

February 15, 2018

Via e-mail

Office of Chief Counsel
Division of Corporation Finance
Securities and Exchange Commission
shareholderproposals@sec.gov

Re: SeaWorld Entertainment, Inc., 2018 Annual Meeting
Shareholder Proposal Submitted by People for the Ethical
Treatment of Animals

Dear Sir or Madam:

I am writing on behalf of People for the Ethical Treatment of Animals (PETA) and pursuant to Rule 14a-8(k) in response to SeaWorld Entertainment, Inc.'s ("SeaWorld") request that the Staff of the Division of Corporation Finance ("Staff") of the Securities and Exchange Commission ("Commission") concur with its view that it may properly exclude PETA's shareholder resolution and supporting statement ("Proposal") from the proxy materials to be distributed by SeaWorld in connection with its 2018 annual meeting of shareholders (the "proxy materials").

As discussed below, SeaWorld's request for a no-action letter should be denied because the resolution is clear, Rule 14a-8(i)(3); it does not seek to micromanage the Company and focuses on a significant social policy issue, Rule 14a-8(i)(7); and SeaWorld has the power to implement it, Rule 14a-8(i)(6).

I. Background

PETA's resolution, titled "Ending of All Captive Breeding Programs," provides:

RESOLVED that in order to reverse the escalating decline in SeaWorld's value and global reputation—as evidenced by a steady drop in visitor attendance as the public learns that animals suffer and die in cramped SeaWorld tanks; a class-action lawsuit by investors who believe that they were intentionally misled by the corporation; a criminal fraud investigation conducted by the Department of Justice; the recent layoffs of an additional 350 employees, bringing the total to nearly 1,000 since the release of *Blackfish*; and sinking revenue, including falling average admissions revenue per visitor and declining in-park spending—the shareholders urge the board, as a start, to ban *all* captive breeding in SeaWorld parks.

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PETA FOUNDATION IS AN
OPERATING NAME OF FOUNDATION
TO SUPPORT ANIMAL PROTECTION.

AFFILIATES:

- PETA U.S.
- PETA Asia
- PETA India
- PETA France
- PETA Australia
- PETA Germany
- PETA Netherlands
- PETA Foundation (U.K.)

The supporting statement then discusses the suffering and premature deaths of animals at SeaWorld, the public's condemnation of confining animals to tanks for human entertainment, and the ability of the Proposal to help the Company "recover from its significant financial and public relations downward spiral."

II. The Proposal May Not Be Excluded Pursuant to Rule 14a-8(i)(3)

Under Rule 14a-8(i)(3), exclusion or modification of a proposal "may be appropriate where ... the resolution contained in the proposal is so inherently vague or indefinite that neither the stockholders voting on the proposal, nor the company in implementing the proposal (if adopted), would be able to determine with any reasonable certainty exactly what actions or measures the proposal requires." Staff Legal Bulletin ("SLB") No. 14B (Sept. 15, 2004).

The Proposal requests that the Company "ban *all* captive breeding in SeaWorld parks." SeaWorld acknowledges that "the proposed resolution literally refers to *all* breeding." Letter from Joia Lee, Simpson Thacher & Bartlett LLP, to SEC Division of Corporation Finance, at 11 (February 2, 2018) ("No-Action Request"). Nonetheless, SeaWorld attempts to introduce ambiguity to the Proposal and argues that it is excludable pursuant to Rule 14a-8(i)(3) because it is "subject to multiple potentially conflicting interpretations." *Id.*

First, SeaWorld argues that "*all* captive breeding" might mean something other than "*all* captive breeding." The Company purports that "it is not at all clear whether the Proponent is suggesting a ban on breeding of all marine mammals or all marine and terrestrial animals in SeaWorld's care." *Id.* PETA does not limit the scope of its Proposal to marine animals, either explicitly or implicitly in its supporting statement by using marine animals as examples of the breeding, illnesses, and deaths that have recently occurred at SeaWorld's facilities, or by using the terms "marine life" and "concrete tank" while also using, which SeaWorld ignores, the broader terms "small enclosures" and, repeatedly, "animals." Similarly, the Company argues that "it is unclear whether the ban on all breeding includes breeding through AI only or through both AI and natural breeding." *Id.* PETA does not limit the scope of its Proposal to artificial insemination, either explicitly or implicitly by using a single example of artificial insemination while also generally discussing newborns who died prematurely without reference to the manner in which they were conceived. The Proposal requests a ban on "*all* captive breeding" by the Company. "In short, 'all' means all." *Sander v. Alexander Richardson Inv.*, 334 F.3d 712, 716 (8th Cir. 2003) *Cty. of Oakland v. Fed. Hous. Fin. Agency*, 716 F.3d 935, 940 (6th Cir. 2013) ("when Congress said 'all taxation,' it meant *all* taxation").

