



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

DIVISION OF  
CORPORATION FINANCE

January 16, 2018

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

Re: Amazon.com, Inc.

Dear Mr. Mueller:

This letter is in regard to your correspondence dated January 16, 2018 concerning the shareholder proposal (the "Proposal") submitted to Amazon.com, Inc. (the "Company") by Elizabeth S. Bowles (the "Proponent") for inclusion in the Company's proxy materials for its upcoming annual meeting of security holders. Your letter indicates that the Proponent has withdrawn the Proposal and that the Company therefore withdraws its January 8, 2018 request for a no-action letter from the Division. Because the matter is now moot, we will have no further comment.

Copies of all of the correspondence related to this matter 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,

Evan S. Jacobson  
Special Counsel

cc: Elizabeth S. Bowles

\*\*\*

January 16, 2018

VIA E-MAIL

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

Re: *Amazon.com, Inc.*  
*Shareholder Proposal of Elizabeth S. Bowles*  
*Securities Exchange Act of 1934—Rule 14a-8*

Ladies and Gentlemen:

In a letter dated January 8, 2018, we requested that the staff of the Division of Corporation Finance concur that our client, Amazon.com, Inc. (the “Company”), could exclude from its proxy statement and form of proxy for its 2018 Annual Meeting of Shareholders a shareholder proposal (the “Proposal”) and statements in support thereof received from Elizabeth S. Bowles (the “Proponent”).

Enclosed as Exhibit A is confirmation, received via e-mail, from the Proponent, dated January 15, 2018, withdrawing the Proposal. In reliance thereon, we hereby withdraw the January 8, 2018 no-action request relating to the Company’s ability to exclude the Proposal pursuant to Rule 14a-8 under the Securities Exchange Act of 1934.

Please do not hesitate to call me at (202) 955-8671, or Mark Hoffman, the Company’s Vice President & Associate General Counsel and Assistant Secretary, at (206) 266-2132.

Sincerely,



Ronald O. Mueller

Enclosures

cc: Mark Hoffman, Amazon.com, Inc.  
Elizabeth S. Bowles

**EXHIBIT A**

-----Original Message-----

From: Lily Bowles

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Sent: Monday, January 15, 2018 5:31 PM

To: [David.Zapolsky@amazon.com](mailto:David.Zapolsky@amazon.com)

Cc: [cfletters@sec.gov](mailto:cfletters@sec.gov); Mueller, Ronald O. <[RMueller@gibsondunn.com](mailto:RMueller@gibsondunn.com)>

Subject: Withdrawal of Shareholder Proposal on the "Integration of Sustainability Information in Financial Reporting"

Dear Mr. Zapolsky,

Please find attached the letter withdrawing my shareholder proposal submitted on December 11, 2017 regarding the "Integration of Sustainability Information in Financial Reporting".

Amazon.com's Investor Relations department has reached out to me and demonstrated sincere willingness to engage on the issue, making it unnecessary for me to present the proposal for inclusion in Amazon.com's proxy statement for the next meeting of shareholders. I therefore withdraw the proposal and my request for its inclusion in the proxy statement.

I look forward to a constructive dialogue with your team!

Best,  
Elizabeth

Elizabeth S. Bowles

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January 15, 2018

VIA EMAIL

David A. Zapolsky  
Corporate Secretary of Amazon.com, Inc.  
Amazon.com, Inc.  
410 Terry Avenue North  
Seattle, WA 98109  
E-mail: David.Zapolsky@amazon.com

Re: *Amazon.com, Inc.*  
*Withdrawal of Shareholder Proposal on the "Integration of Sustainability Information in Financial Reporting"*

Dear Mr. Zapolsky:

I am writing to formally withdraw the shareholder proposal I submitted to Amazon.com (the "Company") on December 11, 2017 regarding the "Integration of Sustainability Information in Financial Reporting" as the Company's Investor Relations department has reached out to me and shown sincere willingness to engage on this issue.

The Company's demonstrated willingness to engage on the issue discussed in the proposal makes it unnecessary for me to present the proposal for inclusion in Amazon.com's proxy statement for the next meeting of shareholders. I therefore withdraw the proposal and my request for its inclusion in the proxy statement.

A copy of this letter is being sent to the Office of Chief Counsel of the SEC Division of Corporation Finance to inform them of my proposal's withdrawal, so that the SEC Staff will not needlessly spend time reviewing it.

Please let me know if you require any additional information or statements from me. I look forward to a productive dialogue with the Company.

Sincerely,

Elizabeth S. Bowles  
Elizabeth S. Bowles

cc: Office of Chief Counsel, Division of Corporation Finance of the Securities and Exchange Commission <[cfletters@sec.gov](mailto:cfletters@sec.gov)>

Ronald Mueller, Gibson Dunn & Crutcher, LLP <[RMueller@gibsondunn.com](mailto:RMueller@gibsondunn.com)>

January 8, 2018

VIA E-MAIL

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

Re: *Amazon.com, Inc.*  
*Shareholder Proposal of Elizabeth S. Bowles*  
*Exchange Act of 1934—Rule 14a-8*

Ladies and Gentlemen:

This letter is to inform you that our client, Amazon.com, Inc. (the “Company”), intends to omit from its proxy statement and form of proxy for its 2018 Annual Meeting of Shareholders (collectively, the “2018 Proxy Materials”) a shareholder proposal (the “Proposal”) and statements in support thereof regarding the “Integration of Sustainability Information in Financial Reporting” that the Company received from Elizabeth S. Bowles (the “Proponent”).

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

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

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

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## BASES FOR EXCLUSION

We hereby respectfully request that the Staff concur in our view that the Proposal may be excluded from the 2018 Proxy Materials pursuant to:

- Rule 14a-8(b) and Rule 14a-8(f)(1) because the Proponent failed to provide on a timely basis the requisite proof of continuous stock ownership in response to the Company's proper request for that information; and
- Rule 14a-8(b) and Rule 14a-8(f)(1) because the Proponent failed to provide on a timely basis a statement of intent to hold the required number or amount of shares through the date of the 2018 Annual Meeting in response to the Company's proper request for that information.<sup>1</sup>

## BACKGROUND

The Proponent sent the Proposal, a cover letter, and a letter from Morgan Stanley dated December 11, 2017 to the Company on December 11, 2017 (the "Submission Date"), which the Company received on December 12, 2017. These materials are attached to this letter as Exhibit A. The Proponent's submission contained two procedural deficiencies (the "Deficiencies"): (1) it did not provide verification of the Proponent's ownership of the requisite number of Company shares through the Submission Date from the record owner of those shares; and (2) it did not include an unambiguous statement of the Proponent's intention to hold the requisite number or amount of Company shares through the date of the 2018 Annual Meeting of Shareholders.

Specifically, as discussed in more detail below, the December 11, 2017 letter from Morgan Stanley was insufficient because it states that the Proponent held "32 shares as of the close of business on December 8, 2017" but does not verify ownership as of the Submission Date nor the period from December 9, 2017 to December 11, 2017. In addition, the Company reviewed its stock records, which do not indicate that the Proponent is a record owner of Company shares. As discussed in more detail below, the Proponent's statement that she "intend[s] to continue to maintain ownership of this stock until (well beyond) the 2018 Annual Meeting" was insufficient because it does not specify that the Proponent intends to

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<sup>1</sup> We also believe there are substantive bases for exclusion of the Proposal. We are addressing only the procedural bases for exclusion in this letter at this time because we do not believe that the Proponent has demonstrated that the Proposal is eligible for consideration for inclusion in the Company's 2018 Proxy Materials. However, we reserve the right to raise the additional bases for exclusion of the Proposal if appropriate.

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hold at least \$2,000 worth of the Company's common stock through the date of the 2018 annual meeting. *See* Exhibit A.

Accordingly, in a letter dated December 13, 2017, which was sent on that day via overnight delivery, the Company notified the Proponent of the procedural deficiencies as required by Rule 14a-8(f) (the "Deficiency Notice"). In the Deficiency Notice, attached hereto as Exhibit B, the Company clearly informed the Proponent of the requirements of Rule 14a-8 and how she could cure the procedural deficiencies. Specifically, the Deficiency Notice stated:

- the ownership requirements of Rule 14a-8(b);
- that, according to the Company's stock records, the Proponent was not a record owner of sufficient shares;
- the specific details of the Deficiencies and the type of statement or documentation necessary to remedy the Deficiencies; and
- that any response to the Deficiency Notice had to be postmarked or transmitted electronically no later than 14 calendar days from the date the Proponent received the Deficiency Notice.

The Deficiency Notice also included a copy of Rule 14a-8 and Staff Legal Bulletin No. 14F (Oct. 18, 2011) ("SLB 14F"). The Deficiency Notice was sent within 14 days of the date the Company received the Proposal. The Company's records confirm delivery of the Deficiency Notice to the Proponent at 4:43 p.m. on December 15, 2017. *See* Exhibit C. Accordingly, the Proponent's response to the Deficiency Notice was required to be postmarked or transmitted electronically by December 29, 2017, which was 14 calendar days after the Proponent's receipt of the Deficiency Notice.

