech industry concentrates more and more power into fewer and fewer companies. That consolidation has implications for competition but also affects the resilience of the internet itself.”¹⁰⁷

Policy Responses

Amazon’s dominance has spurred influential commentators, academics and policymakers to propose various kinds of reforms. Before discussing these, it is worth noting that European regulators are already using existing law to penalize anticompetitive practices. For example, the European Ministry has filed a complaint against Amazon for “unbalanced relations” with its vendors, including the right to change terms or suspend contracts with third-party sellers. The Ministry is seeking a fine of \$11.8 million.¹⁰⁸

One response has called for U.S. antitrust doctrine to take into account the kinds of anti-competitive practices and structural barriers to entry that make Amazon so impervious to

¹⁰³ Greg Ip, “The Antitrust Case Against Facebook, Google and Amazon,” The Wall Street Journal, Jan. 16, 2018 (<https://www.wsj.com/articles/the-antitrust-case-against-facebook-google-amazon-and-apple-1516121561>)

¹⁰⁴ Olivia Solon, “As Tech Companies Get Richer, Is It ‘Game Over’ For Startups?” The Guardian, Oct. 20, 2017 (<https://www.theguardian.com/technology/2017/oct/20/tech-startups-facebook-amazon-google-apple>)

¹⁰⁵ James Surowiecki, “Why Startups Are Struggling,” MIT Technology Review, June 15, 2016 (<https://www.technologyreview.com/s/601497/why-startups-are-struggling/>)

¹⁰⁶ Both sides’ views were reflected in Sonya Mann, “No, It’s Not Time to Treat Amazon as a Monopoly,” Inc., Mar. 1, 2017 (<https://www.inc.com/sonya-mann/aws-outage-centralization.html>)

¹⁰⁷ Klint Finley, “The Amazon S3 Outage is What Happens When One Site Hosts Too Much of the Internet,” Wired, Feb. 28, 2017 (https://www.wired.com/2017/02/happens-one-site-hosts-entire-internet/?mbid=nl_22817_p3&CNDID=37566169)

¹⁰⁸ Dominique Vidalon & Gilles Guillaume, “The French Government Reportedly Filed a Complaint About Amazon Abusing its Dominance,” Reuters, Dec. 18, 2017 (<http://www.businessinsider.com/r-france-files-complaint-against-amazon-for-abuse-of-dominant-position-paper-2017-12>)

challenge. Over the past two years, a flood of media coverage has focused on whether Amazon has reached a tipping point in terms of size and power.¹⁰⁹

In particular, some urge that antitrust law should consider factors other than current prices to measure consumer welfare in analyzing the large technology firms like Google, Facebook and Amazon. Looking only at prices is a relatively development; prior to the ascendance of that view in the 1970s and 1980s, antitrust law used a market structuralism lens to consider whether concentrated market power had the potential to thwart competition.¹¹⁰

Proponents of shifting antitrust doctrine in this way point out that although Amazon currently charges low prices, eliminating competition via platform dominance or predatory behavior would enable Amazon to later raise prices without consequence. Economist Fiona Scott Morton has argued out that “the consumer welfare standard covers today and tomorrow,” and has urged that the effect on innovation should be considered.¹¹¹ The Economist has also endorsed this approach: “Trustbusters should scrutinise mergers to gauge whether a deal is likely to neutralise a potential long-term threat, even if the target is small at the time.”¹¹² If such an analysis led to a conclusion that Amazon was hindering competition, it could be prevented from acquiring other companies or even broken up—for example, forced to spin off AWS.

Scholar Lina Khan, in an influential article in The Yale Law Journal, has argued that returning to a broader conception of consumer interests and promoting competitive markets (before they become uncompetitive) are consistent with legislative history. Architects of U.S. competition law were not just concerned with consumer welfare, she asserted, but also with the antidemocratic effect of concentrated economic power—“a menace to republican institutions themselves”—and the importance of “keeping markets open to independent firms.”¹¹³

¹⁰⁹ E.g., Greg Ip, “The Antitrust Case Against Facebook, Google and Amazon,” The Wall Street Journal, Jan. 16, 2018 (<https://www.wsj.com/articles/the-antitrust-case-against-facebook-google-amazon-and-apple-1516121561>); Jed Graham, “The Amazon Monopoly Problem: Prime Time For Anti-trust Action vs. Internet Giants,” Investors Business Daily, Sept. 18, 2017 (<https://www.investors.com/news/technology/amazon-monopoly-problem-antitrust-action-vs-amazon-facebook-google/>); Chris Sagers, “Crack Down on Amazon,” Slate, June 19, 2017 (http://www.slate.com/articles/business/moneybox/2017/06/yes_there_is_an_antitrust_case_against_amazon.html); Spencer Soper, “Amazon Antitrust Concerns Emerge in Washington and Wall Street,” Bloomberg, July 14, 2017 (<https://www.bloomberg.com/news/articles/2017-07-14/u-s-congressman-calls-for-hearings-on-amazon-s-whole-foods-bid>); Steven Pearlstein, “Is Amazon Getting Too Big?” The Washington Post, July 28, 2017 (https://www.washingtonpost.com/business/is-amazon-getting-too-big/2017/07/28/ff38b9ca-722e-11e7-9eac-d56bd5568db8_story.html?utm_term=.c7022a3f5d06); Angel Gonzalez, “How Big is Too Big? Amazon Sparks Antitrust Concerns,” The Seattle Times, Aug. 6, 2017 (<https://www.seattletimes.com/business/amazon/how-big-is-too-big-amazon-sparks-antitrust-concerns/>); Matt Stoller, “The Return of Monopoly,” New Republic, July 13, 2017 (<https://newrepublic.com/article/143595/return-monopoly-amazon-rise-business-tycoon-white-house-democrats-return-party-trust-busting-roots>)

