



DIVISION OF  
CORPORATION FINANCE

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

March 29, 2018

John Howe  
The Cato Corporation  
jhowe@catocorp.com

Re: The Cato Corporation  
Incoming letter dated January 17, 2018

Dear Mr. Howe:

This letter is in response to your correspondence dated January 17, 2018 concerning the shareholder proposal (the "Proposal") submitted to The Cato Corporation (the "Company") by the Walden Small Cap Fund (the "Proponent") for inclusion in the Company's proxy materials for its upcoming annual meeting of security holders. We also have received correspondence on the Proponent's behalf dated February 1, 2018. Copies of all of the correspondence on which this response is based will be made available on our website at <http://www.sec.gov/divisions/corpfin/cf-noaction/14a-8.shtml>. For your reference, a brief discussion of the Division's informal procedures regarding shareholder proposals is also available at the same website address.

Sincerely,

Matt S. McNair  
Senior Special Counsel

Enclosure

cc: Carly Greenberg  
Walden Asset Management  
cgreenberg@bostontrust.com

March 29, 2018

**Response of the Office of Chief Counsel**  
**Division of Corporation Finance**

Re: The Cato Corporation  
Incoming letter dated January 17, 2018

The Proposal requests that the Company amend its written equal employment opportunity policy to explicitly prohibit discrimination based on sexual orientation and gender identity or expression.

There appears to be some basis for your view that the Company may exclude the Proposal under rule 14a-8(i)(10). Based on the information you have presented, it appears that the Company's policies, practices and procedures compare favorably with the guidelines of the Proposal and that the Company has, therefore, substantially implemented the Proposal. Accordingly, we will not recommend enforcement action to the Commission if the Company omits the Proposal from its proxy materials in reliance on rule 14a-8(i)(10). In reaching this position, we have not found it necessary to address the alternative basis for omission upon which the Company relies.

Sincerely,

Caleb French  
Attorney-Adviser

**DIVISION OF CORPORATION FINANCE**  
**INFORMAL PROCEDURES REGARDING SHAREHOLDER PROPOSALS**

The Division of Corporation Finance believes that its responsibility with respect to matters arising under Rule 14a-8 [17 CFR 240.14a-8], as with other matters under the proxy rules, is to aid those who must comply with the rule by offering informal advice and suggestions and to determine, initially, whether or not it may be appropriate in a particular matter to recommend enforcement action to the Commission. In connection with a shareholder proposal under Rule 14a-8, the Division's staff considers the information furnished to it by the company in support of its intention to exclude the proposal from the company's proxy materials, as well as any information furnished by the proponent or the proponent's representative.

Although Rule 14a-8(k) does not require any communications from shareholders to the Commission's staff, the staff will always consider information concerning alleged violations of the statutes and rules administered by the Commission, including arguments as to whether or not activities proposed to be taken would violate the statute or rule involved. The receipt by the staff of such information, however, should not be construed as changing the staff's informal procedures and proxy review into a formal or adversarial procedure.

It is important to note that the staff's no-action responses to Rule 14a-8(j) submissions reflect only informal views. The determinations reached in these no-action letters do not and cannot adjudicate the merits of a company's position with respect to the proposal. Only a court such as a U.S. District Court can decide whether a company is obligated to include shareholder proposals in its proxy materials. Accordingly, a discretionary determination not to recommend or take Commission enforcement action does not preclude a proponent, or any shareholder of a company, from pursuing any rights he or she may have against the company in court, should the company's management omit the proposal from the company's proxy materials.



**Walden Asset Management**<sup>®</sup>

*Advancing sustainable business practices since 1975*

February 1, 2018

Via electronic mail to [shareholderproposals@sec.gov](mailto:shareholderproposals@sec.gov)

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

Re: Shareholder Proposal to Cato Corporation Regarding a Non-Discrimination Policy on Sexual Orientation and Gender Identity

Ladies and Gentlemen:

Walden Asset Management (the "Proponent" or "Walden") is the beneficial owner of common stock of Cato Corporation (the "Company" or "Cato") and has submitted a shareholder proposal (the "Proposal") to the Company. The purpose of this letter is to respond to a letter dated January 17, 2018 (the "Company Letter") sent to the Securities and Exchange Commission by John Howe, Executive Vice President and Chief Financial Officer of Cato Corporation. In that letter, the company contends that the Proposal may be excluded from the Company's 2017 proxy statement by virtue of rule of Rule 14a-8(i)(10) and Rule 14a-8(i)(7).