The Company received the Proponent's response to the Deficiency Notice on January 3, 2018—19 calendar days after delivery of the Deficiency Notice to the Proponent. The Proponent's January 3, 2018 response included a written statement confirming the Proponent's intent to hold the shares through the date of the Company's 2018 Annual Meeting. In addition, the Company received on January 5, 2018, a letter from Morgan Stanley verifying the Proponent's ownership of the requisite number of the Company's shares as of the Submission Date. *See* Exhibit D. As discussed in more detail below, the Proponent's January 3, 2018 and January 5, 2018 responses are insufficient to cure the Proposal's deficiencies because they are untimely.

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## ANALYSIS

### **I. The Proposal May Be Excluded Under Rule 14a-8(b) And Rule 14a-8(f)(1) Because The Proponent Failed To Establish The Requisite Eligibility To Submit The Proposal.**

Rule 14a-8(b)(1) provides, in part, that “[i]n order to be eligible to submit a proposal, [a shareholder] must have continuously held at least \$2,000 in market value, or 1%, of the company’s securities entitled to be voted on the proposal at the meeting for at least one year by the date [the shareholder] submit[s] the proposal.” Staff Legal Bulletin No. 14 specifies that when the shareholder is not the registered holder, the shareholder “is responsible for proving his or her eligibility to submit a proposal to the company,” which the shareholder may do by one of the two ways provided in Rule 14a-8(b)(2). *See* Section C.1.c, Staff Legal Bulletin No. 14 (Jul. 13, 2001). SLB 14F clarified that these proof of ownership letters must come from the “record” holder of the Proponent’s shares, and that only Depository Trust Company (“DTC”) participants are viewed as record holders of securities that are deposited at DTC. Rule 14a-8(f) provides that a company may exclude a shareholder proposal if the proponent fails to provide evidence of eligibility under Rule 14a-8, including failing to provide the beneficial ownership information required under Rule 14a-8(b), provided that the company timely notifies the proponent of the problem and the proponent fails to correct the deficiency within the required time.

As discussed in the “Background” section above, the Proponent did not include with her submission letter sufficient documentary evidence of her ownership of Company shares. *See Exhibit A*. The Proponent failed to cure this deficiency within 14 days of the Company’s timely Deficiency Notice, and the Proposal may therefore be excluded under Rule 14a-8(b) and Rule 14a-8(f)(1).

Under well-established precedent, the December 11, 2017 letter from Morgan Stanley was insufficient because it fails to cover the entire one year period up to and including the date of submission. *See PepsiCo, Inc. (Albert)* (avail. Jan. 10, 2013) (concurring in exclusion under Rule 14a-8(b) and Rule 14a-8(f) of a proposal where the proponent’s purported proof of ownership covered the one year period up to and including November 19, 2012, but the proposal was submitted on November 20, 2012). *See also Mondelēz International, Inc.* (avail. Feb. 11, 2014) (letter from broker stating ownership for one year as of November 27, 2013 was insufficient to prove continuous ownership for one year as of November 29, 2013); *Union Pacific Corp.* (avail. Mar. 5, 2010) (letter from broker stating ownership for one year as of November 17, 2009 was insufficient to prove continuous ownership as of November 19, 2009); *The McGraw Hill Companies, Inc.* (avail. Jan. 28, 2008) (letter from broker

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stating ownership for one year as of November 16, 2007 was insufficient to prove continuous ownership for one year as of November 19, 2007).

As with the precedents cited above, the Proponent failed to provide, along with her submission, sufficient verification of her ownership of the requisite number of Company shares as of the Submission Date from the record owner of those shares. The January 5, 2018 letter from Morgan Stanley does not cure this deficiency, because it was sent by the Proponent 21 days after the Proponent received the Company's Deficiency Notice, and was therefore untimely. *See, e.g., Prudential Financial, Inc.* (avail. Dec. 28, 2015) (concurring with exclusion of a proposal where the proponent provided proof of ownership twenty-three days after receiving the company's timely deficiency notice); *Mondelēz International, Inc.* (avail. Feb. 27, 2015) (concurring with exclusion of a proposal where the proponent provided proof of ownership sixteen days after receiving the company's timely deficiency notice); *Pitney Bowes Inc.* (avail. Jan. 13, 2012) (concurring with exclusion of a proposal where the proponent provided proof of ownership thirty-four days after receiving the company's timely deficiency notice). Accordingly, the Company may exclude the Proposal under Rule 14a-8(b) and Rule 14a-8(f)(1).

## **II. The Proposal May Be Excluded Under Rule 14a-8(b) And Rule 14a-8(f)(1) Because The Proponent Failed To Provide A Statement Of Intent To Hold The Required Number Or Amount Of Shares Through The Date Of The 2018 Annual Meeting In A Timely Manner.**

Rule 14a-8(b)(1) provides, in part, that “[i]n order to be eligible to submit a proposal . . . [a shareholder] must continue to hold [at least \$2,000 in market value, or 1%, of the company's] securities through the date of the meeting.” Rule 14a-8(b)(2) states that to demonstrate eligibility to submit a proposal under the rule, a shareholder must include with his or her submission a written statement that the shareholder intends to continue to hold the requisite amount of the company's securities through the date of the meeting of shareholders. Staff Legal Bulletin No. 14 (Jul. 13, 2001) (“SLB 14”) specifies that a shareholder is responsible for providing the company with a written statement that he or she intends to continue holding the requisite number of shares through the date of the shareholder meeting. *See* Section C.1.d., SLB 14. Similarly, SLB 14F states, “The shareholder must also continue to hold the required amount of securities through the date of the meeting and must provide the company with a written statement of intent to do so.”

As discussed in the “Background” section above, the Proponent's statement that she “intend[s] to continue to maintain ownership of this stock until (well beyond) the 2018 Annual Meeting” is insufficient because it does not confirm that the Proponent intends to

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hold the required number or amount of shares of the Company's common stock through the date of the 2018 annual meeting. *See Exhibit A.* The Proponent failed to cure this deficiency within 14 days of the Company's timely Deficiency Notice, and the Proposal may therefore be excluded under Rule 14a-8(b) and Rule 14a-8(f)(1).

The Staff has consistently concurred with exclusion of proposals where a proponent has provided an ambiguous statement of its intent to continue to own the requisite number or amount of company shares through the date of a company's annual meeting. For instance, in *Fluor Corp.* (avail. Dec. 31, 2014), the proponents stated that they "pledge to continue to hold stock until after the date of the next shareholder meeting." The company argued that the reference to "stock" failed to confirm continued ownership of the required number of company shares or, for that matter, of any specific number of shares. The Staff concurred with the exclusion of the proposal under Rules 14a-8(b) and 14a-8(f) noting that "[i]t appears that the proponents failed to provide [a written statement that the proponent intends to hold the requisite amount of company stock through the date of the shareholder meeting] within 14 calendar days from the date the proponents received Fluor's request under rule 14a-8(f)."

Similarly, in *General Electric Co.* (avail. Jan. 30, 2012), the proponent represented that it was the beneficial owner of General Electric common stock with a market value in excess of \$2,000 held continuously for more than one year, and that it "intend[ed] to continue to own General Electric common stock through the date of the [c]ompany's 2012 annual meeting." The company responded by sending a deficiency notice with a request that the proponent provide "a written statement that he, she or it intends to continue to hold *the requisite number* of shares through the date of the shareowners' meeting at which the proposal will be voted on by the shareowners" (emphasis added). The proponent failed to cure the deficiency because it did not provide an additional, more specific statement of ownership intent, and the Staff concurred that General Electric could exclude the proposal on that basis. In *The Cheesecake Factory Inc.* (avail. Mar. 27, 2012), the Staff concurred in the exclusion of a proposal where the proponents represented that they were beneficial owners of at least \$2,000 of the company's securities and the accompanying statement of intent expressed only an "intention to continue to own shares in the [c]ompany through the date of the 2012 annual meeting of shareholders" and thus did not sufficiently confirm the proponents' intention to continue "to hold the *requisite* amount of the company stock through the date of the shareholder meeting" (emphasis added).

