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A copy of the Proposal and the supporting statement is set forth in Exhibit A.

### **BASIS FOR EXCLUSION OF THE PROPOSAL**

#### **The Proposal May Be Excluded Under Rule 14a-8(i)(7) Because it Relates to Matters of the Company's Ordinary Business.**

##### ***A. Background on the Ordinary Business Standard Under Rule 14a-8(i)(7)***

Under Rule 14a-8(i)(7), a shareholder proposal may be excluded from a company's proxy materials if the proposal "deals with matters relating to the company's ordinary business operations." The Commission has 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." Two considerations underlie this exclusion. The first relates to the subject matter of the proposal: "[c]ertain tasks are so fundamental to management's ability to run a company on a day-to-day basis that they could not, as a practical matter, be subject to direct shareholder oversight."<sup>1</sup> The second consideration relates to the "degree to which the proposal seeks to 'micro-manage' the company by probing too deeply into matters of a complex nature upon which shareholders, as a group, would not be in a position to make an informed judgment."<sup>2</sup>

The Commission recognized in the 1998 Release that "proposals relating to [ordinary business] matters but focusing on sufficiently significant policy issues . . . generally would not be considered to be excludable."<sup>3</sup> The Staff has elaborated that "[i]n those cases in which a proposal's underlying subject matter transcends the day-to-day business matters of the company and raises policy issues so significant that it would be appropriate for a shareholder vote, the proposal generally will not be excludable under Rule 14a-8(i)(7) as long as a sufficient nexus exists between the nature of the proposal and the company." Staff Legal Bulletin No. 14E (Oct. 27, 2009). The Staff further clarified that, "[c]onversely, in those cases in which a proposal's

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<sup>1</sup> Release No. 34-40018 (May 21, 1998), citing Exchange Act Release No. 12999 (November 22, 1998).

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

underlying subject matter involves an ordinary business matter to the company, the proposal generally will be excludable under Rule 14a-8(i)(7).”

The significant policy exception is further limited in that, even if a proposal involves a significant policy issue, the proposal may nevertheless be excluded under Rule 14a-8(i)(7) if it seeks to micromanage the company by specifying in detail the manner in which the company should address the policy issue. *See Marriott International Inc.* (Mar. 17, 2010) (concurring in the exclusion of a proposal limiting showerhead flow to no more than 1.6 gallons per minute and requiring the installation of mechanical switches to control the level of water flow despite a recognition that global warming, which the proposal sought to address, is a significant policy issue); *Duke Energy Corporation* (Feb. 16, 2001) (concurring in the exclusion of a proposal requesting an 80 percent reduction in nitrogen oxide emissions from the company’s coal-fired plants, among other items, despite the proposal’s underlying objective of addressing significant environmental policy issues). On November 1, 2017, the Staff published *Staff Legal Bulletin No. 14I*, which announced a new Staff policy regarding the application of Rule 14a-8(i)(7). The Staff stated in SLB No. 14I that the applicability of the significant policy exception “depends, in part, on the connection between the significant policy issue and the company’s business operations.”

In applying Rule 14a-8(i)(7) to proposals requesting companies to prepare reports on specific aspects of their business, the Staff has determined that the relevant inquiry is whether the subject matter of the report involves a matter of ordinary business. In Exchange Act Release No. 34-20091 (Aug. 16, 1983), the Commission stated that where a proposal requests that the company prepare a report on specific aspects of its business, “the [S]taff will consider whether the subject matter of the special report . . . involves a matter of ordinary business” and “where it does, the proposal will be excludable.” Further, the Staff has recognized that a shareholder’s casting of a proposal as a mere request for a report, rather than a request for a specific action, does not mean that the proposal does not seek to micromanage the Company, even when the proposal addresses a significant policy issue. *See Ford Motor Company* (Mar. 2, 2004) (concurring with the exclusion of a proposal requesting that the company publish a report about global warming/cooling, where the report was required to include details such as the measured temperature at certain locations and the method of measurement, the effect on temperature of increases or decreases in certain atmospheric gases, the effects of radiation from the sun on global warming/cooling, carbon dioxide production and absorption, and a discussion of certain costs and benefits, despite a recognition that global warming is a significant policy issue).