Based upon the following, as well as the relevant rules, we maintain that the Proposal must be included in the Company's 2017 proxy materials and that it is not excludable by virtue of Rule 14a-8(i)(10) and Rule 14a-8(i)(7). A copy of this letter is being emailed concurrently to John Howe.

The Company asserts that the Proposal is "substantially identical to the shareholder proposal that was submitted by the Proponent...in 2017 (the "2017 Proposal")." This is not accurate. The language of the Proposal has changed. Words have been removed from the resolved clause to minimize confusion and the supporting statement has been amended to reflect the current public policy environment. Furthermore, the context for this Proposal has changed substantially given the open disagreement between the Equal Employment Opportunity Commission (the "EEOC") and the Department of Justice ("DOJ") on how to interpret Title VII of the Civil Rights Act of 1964 ("Title VII"). Last year, the EEOC's interpretation of Title VII may have been a factor in the decision of the staff of the Division of Corporate Finance (the "Staff") that "Cato's policies, practices and procedures compare favorably with the guidelines of the proposal and that Cato has, therefore, substantially implemented the proposal" *The Cato Corporation* (February 28, 2017). We therefore, respectfully request that the Staff review our Proposal and our ensuing response to the Company Letter and not grant the Company's no-action request.

## Summary

The resolved clause of the Proposal states:

RESOLVED

Shareholders request that Cato Corp (Cato) amend its written equal employment opportunity (EEO) policy to explicitly prohibit discrimination based on **sexual orientation and gender identity or expression**. (Emphasis added.)

The proposal is simply asking the company to explicitly add “sexual orientation” and “gender identity or expression” to its EEO policy, which are not currently included. Language was removed from the “Resolved” clause to minimize confusion.

For comparison, the resolved clause of the 2017 Proposal stated:

RESOLVED

The Shareholders request that Cato Corp amend its written equal employment opportunity policy to explicitly prohibit discrimination based on sexual orientation and gender identity or expression and report on its programs to substantially implement this policy.

A copy of the full the Proposal and the 2017 Proposal are attached to this letter as Exhibit A and Exhibit B, respectively.

The Company asserts that the Proposal is excludable under Rule 14a-8(i)(10) as substantially implemented. However, the Company’s EEO policy does not include explicit provisions prohibiting discrimination based on “sexual orientation and gender identity or expression.” Furthermore, there is no federal regulation or Supreme Court precedent that ensures interpretation of Cato’s EEO policy includes the protection of individuals regardless of their sexual orientation or gender identity. In the absence of a clearly written company-wide policy, employees may be subject to different discrimination protections on a state-by-state basis compared with people in explicitly protected categories. As such, the Company cannot correctly argue that it has substantially implemented the Proposal.

The Company also asserts that the Proposal is excludable as relating to the Company’s ordinary business under Rule 14a-8(i)(7). However, the proposal exclusively addresses a significant policy issue – discrimination policies relative to lesbian, gay, bisexual and transgender (“LGBT”) individuals – which is long recognized by the Staff as a significant policy issue and a subject of widespread public controversy and debate. The issue has a clear nexus to the Company because, among other things, the Company headquarters is located in North Carolina, where LGBT rights are a subject of intensive public controversy.

## Analysis

### **I. The Proposal is not excludable under Rule 14a-8(i)(10) as the company has not substantially implemented the Proposal’s request.**

The Company’s letter states the “Company’s Equal Opportunity Employer policy (the “EEO Policy”)...prohibits discrimination in hiring and terms and conditions of employment based on an individual’s ‘race, color, religion, ancestry or national origin, disability, age, sex, or any other legally-protected classification.’”

In order for a Proposal to be “substantially implemented,” the actions of the Company must compare favorably to the guidelines and essential purpose of the Proposal. *Texaco Inc.* (March 28, 1991). The Proposal asks the Company to amend its written equal employment opportunity policy to explicitly prohibit discrimination based on “sexual orientation” and “gender identity or expression”. Cato has not done so, and therefore the Proposal cannot be said to be substantially implemented.