¹¹⁰ Lina M. Khan, “Amazon’s Antitrust Paradox,” The Yale Law Journal Vol. 126, at 710, 718-719 (2017)

¹¹¹ Greg Ip, “The Antitrust Case Against Facebook, Google and Amazon,” The Wall Street Journal, Jan. 16, 2018 (<https://www.wsj.com/articles/the-antitrust-case-against-facebook-google-amazon-and-apple-1516121561>)

¹¹² “How to Tame the Tech Titans,” The Economist, Jan. 18, 2018 (<https://www.economist.com/news/leaders/21735021-dominance-google-facebook-and-amazon-bad-consumers-and-competition-how-tame>)

¹¹³ Lina M. Khan, “Amazon’s Antitrust Paradox,” The Yale Law Journal Vol. 126, at 710, 739-741 (2017)

Also being debated are two solutions that do not rely on antitrust law. The first is to give consumers ownership of the data generated by their Web browsing, purchases, Alexa commands and other online activities. Consumers could sell or license that data as they see fit, and Amazon would not enjoy a private benefit from customers' activity on its site or digital platforms. As The Economist put it, such a reform "would turn data from something titans hoard, to suppress competition, into something users share, to foster innovation."¹¹⁴

Finally, there have been calls to regulate as utilities those big technology firms whose platforms have become essential digital infrastructure.¹¹⁵ Khan suggested considering "elements of public utility regulation" for Amazon, given the company's provision of "essential infrastructure" for ecommerce.¹¹⁶ The Economist, citing an emerging consensus that big tech is too dominant, advised that "tech bosses should view regulation as utilities as a long-term risk."¹¹⁷

That more conservative publications like The Economist and The Wall Street Journal are espousing measures to contain Amazon's power is remarkable, since a hands-off approach to antitrust enforcement has prevailed for decades without objection. The growing consensus that Amazon is different, that it presents unique challenges for our society—economic, cultural, social and political challenges—and that measures may be necessary to check its power arguably threatens the viability of Amazon's long-term strategy and supports a conclusion that Amazon's growth and societal impact should be considered a significant social policy issue. As a result, Amazon has not met its burden of proving that the Proposal can be omitted pursuant to the ordinary business exclusion.

Vagueness

Amazon contends that the Proposal may be excluded in reliance on Rule 14a-8(i)(3) because it is impermissibly vague. That subsection allows exclusion of a proposal if it is so vague or indefinite that "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."¹¹⁸

Amazon claims first that the term "public debate" is too vague and that Amazon thus cannot ascertain what the Proposal means when it asks Amazon to report on risks arising out of the public debate over Amazon's growth and impact. But "public debate" is not language the Fund devised; it is a phrase used often in the shareholder proposal context. The Commission itself

¹¹⁴ "How to Tame the Tech Titans," The Economist, Jan. 18, 2018 (<https://www.economist.com/news/leaders/21735021-dominance-google-facebook-and-amazon-bad-consumers-and-competition-how-tame>)

¹¹⁵ Nick Srnicek, "We Need to Nationalize Google, Facebook and Amazon. Here's Why" The Guardian, Aug. 30, 2017 (<https://www.theguardian.com/commentisfree/2017/aug/30/nationalise-google-facebook-amazon-data-monopoly-platform-public-interest>)

¹¹⁶ Lina M. Khan, "Amazon's Antitrust Paradox," The Yale Law Journal Vol. 126, at 710, 798-802 (2017)

¹¹⁷ "What if Large Tech Firms Were Regulated Like Sewage Companies?" The Economist, Sept. 23, 2017 (<https://www.economist.com/news/business/21729455-being-treated-utilities-big-techs-biggest-long-term-threat-what-if-large-tech-firms-were>)

¹¹⁸ Staff Legal Bulletin 14B (Sept. 15, 2004)

defines a significant social policy issue as one that is a “consistent topic of widespread public debate.”¹¹⁹ As discussed above, the Staff reviewed submissions by proponents of net neutrality proposals in 2011 and 2012, finding that the “sustained public debate over the last several years” precluded exclusion on ordinary business grounds.¹²⁰

There is nothing mysterious about a public debate; it is serious discussion of a problem taking place through public channels of communication such as the media and relevant policy makers. By citing accounts in national general media, a law review article, statements by President Trump and investor-focused publications, the Proposal’s supporting statement illustrates the kinds of statements and activity that would be considered part of a public debate. Because the public debate at issue in the Proposal concerns market power, anticompetitive practices, impact on stakeholders and rethinking the definition of monopoly, it is unsurprising that the participants in the debate skew toward the business and legal press and that the policy makers are those who address particular business practices (e.g., state legislatures in the case of non-collection of sales tax, European antitrust regulators for anticompetitive behavior).

Amazon also suggests that “Amazon’s growth and societal impact” is excessively vague. “Growth” rather unambiguously refers to size; some of the pushback Amazon is now facing stems at least in part from perceptions that it has gotten too big, that it does too many different things. Consider headlines like “Will Amazon Take Over the World?” and “Amazon’s Takeover of the Economy is the Real Threat to American Jobs.”¹²¹

It would not be possible to describe every societal impact Amazon has in its myriad operations, geographical domains and lines of business within the confines of a 500-word proposal. For that reason, the Proposal illustrates the concept with examples drawn from Amazon’s physical infrastructure (automation in its warehouses), platforms (digital infrastructure), cultural influence (content) and social concerns (access to and use of data). Amazon could add discussion of risks created by other societal impacts if it believed those were consistent with the scope of the Proposal indicated by the examples.

