



DIVISION OF
CORPORATION FINANCE

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

March 6, 2018

Gary Gerstman
Sidley Austin LLP
ggerstman@sidley.com

Re: PayPal Holdings, Inc.
Incoming letter dated January 19, 2018

Dear Mr. Gerstman:

This letter is in response to your correspondence dated January 19, 2018 and February 20, 2018 concerning the shareholder proposal (the "Proposal") submitted to PayPal Holdings, Inc. (the "Company") by Amalgamated Bank's LongView LargeCap 500 Index 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: Marcelo Choi
Amalgamated Bank
marcelochoi@amalgamatedbank.com

March 6, 2018

Response of the Office of Chief Counsel
Division of Corporation Finance

Re: PayPal Holdings, Inc.
Incoming letter dated January 19, 2018

The Proposal asks the board to prepare a report 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, as well as the feasibility of reducing other emissions associated with the Company’s activities.

There appears to be some basis for your view that the Company may exclude the Proposal under rule 14a-8(i)(7), as relating to the Company’s ordinary business operations. In our view, the Proposal seeks 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. 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).

Sincerely,

M. Hughes Bates
Special Counsel

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.

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February 20, 2018

Via Electronic Mail

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

Re: PayPal Holdings, Inc. – Shareholder Proposal Submitted by Amalgamated Bank’s LongView LargeCap 500 Index Fund

Amalgamated Bank’s LongView LargeCap 500 Index Fund (the “Proponent”) submitted a stockholder proposal and statement in support thereof (the “Proposal”) to PayPal Holdings, Inc., a Delaware corporation (“PayPal” or the “Company”), for inclusion in PayPal’s proxy statement and form of proxy for its 2018 Annual Meeting of Stockholders (the “2018 Annual Meeting” and such materials, collectively, the “2018 Proxy Materials”). The Proposal requests that the Board of Directors of PayPal “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.”

This supplemental letter is submitted in response to a letter from the Proponent, dated February 9, 2017 (the “Proponent’s Response”), and should be read in conjunction with PayPal’s January 19, 2018 letter to the Staff regarding PayPal’s intention to exclude the Proposal from its 2018 Proxy Materials pursuant to Exchange Act Rule 14a-8 (the “No-Action Request”).

ANALYSIS

The Proposal May Be Excluded Under Rule 14a-8(i)(7) Because It Concerns the Company’s Ordinary Business Operations.

A. The Proponent’s Response Fails to Distinguish the No-Action Letter from Guiding Precedent

As a preliminary matter, the Company agrees with the Proponent’s acknowledgment in Proponent’s Response that the Staff’s denial of the Company’s no-action request relating to a

similarly-worded proposal submitted to the Company for inclusion in the Company's 2017 proxy materials ("PayPal 2017") has no precedential effect on the Staff's analysis of the Proposal. As noted in Proponent's Response, the Staff has "reversed its position in PayPal [2017]" by concluding that a proposal that requests a report that "evaluates the potential" for a company to achieve net-zero emissions of greenhouse gases ("GHG") by a fixed date may be excluded under Rule 14a-8(i)(7) as relating to a company's ordinary business operations. The Proponent correctly cited to the Staff's response to the no-action request filed by *Apple, Inc.* (Dec. 21, 2017). The Staff most recently held the same in *Deere & Co.* (Dec. 27, 2017), allowing the exclusion of a similar proposal requesting that the company "prepare a report...that evaluates the potential for the [c]ompany ... to achiev[e] 'net-zero' emissions of greenhouse gases by a fixed future target date."