As with the precedent cited above, the Proponent's statement that she intends to continue to own "this stock" was ambiguous as to whether the Proponent intended to continue to own all of the shares that she stated she owned or only that she intended to own the Company's stock but no specific number or amount of shares. The statement therefore failed to confirm her

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intent to hold the requisite number or amount of Company shares through the date of the 2018 Annual Meeting. The Proponent's January 3, 2018 letter does not cure this deficiency because it was received by the Company 19 days after the Proponent received the Company's Deficiency Notice, and was therefore untimely. As discussed in Part I above, the Staff has consistently held that a proposal may be excluded under Rule 14a-8(b) and Rule 14a-8(f)(1) if a proponent submits additional materials purporting to cure a procedural deficiency more than fourteen days after receiving a company's timely deficiency notice. *See, e.g., Prudential Financial, Inc.* (avail. Dec. 28, 2015) (concurring with exclusion of a proposal where the proponent provided proof of ownership twenty-three days after receiving the company's timely deficiency notice); *Mondelēz International, Inc.* (avail. Feb. 27, 2015) (concurring with exclusion of a proposal where the proponent provided proof of ownership sixteen days after receiving the company's timely deficiency notice); *Pitney Bowes Inc.* (avail. Jan. 13, 2012) (concurring with exclusion of a proposal where the proponent provided proof of ownership thirty-four days after receiving the company's timely deficiency notice). The Proponent's statement of intent to continue to hold the requisite number or amount of shares through the date of the Company's 2018 Annual Meeting was untimely. Accordingly, the Company may exclude the Proposal under Rule 14a-8(b) and Rule 14a-8(f)(1).

## CONCLUSION

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

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

Sincerely,



Ronald O. Mueller

Enclosures

# GIBSON DUNN

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cc: Mark Hoffman, Amazon.com, Inc.  
Elizabeth S. Bowles

102427166.5

**EXHIBIT A**

RECEIVED

DEC 12 2017

Elizabeth S. Bowles

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AMAZON.COM, INC.  
LEGAL DEPARTMENT

December 11th, 2017

David A. Zapolsky  
Corporate Secretary of Amazon.com, Inc.  
Amazon.com, Inc.  
410 Terry Avenue North  
Seattle, WA 98109

Dear Mr. Zapolsky,

I am the owner of over \$2,000 of Amazon.com, Inc. stock held continuously for over one year. I intend to continue to maintain ownership of this stock until (well beyond) the 2018 Annual Meeting. The required Proof of Ownership document, confirming I own 32 shares, is enclosed.

Also enclosed is the shareholder resolution I am submitting for inclusion in the proxy statement in accordance with Rule 14a-8 of the general rules and regulations of the Securities Exchange Act of 1934. I, or a representative, will attend the annual meeting to move the resolution as required by SEC rules.

As a (very!) small shareholder, I am grateful for the opportunity to engage with Amazon and view the shareholder resolution process as an avenue to connect and work collaboratively towards the goal of integrating material sustainability information in financial reporting.

Thank you for considering this resolution and look forward to discussing next steps with you. Please feel free to reach me anytime at \*\*\* or \*\*\*.

Sincerely,



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Elizabeth S. Bowles

Enclosures:

- Proof of Ownership
- Shareholder Resolution

Robert J. Duddie  
Complex Risk Officer

Wealth Management  
522 5th Avenue  
11th Floor  
New York, NY 10036

direct 212 603 6166  
fax 212 765 1057  
toll free 800 843 0211

robert.j.duddie@morganstanley.com

Morgan Stanley

December 11, 2017

AMAZON.COM INC

Re: Elizabeth S Bowles

To Whom It May Concern:

Please be advised that Elizabeth S Bowles currently maintains the following brokerage account \*\*\* at Morgan Stanley Smith Barney LLC ("Morgan Stanley") which contains a long position in AMAZON.COM INC (AMZN) of 32 shares as of the close of business on December 8, 2017:

<u>A/C Number</u>	<u>A/C Title</u>
***	MSSB C/F NANCY BOWLES (DECD) ELIZABETH S BOWLES

The Client has held the position in AMAZON.COM INC (AMZN) in the Account continuously since April 15, 2016.

We are presenting the information contained herein pursuant to our Client's request. It is valid as of the date of issuance. Morgan Stanley does not warrant or guarantee that such identified securities, assets or monies will remain in the Client's account. The Client have the power to withdraw assets from this account at any time and no security interest or collateral rights are being granted to any party other than Morgan Stanley.

Thank you for your time and consideration in this matter.

Sincerely,



Robert Duddie  
Complex Risk Officer

cc: Elizabeth S Bowles

## **SHAREHOLDER PROPOSAL REGARDING THE INTEGRATION OF SUSTAINABILITY INFORMATION IN FINANCIAL REPORTING**

**RESOLVED:** Shareholders of Amazon.com, Inc. request that the Board of Directors, Head of Worldwide Sustainability, and Chief Financial Officer report the Company's material ESG-related policies, programs, and performance using company-specific information and sustainable accounting metrics in its next Annual Report (Form 10-K). Reporting can be done at reasonable cost and omit proprietary information as well as data the Company is reluctant to share.

**SUPPORTING STATEMENT:** A growing body of evidence supports the observation that investment strategies which consider environmental, social, and governance (ESG) factors lead to stronger financial performance over the long-term.

A 2015 academic literature review conducted by Arabesque Asset Management and the University of Oxford found that, of 200 studies on sustainability and corporate performance, 90% of studies show sound ESG standards lower the cost of capital, 88% demonstrate the implementation of ESG best practices result in superior operational performance, and 80% conclude stock price performance is positively influenced by strong ESG performance.

In October 2017, McKinsey & Company reported that ESG integration - defined as "the systematic and explicit inclusion of ESG factors in financial analysis" - has been growing at 17 percent per year. A 2017 working paper from Harvard Management Company reinforced that "forty years of academic and empirical evidence suggest that ESG integration in the investment process can lead to better risk-adjusted returns and long-term value creation." With the rise of such evidence, an increasing number of investors expect companies to incorporate material ESG information in public financial filings, such as the Annual Report (Form 10-K).

Integrated reports facilitate the use of ESG integration in investors' decision-making processes. In addition, the process of linking sustainability reporting with financial reporting benefits the company and its managers by enabling them to more effectively identify, understand, and target material ESG factors, which contribute to improved long-term financial performance.

There are several cost-effective resources available to assess the relevance and quality of sustainability information and to guide the integrated reporting process. These include frameworks provided by standard-setting bodies, such as the Global Reporting Initiative (GRI), the International Integrated Reporting Council (IIRC), the Task Force on Climate-related Financial Disclosures (TCFD), and most notably the Sustainability Accounting Standards Board (SASB).

Amazon is ideally positioned to become a leader in integrated reporting. The Company already considers ESG factors in its business decisions. As stated on page 19 of the Company's 2017 Proxy Statement, "we already regularly consider environmental, social, and governance issues in our business and continue to develop and improve our sustainability practices." The Company

also publicly reports on many of its ESG policies, programs, and performance metrics (see [www.amazon.com/sustainability](http://www.amazon.com/sustainability) and [www.amazon.com/diversity](http://www.amazon.com/diversity)).

Tying Amazon's material ESG information (much of which it already discloses on its website), with its financial information (disclosed in its Annual Report) will more comprehensively communicate to shareholders the Company's understanding of its opportunities, risks, and approach to value creation.

**EXHIBIT B**

December 13, 2017

**VIA OVERNIGHT MAIL**

Elizabeth S. Bowles  
\*\*\*

Dear Ms. Bowles:

I am writing on behalf of Amazon.com, Inc. (the “Company”), which received on December 12, 2017, your shareholder proposal regarding “Integration of Sustainability Information in Financial Reporting” submitted pursuant to Securities and Exchange Commission (“SEC”) Rule 14a-8 for inclusion in the proxy statement for the Company’s 2018 Annual Meeting of Shareholders (the “Proposal”).

The Proposal contains certain procedural deficiencies, which SEC regulations require us to bring to your attention. Rule 14a-8(b) under the Securities Exchange Act of 1934, as amended, provides that shareholder proponents must submit sufficient proof of their continuous ownership of at least \$2,000 in market value, or 1%, of a company’s shares entitled to vote on the proposal for at least one year as of the date the shareholder proposal was submitted. The Company’s stock records do not indicate that you are the record owner of sufficient shares to satisfy this requirement. In addition, to date we have not received adequate proof that you have satisfied Rule 14a-8’s ownership requirements as of the date that the Proposal was submitted to the Company. The December 11, 2017 letter from Morgan Stanley that you provided is insufficient because it states the number of shares you held as of December 8, 2017 but does not cover the full one-year period preceding and including December 11, 2016, the date the Proposal was submitted to the Company.

To remedy this defect, you must obtain a new proof of ownership letter verifying your continuous ownership of the required number or amount of Company shares for the one-year period preceding and including December 11, 2017, the date the Proposal was submitted to the Company. As explained in Rule 14a-8(b) and in SEC staff guidance, sufficient proof must be in the form of:

- (1) a written statement from the “record” holder of your shares (usually a broker or a bank) verifying that you continuously held the required number or amount of

Elizabeth S. Bowles  
December 13, 2017  
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- Company shares for the one-year period preceding and including December 11, 2017; or
- (2) if you have filed with the SEC a Schedule 13D, Schedule 13G, Form 3, Form 4 or Form 5, or amendments to those documents or updated forms, reflecting your ownership of the required number or amount of Company shares as of or before the date on which the one-year eligibility period begins, a copy of the schedule and/or form, and any subsequent amendments reporting a change in the ownership level and a written statement that you continuously held the required number or amount of Company shares for the one-year period.