***B. The Proposal Seeks to “Micromanage” the Company by Probing Too Deeply Into Matters of a Complex Nature on Which Shareholders, as a Group, Would Not Be in a Position to Make an Informed Judgment***

The Staff has previously permitted exclusion under Rule 14a-8(i)(7) of shareholder proposals substantially similar to the Proposal. Just recently, the Staff concurred with the exclusion of proposals submitted to each of *Deere and Co.* (Dec. 27, 2017) (“*Deere 2017*”) and *Apple Inc.* (Dec. 21, 2017) (“*Apple 2017*”), which requested that the board of the respective company prepare

a report to evaluate the potential to achieve, by a fixed date, “net-zero” emission of greenhouse gases.<sup>4</sup> The proposals in *Deere 2017* and *Apple 2017* were only slightly different from the proposals on the same subject submitted the year before, which requested that the board of each company “generate a feasible plan for the company to reach a net-zero GHG emission status . . . by the year 2030 . . . and report the plan to shareholders.” See *Apple Inc.* (Dec. 5, 2016) (“*Apple 2016*”) and *Deere and Co.* (Dec. 5, 2016) (“*Deere 2016*,” collectively with *Apple 2017*, *Deere 2017* and *Apple 2016*, the “*Apple and Deere Letters*”).<sup>5</sup> In each of these situations, the Staff concurred in the exclusion of the proposals under Rule 14a-8(i)(7) and agreed that such proposals sought to “micromanage the company by probing too deeply into matters of a complex nature upon which shareholders, as a group, would not be in a position to make an informed judgment.”

Like the proposals in the *Apple* and *Deere* Letters, the implementation of the Proposal would involve replacing management’s judgments on complex operational and business decisions and strategies with those favored by the Proponent and would fundamentally interfere with management’s ability to operate the Company’s business. As further described below, the Proposal seeks to have the Company develop a plan for achieving net-zero greenhouse gas emissions by a specific date, which is a necessary pre-condition to evaluating the feasibility for implementing such a plan, and then prepare and publish a report detailing the feasibility of achieving such goal. The inclusion of a specific target (net-zero emissions) by a specific date (2030) would require management to take a number of specific actions and make a multitude of complex calculations, in addition to an evaluation and prioritization of competing business and strategic interests, in order to first develop such a plan and then evaluate the feasibility of it. This type of analysis is precisely the type of management function that Rule 14a-8(i)(7) recognizes as improper for direct shareholder oversight.

***C. The Proposal Seeks to Micromanage the Company by Imposing a Specific “Net-Zero Emissions” Target Level***

The Proposal asks that the Board of Directors of the Company (the “Board”) prepare a report evaluating the feasibility of the specific achievement of “net-zero emissions of greenhouse gases.” By including a specific target level of emissions (net-zero), the Proposal seeks to micromanage the metrics by which the Company may assess its role in climate change. The

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<sup>4</sup> The proposals in *Deere 2017* and *Apple 2017* were as follows: “Resolved: Shareholders request that the Board of Directors to prepare a report to shareholders by December 31, 2019 that evaluates the potential for the Company to achieve, by a fixed date, ‘net-zero’ emissions of greenhouse gases relative to operations directly owned by the Company and major suppliers. The report should be done at reasonable expense and may exclude confidential information.”

<sup>5</sup> The proposals in *Deere 2017* and *Apple 2016* were as follows: “Resolved: Shareholders request that the Board of Directors generate a feasible plan for the Company to reach a net-zero GHG emission status by the year 2030 for all aspects of the business which are directly owned by the Company and major suppliers, including but not limited to manufacturing and distribution, research facilities, corporate offices, and employee travel, and to report the plan to shareholders at reasonable expense, excluding confidential information, by one year from the 2017 annual meeting.”

Proposal forces the Company to focus its analysis on the end goal of net-zero emissions rather than allowing the Company to use its resources to assess, for example, its ability to meet incremental goals related to managing and reducing greenhouse gas emissions on a timeline that management may deem appropriate and reasonable in the context of the Company's operations.

In fact, the Company already recognizes the importance of environmental stewardship and is committed to conducting its business in an environmentally responsible manner. Although the Company's business is a technology platform and digital payments company with a relatively small carbon footprint, management has taken steps, in its discretion, to mitigate the environmental impact of the Company's operations. These steps were highlighted in the Company's Statement Opposition to a similar proposal considered at the 2017 Annual Meeting of Stockholders.<sup>6</sup> All of those initiatives are examples of how management has adopted practices consistent with environmental goals in the context of the Company's business, and not according to an arbitrary standard thrust upon management from the perspective of Proponent.