Amazon speculates that the Proposal might be asking the company to address “how it displays product-related content” or “how the Company manages production of original video content.” That argument ignores the fact that the Proposal focuses not on the nuts and bolts of how Amazon gets work done but rather on the broader risks arising from the ways in which its businesses affect key constituencies. So for content quality and diversity, rather than describing how videos get made, Amazon could report on measures it takes to promote visibility of smaller publishers or less well-known authors, or funding it provides to support authors whose books require substantial time or research resources to complete. Likewise, in terms of risks arising

¹¹⁹ See Exchange Act Release No. 40018 (May 26, 1998).

¹²⁰ AT&T Inc. (Feb. 10, 2012). There, the proponents used media accounts as well as legislative and regulatory activity to show the existence of a widespread public debate.

¹²¹ Christopher Matthews, “Will Amazon Take Over the World?” Time, July 16, 2012 (<http://business.time.com/2012/07/16/will-amazon-take-over-the-world/>); Emily Peck, “Amazon’s Takeover of the Economy is the Real Threat to American Jobs,” Huffington Post, Nov. 29, 2016 (https://www.huffingtonpost.com/entry/amazon-jobs_us_583db239e4b06539a78a7992)

from use of data, the Proposal does not contemplate a technical discussion about data storage or retrieval, but instead a description of any structural barriers to misuse of data to harm customers or competitors.

The Staff has disagreed with similar vagueness arguments aimed at other proposals seeking disclosure regarding companies' impacts. For example, in The AES Corporation,¹²² the proposal asked the company to report on "the long-term impacts on the company's portfolio, of public policies and technological advances that are consistent with limiting global warming to no more than two degrees Celsius over pre-industrial levels." AES objected that the proposal was excessively vague because, among other things, it did not define "long-term impacts." The proponents did not respond to the request and, even without argument or explanation from them, the Staff found that the term did not make the proposal too vague.

Indeed, the Staff has refused to concur with the exclusion of proposals on vagueness grounds for a wide variety of proposal topics seeking enhanced disclosure on significant social policy issues. These include Colgate-Palmolive Company (inequities in employee compensation due to gender, race or ethnicity),¹²³ Caterpillar Inc. (human rights),¹²⁴ Citigroup Inc. (loan modifications, foreclosures and securitizations),¹²⁵ The Goldman Sachs Group, Inc. (political contributions),¹²⁶ and The Boeing Company (ethical criteria for military contracts).¹²⁷ In each of these cases, the company unsuccessfully argued to the Staff that the proposal in question should be excluded because the proposal failed to define key terms and therefore was vague or indefinite.

In sum, Amazon has not met its burden of establishing that it is entitled to exclude the Proposal in reliance on Rule 14a-8(i)(7) or (i)(3). Amazon's growth and societal impact is a significant social policy issue: its size, anti-competitive practices and platform dominance, all of which are important drivers of its success, pose major economic, cultural, social and political challenges. The Proposal asks straightforwardly for reporting on how Amazon is responding risks created by those challenges, and the Company's claim that neither it nor shareholders have any idea what the Proposal seeks is belied by the examples in the resolved clause and the additional discussion in the supporting statement. Accordingly, the Fund respectfully requests that Amazon's request for relief be denied.

* * *

¹²² The AES Corporation (Jan. 11, 2017)

¹²³ Colgate-Palmolive Company (February 1, 2017)

¹²⁴ Caterpillar Inc. (March 21, 2011)

¹²⁵ Citigroup, Inc. (March 2, 2011)

¹²⁶ The Goldman Sachs Group, Inc. (February 11, 2011)

¹²⁷ The Boeing Company (January 28, 2010)

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The Fund appreciates the opportunity to be of assistance in this matter. If you have any questions or need additional information, please contact me at (202) 637-5152 or brees@aflcio.org.

Sincerely,

A handwritten signature in black ink, appearing to read 'B. J. Rees', written in a cursive style.

Brandon J. Rees

Deputy Director, Corporations and Capital Markets

cc: Ronald O. Mueller
Gibson, Dunn & Crutcher LLP

Mark Hoffman
Amazon.com, Inc.

January 9, 2018

VIA E-MAIL

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

Re: *Amazon.com, Inc.*
Shareholder Proposal of AFL-CIO Reserve Fund
Exchange Act of 1934—Rule 14a-8

Ladies and Gentlemen:

This letter is to inform you that our client, Amazon.com, Inc. (the “Company”), intends to omit from its proxy statement and form of proxy for its 2018 Annual Meeting of Shareholders (collectively, the “2018 Proxy Materials”) a shareholder proposal (the “Proposal”) and statements in support thereof (the “Supporting Statement”) received from the AFL-CIO Reserve Fund (the “Proponent”).

Pursuant to Rule 14a-8(j), we have:

- filed this letter with the Securities and Exchange Commission (the “Commission”) no later than eighty (80) calendar days before the Company intends to file its definitive 2018 Proxy Materials with the Commission; and
- concurrently sent copies of this correspondence to the Proponent.