Second, SeaWorld argues that the Proposal is vague because it "states that the banning of breeding is just 'a start' but it is unclear what further actions the Proponent is proposing that the Company take." *No-Action Request*, at 12. PETA is not proposing that the Company take any other action. As is evident from the Proposal's resolved clause, it seeks that the Company "ban *all* captive breeding in SeaWorld parks," which is "a start" towards "revers[ing] the escalating decline in SeaWorld's value and global reputation." This is the *only* request of the board in the Proposal. Again, SeaWorld attempts to introduce ambiguity when there is none.

Third, SeaWorld alleges that the Proposal is materially misleading because it “make[s] several allegations that, although phrased in the form of factual assertions, are actually the Proponent’s unsubstantiated opinions and lack any citation or support of any kind.” *No-Action Request*, at 12. The Staff has made clear that “it would not be appropriate for companies to exclude supporting statement language and/or an entire proposal in reliance on rule 14a-8(i)(3)” for these very reasons, and instead “it is appropriate under rule 14a-8 for companies to address these objections in their statements of opposition.” SLB No. 14B.

There is no “substantial likelihood that the Company’s shareholders may have differing interpretations” as to what “ban *all* captive breeding in SeaWorld parks” refers. Accordingly, the Proposal may not be excluded on the basis of Rule 14a-8(i)(3).

III. The Proposal May Not Be Excluded Pursuant to Rule 14a-8(i)(7)

Rule 14a-8(i)(7) provides that a company may exclude a proposal “[i]f the proposal deals with a matter relating to the company’s ordinary business operations.” Only “business matters that are mundane in nature and do not involve any substantial policy” considerations may be omitted under this exemption. Adoption of Amendments Relating to Proposals by Security Holders, 41 Fed. Reg. 52,994, 52,998 (1976). The Commission has explained that the policy underlying this rule rests on two central considerations. The first consideration “relates to the degree to which the proposal seeks to ‘micro-manage’ the company by probing too deeply into matters of a complex nature upon which stockholders, as a group, would not be in a position to make an informed judgment.” Release No. 34-40018 (May 21, 1998).

Second, “certain tasks are so fundamental to management’s ability to run a company on a day-to-day basis that they could not, as a practical matter, be subject to direct shareholder oversight.” *Id.* The Commission has stated and repeatedly found since that “proposals relating to such matters but focusing on sufficiently significant social policy issues ... generally would not be considered to be excludable, because the proposals would transcend the day-to-day business matters and raise policy issues so significant that it would be appropriate for a shareholder vote.” *Id.* Recently, in Staff Legal Bulletin No. 14H, the agency provided further guidance on the significant policy exception following the Third Circuit’s decision in *Trinity Wall St. v. Wal-Mart Stores, Inc.*, 792 F.3d 323 (3d Cir.), *cert. dismissed*, 136 S. Ct. 499 (2015). The Commission specifically rejected the majority’s interpretation of the exception as requiring a two-part test: (1) the proposal must focus on a significant policy issue; (2) the significant policy issue must “transcend” ordinary business by being “divorced from how a company approaches the nitty-gritty of its core business.” SLB No. 14H (citing *Trinity*, 792 F.3d at 347). The Commission reasoned that “a proposal’s focus [is not] separate and distinct from whether a proposal transcends a company’s ordinary business,” but instead:

[P]roposals focusing on a significant policy issue are not excludable under the ordinary business exception “*because* the proposals would transcend the day-to-day business matters and raise policy issues so significant that it would be appropriate for a shareholder vote.” Thus, a proposal may transcend a company’s ordinary business operations

even if the significant policy issue relates to the “nitty-gritty of its core business.”

Id. (citing Release No. 34-40018). Pursuant to this exception, “[t]he Division has noted many times that the presence of widespread public debate regarding an issue is among the factors to be considered in determining whether proposals concerning that issue ‘transcend the day-to-day business matters.’” SLB No. 14A.

PETA’s Proposal does not implicate a day-to-day operation that is “mundane in nature” and does not seek to “‘micro-manage’ the company by probing too deeply into matters of a complex nature,” but rather focuses on a substantial policy issue.

A. The Proposal does not seek to micro-manage the company.

SeaWorld argues that it may exclude the Proposal pursuant to Rule 14a-8(i)(7) because it “interfer[es] with complex business, regulatory and animal well-being decisions upon which the Company’s shareholders are not in a position to make an informed judgment.” *No-Action Request*, at 6. The Company takes the position that *any* “decisions regarding the care of its animals” must be excluded because they micro-manage the Company’s operations. *Id.* In support of its position here, SeaWorld also argues that its ability “to maintain its licenses, permits¹ and AZA-accredited status are ... fundamental to the operation of the business.”

First, SeaWorld discusses at length the breeding management programs of the Association of Zoos & Aquariums (AZA)—a voluntary, third-party accreditation organization. *Id.* at 4-5. As discussed further in the following section, SeaWorld provides no support for its implication that ending breeding would jeopardize its AZA accreditation.