A key point of the Proponent's Response seeks to distinguish the No-Action Request from the Staff's response to *Apple*, primarily focusing on the analysis of Apple's board of directors and the specific language set forth in the Staff's response letter, which stated: "Based on our review of your submission, including the description of how your board of directors has analyzed this matter, there appears to be some basis for your view that the Company may exclude the Proposal under rule 14a-8(i)(7), as relating to the Company's ordinary business operations." However, the Proponent's Response did not distinguish the No-Action Request from *Deere*. Notably, *Deere* did not include a similar analysis of its board of directors as presented in *Apple*, and the Staff's response did not reference an analysis of the board of directors, stating: "There appears to be some basis for your view that the Company may exclude the Proposal under rule 14a-8(i)(7), as relating to the Company's ordinary business operations. In our view, the Proposal seeks 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."¹

Proponent's response sets forth a view that the proposal in *Apple* was allowed to be excluded in reliance upon Staff Legal Bulletin No. 14I (November 1, 2017) ("SLB 14I") because its board of directors "concluded that the [p]roposal does not transcend the [c]ompany's ordinary business or its day-to-day operations." *Apple*, p. 6. The Company believes that, based on the guidance of the Staff set forth in SLB 14I and the result in *Deere*, while the analysis of the board of directors could assist the Staff in deciding whether a proposal that addresses ordinary business matters nonetheless focuses on a significant policy issue, it is in no way dispositive or required to be included in every no-action request to exclude a proposal on the basis of ordinary business operations under Rule 14a-8(i)(7). It is rightfully within a company's discretion to include or omit an analysis of the board of directors in connection with no-action requests on the basis of ordinary business under Rule 14a-8(i)(7).

¹ It should be noted that *Apple*'s original no-action request was filed on October 9, 2017, whereas *SLB 14I* was issued on November 1, 2017. *Deere*'s original no-action letter also predated SLB 14I. *Deere* filed its no-action request on October 19, 2017. While *Apple* supplemented its no-action request with a letter dated November 20, 2017 "to provide the [S]taff with additional information based on the new guidance in [SLB 14I]," *Deere* did not, and, notwithstanding this difference, the Staff allowed the exclusion of both proposals.

Further, the Company would like to reiterate for the benefit of the Proponent and the Staff that it 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 PayPal's Statement in Opposition to a similar proposal considered at the 2017 Annual Meeting of Stockholders.² All of those initiatives are examples of how management has adopted practices consistent with environmental goals in the context of the Company's business.

B. The Proposal Seeks to Micromanage the Company

In Exchange Act Release No. 20091 (Aug. 16, 1983) (the "1983 Release"), the Securities and Exchange Commission (the "SEC") noted that one of the considerations underlying the ordinary business exclusion was "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." Exchange Act Release No. 34-40018 (May 21, 1998) (the "1998 Release"), further states that "[t]his consideration may come into play in a number of circumstances, such as where the proposal involves intricate detail, or seeks to impose specific time-frames or methods for implementing complex policies."

A close reading of *Deere* and *Apple* shows that the lynchpin of the ordinary business analysis in each case rests upon the degree which the applicable proposal sought to micromanage the company by providing specific details for implementing a "net-zero" proposal as a substitute for management's judgment. In *Deere*, the Staff concurred in the exclusion of a proposal requesting that the company "prepare a report to shareholders by December 31, 2018 that evaluates the potential for the Company... to achiev[e] 'net-zero' emissions of greenhouse gases by a fixed future target date," because the proposal 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." In *Apple*, the Staff concurred in the exclusion of a proposal requesting that the company "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 [c]ompany and its major suppliers." The minor differences in language between the Proposal and the *Apple* and *Deere* proposals do not change the fact that the Proposal seeks to micromanage the Company by substituting management's judgment on these complex issues with that of the Company's shareholders, who as a group, are not in a position to make an informed judgment.

² PayPal Proxy Statement filed with the Commission on April 13, 2017, page 71 (<https://www.sec.gov/Archives/edgar/data/1633917/000119312517123296/d243695ddef14a.htm>).