***Numerous relevant Staff precedents involving similar shareholder proposal language have clearly and repeatedly supported that a proposal to amend a company’s EEO policy is not substantially implemented unless the policy is explicitly amended:***

**Staff has previously found that overarching, general statements from companies indicating that no employee will be discriminated against are insufficient to qualify as substantial implementation.** Many past Staff decisions support the conclusion that a proposal to amend a company’s EEO policy is not substantially implemented unless the policy is explicitly amended. In *Exxon Mobil Corp* (March 23, 2000) the Staff did not agree with Exxon’s argument that the proposal to amend the EEO policy had been substantially implemented based on other statements of the company, such as the statement of Exxon’s then chairman that, “We have a policy to not discriminate against anybody for any reason, period.” This is similar to Cato’s statement in the Company Letter that “a key value of Cato’s culture is treating everyone with respect, regardless of individual circumstances.”

**Staff has previously found that addressing sexual orientation in documents and materials other than the EEO policy are insufficient to qualify as substantial implementation.**

In *Exxon Mobil Corp.* (March 28, 2002) a shareholder proposal for a written policy barring sexual orientation discrimination was considered by the Staff to not be substantially implemented when the words “sexual orientation” were not included in Exxon’s equal employment opportunity policy, even when “sexual orientation” was discussed in training materials, including a question-and-answer section that specifically stated that sexual orientation should be understood to be addressed by the EEO statement. In addition, in *Emerson Electric Company* (October 20, 2004) the company referenced “official” policies on discrimination communicated through supervisory training programs and employee ethics training programs outside of its formal EEO policy. The Staff rejected the company’s assertion that those policies were equivalent to amending the EEO policy. See also *General Electric* (February 2, 1999), in which the shareholder proposal for a written equal employment opportunity policy barring sexual orientation discrimination was not considered by the Staff to be substantially implemented when General Electric’s policy failed to mention sexual orientation, except in a Q&A appendix.

**Staff has previously found that provisions for “other legally-protected status/classifications” are insufficient to qualify as substantial implementation.**

In *Exxon Mobil Corp.* (March 20, 2012) a shareholder proposal requested that Exxon Mobil amend its written equal employment opportunity policy to explicitly prohibit discrimination based on sexual orientation and gender identity and to substantially implement the policy. Exxon Mobil argued that the proposal could be considered substantially implemented because even though the company’s EEO policy omitted mention of sexual orientation and gender identity, a company statement provided that “It is the policy of Exxon Mobil Corporation to provide equal employment opportunity in conformance with all applicable laws and regulations to individuals who are qualified to perform job requirements regardless of their race, color, sex, religion, national origin, citizenship status, age, genetic information, physical or mental disability, veteran or *other legally protected status*” (emphasis added). The Staff

found that the company's policies, practices, and procedures did not compare favorably with the guidelines of the proposal and that Exxon Mobil had not, therefore, substantially implemented the proposal.

**Staff has previously found that even partial implementation of proposals to amend the EEO policy is insufficient to qualify as substantial implementation.**

In *Armor Holdings* (January 31, 2007) the proposal was found not to be substantially implemented because while the Company's policy was amended to explicitly address sexual orientation, it did not address gender identity, which was also specifically requested in the proposal.

***The EEOC's interpretations that "sex" in Title VII includes protections for "sexual orientation" and "gender identity" is not legally binding, is not uniformly agreed upon within the courts, is being actively challenged, and could potentially change under the current administration. Therefore, following the EEOC's guidance should not be considered equivalent to substantial implementation.***

Cato notes correctly that the Equal Employment Opportunity Commission (the "EEOC") indicated LGBT individuals may bring discrimination claims on the basis of "sex" under Title VII of the Civil Rights Act of 1964. However, EEOC guidance is not legally binding on federal or state courts; legal rulings applying Title VII to sexual orientation and gender identity discrimination have been mixed; the Department of Justice recently challenged the EEOC's interpretation of the law; and the U.S. Supreme Court has not weighed in to override these disparate rulings and legal interpretations. In other words, the EEOC's guidance provides no guarantees that individuals can be assured equal employment opportunity and non-discrimination regardless of their sexual orientation or gender identity.