Rule 14a-8(k) and Staff Legal Bulletin No. 14D (Nov. 7, 2008) (“SLB 14D”) provide that shareholder proponents are required to send companies a copy of any correspondence that the proponents elect to submit to the Commission or the staff of the Division of Corporation Finance (the “Staff”). Accordingly, we are taking this opportunity to inform the Proponent that if the Proponent elects to submit additional correspondence to the Commission or the Staff with respect to this Proposal, a copy of that correspondence should be furnished concurrently to the undersigned on behalf of the Company pursuant to Rule 14a-8(k) and SLB 14D.

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THE PROPOSAL

The Proposal relates to the Company's growth and commercial success. Specifically, the Proposal states:

RESOLVED, that shareholders of Amazon.com Inc. ("Amazon") urge the Board of Directors (the "Board") to analyze and report to shareholders on the risks arising from the public debate over Amazon's growth and societal impact and how Amazon is managing or mitigating those risks. The report should address risks related to Amazon's role in providing physical and digital infrastructure, use of and control over data about customers and competitors, increasing reliance on automation and influence on the quality and diversity of content.

In the Supporting Statement, the Proponent states that "[a]s Amazon has grown, so has public debate over its size, dominant platforms and impacts on key constituencies." The Proponent then cites to numerous websites that appear to raise concerns about the Company's growth, such as the Company's "informational advantages in product development and pricing" and the Company's "impact on places in which it operates."

A copy of the Proposal, as well as related correspondence with the Proponent, is attached to this letter as Exhibit A.

BASES FOR EXCLUSION

The Proposal may properly be excluded from the 2018 Proxy Materials pursuant to:

- Rule 14a-8(i)(7) because the Proposal relates to the Company's public relations and because many aspects of the requested report implicate ordinary business matters; and
- Rule 14a-8(i)(3) because the scope of the requested report is so broad as to render the Proposal impermissibly vague and indefinite.

ANALYSIS

I. The Proposal May Be Excluded Under Rule 14-8(i)(7) Because The Proposal Addresses Matters Related To The Company's Ordinary Business Operations.

As discussed below, the Proposal may be omitted as it implicates the Company's ordinary business operations because: (A) it relates to the Company's management of its public

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relations; (B) it relates to the quality and content of the Company's products and services; and (C) it does not focus upon a significant policy issue.

According to the Commission's release accompanying the 1998 amendments to Rule 14a-8, the term "ordinary business" "refers to matters that are not necessarily 'ordinary' in the common meaning of the word," but instead the term "is rooted in the corporate law concept providing management with flexibility in directing certain core matters involving the company's business and operations." Exchange Act Release No. 40018 (May 21, 1998) (the "1998 Release"). In the 1998 Release, the Commission stated that the underlying policy of the ordinary business exclusion is "to confine the resolution of ordinary business problems to management and the board of directors, since it is impracticable for shareholders to decide how to solve such problems at an annual shareholders meeting," and identified two central considerations that underlie this policy. As relevant here, one of these considerations is that certain tasks are "so fundamental to management's ability to run a company on a day-to-day basis" that they cannot be subject to direct shareholder oversight. The Commission added, "[e]xamples include the management of the workforce, such as the hiring, promotion, and termination of employees, decisions on production quality and quantity, and the retention of suppliers." Although the Commission has stated that "proposals relating to such [ordinary business] matters but focusing on sufficiently significant social policy issues (e.g., significant discrimination matters) generally would not be considered excludable," the Staff has indicated that proposals relating to both ordinary business matters and significant social policy issues may be excludable in their entirety in reliance on Rule 14-8(i)(7) if they do not "transcend the day-to-day business matters" discussed in the proposals. 1998 Release.

Framing the shareholder proposal in the form of a request for a report, including requesting a report about certain risks, does not change the nature of the proposal. The Commission has stated that a proposal requesting the dissemination of a report may be excludable under Rule 14a-8(i)(7) if the subject matter of the report is within the ordinary business of the issuer. *See* Exchange Act Release No. 20091 (Aug. 16, 1983) (the "1983 Release"). *See also Johnson Controls, Inc.* (avail. Oct. 26, 1999) ("[Where] the subject matter of the additional disclosure sought in a particular proposal involves a matter of ordinary business . . . it may be excluded under [R]ule 14a-8(i)(7)."). A proposal's request for a review of certain risks also does not preclude exclusion if the underlying subject matter of the proposal is ordinary business. In Staff Legal Bulletin No. 14E (Oct. 27, 2009) ("SLB 14E"), the Staff explained how it evaluates shareholder proposals that request a risk assessment:

[R]ather than focusing on whether a proposal and supporting statement relate to the company engaging in an evaluation of risk, we will instead focus on the subject matter to which the risk pertains or that gives rise to the risk

[S]imilar to the way in which we analyze proposals asking for the preparation

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of a report, the formation of a committee or the inclusion of disclosure in a Commission-prescribed document—where we look to the underlying subject matter of the report, committee or disclosure to determine whether the proposal relates to ordinary business—we will consider whether the underlying subject matter of the risk evaluation involves a matter of ordinary business to the company.

A. *The Proposal Is Excludable Because It Relates To The Manner In Which The Company Conducts Its Public Relations.*

The Proposal asks for a report detailing the “risks arising from the public debate over Amazon’s growth and societal impact and how Amazon is managing or mitigating those risks.” The Supporting Statement asserts that the Company’s growth and success in a wide range of areas in which it competes has led to “growing public debate,” and cites a litany of topics ranging from the percentage of U.S. households who find the Company’s services useful, to the manner in which it displays and markets books, to the economic growth expected to be generated by the Company’s proposed second headquarters, to the fact that the Company operates in many regulated areas.¹ In essence, the Proposal focuses on the Company’s public relations, a topic that has long been held to implicate ordinary business considerations and thus to be excludable under Rule 14a-8(i)(7).