If you intend to demonstrate ownership by submitting a written statement from the “record” holder of your shares as set forth in (1) above, please note that most large U.S. brokers and banks deposit their customers’ securities with, and hold those securities through, the Depository Trust Company (“DTC”), a registered clearing agency that acts as a securities depository (DTC is also known through the account name of Cede & Co.). Under SEC Staff Legal Bulletin No. 14F, only DTC participants are viewed as record holders of securities that are deposited at DTC. You can confirm whether your broker or bank is a DTC participant by asking your broker or bank or by checking DTC’s participant list, which is available at <http://www.dtcc.com/~media/Files/Downloads/client-center/DTC/alpha.ashx>. In these situations, shareholders need to obtain proof of ownership from the DTC participant through which the securities are held, as follows:

- (1) If your broker or bank is a DTC participant, then you need to submit a written statement from your broker or bank verifying that you continuously held the required number or amount of Company shares for the one-year period preceding and including December 11, 2017.
- (2) If your broker or bank is not a DTC participant, then you need to submit proof of ownership from the DTC participant through which the shares are held verifying that you continuously held the required number or amount of Company shares for the one-year period preceding and including December 11, 2017. You should be able to find out the identity of the DTC participant by asking your broker or bank. If your broker is an introducing broker, you may also be able to learn the identity and telephone number of the DTC participant through your account statements, because the clearing broker identified on your account statements will generally be a DTC participant. If the DTC participant that holds your shares is not able to confirm your individual holdings but is able to confirm the holdings of your broker or bank, then you need to satisfy the proof of ownership requirements by obtaining and submitting two proof of ownership statements verifying that, for the

Elizabeth S. Bowles  
December 13, 2017  
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one-year period preceding and including December 11, 2017, the required number or amount of Company shares were continuously held: (i) one from your broker or bank confirming your ownership, and (ii) the other from the DTC participant confirming the broker or bank's ownership.

Under Rule 14a-8(b) of the Exchange Act, in addition to demonstrating that you have continuously held at least \$2,000 in market value, or 1%, of the Company's securities entitled to be voted on the Proposal at the shareholders' meeting for at least one year as of the date the Proposal was submitted to the Company, a shareholder must provide to the Company a written statement of the shareholder's intent to continue to hold the required number or amount of shares through the date of the shareholders' meeting at which the Proposal will be voted on by the shareholders. We believe that your written statement in your December 11, 2017 correspondence that you "intend to continue to maintain ownership of this stock until (well beyond) the 2018 Annual Meeting" is not adequate because it fails to confirm specifically that you intend to hold the required number or amount of the Company's shares through the date of the 2018 Annual Meeting of Shareholders. To remedy this defect, you must submit a written statement that you intend to continue holding the required number or amount of Company shares through the date of the Company's 2018 Annual Meeting of Shareholders.

The SEC's rules require that any response to this letter be postmarked or transmitted electronically no later than 14 calendar days from the date you receive this letter. Please address any response to me at Gibson, Dunn & Crutcher LLP, 1050 Connecticut Ave., N.W., Washington, DC 20036. Alternatively, you may transmit any response by email to me at [rmueller@gibsondunn.com](mailto:rmueller@gibsondunn.com).

If you have any questions with respect to the foregoing, please contact me at (202) 955-8671. For your reference, I enclose a copy of Rule 14a-8 and Staff Legal Bulletin No. 14F.

Sincerely,



Ronald O. Mueller

Enclosures

cc: Mark Hoffman, Amazon.com, Inc.  
Gavin McCraley, Amazon.com, Inc.

## Rule 14a-8 – Shareholder Proposals

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This section addresses when a company must include a shareholder's proposal in its proxy statement and identify the proposal in its form of proxy when the company holds an annual or special meeting of shareholders. In summary, in order to have your shareholder proposal included on a company's proxy card, and included along with any supporting statement in its proxy statement, you must be eligible and follow certain procedures. Under a few specific circumstances, the company is permitted to exclude your proposal, but only after submitting its reasons to the Commission. We structured this section in a question-and-answer format so that it is easier to understand. The references to "you" are to a shareholder seeking to submit the proposal.

(a) *Question 1: What is a proposal?* A shareholder proposal is your recommendation or requirement that the company and/or its board of directors take action, which you intend to present at a meeting of the company's shareholders. Your proposal should state as clearly as possible the course of action that you believe the company should follow. If your proposal is placed on the company's proxy card, the company must also provide in the form of proxy means for shareholders to specify by boxes a choice between approval or disapproval, or abstention. Unless otherwise indicated, the word "proposal" as used in this section refers both to your proposal, and to your corresponding statement in support of your proposal (if any).

(b) *Question 2: Who is eligible to submit a proposal, and how do I demonstrate to the company that I am eligible?*

(1) In order to be eligible to submit a proposal, you must have continuously held at least \$2,000 in market value, or 1%, of the company's securities entitled to be voted on the proposal at the meeting for at least one year by the date you submit the proposal. You must continue to hold those securities through the date of the meeting.

(2) If you are the registered holder of your securities, which means that your name appears in the company's records as a shareholder, the company can verify your eligibility on its own, although you will still have to provide the company with a written statement that you intend to continue to hold the securities through the date of the meeting of shareholders. However, if like many shareholders you are not a registered holder, the company likely does not know that you are a shareholder, or how many shares you own. In this case, at the time you submit your proposal, you must prove your eligibility to the company in one of two ways:

(i) The first way is to submit to the company a written statement from the "record" holder of your securities (usually a broker or bank) verifying that, at the time you submitted your proposal, you continuously held the securities for at least one year. You must also include your own written statement that you intend to continue to hold the securities through the date of the meeting of shareholders; or

(ii) The second way to prove ownership applies only if you have filed a Schedule 13D (§240.13d-101), Schedule 13G (§240.13d-102), Form 3 (§249.103 of this chapter), Form 4 (§249.104 of this chapter) and/or Form 5 (§249.105 of this chapter), or amendments to those documents or updated forms, reflecting your ownership of the shares as of or before the date on which the one-year eligibility period begins. If you have filed one of these documents with the SEC, you may demonstrate your eligibility by submitting to the company:

(A) A copy of the schedule and/or form, and any subsequent amendments reporting a change in your ownership level;

(B) Your written statement that you continuously held the required number of shares for the one-year period as of the date of the statement; and

(C) Your written statement that you intend to continue ownership of the shares through the date of the company's annual or special meeting.

(c) *Question 3:* How many proposals may I submit? Each shareholder may submit no more than one proposal to a company for a particular shareholders' meeting.

(d) *Question 4:* How long can my proposal be? The proposal, including any accompanying supporting statement, may not exceed 500 words.

(e) *Question 5:* What is the deadline for submitting a proposal?

(1) If you are submitting your proposal for the company's annual meeting, you can in most cases find the deadline in last year's proxy statement. However, if the company did not hold an annual meeting last year, or has changed the date of its meeting for this year more than 30 days from last year's meeting, you can usually find the deadline in one of the company's quarterly reports on Form 10-Q (§249.308a of this chapter), or in shareholder reports of investment companies under §270.30d-1 of this chapter of the Investment Company Act of 1940. In order to avoid controversy, shareholders should submit their proposals by means, including electronic means, that permit them to prove the date of delivery.

(2) The deadline is calculated in the following manner if the proposal is submitted for a regularly scheduled annual meeting. The proposal must be received at the company's principal executive offices not less than 120 calendar days before the date of the company's proxy statement released to shareholders in connection with the previous year's annual meeting. However, if the company did not hold an annual meeting the previous year, or if the date of this year's annual meeting has been changed by more than 30 days from the date of the previous year's meeting, then the deadline is a reasonable time before the company begins to print and send its proxy materials.

(3) If you are submitting your proposal for a meeting of shareholders other than a regularly scheduled annual meeting, the deadline is a reasonable time before the company begins to print and send its proxy materials.

(f) *Question 6:* What if I fail to follow one of the eligibility or procedural requirements explained in answers to Questions 1 through 4 of this section?

(1) The company may exclude your proposal, but only after it has notified you of the problem, and you have failed adequately to correct it. Within 14 calendar days of receiving your proposal, the company must notify you in writing of any procedural or eligibility deficiencies, as well as of the time frame for your response. Your response must be postmarked, or transmitted electronically, no later than 14 days from the date you received the company's notification. A company need not provide you such notice of a deficiency if the deficiency cannot be remedied, such as if you fail to submit a proposal by the company's properly determined deadline. If the company intends to exclude the proposal, it will later have to make a submission under §240.14a-8 and provide you with a copy under Question 10 below, §240.14a-8(j).