The Proponent’s Response seeks to minimize the complexity involved in responding to the Proposal, stating: “The focus of the proposal is a very straight-forward policy issue that is framed to allow shareholders to easily provide guidance to the board on the significant policy issue of climate change.” However, as fully detailed in the No-Action Request, evaluating the feasibility of achieving, by the prescribed date, a determined level of net GHG emissions does not, as the Proponent’s Response posits, only entail a simplistic process of answering the question “Is X feasible by deadline Y?” In truth, determining the feasibility of achieving such goals would require management to take a number of specific actions and calculations, including an evaluation and prioritization of competing business and strategic interests, in order to develop and then evaluate the feasibility of a plan for achieving the Proponent’s specific target of net-zero GHG emissions by year 2030. It would require the involvement and input of a number of cross-functional teams and management, as well as input from third-party experts and specialists.

Further, the Proposal prescribes the scope of activities that count toward the “net-zero” goal to those businesses directly owned and operated by the Company. While the Proposal would require the Company also to evaluate the feasibility of “reducing other emissions associated with the Company’s activities,” it does not provide that those emission reductions would be counted toward assessing the “net-zero” goal. The attempt by the Proposal to prescribe what should and should not be counted further highlights that the Proposal seeks to dictate how the Company should go about establishing, measuring and achieving sustainability goals for its business. The specific and detailed choices a company makes to implement a targeted GHG emissions goal such as the goal set forth in the Proposal, including the specific threshold of that goal, the time frame for addressing the goals, the scope of activity taken into account, and the approaches adopted to achieve that goal, are exactly the types of day-to-day operational decisions that the 1998 Release recognized as too impractical and complex to be subject to direct shareholder oversight. Moreover, a finding by the Staff that the Proposal does not micromanage the Company would be in direct opposition to the recent decisions in *Apple* and *Deere*.

C. The Proposal, on the Whole, Is More Prescriptive than the Proposal in Deere.

The Staff has already determined that the proposal in *Deere* “seeks 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.” A side-by-side comparison of the Proposal and the *Deere* proposal clearly demonstrates that the Proposal is actually more prescriptive than *Deere* by including a specific target date (2030) and listing the components of the business that should be included in the analysis. Accordingly, the Proposal should be excluded from the 2018 Proxy Materials pursuant to the same analysis applicable in *Deere*.

The Proposal	Deere
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	Resolved: The shareholders request the Board of Directors of Deere (the “Company”) to prepare a report to shareholders by December 31, 2018 that evaluates the potential for the

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.	Company to voluntarily address its role in climate change by achieving “net-zero” emissions of greenhouse gases by a fixed future target date.
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Further analysis of the differences between these proposals is provided below:

- First, the Proposal requests a report that evaluates “the feasibility of the Company achieving” net-zero GHG emissions, while the *Deere* proposal requests a report that evaluates the “potential for... achieving” net-zero GHG emissions. To the extent that there is any distinction between a feasibility analysis and a “potentiality” analysis, a feasibility study is more prescriptive because it requires a precise determination of whether something is actually achievable and a sufficiently detailed plan to demonstrate the ability to achieve that goal. As pointed out in the company’s supplemental response in *Apple*, there cannot be an accurate assessment of the feasibility of achieving the specific quantitative goal of net-zero GHG gas emissions without first developing a sufficiently detailed technological plan to allow for such a determination; “Whether the [c]ompany is directly called upon to generate a feasible plan or “explor[e] a feasible strategy,” the [c]ompany must develop a plan.”
- Second, the Proposal dictates that the timeframe for net-zero GHG emissions that the Company must evaluate is “by 2030,” while the *Deere* proposal is less prescriptive because it allows the company to choose a “fixed future date.”
- Third, both the Proposal and the *Deere* proposal would require prompt action to prepare the requested report. Although the *Deere* proposal requests the report by a specific deadline, the Proposal likewise would require near-immediate decisions in order to establish the feasibility of achieving the goal prescribed by the Proponent within the time frame the Proponent has set. The Proposal’s supporting statement makes clear the immediacy of the Proposal’s request by stating that action is required “sooner than is currently planned by most corporations and nations” in order to achieve net GHG emissions, and shareholders clearly would expect the Company to not delay significantly in evaluating a goal that must be achieved within the next twelve years.
- Fourth, whereas the *Deere* proposal required that company to address “its role in climate change,” the Proposal requires evaluation of “the business directly owned and operated