By setting a specific level of acceptable greenhouse gas emissions (net-zero), the Proposal differs significantly from proposals that seek to establish "goals" for achieving an environmental objective or a range of acceptable levels of compliance. A proposal that seeks to establish goals for, or ranges of, compliance allows the company flexibility to determine an achievable level of compliance and an acceptable timetable for implementation and therefore, unlike the Proposal, does not micromanage the company for purposes of Rule 14a-8(i)(7). *See, e.g., FirstEnergy Corp.* (March 4, 2015) (declining to concur in exclusion of proposal that called for preparation of a plan to address carbon dioxide emissions but did not "mandate what quantitative goals should be adopted, or how the quantitative targets should be set"); *Exxon Mobil Corporation* (March 12, 2007) (declining to concur in exclusion of proposal requesting adoption of a policy (as opposed to a plan) to significantly increase renewable energy sourcing, with a "recommended goal" in the range of 15%-25% of all energy sourcing by 2015-2025). The Proposal, in contrast, sets a specific goal of net-zero emissions, by a specific deadline, and requires the development and evaluation of a plan in order to assess the feasibility of achieving that goal, rather than implementing a policy.

***D. The Proposal Seeks to Micromanage the Company by Imposing a Specific Timeframe to Achieve the Specified Target Level of Greenhouse Gas Emissions***

The Proposal seeks to micromanage the Company to a similar degree as the proposals in *Apple 2016* and *Deere 2016* by imposing a specific timeframe to achieve net-zero emissions. The proposals in *Apple 2016* and *Deere 2016* requested that each company "generate a feasible plan to reach net-zero GHG emission status by the year 2030 for all aspects of the business which are

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<sup>6</sup> PayPal Proxy Statement filed with the Commission on April 13, 2017, page 71 (<https://www.sec.gov/Archives/edgar/data/1633917/000119312517123296/d243695ddef14a.htm>).

directly owned by the Company and major suppliers.” The Proposal requests that the Company “prepare a report to shareholders that evaluates the feasibility of the Company achieving by 2030 ‘net-zero’ emissions of greenhouse gases from parts of the business directly owned and operated by the Company, including any executive and administrative offices, data centers, product development offices, fulfillment centers and customer service offices, as well as the feasibility of reducing other emissions associated with the Company’s activities.” Like the *Apple 2016* and *Deere 2016* proposals, the Proposal would require management to develop a hypothetical plan which could feasibly achieve “net-zero” greenhouse gas emissions by 2030 from its directly owned businesses and, potentially, from its suppliers, customers and employees (to the extent that they produce emissions associated with the Company’s activities).

Setting particular greenhouse gas emissions targets involves complex operational decisions made by engineering, legal, financial and management experts based on analyses, projections and assumptions regarding, among other things, the Company’s operations and long-term strategy, anticipated technological development, projected cash flows, capital expenditure requirements and energy requirements. Business judgments must then be made about the strategic allocation of resources among these different strategies. Implementing the Proposal would require management to replace its own judgments as to how to best allocate the Company’s resources to achieve its long-term growth strategy, and instead prioritize specific courses of action directed solely at meeting the net-zero emission level selected by the Proponents by the arbitrary date mandated by the Proposal. These aspects of the Company’s business are simply too complex for shareholders to exercise direct oversight. Additionally, implementing the infrastructure necessary to collect and assess this information would require the allocation of significant resources and entail considerable expense without commensurate material benefits to the Company’s stockholders. By substituting the Proponents’ business judgment for management’s business judgment, the Proposal fundamentally interferes with management’s ability to exercise its judgment to run the Company and operate its business on a day-to-day basis. The Company also believes that the preparation of the report would have no material effect on its commitment to conducting its business in an environmentally responsible manner.

To further illustrate the complexities involved in developing a plan to achieve the goal set forth by the Proponent and producing a report on the feasibility of achieving that goal, consider that the Proposal requests the Company to consider “other emissions associated with Company activities.” This language sweeps broadly and would require the Company to consider emissions generated by its suppliers, which would, in turn, require the Company to analyze: (i) each supplier’s business to determine what changes would need to be made to their choices of processes, technologies and energy sources so that they could contribute to the reduction in emissions related to the Company; (ii) the impact such changes would have on each supplier’s business to determine the feasibility of those changes; and (iii) the impact such changes would have on the Company because additional costs borne by a supplier would likely be passed on to the Company. Other indirect emissions “associated with the Company activities”