The Staff consistently has concurred that decisions regarding a company’s public relations are part of a company’s ordinary business operations. *See Johnson & Johnson* (avail. Feb. 23, 2017) (concurring with the exclusion under Rule 14a-8(i)(7) of a shareholder proposal asking that the company prepare a report detailing the known and potential risks and costs to the Company related to public pressure campaigns); *Best Buy Co.* (avail. Feb. 23, 2017) (same); *The Home Depot, Inc.* (avail. Feb. 23, 2017) (same); *see also Johnson & Johnson*

¹ Notably, the Company disagrees with many of the assertions made in the Supporting Statement and believes that many of them are false or misleading. For example, information regarding the Company’s beneficial economic impact on the United States is available at <https://www.amazon.com/p/feature/nsog9ct4onemec9> and in hundreds of news articles and announcements about the Company’s positive job creation and investment. In addition, information regarding how the Company is helping authors, small businesses, developers, and non-profits is available at <https://www.amazon.com/p/feature/92oy4j4mh9vm8q8>, as well as in hundreds of other news articles and announcements. Information regarding the Company’s contribution to job creation in general is also available on the About Amazon website at <https://www.amazon.com/p/feature/rzekmvyjojcp6uc>.

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(avail. Jan. 12, 2004) (concurring with the exclusion under Rule 14a-8(i)(7) of a shareholder proposal asking that the company review its pricing and marketing policies and issue a report disclosing how the company intended to “respond to . . . public pressure to reduce prescription drug pricing”); *Apple Computer, Inc.* (avail. Oct. 20, 1989) (concurring with exclusion under the predecessor to Rule 14a-8(i)(7) of a proposal requesting that the company create a committee to regulate public use of the company’s logo, stating the matter appeared directed toward “operational decisions with respect to advertising, public relations and related matters”).

Similar to *Johnson & Johnson* and the other precedents cited above, the Proposal requests a report that would include information about how the Company would respond to risks arising from the public debate concerning the Company’s growth and commercial success. As with the precedents cited above, the Proposal’s focus on specific public relations topics and the Company’s response to those topics would result in inappropriate shareholder involvement in the Company’s management of its public relations. By requesting that the Company address the public relations implications of various aspects of the Company’s operations, the Proposal seeks to introduce shareholder oversight of a routine aspect of the Company’s public relations and marketing activities. Moreover, the ordinary business implications of the Proposal are not altered by the fact that the Proposal asserts that there are risks arising from the Company’s public relations and requests a report analyzing those risks. Per the Staff’s guidance in SLB 14E, in evaluating a proposal that requests a risk assessment, “rather than focusing on whether a proposal and supporting statement relate to the company engaging in an evaluation of risk, [the Staff] will focus on the subject matter to which the risk pertains or that gives rise to the risk.” Here, the “subject matter to which the risk pertains” is how the Company conducts its public relations, which, as the examples of *Johnson & Johnson* and other precedents cited above show, is a matter of ordinary business.

B. Regardless Of Whether The Proposal Touches Upon Significant Policy Issues, The Entire Proposal Is Excludable Because It Addresses Ordinary Business Matters.

Even if some of the litany of topics listed in the Proposal and Supporting Statement touched upon significant policy issues, the Proposal properly can be excluded under Rule 14a-8(i)(7) because the thrust and focus of the Proposal relates to the Company’s public relations—a matter of ordinary business—and because the scope of the Proposal also encompasses ordinary business matters.

The Staff consistently has concurred in the exclusion of proposals that touch upon a significant policy matter but that also encompass ordinary business matters. This position prevents proponents from circumventing the standards of Rule 14a-8(i)(7) by combining

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ordinary business matters with a significant policy issue. For example, the proposal in *PetSmart, Inc.* (avail. Mar. 24, 2011) requested that the board require its suppliers to certify they had not violated “the Animal Welfare Act, the Lacey Act, or any state law equivalents,” the principal purpose of which related to preventing animal cruelty. The Staff granted no-action relief under Rule 14a-8(i)(7) and stated, “Although the humane treatment of animals is a significant policy issue, we note your view that the scope of the laws covered by the proposal is ‘fairly broad in nature from serious violations such as animal abuse to violations of administrative matters such as record keeping.’” Similarly, in *Union Pacific Corp.* (avail. Feb. 25, 2008), the Staff concurred with the exclusion of a proposal requesting disclosure of the company’s efforts to safeguard the company’s operations from terrorist attacks and other homeland security incidents. The company argued that the proposal was excludable because it related to securing the company’s operations from both extraordinary incidents, such as terrorism, and ordinary incidents, such as earthquakes, floods, and counterfeit merchandise. The Staff concurred that the proposal was excludable because it implicated matters relating to the company’s ordinary business operations. *See also Apache Corp.* (avail. Mar. 5, 2008) (concurring with the exclusion of a proposal under Rule 14a-8(i)(7), stating “in particular that some of the principles [referenced in the proposal] related to [the company’s] ordinary business operations”).

Thus, even if there were aspects of the Company’s growth and societal impact that touch upon significant policy issues, the Proposal is excludable because it also encompasses ordinary business considerations. For example, the Proposal states that the requested report should address what it describes as the Company’s “influence on the quality and diversity of content,” and the Supporting Statement reiterates this by asserting that “[c]oncerns have been raised regarding Amazon’s effect on content quality and diversity, given its . . . control over product display.” Yet, the Staff has consistently concurred that decisions regarding content quality and product display do not raise significant policy issues but instead implicate ordinary business considerations.