by the Company” and enumerates specific aspects of the Company’s business that must be addressed, including “any executive and administrative offices, data centers, product development offices, fulfillment centers and customer service offices,” Moreover, the Proposal requires that the Company look beyond operations “directly owned and operated by the Company” to also encompass “the feasibility of reducing other emissions associated with the Company’s activities,” but would not allow the Company to account for such activities in evaluating the feasibility of achieving net-zero GHG emissions by year 2030.

In summary, the Proposal seeks for the Company to address a complex, multifaceted issue by imposing (1) a specific (and arbitrary) time frame, (2) to achieve a specific standard, (3) measured by a prescriptive (and arbitrary) standard that differs from the approach the Company believes is best suited to the nature of the Company’s operations in minimizing the environmental impact of its operations. The Proposal thus imposes precisely the type of micromanagement involved in *Apple* and *Deere*.

D. Although the Proposal Requests that the Board Prepare a Report, the Underlying Request Is for the Board to Prepare a Plan to Achieve the “Net-Zero” Target Set Forth in the Proposal

The Proponent’s Response argued that the Staff should not allow the exclusion of the Proposal in part because the Proposal does not seek for the Company to generate a “plan” for the Company to achieve net-zero emissions by year 2030, but instead asks the Company to “prepare a report to shareholders that evaluates the feasibility of the Company achieving by 2030 ‘net-zero’ emissions of greenhouse gases.” The Proponent’s position ignores the fact that the Staff has long settled that framing a shareholder proposal in the form of a request for a report does not change the nature of the proposal. In this case, as stated in the No-Action Request, 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. As highlighted above, the Proponent’s overly simplistic characterization of the analysis required set forth in the Proponent’s Response (“Is X feasible by deadline Y?”), is not an accurate portrayal of how a large, sophisticated company with global operations approaches, evaluates and prioritizes business planning and decisions, particularly those that may result in considerable costs or changes in operational practices.

As previously stated in the No-Action Request, the SEC 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

Office of Chief Counsel
Division of Corporation Finance
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February 20, 2018
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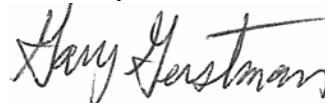
the report is within the ordinary business of the issuer. *See* 1983 Release. *See Johnson Controls, Inc.* (Oct. 26, 1999) (“[Where] the subject matter of the additional disclosure sought in a particular proposal involves a matter of ordinary business... it may be excluded under [R]ule 14a-8(i)(7).”). *See also, Ford Motor Co.* (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).

CONCLUSION

Based upon the foregoing analysis, in addition to the arguments set forth in the No-Action Request, we respectfully request that the Staff concur that it will not recommend enforcement 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. 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.

Sincerely,

A handwritten signature in dark ink, appearing to read "Gary Gerstman", written in a cursive style.

Gary Gerstman

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



MARCELO CHOI
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February 9, 2018

Via Electronic Mail to: shareholderproposals@sec.gov

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

Re: Shareholder proposal to PayPal Holdings, Inc. from Amalgamated Bank's LongView LargeCap 500 Index Fund

Dear Counsel:

I write on behalf of Amalgamated Bank's LongView LargeCap 500 Index Fund (the "Fund"), in response to the letter from counsel for PayPal Holdings, Inc. ("PayPal" or the "Company") dated January 19, 2018 ("PayPal Letter") in which PayPal advises the Securities and Exchange Commission that PayPal intends to omit from its 2018 proxy materials a proposal submitted by the Fund. For the reasons set forth below, we respectfully ask the Division of Corporation Finance (the "Division") to deny the requested no-action relief.

