



DIVISION OF  
CORPORATION FINANCE

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

March 22, 2018

John Kelsh  
Sidley Austin LLP  
jkelsh@sidley.com

Re: Simon Property Group, Inc.  
Incoming letter dated March 12, 2018

Dear Mr. Kelsh:

This letter is in response to your correspondence dated March 12, 2018 concerning the shareholder proposal (the "Proposal") submitted to Simon Property Group, Inc. (the "Company") for inclusion in the Company's proxy materials for its upcoming annual meeting of security holders. On March 8, 2018, we issued a no-action response expressing our informal view that the Company could not exclude the Proposal from its proxy materials for its upcoming annual meeting. You have asked us to reconsider our position. After reviewing the information contained in your correspondence, we find no basis to reconsider our position.

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

cc: Matthew A. Archer  
Ohio Laborers' Fringe Benefits Programs  
marcher@olfbp.com



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AMERICA • ASIA PACIFIC • EUROPE

March 12, 2018

***Via Electronic Mail***

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

Re: Simon Property Group, Inc. – Shareholder Proposal submitted by Laborers’ District Council and Contractors’ Pension Fund of Ohio

On January 4, 2018, Simon Property Group, Inc., a Delaware corporation (the “Company”), submitted a letter (the “No-Action Request”) notifying the staff of the Division of Corporation Finance (the “Staff”) that the Company intends to omit from its proxy materials for its 2018 Annual Meeting of Stockholders (the “2018 Proxy Materials”) a shareholder proposal (the “Proposal”) and statement in support thereof submitted by the Laborers’ District Council and Contractors’ Pension Fund of Ohio (the “Proponent”). The Proposal requested that any future employment agreements entered into with the Company’s CEO, David Simon, after the expiration of his current employment agreement not provide any termination benefits to him following a change in control.

On March 8, 2018, the Staff issued its letter denying the Company’s request for no-action relief. The Staff’s letter noted that “We have also received correspondence from the Proponent dated January 22, 2018.” Upon learning about the existence of this January 22, 2018 letter (the “Proponent Letter”), we immediately asked for a copy of the correspondence, which the Staff emailed to Mr. Kelsh on March 9, 2018. As noted below, however, the Company never received a copy of the Proponent Letter from the Proponent, which is a clear violation of Rule 14a-8(k).

The Company respectfully requests review and reconsideration by the Staff of its response to the No-Action Request dated March 8, 2018, to allow the Staff to administer an appropriate remedy to Proponent’s failure to comply with Rule 14a-8(k) and to give the Staff the opportunity to consider the arguments made in this letter, which address the new arguments included in the Proponent Letter.

In accordance with *Staff Legal Bulletin 14D* (“SLB 14D”), this letter and its exhibits are being submitted via email. A copy of this letter and its exhibits will also be sent to the Proponent. Pursuant to Rule 14a-8(k) and SLB 14D, the Company requests that the Proponent copy the undersigned on any correspondence that it elects to submit to the Staff in response to this letter as required by Rule 14a-8(k).

**Notice to the Staff that the Proponent has Violated Rule 14a-8(k)**

Rule 14a-8(k) sets forth that a proponent of a shareholder proposal may respond to a no-action request letter submitted to the Staff by a company, stating, in part:

[Y]ou 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. (emphasis added)

As clearly set forth in the above rule, a proponent is required to send any response letter to the company at the same time such letter is provided to the Staff. We believe that the Proponent failed to comply with this requirement with regard to the Proponent Letter. The Company acknowledges that the Proponent Letter indicates that Steven E. Fivel of the Company was copied on such letter. Mr. Fivel is the Company’s Secretary and General Counsel. However, Mr. Fivel has informed us that he never received such copy. On this basis alone, the Staff should allow the exclusion of the Proposal from the 2018 Proxy Materials. The Company was not given the opportunity to respond to the Proponent Letter before the Staff issued its response to the Company’s No-Action Request.

The purpose of Rule 14a-8(k) is to promote due process for the benefit of not only the company and the shareholder, but also the Staff, so that the Staff’s no-action decision is fully informed. The Company was denied this due process and as a result, now faces the heavier burden of having to persuade the Staff to change its decision. In our view, the equitable resolution of the Proponent’s failure to comply with Rule 14a-8(k) would be to permit the Company to exclude the Proposal. This remedy would affirm that the process set forth by Rule 14a-8 should be taken seriously by both companies and shareholder proponents alike, and that there are meaningful consequences to violating such rules. This remedy would also be consistent with the no-action relief that is routinely granted when the other procedural requirements of Rule 14a-8 are not complied with.