also would require the Company to consider measuring emissions from thousands of employees, millions of customers, and millions of other potential indirect sources linked to the Company's operations. That effort likely would involve deploying highly complicated technological solutions to adequately and accurately measure sources of greenhouse gas emissions over which the Company has no control, such as the modes of transportation used by its employees and customers. Even if the Company determined it were able to obtain such information, it would still need to consider for purposes of the report how it would analyze, among numerous other factors, (i) all of its direct and indirect sources of greenhouse gas emissions to determine what changes would need to be made to third-party processes, technologies and materials so that the indirect sources of greenhouse gas emissions could contribute to aggregate net-zero emissions by 2030, and (ii) the impact such changes would have on each aspect of the Company's business and related third-party businesses to determine the feasibility of those changes. Analyzing and reporting on the feasibility of these strategic and operational choices would have substantial impacts on the Company's business and operations and require balancing many complex and competing factors.

***E. The Proposal Focuses on Ordinary Business Matters Regardless of Whether It Touches upon a Significant Policy Issue***

While reduction of greenhouse gas emissions is a significant policy issue, the environmental goals of the Proposal are secondary to the Proposal's effort to micromanage the Company's processes and operations to achieve specific objectives. The Staff has consistently concurred that a proposal may be excluded when it micromanages the Company, even if it touches upon a significant social policy issue. In the *Apple* and *Deere* Letters, the Staff concurred in the exclusion of proposals addressing greenhouse gas emissions because the proposals sought to interfere with the companies' ordinary business operations on a day-to-day basis. The Staff's concurrence in those instances was consistent with prior Staff decisions. In *FirstEnergy*, the Staff concurred in the exclusion of a proposal that called for the company to generate a report explaining "actions the company is taking or could take to reduce risk throughout its energy portfolio by diversifying the company's energy resources to include increased energy efficiency and renewable energy resource." See also *Dominion Resources, Inc.* (Feb. 3, 2011) (allowing exclusion of a proposal relating to use of alternative energy because the proposal related, in part, to the company's choice of technologies for use in its operations); *Papa John's International, Inc.* (Feb. 13, 2015) (concurring that the company could exclude a proposal that touched upon a significant policy issue (animal welfare) because it related to an ordinary business matter (choice of products offered for sale)).

Moreover, the Staff has indicated that, where a proposal relating to the company's ordinary business operations also raises a significant policy issue, the proposal will be excludable under Rule 14a-8(i)(7) unless "a sufficient nexus exists between the nature of the proposal and the company." *Staff Legal Bulletin No. 14E* (Oct. 27, 2009). In this case, there is no sufficient nexus between the overarching policy of the Proposal to reduce greenhouse gas emissions and



Office of Chief Counsel  
Division of Corporation Finance  
U.S. Securities and Exchange Commission  
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the Company's day-to-day operations as a leading technology platform and digital payments company. Although the Company's operations incidentally consume energy and generate greenhouse gases, the Company is not an energy company that would otherwise focus its day-to-day operations solely on the production and transfer of energy and greenhouse gas emissions. Accordingly, the nexus between the greenhouse gas emission issues that are central to the Proposal and those that affect the Company's day-to-day operations is not sufficiently narrow to justify the Proposal's substantial incursion into the management of the Company's business operations.

As the foregoing discussion demonstrates, the Staff has consistently allowed exclusion of proposals that seek to micromanage a company's day-to-day activities, although in some situations those activities may implicate larger social policy issues. While the Proposal does invoke a significant policy issue, there is only an incidental nexus between the Proposal and the Company's business, which is not enough to overcome the significant level of micromanagement of the Company's business the Proposal would entail. Accordingly, the Proposal is excludable under Rule 14a-8(i)(7).

### CONCLUSION

Based upon the foregoing analysis, we respectfully request that the Staff confirm that it will take no action if the Company excludes the Proposal from its proxy materials for the 2018 Annual Meeting.

We would be happy to provide you with any additional information and answer any questions that you may have regarding this subject. If you have any questions regarding this request or desire additional information, please contact the undersigned at (312) 853-2060 or by email at [ggerstman@sidley.com](mailto:ggerstman@sidley.com).

Sincerely,



Gary Gerstman

Attachments

Cc: Brian Y. Yamasaki, Corporate Secretary, PayPal Holdings, Inc.  
Amalgamated Bank's LongView LargeCap 500 Index Fund

**Exhibit A**



DEBORAH A. SILODOR  
Executive Vice President  
General Counsel

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December 13, 2017

Mr. Brian Yamasaki  
Senior Director and Corporate Secretary  
PayPal Holdings, Inc.  
2211 North First Street  
San Jose, California 95131

Re: Shareholder proposal for 2018 annual meeting

Dear Mr. Yamasaki:

On behalf of the Amalgamated Bank's LongView LargeCap 500 Index Fund (the "Fund"), I am submitting the enclosed shareholder proposal for inclusion in the proxy materials that PayPal Holdings, Inc. (the "Company") plans to circulate to shareholders in anticipation of the 2018 annual meeting. The proposal relates to the Company's environmental policies.