The Resolution and PayPal's Objection

Citing the Paris Agreement on climate change signed by 196 parties in 2015, the resolution asks PayPal's board of directors 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, as well as the feasibility of reducing other emissions associated with the Company activities.

The proposal includes the standard conditions that the report should be prepared at reasonable expense and may exclude confidential information.

The supporting statement explains that the parties to the Paris Agreement, including the United States, agreed to limit climate change to an average global warming of 2° Celsius above pre-industrial temperatures, with a goal of limiting it to 1.5° Celsius. The Intergovernmental Panel on Climate Change states that to reach this goal, CO₂ emissions must fall to zero by 2040 to 2070, and scientists agree that reaching the Paris Agreement's 1.5° goal means that the world must reach

“net-zero” greenhouse gas emissions by 2030-2050. Unfortunately, while some companies have already adopted or begun consideration¹ of how to align with the goals of the agreement, many corporations have not presented to investors, the public, or regulators an assessment of how they will address this issue.

What are “net-zero” greenhouse gas emissions? The concept refers to reducing the level of greenhouse gases emitted on an annual basis to a level roughly equal to the amount of renewable energy created by an individual entity. The proposal states the belief that achieving that goal is important in maintaining long-term shareholder value and that PayPal should, in a transparent manner for shareholders, assess impacts on the company and further be a leader in this area, given its prominent role in the new technology economy.

The supporting statement suggests – but does not require – that PayPal consider, as one option for assessing the feasibility of a net-zero future, using THE GREENHOUSE GAS PROTOCOL prepared by World Business Council for Sustainable Development and the World Resources Institute, which provides companies with a guide for quantifying and reporting corporate greenhouse gas emissions. The supporting statement also cites certain criteria to be considered to assure that the offsets are permanent and validly counted and assessed.

PayPal seeks to exclude the resolution because it argues that the proposal implicates the “ordinary business” of the Company and may thus be excluded under Rule 14a-8(i)(7).

As we now explain, this objection lacks merit.

Discussion

The issues raised here transcend PayPal’s “ordinary business” operations.

PayPal’s letter recites the familiar criteria for excluding a proposal under Rule 14a-8(i)(7), and the letter focuses on alleged efforts at “micro-management.” As a general response to the charge of “micro-management,” we note the Division’s comments in STAFF LEGAL BULLETIN 14H (2015), part C of which made it clear that “a proposal may transcend a company’s ordinary business operations even if the significant policy issue relates to the ‘nitty-gritty of its core business’” (internal citation omitted). That is the same situation here. The issue of climate change presents a significant policy issue for PayPal’s shareholders, even if the resolution deals with what PayPal regards as the “nitty-gritty” of its business.

PayPal argues that the alleged micro-management consists of “matters of a complex nature upon which shareholders, as a group, would not be in a position to make an informed judgment.” PayPal Letter at 3 (initial capitals omitted). This argument rests almost exclusively on two recent no-action letters that granted no action relief on a proposal that also dealt with net-zero emissions. *Apple Inc.* (21 December 2017) (“*Apple 2*”) and *Deere & Company* (27 December 2017) (“*Deere 2*”). These decisions were in contrast to the Division’s rejection last year of a no-action request in

¹ <http://climateneutralnow.org/Pages/Companies.aspx>

PayPal Holdings, Inc. (13 March 2017) (“*PayPal I*”) which allowed a net zero proposal to move forward.

In both the *Apple 2* and *Deere 2* decisions, each was granted no-action relief as to the proposal at issue, but with significant difference from this proposal. The determinations in those cases rested on the fact that the companies, in response to STAFF LEGAL BULLETIN 14I (2017), offered a detailed explanation as to how its board of directors had reviewed and considered the topic. PayPal does not provide any such detailed information as to the Board’s review of this issue. PayPal thus offers no basis for the Division to follow these decisions.