Accordingly, we believe that the Proposal may be omitted from the 2018 Proxy Materials due to Proponent’s failure to comply with Rule 14a-8(k),

**Response to Proponent Letter**

Notwithstanding the fact that the Company did not receive the Proponent Letter in a timely manner, the Company wishes to respond to the arguments set forth in the Proponent Letter.

The Company continues to believe, as set forth in the No-Action Request, that the Proposal should be excluded pursuant to Rule 14a-8(i)(7) as dealing with a matter relating to the Company's ordinary business operations, because it involves the compensation and benefits of a single employee and is not a proposal regarding any broader policy regarding senior executive compensation.

The Proponent Letter argues that the Company should have included a discussion that reflects the analysis of the Company's Board of Directors on whether senior executive compensation is a significant policy issue that transcends the Company's ordinary business. Proponent misunderstands Staff Legal Bulletin No. 14I ("SLB 14I") as it applies to the Staff's analysis of the Proposal. The board analysis discussed in SLB 14I, which would be helpful in cases of "difficult judgment calls," is irrelevant to the Staff's analysis of the Proposal. The Company acknowledges in the No-Action Request that senior executive compensation policy in general transcends ordinary business. The Proposal, however, does not relate to senior executive compensation *policy* within the meaning of the Commission's interpretation of Rule 14a-8(i)(7). Rather, it relates to the employment agreement and benefits of a single person identified by name (David Simon). There is no "difficult judgment call" involved.

Further, the Proponent Letter states that the applicable standard when analyzing the Proposal is "whether the proposal addresses senior executive compensation, which it clearly does." This standard is misstated. It is not enough that the Proposal happens to relate to the compensation of the CEO. As stated in the No-Action Request, by focusing on a specific individual and that individual's unique facts and circumstances, the Proposal is distinct and distinguishable from proposals concerning executive compensation policies. The Proposal is a targeted request related to any future employment agreement and termination benefits of Mr. Simon, and only Mr. Simon. By its terms, the Proposal does not request that the Company apply similar terms to anyone else and is not a request to adopt a general policy regarding termination benefits for one or more executive officers following a change in control. The Proposal does not extend to any other executive officer of the Company, or even any successor CEO. As a result, rather than transcend the ordinary business aspect of its subject matter, the Proposal narrowly focuses on the ordinary business of negotiating a specific provision in Mr. Simon's future employment agreement and in so doing, seeks to "micro-manage" the Company's Compensation Committee.

Finally, Proponent takes issue with the Company's argument in the No-Action Request to exclude the Proposal on grounds of being false and misleading under Rule 14a-8(i)(3). Despite the argument set forth in the Proponent Letter, the Company

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continues to assert that the Proposal misstates the amounts that Mr. Simon would receive that are attributable to a change-in-control event by 98%, as more fully described in the No-Action Request. Such a gross misstatement is materially misleading to the Company's stockholders. While the Company continues to acknowledge that the Proposal accurately cites the dollar amount provided in the Company's most recent proxy statement, including this amount in the Proposal without the further explanation and context provided in the Company's proxy statement is materially misleading. Accordingly, we continue to believe that the Proposal may be omitted from the 2018 Proxy Materials in reliance on Rule 14a-8(i)(3), because it is materially misleading in violation of Exchange Act Rule 14a-9.

### **Conclusion**

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

If you have any questions regarding this request or desire additional information, please contact Mr. Kelsh at (312) 853-7097 or by email at [jkesh@sidley.com](mailto:jkesh@sidley.com) or Mr. Kim at (202) 736-8615 or by email at [thomas.kim@sidley.com](mailto:thomas.kim@sidley.com).

Sincerely,

/s/ John Kelsh /s/ Thomas Kim

John Kelsh                  Thomas Kim

cc: Steven E. Fivel, Simon Property Group, Inc.  
Alexander L.W. Snyder, Simon Property Group, Inc.  
Mr. Matthew A. Archer, Laborers' District Council and  
Contractors' Pension Fund of Ohio