(2) If you fail in your promise to hold the required number of securities through the date of the meeting of shareholders, then the company will be permitted to exclude all of your proposals from its proxy materials for any meeting held in the following two calendar years.

(g) *Question 7:* Who has the burden of persuading the Commission or its staff that my proposal can be excluded? Except as otherwise noted, the burden is on the company to demonstrate that it is entitled to exclude a proposal.

(h) *Question 8:* Must I appear personally at the shareholders' meeting to present the proposal?

(1) Either you, or your representative who is qualified under state law to present the proposal on your behalf, must attend the meeting to present the proposal. Whether you attend the meeting yourself or send a qualified representative to the meeting in your place, you should make sure that you, or your representative, follow the proper state law procedures for attending the meeting and/or presenting your proposal.

(2) If the company holds its shareholder meeting in whole or in part via electronic media, and the company permits you or your representative to present your proposal via such media, then you may appear through electronic media rather than traveling to the meeting to appear in person.

(3) If you or your qualified representative fail to appear and present the proposal, without good cause, the company will be permitted to exclude all of your proposals from its proxy materials for any meetings held in the following two calendar years.

(i) *Question 9:* If I have complied with the procedural requirements, on what other bases may a company rely to exclude my proposal?

(1) *Improper under state law:* If the proposal is not a proper subject for action by shareholders under the laws of the jurisdiction of the company's organization;

*Note to paragraph (i)(1):* Depending on the subject matter, some proposals are not considered proper under state law if they would be binding on the company if approved by shareholders. In our experience, most proposals that are cast as recommendations or requests that the board of directors take specified action are proper under state law. Accordingly, we will assume that a proposal drafted as a recommendation or suggestion is proper unless the company demonstrates otherwise.

(2) *Violation of law:* If the proposal would, if implemented, cause the company to violate any state, federal, or foreign law to which it is subject;

*Note to paragraph (i)(2):* We will not apply this basis for exclusion to permit exclusion of a proposal on grounds that it would violate foreign law if compliance with the foreign law would result in a violation of any state or federal law.

(3) *Violation of proxy rules:* If the proposal or supporting statement is contrary to any of the Commission's proxy rules, including §240.14a-9, which prohibits materially false or misleading statements in proxy soliciting materials;

(4) *Personal grievance; special interest:* If the proposal relates to the redress of a personal claim or grievance against the company or any other person, or if it is designed to result in a benefit to you, or to further a personal interest, which is not shared by the other shareholders at large;

(5) *Relevance:* If the proposal relates to operations which account for less than 5 percent of the company's total assets at the end of its most recent fiscal year, and for less than 5 percent of its net earnings and gross sales for its most recent fiscal year, and is not otherwise significantly related to the company's business;

(6) *Absence of power/authority:* If the company would lack the power or authority to implement the proposal;

(7) *Management functions*: If the proposal deals with a matter relating to the company's ordinary business operations;

(8) *Director elections*: If the proposal:

- (i) Would disqualify a nominee who is standing for election;
- (ii) Would remove a director from office before his or her term expired;
- (iii) Questions the competence, business judgment, or character of one or more nominees or directors;
- (iv) Seeks to include a specific individual in the company's proxy materials for election to the board of directors; or
- (v) Otherwise could affect the outcome of the upcoming election of directors.

(9) *Conflicts with company's proposal*: If the proposal directly conflicts with one of the company's own proposals to be submitted to shareholders at the same meeting;

*Note to paragraph (i)(9)*: A company's submission to the Commission under this section should specify the points of conflict with the company's proposal.

(10) *Substantially implemented*: If the company has already substantially implemented the proposal;

*Note to paragraph (i)(10)*: A company may exclude a shareholder proposal that would provide an advisory vote or seek future advisory votes to approve the compensation of executives as disclosed pursuant to Item 402 of Regulation S-K (§229.402 of this chapter) or any successor to Item 402 (a "say-on-pay vote") or that relates to the frequency of say-on-pay votes, provided that in the most recent shareholder vote required by §240.14a-21(b) of this chapter a single year ( i.e., one, two, or three years) received approval of a majority of votes cast on the matter and the company has adopted a policy on the frequency of say-on-pay votes that is consistent with the choice of the majority of votes cast in the most recent shareholder vote required by §240.14a-21(b) of this chapter.

(11) *Duplication*: If the proposal substantially duplicates another proposal previously submitted to the company by another proponent that will be included in the company's proxy materials for the same meeting;

(12) *Resubmissions*: If the proposal deals with substantially the same subject matter as another proposal or proposals that has or have been previously included in the company's proxy materials within the preceding 5 calendar years, a company may exclude it from its proxy materials for any meeting held within 3 calendar years of the last time it was included if the proposal received:

- (i) Less than 3% of the vote if proposed once within the preceding 5 calendar years;
- (ii) Less than 6% of the vote on its last submission to shareholders if proposed twice previously within the preceding 5 calendar years; or
- (iii) Less than 10% of the vote on its last submission to shareholders if proposed three times or more previously within the preceding 5 calendar years; and

(13) *Specific amount of dividends*: If the proposal relates to specific amounts of cash or stock dividends.

(j) *Question 10*: What procedures must the company follow if it intends to exclude my proposal?

(1) If the company intends to exclude a proposal from its proxy materials, it must file its reasons with the Commission no later than 80 calendar days before it files its definitive proxy statement and form of proxy with the Commission. The company must simultaneously provide you with a copy of its submission. The Commission staff may permit the company to make its submission later than 80 days before the company files its definitive proxy statement and form of proxy, if the company demonstrates good cause for missing the deadline.

(2) The company must file six paper copies of the following:

(i) The proposal;

(ii) An explanation of why the company believes that it may exclude the proposal, which should, if possible, refer to the most recent applicable authority, such as prior Division letters issued under the rule; and

(iii) A supporting opinion of counsel when such reasons are based on matters of state or foreign law.

(k) *Question 11*: May I submit my own statement to the Commission responding to the company's arguments? Yes, you may submit a response, but it is not required. You should try to submit any response to us, with a copy to the company, as soon as possible after the company makes its submission. This way, the Commission staff will have time to consider fully your submission before it issues its response. You should submit six paper copies of your response.

(l) *Question 12*: If the company includes my shareholder proposal in its proxy materials, what information about me must it include along with the proposal itself?

(1) The company's proxy statement must include your name and address, as well as the number of the company's voting securities that you hold. However, instead of providing that information, the company may instead include a statement that it will provide the information to shareholders promptly upon receiving an oral or written request.

(2) The company is not responsible for the contents of your proposal or supporting statement.

(m) *Question 13*: What can I do if the company includes in its proxy statement reasons why it believes shareholders should not vote in favor of my proposal, and I disagree with some of its statements?

(1) The company may elect to include in its proxy statement reasons why it believes shareholders should vote against your proposal. The company is allowed to make arguments reflecting its own point of view, just as you may express your own point of view in your proposal's supporting statement.

(2) However, if you believe that the company's opposition to your proposal contains materially false or misleading statements that may violate our anti-fraud rule, §240.14a-9, you should promptly send to the Commission staff and the company a letter explaining the reasons for your view, along with a copy of the company's statements opposing your proposal. To the extent possible, your letter should include specific factual information demonstrating the inaccuracy of the company's claims. Time permitting, you may wish to try to work out your differences with the company by yourself before contacting the Commission staff.

(3) We require the company to send you a copy of its statements opposing your proposal before it sends its proxy materials, so that you may bring to our attention any materially false or misleading statements, under the following timeframes:

(i) If our no-action response requires that you make revisions to your proposal or supporting statement as a condition to requiring the company to include it in its proxy materials, then the company must provide you with a copy of its opposition statements no later than 5 calendar days after the company receives a copy of your revised proposal; or

(ii) In all other cases, the company must provide you with a copy of its opposition statements no later than 30 calendar days before its files definitive copies of its proxy statement and form of proxy under §240.14a-6.



**Division of Corporation Finance  
Securities and Exchange Commission**

**Shareholder Proposals**

**Staff Legal Bulletin No. 14F (CF)**

**Action:** Publication of CF Staff Legal Bulletin

**Date:** October 18, 2011

**Summary:** This staff legal bulletin provides information for companies and shareholders regarding Rule 14a-8 under the Securities Exchange Act of 1934.

**Supplementary Information:** The statements in this bulletin represent the views of the Division of Corporation Finance (the "Division"). This bulletin is not a rule, regulation or statement of the Securities and Exchange Commission (the "Commission"). Further, the Commission has neither approved nor disapproved its content.

**Contacts:** For further information, please contact the Division's Office of Chief Counsel by calling (202) 551-3500 or by submitting a web-based request form at [https://tts.sec.gov/cgi-bin/corp\\_fin\\_interpretive](https://tts.sec.gov/cgi-bin/corp_fin_interpretive).