For example, in *Netflix, Inc.* (avail. Mar. 14, 2016), the Staff concurred with the exclusion of a proposal requesting that “the company issue a report describing how company management identifies, analyzes and oversees reputational risks related to offensive and inaccurate portrayals of Native Americans, American Indians and other indigenous peoples,” as relating to “the nature, presentation and content of programming and film production.” *See also The Walt Disney Co.* (avail. Nov. 22, 2006) (concurring with the exclusion of a proposal requesting that Disney report on steps undertaken to avoid stereotyping in its products because the proposal related to the nature, presentation and content of programming); *Time Warner Inc. (Trinity Health Systems)* (avail. Jan. 21, 2005) (concurring in the exclusion of a proposal under Rule 14a-8(i)(7) that requested a report on the impact on adolescent health

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arising from their exposure to smoking in movies or other company programming that the company released or distributed); *BellSouth Corp.* (avail. Jan. 25, 1999) (proposal seeking to amend the terms and prices in cellular phone service contracts for existing customers excludable as relating to product terms and prices). By requesting that the Company report on the quality and diversity of content, the Proposal relates to the Company's ordinary business operations and may therefore be excluded pursuant to Rule 14a-8(i)(7).

In addition, the Supporting Statement references concerns regarding the Company's "control over product display." However, the Staff has long recognized that decisions regarding a company's display or advertising of products it sells and a company's communications with customers relate to a company's ordinary business operations and thus may be excluded under Rule 14a-8(i)(7). For example, in *J.C. Penney Co., Inc.* (avail. Mar. 30, 2000), the Staff concurred in the exclusion of a proposal recommending the company include in its print advertisements certain information, including phone numbers, store addresses, and web addresses, noting that the proposal related to "the manner in which a company advertises its products and the procedures for communicating with customers." *See also PepsiCo, Inc.* (avail. Jan. 10, 2014) (concurring in the exclusion under Rule 14a-8(i)(7) of a proposal requesting the issuance of a public statement regarding the "poor taste" of the company's advertising as relating to the way the company advertises its products); *FedEx Corp.* (avail. Jul. 14, 2009) (concurring in the exclusion under Rule 14a-8(i)(7) of a proposal requesting the company prepare a report addressing, among other things, efforts to disassociate the company from imagery which disparages American Indians as relating to the way the company advertises its products).

The Supporting Statement illustrates how broad the scope of the Proposal is intended to be, suggesting that virtually any aspect of the Company's growth or operations that has generated a news article or that touches upon a regulated area is to be encompassed by the requested report. In implementing the Proposal, the Company would be required to analyze the risks associated with negative opinions regarding a wide range of the Company's ordinary business operations, from the Company's selection of where it locates its second headquarters to the Company's development and use of robots. As with the precedents cited above, where companies were permitted to exclude broad proposals that addressed ordinary business matters regardless of whether those proposals also touched upon significant policy issues, the Proposal encompasses many aspects of the Company's ordinary business decisions regarding topics that do not implicate a significant policy issue. Thus, the Proposal is not focused on a significant policy issue and therefore may be excluded under Rule 14a-8(i)(7).

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II. The Proposal May Be Excluded Under Rule 14a-8(i)(3) Because The Proposal Is Impermissibly Vague and Indefinite.

The Proposal requests that the Company report on “the risks arising from the public debate over Amazon’s growth and societal impact,” and both the Proposal and Supporting Statement list a wide-ranging litany of topics that the requested report “should address.” As reflected in the Proposal and Supporting Statement, the requested report seeks to encompass any topic that has generated a report that includes a negative comment on the Company’s growth or societal impact. As such, the report requested by the Proposal is so vague and ill-defined as to render the Proposal excludable under Rule 14a-8(i)(3).

Rule 14-8(i)(3) permits the exclusion of a shareholder proposal if the proposal or 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 soliciting materials. The Staff consistently has taken the position that a shareholder proposal is excludable under Rule 14a-8(i)(3) when it is vague and indefinite so that “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); *see also Dyer v. SEC*, 287 F.2d 773, 781 (8th Cir. 1961) (“[I]t appears to us that the proposal, as drafted and submitted to the company, is so vague and indefinite as to make it impossible for either the board of directors or the stockholders at large to comprehend precisely what the proposal would entail.”).

The Staff has explained that “[i]n evaluating whether a proposal may be excluded” for being impermissibly vague or misleading, it “consider[s] only the information contained in the proposal and supporting statement and determine[s] whether, based on that information, shareholders and the company can determine what actions the proposal seeks.” Staff Legal Bulletin 14G (Oct. 16, 2012); *see also McKesson Corp.* (avail. Apr. 17, 2013). In applying this standard, the Staff has concurred with the exclusion of proposals that, for example, failed to list standards for determining whether a director qualified as an independent director. *See General Electric Co.* (avail. Jan. 15, 2015); *see also Chevron Corp.* (avail. Mar. 15, 2013) (same).