The Fund is located at 275 Seventh Avenue, New York, N.Y. 10001. The Fund beneficially owns more than \$2000 worth of the Company's common stock and has held those shares for over a year. A letter from the Bank as record owner confirming ownership is being submitted under separate cover. The Fund plans to continue ownership through the date of the 2018 annual meeting, which a representative is prepared to attend.

Very truly yours,

A handwritten signature in black ink, appearing to read "Deborah A. Silodor".

**RESOLVED:** The shareholders ask the Board of Directors of PayPal Holdings, Inc. (the "Company") to prepare a report to shareholders that evaluates the feasibility of the Company achieving by 2030 "net-zero" emissions of greenhouse gases from parts of the business directly owned and operated by the Company, including any executive and administrative offices, data centers, product development offices, fulfillment centers and customer service offices, as well as the feasibility of reducing other emissions associated with the Company's activities. The report should be done at reasonable expense and may exclude confidential information.

### SUPPORTING STATEMENT

In 2015, 196 parties at the U.N. Climate Change Conference agreed to limit climate change to an average global warming of 2 degrees Celsius above pre-industrial temperatures, with a goal of limiting it to 1.5 degrees Celsius. The Intergovernmental Panel on Climate Change states that to reach this goal, CO<sub>2</sub> emissions must fall to zero by 2040 to 2070, and scientists agree that reaching the Paris Agreement's 1.5 degrees goal means that the world must reach net-zero greenhouse gas emissions by 2030 to 2050, sooner than is currently planned by most corporations and nations.

Achieving net-zero emissions essentially means reducing the level of greenhouse gases emitted each year to a level roughly equal to the amount of renewable energy created by an individual entity. We believe that achieving this goal is important for companies generally to achieve long-term shareholder value. We believe that PayPal should be a leader in this area, given its prominent role in the new technology economy.

We acknowledge that PayPal has taken some commendable steps to reduce its carbon footprint, enhance energy efficiency and place greater reliance on renewable energy. Nonetheless, it appears that these are individual measures and that there is not an overall Board policy to achieve a goal of net-zero emissions -- hence, the request to consider the feasibility of such a move.

When we offered this proposal last year (and it received 23% of the yes/no vote), PayPal's principal objection was to the perceived "burden" of preparing a report using *The Greenhouse Gas Protocol*, prepared by World Business Council for Sustainable Development and the World Resources Institute, which we cited as a possible methodology to quantify and report corporate GHG emissions.

Our proposal suggested – but did not require – the use of that *Protocol*, so we view PayPal's objection on that score as beside the point. The goal is for PayPal to examine the feasibility of achieving net-zero emissions, and the proposal allows PayPal to choose the most suitable methodology.

We believe that offsets should be permanent and represent emission reductions unlikely to have occurred otherwise. Also, offsets should represent carbon abatement that is not being counted by another party and should account for leakage, *i.e.*, deducting material increases in emissions elsewhere that nullify or reduce the abatement. Finally, we believe that independently audited information about offsets should be available to interested parties.

We urge you to vote FOR this proposal.



DEBORAH A. SILODOR  
Executive Vice President  
General Counsel

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December 13, 2017

Mr. Brian Yamasaki  
Senior Director and Corporate Secretary  
PayPal Holdings, Inc.  
2211 North First Street  
San Jose, California 95131

Via courier

Re: Shareholder proposal for 2018 annual meeting

Dear Mr. Yamasaki:

This letter will supplement the shareholder proposal submitted to you by Amalgamated Bank's LongView LargeCap 500 Index Fund (the "Fund"). On the date of submission of this proposal, the Fund beneficially owned 137,682 shares of PayPal Holdings, Inc. common stock. These shares are held of record by Amalgamated Bank (DTC No. 2352) through its agent, CEDE & Co. The Fund has continuously held at least \$2000 worth of the Company's common stock for more than one year prior to submission of the resolution and plans to continue ownership through the date of your 2018 annual meeting.

If you require any additional information, please let me know.

Very truly yours,

A handwritten signature in blue ink, appearing to read "D. Silodor", written over a faint blue circular stamp.