**A. The purpose of this bulletin**

This bulletin is part of a continuing effort by the Division to provide guidance on important issues arising under Exchange Act Rule 14a-8. Specifically, this bulletin contains information regarding:

- Brokers and banks that constitute "record" holders under Rule 14a-8 (b)(2)(i) for purposes of verifying whether a beneficial owner is eligible to submit a proposal under Rule 14a-8;
- Common errors shareholders can avoid when submitting proof of ownership to companies;
- The submission of revised proposals;
- Procedures for withdrawing no-action requests regarding proposals submitted by multiple proponents; and
- The Division's new process for transmitting Rule 14a-8 no-action responses by email.

You can find additional guidance regarding Rule 14a-8 in the following bulletins that are available on the Commission's website: [SLB No. 14](#), [SLB No. 14A](#), [SLB No. 14B](#), [SLB No. 14C](#), [SLB No. 14D](#) and [SLB No. 14E](#).

## **B. The types of brokers and banks that constitute “record” holders under Rule 14a-8(b)(2)(i) for purposes of verifying whether a beneficial owner is eligible to submit a proposal under Rule 14a-8**

### **1. Eligibility to submit a proposal under Rule 14a-8**

To be eligible to submit a shareholder proposal, a shareholder must have continuously held at least \$2,000 in market value, or 1%, of the company's securities entitled to be voted on the proposal at the shareholder meeting for at least one year as of the date the shareholder submits the proposal. The shareholder must also continue to hold the required amount of securities through the date of the meeting and must provide the company with a written statement of intent to do so.<sup>1</sup>

The steps that a shareholder must take to verify his or her eligibility to submit a proposal depend on how the shareholder owns the securities. There are two types of security holders in the U.S.: registered owners and beneficial owners.<sup>2</sup> Registered owners have a direct relationship with the issuer because their ownership of shares is listed on the records maintained by the issuer or its transfer agent. If a shareholder is a registered owner, the company can independently confirm that the shareholder's holdings satisfy Rule 14a-8(b)'s eligibility requirement.

The vast majority of investors in shares issued by U.S. companies, however, are beneficial owners, which means that they hold their securities in book-entry form through a securities intermediary, such as a broker or a bank. Beneficial owners are sometimes referred to as “street name” holders. Rule 14a-8(b)(2)(i) provides that a beneficial owner can provide proof of ownership to support his or her eligibility to submit a proposal by submitting a written statement “from the ‘record’ holder of [the] securities (usually a broker or bank),” verifying that, at the time the proposal was submitted, the shareholder held the required amount of securities continuously for at least one year.<sup>3</sup>

### **2. The role of the Depository Trust Company**

Most large U.S. brokers and banks deposit their customers' securities with, and hold those securities through, the Depository Trust Company (“DTC”), a registered clearing agency acting as a securities depository. Such brokers and banks are often referred to as “participants” in DTC.<sup>4</sup> The names of these DTC participants, however, do not appear as the registered owners of the securities deposited with DTC on the list of shareholders maintained by the company or, more typically, by its transfer agent. Rather, DTC's nominee, Cede & Co., appears on the shareholder list as the sole registered owner of securities deposited with DTC by the DTC participants. A company can request from DTC a “securities position listing” as of a specified date, which identifies the DTC participants having a position in the company's securities and the number of securities held by each DTC participant on that date.<sup>5</sup>

### **3. Brokers and banks that constitute “record” holders under Rule 14a-8(b)(2)(i) for purposes of verifying whether a beneficial owner is eligible to submit a proposal under Rule 14a-8**

In *The Hain Celestial Group, Inc.* (Oct. 1, 2008), we took the position that an introducing broker could be considered a “record” holder for purposes of

Rule 14a-8(b)(2)(i). An introducing broker is a broker that engages in sales and other activities involving customer contact, such as opening customer accounts and accepting customer orders, but is not permitted to maintain custody of customer funds and securities.<sup>6</sup> Instead, an introducing broker engages another broker, known as a “clearing broker,” to hold custody of client funds and securities, to clear and execute customer trades, and to handle other functions such as issuing confirmations of customer trades and customer account statements. Clearing brokers generally are DTC participants; introducing brokers generally are not. As introducing brokers generally are not DTC participants, and therefore typically do not appear on DTC’s securities position listing, *Hain Celestial* has required companies to accept proof of ownership letters from brokers in cases where, unlike the positions of registered owners and brokers and banks that are DTC participants, the company is unable to verify the positions against its own or its transfer agent’s records or against DTC’s securities position listing.

In light of questions we have received following two recent court cases relating to proof of ownership under Rule 14a-8<sup>7</sup> and in light of the Commission’s discussion of registered and beneficial owners in the Proxy Mechanics Concept Release, we have reconsidered our views as to what types of brokers and banks should be considered “record” holders under Rule 14a-8(b)(2)(i). Because of the transparency of DTC participants’ positions in a company’s securities, we will take the view going forward that, for Rule 14a-8(b)(2)(i) purposes, only DTC participants should be viewed as “record” holders of securities that are deposited at DTC. As a result, we will no longer follow *Hain Celestial*.

We believe that taking this approach as to who constitutes a “record” holder for purposes of Rule 14a-8(b)(2)(i) will provide greater certainty to beneficial owners and companies. We also note that this approach is consistent with Exchange Act Rule 12g5-1 and a 1988 staff no-action letter addressing that rule,<sup>8</sup> under which brokers and banks that are DTC participants are considered to be the record holders of securities on deposit with DTC when calculating the number of record holders for purposes of Sections 12(g) and 15(d) of the Exchange Act.

Companies have occasionally expressed the view that, because DTC’s nominee, Cede & Co., appears on the shareholder list as the sole registered owner of securities deposited with DTC by the DTC participants, only DTC or Cede & Co. should be viewed as the “record” holder of the securities held on deposit at DTC for purposes of Rule 14a-8(b)(2)(i). We have never interpreted the rule to require a shareholder to obtain a proof of ownership letter from DTC or Cede & Co., and nothing in this guidance should be construed as changing that view.

*How can a shareholder determine whether his or her broker or bank is a DTC participant?*

Shareholders and companies can confirm whether a particular broker or bank is a DTC participant by checking DTC’s participant list, which is currently available on the Internet at <http://www.dtcc.com/~media/Files/Downloads/client-center/DTC/alpha.ashx>.

*What if a shareholder’s broker or bank is not on DTC’s participant list?*

The shareholder will need to obtain proof of ownership from the DTC participant through which the securities are held. The shareholder should be able to find out who this DTC participant is by asking the shareholder's broker or bank.<sup>9</sup>

If the DTC participant knows the shareholder's broker or bank's holdings, but does not know the shareholder's holdings, a shareholder could satisfy Rule 14a-8(b)(2)(i) by obtaining and submitting two proof of ownership statements verifying that, at the time the proposal was submitted, the required amount of securities were continuously held for at least one year – one from the shareholder's broker or bank confirming the shareholder's ownership, and the other from the DTC participant confirming the broker or bank's ownership.

*How will the staff process no-action requests that argue for exclusion on the basis that the shareholder's proof of ownership is not from a DTC participant?*

The staff will grant no-action relief to a company on the basis that the shareholder's proof of ownership is not from a DTC participant only if the company's notice of defect describes the required proof of ownership in a manner that is consistent with the guidance contained in this bulletin. Under Rule 14a-8(f)(1), the shareholder will have an opportunity to obtain the requisite proof of ownership after receiving the notice of defect.

### **C. Common errors shareholders can avoid when submitting proof of ownership to companies**

In this section, we describe two common errors shareholders make when submitting proof of ownership for purposes of Rule 14a-8(b)(2), and we provide guidance on how to avoid these errors.

First, Rule 14a-8(b) requires a shareholder to provide proof of ownership that he or she has "continuously held at least \$2,000 in market value, or 1%, of the company's securities entitled to be voted on the proposal at the meeting for at least one year by the date you submit the proposal" (emphasis added).<sup>10</sup> We note that many proof of ownership letters do not satisfy this requirement because they do not verify the shareholder's beneficial ownership for the entire one-year period preceding and including the date the proposal is submitted. In some cases, the letter speaks as of a date *before* the date the proposal is submitted, thereby leaving a gap between the date of the verification and the date the proposal is submitted. In other cases, the letter speaks as of a date *after* the date the proposal was submitted but covers a period of only one year, thus failing to verify the shareholder's beneficial ownership over the required full one-year period preceding the date of the proposal's submission.

Second, many letters fail to confirm continuous ownership of the securities. This can occur when a broker or bank submits a letter that confirms the shareholder's beneficial ownership only as of a specified date but omits any reference to continuous ownership for a one-year period.

We recognize that the requirements of Rule 14a-8(b) are highly prescriptive and can cause inconvenience for shareholders when submitting proposals.