PayPal also repeats the same micro-management arguments that the Division rejected last year in *PayPal I* which involved the same proposal the Fund filed here, with only minor wording changes. PayPal has offered no basis to re-consider and overturn the decision by the Division reached last year in this same resolution before PayPal. Further, PayPal’s reliance on the *Apple 2* and *Deere 2* decisions is misplaced with regard to micromanagement. .

To start at the beginning, the 2016 proposals in *Apple 2* and *Deere 2* stated:

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.

In seeking no-action relief Apple’s request letter made a notable concession (*Apple 1*, at PDF p. 36):

Developing a “feasible” plan to shareholders for the Company to achieve net-zero greenhouse gas emissions by 2030 is a fundamentally different proposal from a report assessing the feasibility and policy options for the Company to reach that goal. Developing and selecting a feasible plan would require the Company to evaluate and prioritize particular courses of actions and changes to its operations and business, and then to replace its own judgments about the best course of action with a course of action directed solely at meeting the specific emissions level selected by the Proponent by the arbitrary date mandated by the Proposal.

The Division did not address this distinction in granting the relief sought in *Apple 2*. Specifically, the Division concluded that the proposal, as submitted, asks the company to develop a plan that will work by the specified deadline and “seeks 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.”

The proponents in *PayPal I* took this distinction to heart. In 2017, the proposal to PayPal asked the board to prepare a report 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...as well as the feasibility of reducing other emissions associated with the Company's activities.” The 2017 PayPal proposal did not ask the company to develop a specific, feasible plan.

This distinction – between a request to “generate a feasible plan” for reaching a goal versus a request to “evaluate the feasibility” or the “potential” of achieving that goal – was sufficient to persuade the Division that the proposal, as reframed, did not “seek to micromanage the company to such a degree that exclusion of the proposal would be appropriate.” The proposal were voted at both companies and received 23.8% of the yes/no vote at PayPal.

The issuance of STAFF LEGAL BULLETIN 14I in November 2017 prompted Apple to try again, this time with respect to an “evaluate the potential” resolution. It worked. The Division appears to have reversed its position in PayPal, the Division concluding in *Apple 2* that the proposal 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,” the same reasoning that the Division used in the *Apple 2* decision.

What was different this time?

Apple 2 sought to re-litigate the same micro-management points raised in the prior letters, arguing that considering even the feasibility of achieving the net-zero target involved a congeries of complex technological decisions that were beyond the capability of shareholders to understand and weigh in on.

Apple went beyond this, however, invoking STAFF LEGAL BULLETIN 14I to offer an explanation that “reflects the analysis of the Company’s board of directors (the “Board”) as well as management’s and includes a description of the Board’s processes in conducting its analysis.” *Apple 2*, at PDF pp. 25-26 (emphasis in original). *Apple 2* explained its commitment to environmental stewardship and steps it had taken in furtherance of that goal (in *Apple 2*, at PDF p. 26), concluding:

The Board and management are committed to minimizing the environmental impact of the Company’s business, as evidenced by the Company’s deep and longstanding commitment to safeguarding the environment. The Company’s policies, practices and deliberations regarding all aspects of the Company’s business incorporate an in-depth review of the environmental impact of the Company’s policies, practices and operations. Therefore, the Proposal’s request that the

Company develop and report on the achievability of a plan for the Company and its major suppliers to achieve net-zero greenhouse gas emissions is merely a variant of what the Company's management and the Board already do.

The Division found the description of the Board's analysis and procedures to be determinative, writing: "Based on our review of your submission, including the description of how your board of directors has analyzed this matter, there appears to be some basis for your view that the Company may exclude the Proposal under rule 14a-8(i)(7)." *Apple 2*, at PDF p. 2 (emphasis added).