The EEOC officially declared that it considered Title VII's prohibition of sex discrimination to apply to discrimination based on sexual orientation and gender identity on July 15, 2015.<sup>1</sup> In April 2017, the Seventh U.S. Circuit Court of Appeals in Chicago held that sexual orientation is protected under Title VII in *Kimberly Hively v. Ivy Tech Community College*. In contrast, in July 2017, the Eleventh U.S. Circuit Court of Appeals in Atlanta ruled in *Jameka K. Evans v. Georgia Regional Hospital, Charles Moss et al* that Title VII did not protect employees from sexual orientation discrimination. Presently, there is an ongoing case considering the matter in the Second U.S. Circuit Court of Appeals (*Zarda v. Altitude Express*). These incongruent results from the Seventh Circuit and the Eleventh Circuit demonstrate that Cato is incorrect in its assertion in the Company Letter that there is agreement between the federal courts and the EEOC. This makes the following statement by Cato disingenuous: "based on the EEOC's and other federal courts' interpretations, the existing EEO Policy already prohibits the type of discrimination the proposal seeks to prohibit." In fact, most Circuit Courts have yet to overturn precedents that have ruled that sex discrimination does not encompass sexual orientation discrimination.<sup>2</sup>

<sup>1</sup> <https://www.natlawreview.com/article/eec-declares-title-vii-covers-discrimination-based-individual-s-sexual-orientation>

<sup>2</sup> While predating the 2015 EEOC interpretation of Title VII, nearly every Circuit Court has upheld rulings that sex discrimination does not encompass sexual orientation discrimination. See, *Vickers v. Fairfield Med. Ctr.*, 453 F.3d 757, 763 (6th Cir. 2006); *Medina v. Income Support Div.*, 413 F.3d 1131, 1135 (10th Cir. 2005); *Hamm v. Weyauwega Milk Prods., Inc.*, 332 F.3d 8 1058, 1063 (7th Cir. 2003), *overruled by Hively, supra*; *Bibby v. Philadelphia Coca Cola Bottling Co.*, 260 F.3d 257, 261 (3d Cir. 2001); *Higgins v. New Balance Athletic Shoe, Inc.*, 194 F.3d 252, 259 (1st Cir. 1999); *Wrightson v. Pizza Hut*, 99 F.3d 138, 143 (4th Cir. 1996); (cont. on next page)

In order for the EEOC interpretation of Title VII to be legally binding, it would need to be affirmed by Congress or the Supreme Court. Notably, Congress has amended Title VII's definition of "sex" in the past. The 1978 Pregnancy Discrimination Act amended Title VII to expand the prohibition of "sex" discrimination to include discrimination "because of or on the basis of pregnancy, childbirth, or related medical conditions."<sup>3</sup> Congress has yet to pass a federal statute to expand the prohibition of "sex" discrimination to include prohibition of discrimination due to "sexual orientation" or "gender identity." In fact, Congress has repeatedly declined to enact proposed legislation that would explicitly prohibit discrimination on sexual orientation and gender identity by failing to pass the Equality Act and the Employment Non-Discrimination Act for every legislative season that these bills have been introduced.

The fact that Congress can amend Title VII to include other provisions under "sex" but has declined to do so for sexual orientation and gender identity forms part of the Department of Justice's rationale for interpreting Title VII to not presently include protections for sexual orientation and gender identity. The Company Letter and our Proposal highlight the fact that the EEOC and the Department of Justice currently maintain different interpretations of Title VII. In an amicus brief submitted by the DOJ regarding *Zarda v. Altitude Express*, the DOJ states explicitly that "Title VII does not reach discrimination based on sexual orientation."<sup>4</sup> In October 2017, the DOJ also issued a memorandum that stated "Title VII does not prohibit discrimination based on gender identity."<sup>5</sup>

The Supreme Court has yet to hear a case testing a Title VII interpretation on this issue. However, should a Title VII case go to the U.S. Supreme Court, the Department of Justice would be representing the government against an inclusive interpretation.<sup>6</sup> Therefore, even though Cato is correct that the EEOC is the agency responsible for enforcement of Title VII against private employers, the Department of Justice's interpretation will continue to play a significant role in court-based efforts to establish a Supreme Court precedent protecting individuals from discrimination based on sexual orientation and gender identity. Moreover, the open disagreement between the two federal agencies tasked with enforcing Title VII<sup>7</sup> has created confusion within the courts<sup>8</sup> and highlights a weakness in Title VII's ability to effectively provide LGBT individuals with recourse for discrimination in present-day work environments.