Although our administration of Rule 14a-8(b) is constrained by the terms of the rule, we believe that shareholders can avoid the two errors highlighted above by arranging to have their broker or bank provide the required verification of ownership as of the date they plan to submit the proposal using the following format:

“As of [date the proposal is submitted], [name of shareholder] held, and has held continuously for at least one year, [number of securities] shares of [company name] [class of securities].”<sup>11</sup>

As discussed above, a shareholder may also need to provide a separate written statement from the DTC participant through which the shareholder’s securities are held if the shareholder’s broker or bank is not a DTC participant.

#### **D. The submission of revised proposals**

On occasion, a shareholder will revise a proposal after submitting it to a company. This section addresses questions we have received regarding revisions to a proposal or supporting statement.

##### **1. A shareholder submits a timely proposal. The shareholder then submits a revised proposal before the company’s deadline for receiving proposals. Must the company accept the revisions?**

Yes. In this situation, we believe the revised proposal serves as a replacement of the initial proposal. By submitting a revised proposal, the shareholder has effectively withdrawn the initial proposal. Therefore, the shareholder is not in violation of the one-proposal limitation in Rule 14a-8 (c).<sup>12</sup> If the company intends to submit a no-action request, it must do so with respect to the revised proposal.

We recognize that in Question and Answer E.2 of SLB No. 14, we indicated that if a shareholder makes revisions to a proposal before the company submits its no-action request, the company can choose whether to accept the revisions. However, this guidance has led some companies to believe that, in cases where shareholders attempt to make changes to an initial proposal, the company is free to ignore such revisions even if the revised proposal is submitted before the company’s deadline for receiving shareholder proposals. We are revising our guidance on this issue to make clear that a company may not ignore a revised proposal in this situation.<sup>13</sup>

##### **2. A shareholder submits a timely proposal. After the deadline for receiving proposals, the shareholder submits a revised proposal. Must the company accept the revisions?**

No. If a shareholder submits revisions to a proposal after the deadline for receiving proposals under Rule 14a-8(e), the company is not required to accept the revisions. However, if the company does not accept the revisions, it must treat the revised proposal as a second proposal and submit a notice stating its intention to exclude the revised proposal, as required by Rule 14a-8(j). The company’s notice may cite Rule 14a-8(e) as the reason for excluding the revised proposal. If the company does not accept the revisions and intends to exclude the initial proposal, it would also need to submit its reasons for excluding the initial proposal.

### **3. If a shareholder submits a revised proposal, as of which date must the shareholder prove his or her share ownership?**

A shareholder must prove ownership as of the date the original proposal is submitted. When the Commission has discussed revisions to proposals,<sup>14</sup> it has not suggested that a revision triggers a requirement to provide proof of ownership a second time. As outlined in Rule 14a-8(b), proving ownership includes providing a written statement that the shareholder intends to continue to hold the securities through the date of the shareholder meeting. Rule 14a-8(f)(2) provides that if the shareholder “fails in [his or her] promise to hold the required number of securities through the date of the meeting of shareholders, then the company will be permitted to exclude all of [the same shareholder’s] proposals from its proxy materials for any meeting held in the following two calendar years.” With these provisions in mind, we do not interpret Rule 14a-8 as requiring additional proof of ownership when a shareholder submits a revised proposal.<sup>15</sup>

### **E. Procedures for withdrawing no-action requests for proposals submitted by multiple proponents**

We have previously addressed the requirements for withdrawing a Rule 14a-8 no-action request in SLB Nos. 14 and 14C. SLB No. 14 notes that a company should include with a withdrawal letter documentation demonstrating that a shareholder has withdrawn the proposal. In cases where a proposal submitted by multiple shareholders is withdrawn, SLB No. 14C states that, if each shareholder has designated a lead individual to act on its behalf and the company is able to demonstrate that the individual is authorized to act on behalf of all of the proponents, the company need only provide a letter from that lead individual indicating that the lead individual is withdrawing the proposal on behalf of all of the proponents.

Because there is no relief granted by the staff in cases where a no-action request is withdrawn following the withdrawal of the related proposal, we recognize that the threshold for withdrawing a no-action request need not be overly burdensome. Going forward, we will process a withdrawal request if the company provides a letter from the lead filer that includes a representation that the lead filer is authorized to withdraw the proposal on behalf of each proponent identified in the company’s no-action request.<sup>16</sup>

### **F. Use of email to transmit our Rule 14a-8 no-action responses to companies and proponents**

To date, the Division has transmitted copies of our Rule 14a-8 no-action responses, including copies of the correspondence we have received in connection with such requests, by U.S. mail to companies and proponents. We also post our response and the related correspondence to the Commission’s website shortly after issuance of our response.

In order to accelerate delivery of staff responses to companies and proponents, and to reduce our copying and postage costs, going forward, we intend to transmit our Rule 14a-8 no-action responses by email to companies and proponents. We therefore encourage both companies and proponents to include email contact information in any correspondence to each other and to us. We will use U.S. mail to transmit our no-action response to any company or proponent for which we do not have email contact information.

Given the availability of our responses and the related correspondence on the Commission's website and the requirement under Rule 14a-8 for companies and proponents to copy each other on correspondence submitted to the Commission, we believe it is unnecessary to transmit copies of the related correspondence along with our no-action response. Therefore, we intend to transmit only our staff response and not the correspondence we receive from the parties. We will continue to post to the Commission's website copies of this correspondence at the same time that we post our staff no-action response.

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<sup>1</sup> See Rule 14a-8(b).

<sup>2</sup> For an explanation of the types of share ownership in the U.S., see Concept Release on U.S. Proxy System, Release No. 34-62495 (July 14, 2010) [75 FR 42982] ("Proxy Mechanics Concept Release"), at Section II.A. The term "beneficial owner" does not have a uniform meaning under the federal securities laws. It has a different meaning in this bulletin as compared to "beneficial owner" and "beneficial ownership" in Sections 13 and 16 of the Exchange Act. Our use of the term in this bulletin is not intended to suggest that registered owners are not beneficial owners for purposes of those Exchange Act provisions. See Proposed Amendments to Rule 14a-8 under the Securities Exchange Act of 1934 Relating to Proposals by Security Holders, Release No. 34-12598 (July 7, 1976) [41 FR 29982], at n.2 ("The term 'beneficial owner' when used in the context of the proxy rules, and in light of the purposes of those rules, may be interpreted to have a broader meaning than it would for certain other purpose[s] under the federal securities laws, such as reporting pursuant to the Williams Act.").

<sup>3</sup> If a shareholder has filed a Schedule 13D, Schedule 13G, Form 3, Form 4 or Form 5 reflecting ownership of the required amount of shares, the shareholder may instead prove ownership by submitting a copy of such filings and providing the additional information that is described in Rule 14a-8(b)(2)(ii).

<sup>4</sup> DTC holds the deposited securities in "fungible bulk," meaning that there are no specifically identifiable shares directly owned by the DTC participants. Rather, each DTC participant holds a pro rata interest or position in the aggregate number of shares of a particular issuer held at DTC. Correspondingly, each customer of a DTC participant – such as an individual investor – owns a pro rata interest in the shares in which the DTC participant has a pro rata interest. See Proxy Mechanics Concept Release, at Section II.B.2.a.

<sup>5</sup> See Exchange Act Rule 17Ad-8.

<sup>6</sup> See Net Capital Rule, Release No. 34-31511 (Nov. 24, 1992) [57 FR 56973] ("Net Capital Rule Release"), at Section II.C.

<sup>7</sup> See *KBR Inc. v. Chevedden*, Civil Action No. H-11-0196, 2011 U.S. Dist. LEXIS 36431, 2011 WL 1463611 (S.D. Tex. Apr. 4, 2011); *Apache Corp. v. Chevedden*, 696 F. Supp. 2d 723 (S.D. Tex. 2010). In both cases, the court concluded that a securities intermediary was not a record holder for purposes of Rule 14a-8(b) because it did not appear on a list of the

company's non-objecting beneficial owners or on any DTC securities position listing, nor was the intermediary a DTC participant.

<sup>8</sup> *Techne Corp.* (Sept. 20, 1988).

<sup>9</sup> In addition, if the shareholder's broker is an introducing broker, the shareholder's account statements should include the clearing broker's identity and telephone number. See Net Capital Rule Release, at Section II.C.(iii). The clearing broker will generally be a DTC participant.

<sup>10</sup> For purposes of Rule 14a-8(b), the submission date of a proposal will generally precede the company's receipt date of the proposal, absent the use of electronic or other means of same-day delivery.

<sup>11</sup> This format is acceptable for purposes of Rule 14a-8(b), but it is not mandatory or exclusive.

<sup>12</sup> As such, it is not appropriate for a company to send a notice of defect for multiple proposals under Rule 14a-8(c) upon receiving a revised proposal.