Second, SeaWorld discusses that it is regulated by the federal government and maintains a license. *Id.* at 4. SeaWorld refers to the exhibitor license it holds pursuant to the Animal Welfare Act (AWA). The AWA has no bearing on a licensee’s decision to breed or not breed an animal, and SeaWorld provides no support for its implication that ending breeding would jeopardize its license to exhibit animals.²

Third, SeaWorld points to the ten months that its Special Committee took to reach the conclusion that it would implement a ban on orca breeding. *Id.* at 5. However, the Company admits that the Committee’s considerations were far more extensive than that ultimate determination—it was formed “for the primary purpose of evaluating long-range business initiatives, including a broad spectrum of enhancements, modifications and alternatives with respect to the display, husbandry and breeding practices, handling and care, and study and research of the

¹ SeaWorld does not address any “permits” that it maintains or state or imply that any such permits could not be maintained if the Proposal was implemented.

² SeaWorld asserts that it is “highly regulated” and subject to “strict licensing requirements.” *No-Action Request*, at 4. The AWA provides bare minimum requirements and the U.S. Department of Agriculture, which administers the law, has been criticized by an independent federal agency for ignoring abundant data on animal well-being and prioritizing cost considerations over animal welfare, and repeatedly by its own Office of Inspector General for its failure to adequately enforce the law.

Company's orcas." *Id.* at 5. The Committee was tasked with evaluating how it should approach "the uncertain legal, legislative and regulatory environment and evolving public sentiment regarding such matters"—not simply whether it should stop breeding orcas.

Fourth, SeaWorld argues that all "decisions regarding the care of its animals is fundamental to its operation of the business," specifically that decisions regarding breeding are supervised by "the Company's management and zoological team and, under certain circumstances, the Company's board of directors," and that any such decision would involve consideration of several factors—"animal well-being, safety, resource availability and cost, labor efficiency, transportation, and regulatory compliance." *Id.* at 4-6. The need to address several factors and consult with staff is undoubtedly common to virtually *any* significant business decision made by a billion-dollar public company. To allow for companies to exclude a Proposal on that basis would virtually gut Rule 14a-8.

Finally, the focus of the Proposal is no more complex than issues related to animal experimentation, non-animal and *in vitro* alternatives, or requiring a particular killing method for millions of animals held by a company's many suppliers—all for which the Staff denied no-action relief pursuant to Rule 14a-8(i)(7). *See, e.g., The Gillette Co.* (Jan. 16, 1996) (proposal to eliminate animal tests); *Revlon, Inc.* (Mar. 18, 2014) (proposal regarding participation in government-mandated animal tests in China); *Wyeth* (Feb. 8, 2005) (proposal to discontinue promotion of pharmaceutical products pending further review and adopt protections for mares used in their production); *Denny's Corporation* (Mar. 22, 2007), *Outback Steakhouse, Inc.* (Mar. 6, 2006); *Hormel Foods Corp.* (Nov. 10, 2005), and *Wendy's International, Inc.* (Feb. 8, 2005) (proposals focusing on the implementation of controlled-atmosphere killing by poultry suppliers). Further, SeaWorld's mischaracterization of PETA's proposal from 2017 is unavailing. It was not a narrower iteration of the Proposal that merely "request[ed] the replacement of the Company's live orca exhibits," but demanded that the Company "retire the current resident orcas to seaside sanctuaries"—which SeaWorld not only opposed at length in its no-action request, but also commissioned an 11-page memorandum from outside counsel specifically to address the issue.

Accordingly, the Proposal does not address any matter too complex for which shareholders can make an informed judgment.

B. The Proposal raises a significant policy issue that transcends day-to-day business matters.

Even assuming that the Staff deems the Proposal to deal with the sale of a product or service, it is well-established that a proposal is not excludable merely because it deals with the sale of a company's products or services where significant social policy issues are implicated—as they are here. SeaWorld's argument that even if the Proposal relates to the humane treatment of animals, it "does not actually raise any significant social policy issue" is unavailing. *No-Action Request*, at 8.

The Staff has long recognized that shareholder proposals may properly address business decisions regarding the sale of products where significant policy issues are at issue. *See e.g., Kimberly-Clark Corp.* (Jan. 12, 1988); *Texaco, Inc.* (February 28,

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VIA E-MAIL

February 2, 2018

Re: SeaWorld Entertainment, Inc. – Omission of Shareholder
Proposal from Proxy Material Pursuant to Rule 14a-8

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

Ladies and Gentlemen:

We are filing this letter on behalf of SeaWorld Entertainment, Inc. (“SeaWorld” or the “Company”) with respect to the shareholder proposal and supporting statement (collectively, the “Proposal”) submitted by People for the Ethical Treatment of Animals (the “Proponent”) for inclusion in the proxy statement and form of proxy to be distributed by the Company in connection with its 2018 Annual Meeting of Stockholders (collectively, the “Proxy Materials”). A copy of the Proposal and accompanying correspondence from the Proponent is attached as Exhibit A. For the reasons stated below, we respectfully request that the Staff (the “Staff”) of the Division of Corporation Finance of the Securities and Exchange Commission (the “Commission”) not recommend any enforcement action against SeaWorld if SeaWorld omits the Proposal in its entirety from the Proxy Materials.