PayPal offers none of this. PayPal mimics arguments that Apple made in *Apple 2* about the complexity of the task, particularly with a fixed target of 2030. Unlike Apple, however, PayPal does not adequately establish how the PayPal's board has dealt with the issues presented by the Fund's proposal. It simply claims that it has a small carbon footprint. Of course, PayPal is under no obligation to do so, as a company is free to eschew the sort of showing set out in that BULLETIN and to rely on prior BULLETINS and no-action precedents.²

In an effort to shoehorn the Fund's proposal into Apple and Deere, PayPal mischaracterizes the proposal as asking the Company to "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" (PayPal Letter, at p. 4). The Fund's proposal does not seek the preparation of a "plan." A request to evaluate the feasibility of reaching a goal gives a company significant flexibility in deciding how to respond. In theory, the question "Is X feasible by deadline Y?" can generate multiple answers, e.g., "Yes, but only if we spent \$500 billion," or "No, but we can get 75% of the way there," or "Yes, the goal is feasible at reasonable cost and will require little change from current policies" – there are many possible answers and none mandate specific action by the company.

PayPal also argues that the inquiry is "complex" for a company such as PayPal (PayPal Letter, at p. 4), which is a surprising claim coming from a leading technology company. "Complexity" cannot be a sufficient answer, and indeed the Division rejected similar generalized objections in last year's PayPal.

There is a separate reason why complexity is not a sufficient response. The focus of the proposal is a very straight-forward policy issue that is framed to allow shareholders to easily provide guidance to the board on the significant policy issue of climate change. A proposal requesting the Company examine the feasibility of aligning its actions with global mandates on climate change, i.e, achieving net zero emissions by 2030, is an important risk management issue.

² Indeed, at least one company has made that choice so far this year in seeking no-action relief under Rule 14a-8(i)(7). See incoming letter from Express Scripts Holding Company (dated 21 December 2017) (New York State Common Retirement Fund proposal).

Companies that begin considering the issue too late to feasibly implement it will be at significant risk. Asking this broad question, without mandating action, is not micromanagement.

This question is particularly pertinent at PayPal. The PayPal letter cites (at p. 6) a number of steps that PayPal has taken to reduce its carbon intensity. While those actions are certainly commendable, the question remains: Is the Company acting on a piecemeal basis, or is it examining options to achieve the net zero emission status that global governments have agreed to implement?

For example, in the Company's Statement of Opposition to a similar proposal considered at the 2017 Annual Meeting of Stockholders, it touted its corporate headquarters being designed and built in accordance with U.S. Green Building Council's Leadership in Energy and Environmental Design ("LEED") Gold Standard for new construction. This achievement, though commendable, happened in the past and does not further alleviate the future concerns of climate change. Is the Company resting on its laurels? Have new carbon reduction goals been established? Are the Company's actions pursuant to an overall strategy set by the board and in line with global mandates? Further references to solar installation, recycling programs, and incentive programs to promote alternate methods of transportation do not answer the important question of whether PayPal has assessed the feasibility of adopting an overall long-term policy in line with the goals of the Paris Agreement.

Why does any of this matter to shareholders?

At a basic level, climate change poses several types of risk to investors. The first is physical risk, e.g., risks from rising sea levels, storms, drought, and other climate related impacts that will affect the company's operations. The second is regulatory or legislative: The Paris Agreement is designed to increasingly ratchet up countries' climate change policies with the goal of achieving net zero reductions between now and 2030 or 2040. Will publicly traded companies be prepared? If they are not prepared, what will be the cost to shareholders?

For these reasons, PayPal cannot plausibly assert that the Fund's proposal involves merely "ordinary business" concerns. Further, asking for an assessment of feasibility does not command specific action by the company or otherwise micro-manage the Company's handling of the issue.

The no-action letters cited by PayPal do not advance the company's argument because the proposals there involved highly prescriptive recommendations for action – development of an actual net zero plan. Such specific requirements have been deemed to be micromanagement. *See Marriott International Inc.* (17 March 2010) (request that a hotel company install and test low-flow shower heads deemed micro-management by seeking to require the use of certain technologies); *Ford Motor Co.* (2 March 2004) (excluding a proposal seeking a report on global warming that specified a number of details to be included, e.g., the measured temperature at various locations and the method of measurement).