Here, the Proposal requests a report on the “public debate” regarding the Company, a topic so broad and ill-defined that neither the Company nor shareholders could determine with any reasonable certainty what is encompassed. Instead of clarifying the scope of the requested report, the Proposal employs capacious terminology such as the Company’s “role in providing physical and digital infrastructure,” the Company’s “use of and control over data about customers and competitors,” and the Company’s “quality and diversity of content.” The Supporting Statement provides little, if any, meaningful clarity. As addressed in the

Office of Chief Counsel
Division of Corporation Finance
January 9, 2018
Page 9

discussion above regarding the Company's diversity and quality of content, the Proposal could be asking the Company to address risks associated with the products it sells and how it displays product-related content, how the Company manages its media streaming content, how the Company manages production of original video content, or something else entirely. Ambiguities such as this fatally plague the Proposal, and the random, discrete news stories referenced in the Supporting Statement only add to the uncertain scope of the Proposal. As such, the Proposal therefore may properly be excluded under Rule 14a-8(i)(3) as vague and indefinite, since neither shareholders nor the Company can determine with any reasonable certainty what actions the Proposal seeks.

CONCLUSION

Based upon the foregoing analysis, we respectfully request that the Staff concur that it will take no action if the Company excludes the Proposal from its 2018 Proxy Materials.

We would be happy to provide you with any additional information and answer any questions that you may have regarding this subject. Correspondence regarding this letter should be sent to shareholderproposals@gibsondunn.com. If we can be of any further assistance in this matter, please do not hesitate to call me at (202) 955-8671, or Mark Hoffman, the Company's Vice President & Associate General Counsel and Assistant Secretary, at (206) 266-2132.

Sincerely,



Ronald O. Mueller

Enclosures

cc: Mark Hoffman, Amazon.com, Inc.
Brandon Rees, AFL-CIO Reserve Fund

EXHIBIT A

From: Brandon Rees [<mailto:brees@aficio.org>]

Sent: Tuesday, December 12, 2017 1:12 PM

To: Zapolsky, David <[REDACTED]>

Cc: Hoffman (Legal), Mark <[REDACTED]>; Manney, Darin <[REDACTED]>;

McCraley, Gavin <[REDACTED]>

Subject: AFL-CIO shareholder proposal for the 2018 annual meeting

Dear Mr. Zapolsky,

Attached is the AFL-CIO Reserve Fund's shareholder proposal that we are submitting for the 2018 annual meeting of Amazon.com, Inc. A hardcopy of our proposal is also being sent by UPS Next Day Air. We look forward to discussing our shareholder proposal with you.

Sincerely,

Brandon Rees

brees@aficio.org

202-637-5152



AFL-CIO

AMERICA'S UNIONS

**American Federation
of Labor and
Congress of Industrial
Organizations**

815 16th St., NW
Washington, DC 20006
202-637-5000
www.aflcio.org

December 12, 2017

Amazon.com, Inc.
Office of the Corporate Secretary
410 Terry Avenue North
Seattle, Washington 98109

Dear Corporate Secretary:

On behalf of the AFL-CIO Reserve Fund (the "Fund"), I write to give notice that pursuant to the 2017 proxy statement of Amazon.com Inc. (the "Company"), the Fund intends to present the attached proposal (the "Proposal") at the 2018 annual meeting of shareholders (the "Annual Meeting"). The Fund requests that the Company include the Proposal in the Company's proxy statement for the Annual Meeting.

The Fund is the beneficial owner of 240 shares of voting common stock (the "Shares") of the Company. The Fund has held at least \$2,000 in market value of the Shares for over one year, and the Fund intends to hold at least \$2,000 in market value of the Shares through the date of the Annual Meeting. A letter from the Fund's custodian bank documenting the Fund's ownership of the Shares is enclosed.

The Proposal is attached. I represent that the Fund or its agent intends to appear in person or by proxy at the Annual Meeting to present the Proposal. I declare that the Fund has no "material interest" other than that believed to be shared by stockholders of the Company generally. Please direct all questions or correspondence regarding the Proposal to Brandon Rees at 202-637-5152 or brees@aflcio.org.

Sincerely,

Heather Slavkin Corzo, Director
Office of Investment

Attachments

HSC/sdw
opeiu #2, afl-cio

EXECUTIVE COUNCIL

RICHARD L. TRIMBRA
PRESIDENT

ELIZABETH H. SHULZ
SECRETARY/TREASURER

TERENE GIBONE
EXECUTIVE VICE PRESIDENT

- Michael Sacco
- Robert A. Gaskin/Dale
- Ernest Schellberger
- Clyde Rivers
- Cecil Roetta
- Leo W. Gerard
- William Hite
- Gregory J. Jansmann
- Nancy Winkler
- Rosa Ann DeMora
- Fred Redmond
- Matthew Lieb
- Ronald Weingarten
- Rogelio "Roy" A. Flores
- Fredric V. Roberts
- Dean Woodford
- Newton B. Jones
- D. Michael Langford
- Bokimer Velasquez
- James Boland
- Bruce R. Smith
- Lee A. Saunders
- Terry O'Sullivan
- Lourence J. Hanley
- Loretta Johnson
- Jeanne Calkins
- ColMaurice Smith
- Sara McGowan
- Luiza Reyes
- J. David Cox
- David Dunfee
- D. Fayle
- Kenneth Rymaszewski
- Steven Appelbaum
- Harold Gargan
- Rhonda Desai
- Paul Rivaldi
- Muri Diamondstein
- Harry Lombardi
- Dennis D. Williams
- Grady Eschke
- Colt. Timothy Condit
- Sara Nelson
- Earl Pelletier
- Mark Payne
- Jorge Ramirez
- Eric Esosa
- Joseph Sellers, M
- Christopher Shelton
- Louis R. Stephenson
- Richard Langgan
- Robert Madheli
- Gabrielle Carreris

RESOLVED, that shareholders of Amazon.com Inc. ("Amazon") urge the Board of Directors (the "Board") to analyze and report to shareholders on the risks arising from the public debate over Amazon's growth and societal impact and how Amazon is managing or mitigating those risks. The report should address risks related to Amazon's role in providing physical and digital infrastructure, use of and control over data about customers and competitors, increasing reliance on automation and influence on the quality and diversity of content.