Pursuant to Staff Legal Bulletin No. 14D (November 7, 2008) (“SLB 14D”), we are submitting this request for no-action relief to the Staff via e-mail at shareholderproposals@sec.gov in lieu of providing six additional copies of this letter pursuant to Rule 14a-8(j), and the undersigned has included her name and telephone number both in this letter and in the cover e-mail accompanying this letter. Pursuant to Rule 14a-8(j) under the Securities and Exchange Act of 1934, as amended (the “Exchange Act”), we are:

Office of Chief Counsel
Division of Corporation Finance
Securities and Exchange Commission

-2-

1. filing this letter with the Commission no later than 80 calendar days before the date on which the Company plans to file its definitive Proxy Materials with the Commission; and
2. simultaneously providing the Proponent with a copy of this submission.

Rule 14a-8(k) and SLB 14D provide that a shareholder proponent is required to send the company a copy of any correspondence that the proponent elects to submit to the Commission or the Staff. Accordingly, we hereby inform the Proponent that if the Proponent elects to submit additional correspondence to the Commission or the Staff relating to the Proposal, the Proponent must concurrently furnish a copy of that correspondence to the Company. Similarly, the Company will promptly forward to the Proponent any response received from the Staff to this request that the Staff transmits by email or fax only to the Company.

I. The Proposal

The Proposal reads as follows:

“Ending of All Captive Breeding Programs

RESOLVED that in order to reverse the escalating decline in SeaWorld’s value and global reputation—as evidenced by a steady drop in visitor attendance as the public learns that animals suffer and die in cramped SeaWorld tanks; a class-action lawsuit by investors who believe that they were intentionally misled by the corporation; a criminal fraud investigation conducted by the Department of Justice; the recent layoffs of an additional 350 employees, bringing the total to nearly 1,000 since the release of *Blackfish*; and sinking revenue, including falling average admissions revenue per visitor and declining in-park spending—the shareholders urge the board, as a start, to ban *all* captive breeding in SeaWorld parks.”

II. Bases for Exclusion

The Company respectfully requests the Staff’s concurrence that the Company may exclude the Proposal from its Proxy Materials in reliance on:

- Rule 14a-8(i)(7) because the Proposal deals with a matter relating to the Company’s ordinary business operations;
- Rule 14a-8(i)(3) because the Proposal is vague and indefinite and thus inherently misleading; and

Office of Chief Counsel
Division of Corporation Finance
Securities and Exchange Commission

-3-

- Rule 14a-8(i)(6) because the Company lacks the power or authority to implement the Proposal.

III. Analysis

A. The Proposal Is Excludable Under Rule 14a-8(i)(7) Because It Deals with Matters Relating to the Company's Ordinary Business Operations

Rule 14a-8(i)(7) permits the exclusion of shareholder proposals dealing with matters relating to a company's "ordinary business operations." The Commission has explained that the underlying policy of the ordinary business exclusion is "to confine the resolution of ordinary business problems to management and the board of directors, since it is impracticable for shareholders to decide how to solve such problems at an annual shareholders meeting." Exchange Act Release No. 40018 (May 21, 1998). As explained by the Commission, the term "ordinary business" in this context refers to "matters that are not necessarily 'ordinary' in the common meaning of the word, and is rooted in the corporate law concept providing management with flexibility in directing certain core matters involving the company's business and operations." *Id.*

According to the Commission, two central considerations underlie the ordinary business exclusion. First, "[c]ertain tasks are so fundamental to management's ability to run a company on a day-to-day basis" that they are not proper subjects for shareholder proposals. *Id.* "The second consideration relates to the degree to which the proposal seeks to 'micro-manage' the company by probing too deeply into matters of a complex nature upon which shareholders, as a group, would not be in a position to make an informed judgment." *Id.*

As described below under "—B. The Proposal is Excludable Under Rule 14a-8(i)(3) because it is vague and indefinite and thus inherently misleading", the Proposal is vague because (i) it literally requests that the Company ban "all captive breeding" but fails to identify whether "all" refers only to marine animals (as suggested by the supporting statement) or all of the over 1,700 species of both marine and terrestrial animals in SeaWorld's care and (ii) it fails to specify whether the ban should apply only to breeding through artificial insemination ("AI") (again, as suggested by the supporting statement) or both breeding through AI and natural breeding. However, as explained more fully directly below, a ban on breeding, regardless of whether such ban relates to all or only some of SeaWorld's animals, or prohibits natural breeding in addition to breeding through AI, implicates both considerations underlying the ordinary business exclusion and is thus excludable as pertaining to the Company's ordinary business operations.