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*Williamson v. A.G. Edwards & Sons*, 876 F.2d 69, 70 (8th Cir. 1989); *DeSantis v. Pacific Tel. & Tel. Co.*, 608 F.2d 327, 329-30 (9th Cir. 1979), *abrogated in part on other grounds*, *Nichols v. Azteca Restaurant Enterpr., Inc.*, 256 F.3d 864, 874-75 (9th Cir. 2001); *Blum v. Gulf Oil Corp.*, 597 F.2d 936, 938 (5th Cir. 1979). January 2018 First Circuit case *Franchina v. City of Providence*, supported a "sex plus" discrimination claim under Title VII but did not directly challenge *Higgins v. New Balance Athletic Shoe, Inc.*

<sup>3</sup> <https://www.eeoc.gov/laws/statutes/pregnancy.cfm>

<sup>4</sup> <https://www.washingtonblade.com/content/files/2017/07/Zarda-DOJ-brief.pdf>

<sup>5</sup> <https://assets.documentcloud.org/documents/4067383/Attachment-2.pdf>

<sup>6</sup> <https://www.law.com/sites/almstaff/2017/09/26/govt-agencies-spar-in-second-circuit-over-lgbtq-rights/?sreturn=20180023111046>

<sup>7</sup> The DOJ and the EEOC share enforcement of Title VII responsibilities against state or local government employers (see <https://www1.eeoc.gov/laws/mous/eeoc-doj.cfm?renderforprint=1>)

<sup>8</sup> Judge Rosemary Pooler of the 2<sup>nd</sup> U.S. Circuit Court stated "We love to hear from the federal government, but it's a bit awkward to hear from them on both sides" during proceedings for *Zarda v. Altitude Express* <http://www.slate.com/news-and-politics/2018/01/its-now-certain-federal-agents-broke-the-law-to-implement-trumps-first-travel-ban.html>

Furthermore, the EEOC's guidance on how to interpret Title VII could change under the current administration. Already, we have seen the DOJ reverse its interpretation of protections afforded to transgender employees under existing federal laws. The EEOC is a bipartisan Commission comprised of five presidentially appointed members who serve fixed terms. Presently there are two vacant positions and two of the three sitting commissioners have terms that expire in 2018 and 2019, respectively. As such there is no certainty as to whether the EEOC will maintain its position that protections for "sex" under Title VII include protections for "sexual orientation" and "gender identity" as more appointees from the current administration are added to the commission.

Cato indicates that it "continues to follow the EEOC's interpretation," but given that the EEOC's interpretation is disputed, not certain to assure protection, and could change under the current administration, the company cannot claim that by following the EEOC guidance it has in place "policies, practices, and procedures that compare favorably with the guidelines of the proposal" *Texaco, Inc.* (March 28, 1991). Thereby, following the EEOC's guidance is not adequate evidence of substantial implementation of the proposal's request.

***Without a corporate-wide EEO policy that explicitly includes "sexual orientation" and "gender identity," employees may be subject to different discrimination rules on a state-by-state basis, and different treatment by fellow employees. As such, the company cannot correctly argue that it has substantially implemented the Proposal.***

There is no federal policy or U.S. Supreme Court legal precedent that guarantees protections against workplace discrimination for LGBT individuals across the United States.

As a result, protections for LGBT individuals are determined by disparate state policies. There has recently been an upsurge in state statutes that effectively legitimize discrimination of LGBT people. As examples, a number of state laws have been proposed or enacted that allow discrimination against LGBT people in housing and public and private services on religious grounds. Other high profile efforts, including in North Carolina where Cato is headquartered, have focused on preventing transgender individuals from using the bathrooms correlating with their gender identities and limiting them to use of bathroom facilities associated with the sex that appears on their birth certificates. The need for an explicit company-wide EEO policy is heightened in this national context.

In the Company Letter, Cato mentions that the "Senior Vice President of Human Resources personally meets with *all new corporate headquarters* associates to share with them several basic expectations" (emphasis added). While Cato does not disclose in its most recent 10-k how many associates work at its corporate headquarters, it is reasonable to conclude that only a small fraction of Cato's 10,200 full-time and part-time associates will receive such intensive training given that Cato operates 1,371 fashion specialty stores in 33 states as of at January 28, 2017.<sup>9</sup>

The full purpose of a corporation's anti-discrimination policy ought to be to prevent discrimination in the workplace, not solely to specify which groups can and cannot bring discrimination claims against the company in the event that allegations of discrimination occurs. By not explicitly including sexual orientation or gender identity in its written policy, the company is not proactively discouraging discrimination against members of the LGBT population. Other employees will not necessarily

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<sup>9</sup> Cato 2017, 10-k <https://www.sec.gov/Archives/edgar/data/18255/000001825517000017/cato10k2016.htm>

understand that LGBT individuals are protected under “sex” by Title VII as interpreted by the EEOC. A corporate-wide EEO policy that explicitly includes “sexual orientation and gender identity or expression” is needed to avoid the problem of sending mixed signals to company employees, including store managers, due to inconsistent state policies.