The Fund's proposal falls within the line of proposals PayPal cites that did not grant no-action relief.

- In *First Energy Corp.* (4 March 2015) the Division denied relief sought by a utility from a request to "create specific, quantitative, time bound carbon dioxide reduction goals to decrease the company's corporate carbon dioxide emissions." The Division explained that the proposal did not involve "ordinary business" because it focused on "greenhouse gas emissions and does not seek to micromanage the company to such a degree that exclusion of the proposal would be appropriate."

- In *Exxon Mobil Corp.* (12 March 2007), relief was denied as to a proposal that sought adoption of a policy to increase use of renewable energy with a goal of achieving between 15% and 25% of its energy sourcing between 2015 and 2025.

Oddly enough, the PayPal Letter claims (at p. 5) that *Exxon Mobil* is helpful to its argument because the Fund's proposal supposedly is calling for a "plan" - but that is a mischaracterization that we answered earlier. If anything, a proposal seeking an evaluation of whether a certain goal can be achieved by a fixed date is less prescriptive than a proposal asking the company to adopt a policy that the company will achieve a certain goal by a fixed date.

Conclusion

PayPal has thus failed to carry its burden of showing that the Fund's resolution may be excluded under Rule 14a-8(i)(7). Accordingly, we respectfully ask you to advise PayPal that the Division cannot concur with the Company's objections.

Thank you for your consideration of these points. Please feel free to contact me if any additional information would be helpful.

Very truly yours,
Marcelo Choi

cc: Brian Yamasaki, Esq., PayPal via e-mail to byamasaki@paypal.com
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January 19, 2018

Via Electronic Mail

Office of Chief Counsel
Division of Corporation Finance
U.S. Securities and Exchange Commission
100 F St., NE
Washington, DC 20549

Re: PayPal Holdings, Inc. – Shareholder Proposal Submitted by Amalgamated Bank’s LongView LargeCap 500 Index Fund

This letter is submitted on behalf of PayPal Holdings, Inc. (“PayPal” or the “Company”), pursuant to Rule 14a-8 under the Securities Exchange Act of 1934 (the “Exchange Act”), to notify the Securities and Exchange Commission (the “Commission”) of its intention to exclude from its proxy materials for its 2018 Annual Meeting of Stockholders (the “2018 Annual Meeting”) a shareholder proposal (the “Proposal”) and statement in support thereof received from Amalgamated Bank’s LongView LargeCap 500 Index Fund (the “Proponent”).

PayPal intends to file its definitive proxy materials for the 2018 Annual Meeting on or about April 12, 2018. Pursuant to *Staff Legal Bulletin No. 14D* (Nov. 7, 2008), this letter and its exhibits are being submitted via email to shareholderproposals@sec.gov. A copy of this letter and its exhibits will also be sent to the Proponent.

PayPal hereby respectfully requests confirmation that the staff of the Division of Corporation Finance (the “Staff”) will not recommend to the Commission that enforcement action be taken if PayPal excludes the Proposal from its 2018 Annual Meeting proxy materials for the reasons set forth below.

THE PROPOSAL

The Proposal sets forth the following resolution to be voted on by shareholders at the 2018 Annual Meeting:

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.

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."¹ 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."²

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."³ 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

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

² *Id.*

³ *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.⁴ 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*”).⁵ 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

⁴ 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.”

⁵ 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.⁶ 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

⁶ 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

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.

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. SIODOR
Executive Vice President
General Counsel

TEL (212) 895-4428
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deborahsiodor@amalgamatedbank.com

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. Siodor".

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, CO₂ 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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deborahsilodor@amalgamatedbank.com

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 light blue circular stamp.