Office of Chief Counsel
Division of Corporation Finance
Securities and Exchange Commission -4-

1. The Proposal Seeks to Micro-Manage the Company.

SeaWorld is one of the world's foremost zoological organizations, with over 1,700 marine and terrestrial species in its care, and is a worldwide leader in animal welfare, training, husbandry and veterinary care. The well-being of the animals in SeaWorld's care is a top priority for the Company. Animal care and welfare at SeaWorld are also highly regulated by the federal government, through a complex set of laws and regulations, frequent inspections by federal veterinarians and other officials, as well as strict licensing requirements which SeaWorld maintains every year. SeaWorld is also accredited by the Association of Zoos and Aquariums (the "AZA"), an independent accrediting organization that evaluates zoos and aquariums to make sure they meet the AZA's high standards for animal management and care, including with respect to living environments, social groupings, health, and nutrition.¹ As part of its AZA accreditation, SeaWorld participates in AZA Taxon Advisory Groups ("TAGS"), which are composed of expert advisors that examine conservation needs of an entire taxon (e.g., marine mammals). Among other functions, TAGS oversee Species Survival Plan ("SSP") Programs, which manage breeding of a species or sub-species through the development of a plan that, among other things, recommends breeding pairs and transfers (a "Breeding and Transfer Plan"). AZA accreditation requires that SeaWorld participate in every SSP Program that pertains to an animal in its care. In order to comply with federal regulations, licensing requirements and accreditation standards, SeaWorld has detailed animal care policies and procedures and follows all applicable government regulations regarding the animals in its care. The Company's policies and all animal care decisions made by the Company, including with respect to breeding, are based on a complex set of factors involving animal well-being, safety, resource availability and cost, labor efficiency, transportation, and regulatory compliance, among other factors.

The ability of SeaWorld to make decisions regarding the care of its animals is fundamental to its operation of the business. The Company's management maintains a constant focus on a broad spectrum of animal care issues, including display, husbandry and breeding practices with respect to the animals in SeaWorld's care. Because SeaWorld is a zoological organization, the breeding of animals is, by definition, part of the Company's management functions. The ability of SeaWorld to maintain its licenses, permits and AZA-accredited status are also fundamental to the operation of the business. Indeed, as discussed above, SeaWorld's AZA accreditation requires it to participate in sustainability efforts pursuant to the SSP Programs. By attempting to impose upon the Company a specific husbandry decision, the Proposal seeks to micro-manage the Company's operations,

¹ See website of AZA, *Becoming Accredited*, available at <https://www.aza.org/becoming-accredited>.

Office of Chief Counsel
Division of Corporation Finance
Securities and Exchange Commission -5-

interfering with complex animal well-being, business and operational decisions upon which the Company's shareholders are not in a position to make an informed judgment.

Furthermore, specific husbandry and breeding practices suited for one animal species may not be similarly suited for another. Decisions regarding breeding practices require deep knowledge of animal care issues. According to the AZA, there are currently nearly 500 SSP Programs, each responsible for developing a separate and comprehensive Breeding and Transfer Plan.² The large number of SSP Programs demonstrates how tailored a breeding plan must be to a particular species – there is no “one-size-fits-all” approach as the Proposal seems to suggest. Moreover, decisions specifically relating to SeaWorld's sustainability practices, as opposed to those of other zoological institutions, further require detailed knowledge of SeaWorld's business and operations – information to which the Company's shareholders may not have access. Given the complexity of the issue, the Company's breeding and sustainability practices remain under active supervision by the Company's management and zoological team and, under certain circumstances, the Company's board of directors (the “Board”). For example, among other initiatives, in May of 2015 the Board formed a special committee (the “Special Committee”) for the primary purpose of evaluating long-range business initiatives, including a broad spectrum of enhancements, modifications and alternatives with respect to the display, husbandry and breeding practices, handling and care, and study and research of the Company's orcas in light of the uncertain legal, legislative and regulatory environment and evolving public sentiment regarding such matters. It was only after ten months and as many meetings of the Special Committee (in person or by telephone), significant consultation with the Company's animal care experts and regular reports by the Special Committee to the Board that the Company announced on March 17, 2016 that the orcas that were currently in its care would be the last generation of orcas at SeaWorld. This illustrates the amount of effort, deliberation and care needed for a breeding decision to be made with respect to just one out of over 1,700 species of animals in the Company's care. The Proposal broadly seeks to ban “*all* captive breeding in SeaWorld parks” without the benefit of vital information necessary to make such a decision. Regardless of whether the Proposal's intent is to ban breeding of all marine animals or both marine and terrestrial animals, or to ban AI or both AI and natural breeding, the complexity of the determination even as it relates to just one species demonstrates the impracticability (if not impossibility) for shareholders to make such a determination at an annual meeting.

The Staff has consistently concurred that shareholder proposals attempting to micro-manage a company by substituting the judgment of stockholders for that of management with respect to complex day-to-day business operations are excludable under Rule 14a-8(i)(7). Just last year, the Staff concurred in the Company's exclusion of a proposal

² See website of AZA, Species Survival Plan Programs, *available at* <https://www.aza.org/species-survival-plan-programs>.