As in the fact patterns of prior Staff precedents, only explicit amendment of Cato’s EEO policy can implement the guidelines and essential purpose of the Proposal.

For all these reasons, the Proposal is not excludable under Rule 14a-8(i)(10).

On a side note, it should be noted that implementation of the Proposal’s request would not divert Company resources as Cato claims. Companies have received proposals similar to this one since the 1990s. The majority of these companies responded to shareholders’ requests and did not report experiencing significant diversion of management attention as Cato alleges. In fact, many companies find the resolution’s request simple enough to implement quickly.

## **II. The Proposal is not excludable under Rule 14a-8(i)(7) because it exclusively addresses a significant policy issue with a nexus to the Company.**

Numerous prior Staff decisions affirmed that proposals focused on discrimination against recognized classes of people (LGBT, women, minorities) are not excludable because they address a significant policy issue. In *JP Morgan Chase* (Feb. 22, 2006) Staff denied relief under Rule 14a-8(i)(7) with regard to a proposal that JPMorgan Chase amend its written equal employment opportunity policy to explicitly exclude reference to sexual orientation. In *Exxon Mobil Corporation* ( March 20, 2012) the Staff rejected a Rule 14a-8(i)(7) objection to a substantially identical proposal requesting amendment of EEO policy to explicitly include sexual orientation and gender identity. The Staff effectively recognized the significant policy issue. The same result occurred in *OGE Energy, Inc.* (February 24, 2004).

Staff decisions that rejected Rule 14a-8(i)(7) arguments include: In *Wal-Mart Stores, Inc.* (April 3, 2002) the proposal requested that Wal-Mart prepare a report on its equal employment opportunity policies and programs, including a review of specified topics. In *The Proctor & Gamble Company* (August 16, 2016) the proposal requested a report detailing the known and potential risks and costs to the company caused by any enacted or proposed state policies supporting discrimination against LGBT people, and detailing strategies above and beyond litigation or legal compliance that the company may deploy to defend the company’s LGBT employees and their families against discrimination and harassment that is encouraged or enabled by the policies.

The present Proposal does not contain language that would cause it to fall within the exceptions to this general policy of the Staff disallowing exclusion of discrimination-focused proposals.

### ***The subject matter remains a significant policy issue.***

The Company Letter goes a bridge too far when it attempts to argue that the Proposal does not focus on a significant social policy issue -- as if this matter were now a settled issue and no longer a highly controversial public issue:

“In 2015, the U.S. Supreme Court held in *Obergefell v. Hodges*, 135 S. Ct 2584 (2015), that the Fourteenth Amendment requires a state to license a marriage between two people of the same

sex and to recognize a marriage between two people of the same sex when their marriage was lawfully performed out-of-state. **While the DOJ has recently reversed its prior position on the protections under Title VII, the EEOC is the agency which is responsible for the enforcement of Title VII and has maintained its position that Title VII prohibits discrimination passed on sexual orientation and gender-based associational discrimination.** As indicated above, Cato's associates are well aware of the Company's support of a workplace free from discrimination and harassment of any kind. Therefore, the Company believes that the subject of the Proposal is not a matter of widespread public debate or a significant social policy issue with a clear nexus to the Company that transcends day-to-day business matters.” (Emphasis added.)

As demonstrated in the bolded portion from the Company Letter excerpt, Cato itself acknowledges that there is presently a public debate between the EEOC and the DOJ on protections against discrimination on the basis of “sexual orientation” and “gender identity.”

Furthermore, the rights of LGBT populations are currently subject to widespread backlash. After years of progress on marriage equality, there has been an upsurge in state policies encouraging or allowing discrimination against LGBT people. A number of state laws, proposed or enacted, allow discrimination against LGBT people in housing and public and private services on religious grounds. Other high profile efforts have focused on preventing transgender people from using the bathrooms correlating with their gender identities and limiting them to use of bathroom facilities associated with the sex that appears on their birth certificates. These laws legitimize discrimination and encourage harassment of LGBT people.