The report should be prepared at reasonable expense and omitting confidential or proprietary information.

SUPPORTING STATEMENT

As Amazon has grown, so has public debate over its size, dominant platforms and impacts on key constituencies. Amazon accounts for 46% of U.S. online commerce (<https://www.yalelawjournal.org/note/amazons-antitrust-paradox>) and Prime membership will surpass 50% of U.S. households by the end of 2017. (<https://www.cnbc.com/2017/08/08/amazon-prime-will-be-in-more-than-half-of-us-households-by-years-end.html>)

Amazon provides much of the Internet economy's infrastructure. Fulfillment-by-Amazon, Amazon's logistics and delivery service, and its third-party seller platform Marketplace provide data about competitors and customers. The data, in turn, give Amazon informational advantages in product development and pricing, which could result in anti-competitive behavior. (<https://qz.com/1107328/theres-precedent-for-amazon-competing-with-so-many-companies-it-doesnt-end-well/>) Amazon Web Services (AWS) is the leader in cloud computing (<https://www.bloomberg.com/news/articles/2017-10-19/tech-rally-persists-as-growth-forecasts-outweigh-crackdown-risk>), leading to concerns that Amazon may gain access to sensitive competitor data hosted on AWS servers; at least one major retail rival has barred its vendors from using AWS. (<https://www.wsj.com/articles/wal-mart-to-vendors-get-off-amazons-cloud-1498037402?mod=e2tw&mg=prod/accounts-wsj>)

Concerns have been raised regarding Amazon's effect on content quality and diversity, given its e-Book dominance and control over product display. (E.g., <https://www.vanityfair.com/news/business/2014/12/amazon-hachette-ebook-publishing>; <http://www.indiewire.com/2017/07/netflix-amazon-algorithms-destroying-the-movies-1201853974/>) During Amazon's dispute with publisher Hachette, author Ursula Le Guin accused Amazon of engaging in censorship by delaying shipping and making books hard to find. (<https://bits.blogs.nytimes.com/2014/10/12/amazon-and-its-missing-books/>) Some have warned that Amazon's extraction of higher fees from publishers will likely reduce author advances and degrade book quality. (<https://newrepublic.com/article/119769/amazons-monopoly-must-be-broken-radical-plan-tech-giant>; <https://www.authorsguild.org/industry-advocacy/letter-from-richard-russo-on-the-amazon-hachette-dispute/>) In the months since Amazon's acquisition of Whole Foods, similar concerns have been raised about the deal's effect on small natural foods suppliers. (<https://www.cnbc.com/2017/09/28/amazon-whole-foods-some-investors-suppliers-less-enthusiastic.html>)

Amazon's announcement that it plans to create a second headquarters has spurred discussion of its impact on places in which it operates. (E.g., <http://fortune.com/2017/10/17/amazon-second-headquarters-ban/>) President Trump blamed Amazon for the loss of retail jobs and erosion of state and local tax bases. (<https://twitter.com/realDonaldTrump/status/897763049226084352>) Job losses attributable to Amazon in the next five years have been estimated at two million. (<https://www.marketwatch.com/story/amazon-is-going-to-kill-more-american-jobs-than-china-did-2017-01-19>) Amazon's increasing reliance on robots heightens anxieties about job loss. (https://www.nytimes.com/2017/09/10/technology/amazon-robots-workers.html?_r=1)

Amazon's continued dominance and expansion may provoke regulatory action or harm Amazon's relationships with important constituencies. Amazon settled a European Commission antitrust investigation into contracts with publishers by agreeing to drop certain provisions. (<http://fortune.com/2017/05/04/eu-amazon-ebook/>) Goldman Sachs analysts recently warned that investors may be underestimating regulatory risk inherent in the businesses of five large technology companies, including Amazon. (<https://www.institutionalinvestor.com/article/b1505pbktq13v/goldman-warns-that-tech-investors-are-ignoring-risks>)

Amazon's Form 10-K disclosure includes a list of 23 areas of regulatory risk, from drones to copyright. Given the growing public debate, we believe fuller disclosure would be useful to shareholders.

30 N. LaSalle Street
Chicago, IL 60602
Phone: 312-822-3220
Fax: 312-267-8775



312/822-3220

Lawrence M. Kaplan
Vice President
lkaplan@aboc.com

December 12, 2017

Amazon.com, Inc.
Office of the Corporate Secretary
410 Terry Avenue North
Seattle, Washington 98109

Dear Corporate Secretary:

AmalgaTrust, a division of Amalgamated Bank of Chicago, is the record holder of 240 shares of common stock (the "Shares") of Amazon.com, Inc. beneficially owned by the AFL-CIO Reserve Fund as of December 12, 2017. The AFL-CIO Reserve Fund has continuously held at least \$2,000 in market value of the Shares for over one year as of December 12, 2017. The Shares are held by AmalgaTrust at the Depository Trust Company in our participant account No. 2567.

If you have any questions concerning this matter, please do not hesitate to contact me at (312) 822-3220.

Sincerely,

A handwritten signature in cursive script that reads 'Lawrence M. Kaplan'.

Lawrence M. Kaplan
Vice President

cc: Heather Slavkin Corzo
Director, AFL-CIO Office of Investment