Office of Chief Counsel
Division of Corporation Finance
Securities and Exchange Commission -6-

requesting the replacement of the Company's live orca exhibits with virtual reality experiences as "seek[ing] to micromanage the company by probing too deeply into matters of a complex nature upon which shareholders, as a group, would not be in a position to make an informed judgment." *SeaWorld Entertainment, Inc.* (avail. Mar. 30, 2017, recon. denied Apr. 17, 2017). The Proposal is vague, but even its most narrow reading – seeking to ban AI of marine animals in SeaWorld's care – would mean that implementation of the Proposal would ultimately require the replacement of not only the Company's live orca exhibits, as requested last year when no-action relief was granted, but indeed any and all of the Company's exhibits of marine animals that are bred via AI. The broadest reading of the Proposal would require replacement of *all* of the Company's live animal exhibits.³

As a regulated, licensed and professionally accredited zoological organization, the ability of SeaWorld to make decisions regarding the care of its animals is fundamental to the operation of its business, as well as to the well-being of the animals in its care. By attempting to impose upon the Company a specific decision with respect to the Company's breeding practices, the Proposal, like the Proponent's proposal last year, again seeks to micro-manage the Company's operations, interfering with complex business, regulatory and animal well-being decisions upon which the Company's shareholders are not in a position to make an informed judgment. The scope of the Company's sustainability program may not be properly delegated to, and should not be micro-managed by, the Company's shareholders. Accordingly, the Proposal may be excluded under Rule 14a-8(i)(7) as relating to the Company's ordinary business operations.

2. *The Subject Matter of the Proposal is Fundamental to Management's Ability to Run the Company's Day-to-Day Business, as it Relates to the Company's Decision to Sell a Product or Service.*

At the core of SeaWorld's business is its delivery of personal, interactive and educational experiences that allow guests to experience and connect with marine and terrestrial animals. An integral part of SeaWorld's business, therefore, is selecting and designing rides, exhibits, shows and attractions for its theme parks that achieve this mission.

³ Also last year, in *Deere & Company* (avail. Dec. 27, 2017), the Staff concurred in the exclusion of a proposal requiring the preparation of a report to shareholders that would evaluate the potential for the company to achieve, by a fixed date, "net-zero" emissions of greenhouse gases relative to operations directly owned by the company and major suppliers because the proposal sought "to micromanage the [c]ompany by probing too deeply into matters of a complex nature upon which shareholders, as a group, would not be in a position to make an informed judgment." The Proposal, by contrast, goes much further than simply requiring a report on the potential cessation of breeding of the Company's myriad animal species.

Office of Chief Counsel
Division of Corporation Finance
Securities and Exchange Commission

-7-

Indeed, one of the hallmark services SeaWorld provides its customers is the ability to encounter and engage with various animals in its one-of-a-kind zoological displays, inspiring guests to protect animals and conserve their habitats.

Decisions regarding whether and how to feature the animals in its care are fundamental to the Company's day-to-day operations. These decisions inherently involve complex issues that require deep knowledge of the Company's business and operations. The Proposal's request that the Company end all breeding (whether it be of marine animals or both marine and terrestrial animals or through AI or both AI and natural breeding) is, in essence, an attempt to direct the Company to eliminate a particular service it currently provides – i.e., the opportunity to view and experience its various species of animals. Indeed, it is well known that PETA's goal is for SeaWorld to cease featuring animals in its parks.⁴ The supporting statement also suggests that the Company should introduce "innovative exhibits...such as augmented or virtual reality displays". Allowing shareholders to dictate which services the Company provides its customers, however, would inappropriately delegate to shareholders management's role in directing the day-to-day business of the Company.

The Staff has consistently taken the position that proposals seeking to dictate management's decisions regarding the selection of products or services a company offers for sale implicate the company's ordinary business operations and are thus excludable under Rule 14a-8(i)(7). *See, e.g., Amazon.com, Inc. (avail. Mar. 11, 2016)* (concurring in the exclusion of a shareholder proposal requesting that the company "issue a report addressing animal cruelty in the supply chain," since "the proposal relates to the products and services offered for sale by the company" and noting that "[p]roposals concerning the sale of particular products and services are generally excludable under rule 14a-8(i)(7)"); *Amazon.com, Inc. (avail. Mar. 27, 2015)* (permitting the exclusion of a shareholder proposal requesting the disclosure of any reputational and financial risks the company may face as a result of negative public opinion pertaining to the treatment of animals used to produce products it sells and noting that "[p]roposals concerning the sale of particular products and services are generally excludable under rule 14a-8(i)(7)"); *Papa John's International, Inc. (avail. Feb. 13, 2015)* (granting no-action relief under Rule 14a-8(i)(7) because the proposal related to the choice of products offered for sale); *Lowe's Companies, Inc. (avail. Mar. 18, 2010)* (granting no-action relief under Rule 14a-8(i)(7) with regard to a proposal encouraging the company to place warning labels on the glue traps sold in its stores, explicitly noting that "the proposal relates to the manner in which [the company] sells particular products" and that "[p]roposals concerning the sale of particular products are

⁴ *See, e.g.,* PETA website, <https://www.seaworldofhurt.com/about/> (stating that PETA is urging SeaWorld to end "the use of all animals and retiring the orcas, dolphins, and other animals to seaside sanctuaries").