<sup>13</sup> This position will apply to all proposals submitted after an initial proposal but before the company's deadline for receiving proposals, regardless of whether they are explicitly labeled as "revisions" to an initial proposal, unless the shareholder affirmatively indicates an intent to submit a second, *additional* proposal for inclusion in the company's proxy materials. In that case, the company must send the shareholder a notice of defect pursuant to Rule 14a-8(f)(1) if it intends to exclude either proposal from its proxy materials in reliance on Rule 14a-8(c). In light of this guidance, with respect to proposals or revisions received before a company's deadline for submission, we will no longer follow *Layne Christensen Co.* (Mar. 21, 2011) and other prior staff no-action letters in which we took the view that a proposal would violate the Rule 14a-8(c) one-proposal limitation if such proposal is submitted to a company after the company has either submitted a Rule 14a-8 no-action request to exclude an earlier proposal submitted by the same proponent or notified the proponent that the earlier proposal was excludable under the rule.

<sup>14</sup> See, e.g., Adoption of Amendments Relating to Proposals by Security Holders, Release No. 34-12999 (Nov. 22, 1976) [41 FR 52994].

<sup>15</sup> Because the relevant date for proving ownership under Rule 14a-8(b) is the date the proposal is submitted, a proponent who does not adequately prove ownership in connection with a proposal is not permitted to submit another proposal for the same meeting on a later date.

<sup>16</sup> Nothing in this staff position has any effect on the status of any shareholder proposal that is not withdrawn by the proponent or its authorized representative.

<http://www.sec.gov/interp/leg/cfs1b14f.htm>

**EXHIBIT C**



# Shipment Receipt

Transaction Date: 13 Dec 2017

Tracking Number:

\*\*\*

## ① ADDRESS INFORMATION

**Ship To:**

\*\*\*

**Ship From:**

GIBSON, DUNN & CRUTCHER LLP  
 VIVIAN WEBB  
 3161 MICHELSON DRIVE  
 IRVINE CA 926124412  
 Telephone:9494513815

**Return Address:**

GIBSON, DUNN & CRUTCHER LLP  
 MICHAEL A. TITERA  
 3161 MICHELSON DRIVE  
 IRVINE CA 926124412  
 Telephone:9494513815

## ② PACKAGE INFORMATION

	WEIGHT	DIMENSIONS / PACKAGING	DECLARED VALUE	REFERENCE NUMBERS
1.	Letter (Letter billable)	UPS Letter		Client-Matter - ***

## ③ UPS SHIPPING SERVICE AND SHIPPING OPTIONS

**Service:**

UPS Next Day Air

**Shipping Fees Subtotal:**

29.90 USD

**Additional Shipping Options**

**Transportation**

23.10 USD

**Deliver Without Signature**

**Fuel Surcharge**

2.80 USD

Package1: Deliver Without Signature

0.00 USD

**Residential Surcharge**

4.00 USD

**Quantum View Notify E-mail Notifications:**

No Charge

1 octeam@gibsondunn.com: Ship, Exception, Delivery

**Saturday Delivery**

16.00 USD

Note: Remember to put a Saturday Delivery sticker on your packages.

**Total Shipping Charges**

45.90 USD

## ④ PAYMENT INFORMATION

**Bill Shipping Charges to:**

Shipper's Account \*\*\*

**Shipping Charges:**

45.90 USD

Negotiated rates were applied to this shipment.

**Negotiated Charges:**

31.87 USD

**Subtotal Shipping Charges:**

31.87 USD

**Total Charges:**

31.87 USD

**Note:** This document is not an invoice. Your final invoice may vary from the displayed reference rates.

12/15/2017

Tracking: UPS



# Proof of Delivery

Dear Customer,

**EXHIBIT D**

**From:** Lily Bowles

\*\*\*

**Sent:** Wednesday, January 3, 2018 4:08 PM

**To:** Mueller, Ronald O. <[RMueller@gibsondunn.com](mailto:RMueller@gibsondunn.com)>

**Cc:** Fildes, Dave <[fildes@amazon.com](mailto:fildes@amazon.com)>

**Subject:** Amazon Resolution -- New Proof of Ownership & Letter of Intention to Hold

Dear Mr. Mueller,

I have just returned to my house in California where I found your letter in my yard. Sincerest apologies for the delay. I will move us over to email correspondence to ensure prompt replies moving forward.

Attached is a letter confirming my intent to continue holding the required amount of Company shares through the date of the Company's 2018 Annual Meeting of Shareholders.

Also, I have emailed my broker to get a new Proof of Ownership stating my "continuous ownership of the required number or amount of Company shares for the one-year period preceding and including December 11, 2017, the date the Proposal was submitted to the Company". I will send it to you as soon as I receive it from them (hopefully today or tomorrow).

Is there any other documentation you need from me? I am very much looking forward to my call scheduled with Mr. Dave Fildes (cc'ed) from Amazon's Investor Relations department on January 17th and want to make sure I have submitted all documents you need beforehand.

Gratefully,  
Elizabeth S Bowles

Elizabeth S. Bowles  
\*\*\*

January 3, 2018

Ronald O. Mueller  
Gibson, Dunn & Crutcher LLP  
1050 Connecticut Avenue, N.W.  
Washington, DC 20036-5306

Dear Mr. Mueller,

I am writing as a follow up to your letter to confirm that I intend to continue holding the required amount of Amazon shares through the date of the Company's 2018 Annual Meeting of Shareholders.

I am currently also in the process of securing the required Proof of Ownership document showing that I have owned 32 shares worth over \$2,000 for over a year, including on December 11<sup>th</sup> 2017, the date I submitted the proposal to the Company.

Thank you for your patience and understanding. Please let me know if there is any other documentation you need. You can reach me anytime at \*\*\* or (202) \*\*\*

Sincerely,

Elizabeth S Bowles  
Elizabeth S. Bowles

**From:** Lily Bowles

\*\*\*

**Sent:** Thursday, January 4, 2018 9:08 PM

**To:** Mueller, Ronald O. <[RMueller@gibsondunn.com](mailto:RMueller@gibsondunn.com)>

**Cc:** Fildes, Dave <[fildes@amazon.com](mailto:fildes@amazon.com)>

**Subject:** Re: Amazon Resolution -- New Proof of Ownership & Letter of Intention to Hold

Mr. Mueller,

My broker said that he can get the updated Proof of Ownership document to me by tomorrow. I will send it over immediately when I receive it.

Thank you for your patience.

Best,  
Elizabeth

**From:** Lily Bowles

\*\*\*

**Sent:** Friday, January 5, 2018 6:29 PM

**To:** Mueller, Ronald O. <[RMueller@gibsondunn.com](mailto:RMueller@gibsondunn.com)>

**Cc:** Fildes, Dave <[fildes@amazon.com](mailto:fildes@amazon.com)>

**Subject:** Re: Amazon Resolution -- New Proof of Ownership & Letter of Intention to Hold

Mr. Mueller,

Attached is the updated Proof of Ownership document from Morgan Stanley specifying "my continuous ownership of the required amount of Company shares for the one-year period preceding and including December 11, 2017, the date the Proposal was submitted to the Company". Please let me know if this letter suffices and/or if you need any additional documentation, which I would be more than happy to provide.

Gratefully,  
Elizabeth

Wei Huang  
Assistant Vice President  
Complex Risk Officer

Wealth Management  
522 5th Avenue  
11th Floor  
New York, NY 10036

direct 212 603 6157  
fax 212 307 3966  
toll free 800 843 0211

wei.l.huang@morganstanley.com

Morgan Stanley

January 5, 2018

AMAZON.COM INC

Re: Elizabeth S Bowles

To Whom It May Concern:

Please be advised that Elizabeth S Bowles currently maintains the following brokerage account \*\*\* at Morgan Stanley Smith Barney LLC ("Morgan Stanley") which contains a long position in AMAZON.COM INC (AMZN) of 32 shares as of the close of business on January 4, 2018:

<u>A/C Number</u>	<u>A/C Title</u>
***	MSSB C/F NANCY BOWLES (DECD) ELIZABETH S BOWLES

The Client has held the position in AMAZON.COM INC (AMZN) in the Account continuously since April 15, 2016 (16 shares) and June 06, 2016 (16 Shares), respectively.

This letter verifies Elizabeth S Bowles' continuous ownership of the required number or amount of Company shares for the one-year period preceding and including December 11, 2017, the date the Proposal was submitted to the Company.

We are presenting the information contained herein pursuant to our Client's request. It is valid as of the date of issuance. Morgan Stanley does not warrant or guarantee that such identified securities, assets or monies will remain in the Client's account. The Client have the power to withdraw assets from this account at any time and no security interest or collateral rights are being granted to any party other than Morgan Stanley.

Thank you for your time and consideration in this matter.

Sincerely,



Wei Huang  
Complex Risk Officer

cc: Elizabeth S Bowles