Office of Chief Counsel
Division of Corporation Finance
Securities and Exchange Commission -8-

generally excludable under rule 14a-8(i)(7)"); *The Home Depot, Inc.* (avail. Mar. 12, 2010) (same); *PetSmart, Inc.* (avail. Apr. 8, 2009) (concurring that a proposal requesting that the board of directors "produce a report on the feasibility of [the company] phasing out its sale of live animals by 2014" may be excluded under Rule 14a-8(i)(7), as it relates to the "sale of particular goods"); *Lowe's Companies, Inc.* (avail. Feb. 1, 2008) (permitting the exclusion of a proposal encouraging the company end its sale of glue traps, as it relates to "the sale of a particular product"); *The Home Depot, Inc.* (avail. Jan. 24, 2008) (same).

The Staff has made clear that proposals relating to the sale of services are equally excludable under Rule 14a-8(i)(7) as those relating to the sale of goods. *See, e.g., JPMorgan Chase & Co.* (avail. Mar. 7, 2013) (concurring in the exclusion of a proposal requesting that the board "adopt public policy principles for national and international reforms to prevent illicit financial flows. . ." based upon principles specified in the proposal, expressly noting that "the proposal relates to principles regarding the products and services that the company offers"); *Wells Fargo & Co.* (avail. Jan. 28, 2013, *recon. denied* Mar. 4, 2013) (granting no-action relief under Rule 14a-8(i)(7) where the proposal requested that the company prepare a report discussing the adequacy of the company's policies in addressing the social and financial impacts of the company's direct deposit advance lending service, noting in particular that "the proposal relates to the products and services offered for sale by the company" and that "[p]roposals concerning the sale of particular products and services are generally excludable under rule 14a-8(i)(7)"); *General Electric Co.* (avail. Jan. 7, 2011) (permitting the exclusion of a proposal focused on the scope of the financial services offered by the company, explicitly stating that "the proposal appears to relate to the emphasis that the company places on the various products and services it offers for sale" and that "[p]roposals concerning the sale of particular products and services are generally excludable under rule 14a-8(i)(7)").

Because the Proposal constrains the ability of SeaWorld's management to determine which services to provide its customers, the Proposal is similarly excludable under Rule 14a-8(i)(7).

3. *The Proposal Does Not Raise a Significant Social Policy Issue.*

The Commission has indicated that proposals that relate to ordinary business matters but that focus on "sufficiently significant social policy issues . . . generally would not be considered to be excludable [under Rule 14a-8(i)(7)] because the proposals would transcend the day-to-day business matters." Exchange Act Release No. 40018. Similar to the Proponent's shareholder proposal from last year requesting that the Company retire its orcas to "seaside sanctuaries" which the Staff determined was excludable under Rule 14a-8(i)(7), the Proposal purports to relate to the humane treatment of animals but does not actually raise any significant social policy issue and is excludable as pertaining to the Company's ordinary business operations.

Office of Chief Counsel
Division of Corporation Finance
Securities and Exchange Commission -14-

scenarios. A ban on all breeding would prevent the Company from being able to implement, or even attempt to implement, the purpose of these contractual agreements.

Furthermore, as discussed above, one of the goals of the AZA is cooperative animal management and conservation and, in furtherance of this goal, the AZA requires that its institutions participate in SSP Programs. SSP Programs make breeding and other population management recommendations, which could be to breed or not to breed certain animals. A complete ban on breeding at SeaWorld as suggested by the Proposal would prevent SeaWorld from the ability to abide by an SSP Program that recommends breeding – a recommendation that indeed, SeaWorld likely participated in making. This inability to further the purpose of an SSP Program (made with animal well-being and conservation efforts in mind) could jeopardize SeaWorld's AZA accreditation. As such, the Company lacks the power or authority to implement the Proposal and the Proposal is therefore excludable under Rule 14a-8(i)(6).

Conclusion

On behalf of the Company, we hereby respectfully request that the Staff express its intention not to recommend enforcement action if the Proposal is excluded from the Company's Proxy Materials for the reasons set forth above.

If the Staff disagrees with the Company's conclusions regarding omission of the Proposal, or if any additional submissions are desired in support of the Company's position, we would appreciate an opportunity to speak with you by telephone prior to the issuance of the Staff's Rule 14a-8(j) response.

If you have any questions regarding this request, or need any additional information, please do not hesitate to contact the undersigned at (212) 455-7024 or joia.lee@stblaw.com or Amanda Weiss at (212) 455-3934 or amanda.weiss@stblaw.com.

Sincerely,



Joia Lee

Enclosures

cc: G. Anthony Taylor, SeaWorld Entertainment, Inc.
Carlos Clark, SeaWorld Entertainment, Inc.
Igor Fert, Simpson Thacher & Bartlett LLP
Jared S. Goodman, PETA Foundation

Exhibit A

Copy of the Proposal and Accompanying Correspondence

PEOPLE FOR
THE ETHICAL
TREATMENT
OF ANIMALS

Washington, D.C.

1536 16th St. N.W.
Washington, DC 20036
202-483-PETA

Los Angeles

2154 W. Sunset Blvd.
Los Angeles, CA 90026
323-644-PETA

Norfolk

501 Front St.
Norfolk, VA 23510
757-622-PETA

Oakland

554 Grand Ave.
Oakland, CA 94610
510-763-PETA

Info@peta.org
PETA.org

December 18, 2017

G. Anthony (Tony) Taylor
Corporate Secretary
SeaWorld Entertainment, Inc.
9205 South Park Center Loop, Suite 400
Orlando, Florida 32819

Via UPS Next Day Air Saver

Dear Mr. Taylor:

Attached to this letter is a shareholder proposal submitted for inclusion in the proxy statement for the 2018 annual meeting. Also enclosed is a letter from People for the Ethical Treatment of Animals' (PETA) brokerage firm, RBC Wealth Management, confirming ownership of 339 shares of SeaWorld Entertainment, Inc. common stock, which were acquired at least one year ago. PETA has held at least \$2,000 worth of common stock continuously for more than one year and intends to hold at least this amount through and including the date of the 2018 shareholders meeting.

Please communicate with PETA's authorized representative Jared S. Goodman if you need any further information. Mr. Goodman can be reached at Jared S. Goodman, PETA Foundation, 2154 W. Sunset Blvd., Los Angeles, CA 90026, by telephone at (323) 210-2266, or by e-mail at JaredG@PetaF.org. If SeaWorld Entertainment, Inc. will attempt to exclude any portion of this proposal under Rule 14a-8, please advise Mr. Goodman within 14 days of your receipt of this proposal.

Sincerely,

Sara Britt, Corporate Liaison
PETA Corporate Affairs

Enclosures: 2018 Shareholder Resolution
RBC Wealth Management letter

Affiliates

- PETA India
- PETA Australia
- PETA Germany
- PETA Asia-Pacific
- PETA Netherlands
- PETA Foundation (U.K.)

Ending of All Captive Breeding Programs

RESOLVED that in order to reverse the escalating decline in SeaWorld's value and global reputation—as evidenced by a steady drop in visitor attendance as the public learns that animals suffer and die in cramped SeaWorld tanks; a class-action lawsuit by investors who believe that they were intentionally misled by the corporation; a criminal fraud investigation conducted by the Department of Justice; the recent layoffs of an additional 350 employees, bringing the total to nearly 1,000 since the release of *Blackfish*; and sinking revenue, including falling average admissions revenue per visitor and declining in-park spending—the shareholders urge the board, as a start, to ban *all* captive breeding in SeaWorld parks.

Supporting Statement

While SeaWorld's ban against breeding orcas was a step in the right direction, the measure does not go far enough to mitigate the park's many serious failures. In addition to the three orcas who have died in 2017—Tilikum, Kyara, and Kasatka—many other animals have lost their lives, including the newborn calf born to Commerson's dolphin Ringer, a newborn beluga calf, and polar bear Szenja, who died shortly after her companion of 20 years was shipped off to the Pittsburgh Zoo for breeding.

SeaWorld's business model of breeding and displaying animals and forcing them to perform is no longer tenable. Masturbating male dolphins and sedating females so they can be subjected to invasive and traumatizing artificial insemination—especially when so many dolphins at SeaWorld have perished prematurely—is indefensible.

Public condemnation of confining animals to cramped concrete tanks so they can be used for human entertainment continues to grow. There is no reasonable expectation that this trend will reverse itself.

Furthermore, public antipathy is not limited to the United States. SeaWorld's callous abandonment of the orcas at Loro Parque has met with global outrage.

Ending our company's breeding programs would mean that these socially complex animals will no longer spend years in captivity at SeaWorld parks, living in incompatible groups and suffering in small enclosures—conditions that the public will no longer tolerate.

SeaWorld can start to recover from its significant financial and public relations downward spiral by ending its captive breeding programs and introducing innovative exhibits that don't rely on cruelly exploiting animals, such as augmented or virtual reality displays that allow visitors to observe, "interact" with, and learn about marine life.

We urge the shareholders to support this ethically and economically responsible resolution to ban all breeding at SeaWorld parks.



**Wealth
Management**

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Toll Free: 800.421.2746
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December 18, 2017

Tracy Reiman
Executive Vice President
People for the Ethical Treatment of Animals
501 Front Street
Norfolk, VA 23510

Re: Verification of Shareholder Ownership in SeaWorld Entertainment, Inc.

Dear Ms. Reiman:

This letter verifies that People for the Ethical Treatment of Animals (PETA) is the beneficial owner of 339 shares of SeaWorld Entertainment, Inc. common stock and that PETA has continuously held at least \$2,000.00 in market value for at least one year prior to and including the date of this letter.

Should you have any questions or require additional information, please contact me at (408) 947-3322.

Sincerely,

A handwritten signature in cursive script that reads 'Thach Nguyen'.

Thach Nguyen
Registered Client Associate to Joshua Levine
Senior Vice President – Financial Advisor
RBC Wealth Management