**The following are excerpts from articles providing examples of the widespread public debate and controversy, including in North Carolina specifically where Cato is headquartered:**

Mulvaney, Erin, “Jeff Sessions Memo, Reversing Transgender Protections, Further Inflames Divisions”, Law.com, October 7, 2017, <https://www.law.com/sites/nationallawjournal/2017/10/05/jeff-sessions-memo-reversing-transgender-protections-further-inflames-divisions/>

“U.S. Attorney General Jeff Sessions is reversing the U.S. Justice Department’s stance that transgender employees should be protected in the workplace, a move that clashes with federal appeals court decisions and another government agency’s interpretation of civil rights laws.”

Mulvaney, Erin and Denney, Andrew, “Gov’t Agencies Spar in Second Circuit Over LGBTQ Rights”, Law.com, September 26, 2017, <https://www.law.com/sites/almstaff/2017/09/26/govt-agencies-spar-in-second-circuit-over-lgbtq-rights/?slreturn=20180023111046>

The DoJ and EEOC “faced off Tuesday afternoon before a federal appeals court over whether federal civil rights law, as written, includes protection against discrimination based on sexual orientation.”

Green, Emma, “Trump’s Battle Over LGBT Discrimination is Just Beginning”, The Atlantic, July 28, 2017, <https://www.theatlantic.com/politics/archive/2017/07/title-vii/535182/>

“LGBT issues have been all over the news this week. On Wednesday, President Trump announced a ban on transgender Americans serving in the military. That evening, the Department of Justice made another significant move in the fight over LGBT rights, albeit with less flash than a tweet storm: It filed an amicus brief in a major case, *Zarda v. Altitude Express*, arguing that it’s not illegal to fire an employee based on his or her sexual orientation under federal law.”

“While this case will ultimately be decided by the courts, it’s a sign of conflict ahead in the long-brewing battle over LGBT rights and the meaning of sex discrimination. It also shows the limits of executive action in contested areas of law. The Obama administration may have believed gay people should be protected by federal civil-rights statutes, but it may prove challenging to make that interpretation stick now that a new party controls Washington.”

Greenwald, Judy, “11<sup>th</sup> Circuit Won’t Rehear Title VII Ruling on Sexual Orientation”, Business Insurance, July 7, 2017, <http://www.businessinsurance.com/article/00010101/NEWS06/912314339/11th-Circuit-won%E2%80%99t-rehear-Title-VII-ruling-on-sexual-orientation>

“The 11th U.S. Circuit Court of Appeals in Atlanta on Thursday refused to reconsider a ruling in which it held that Title VII of the Civil Rights Act of 1964 does not protect employees from discrimination on the basis of sexual orientation.”

Williams, Pete, “LGBT Job Discrimination Is Prohibited by Civil Rights Law, Federal Appeals Court Rules,” NBC News, April 4, 2017, <https://www.nbcnews.com/feature/nbc-out/lgbt-job-discrimination-prohibited-civil-rights-law-federal-appeals-court-n742751>

“A federal appeals court in Chicago ruled Tuesday that long-standing federal civil rights laws prohibit discrimination on the job against lesbian, gay, bisexual, and transgender employees.

“It was the first ruling of its kind from a federal appeals court.

“The decision, from the Seventh Circuit Court of Appeals in Chicago said “discrimination on the basis of sexual orientation is a form of sex discrimination.”...

“90 percent of Americans already believe that LGBT employees should be valued for how well they do their jobs, not who they love or who they are,” said Nevins. “Now, through this case and others, that principle is backed up by the courts.”

“In the past, every federal appeals court to consider whether gay employees are entitled to non-discrimination protection has ruled that they are not, though the Equal Employment Opportunity Commission recently said they are protected.”

Dunlap, Bridgette, “Why North Carolina Law is Still Anti-LGBT and Unconstitutional,” Rolling Stone Magazine, March 31, 2017, <https://www.rollingstone.com/politics/news/nc-bathroom-bill-repeal-is-still-anti-lgbt-unconstitutional-w474462>

“On Thursday, North Carolina Gov. Cooper signed a bill repealing House Bill 2, the famously anti-LGBT law enacted last year that has subjected the state to widespread condemnation, boycotts and lawsuits. Passed in response to an anti-discrimination ordinance enacted by the city of Charlotte, HB2 barred transgender people from using public restrooms consistent with their gender identities. It also barred municipalities from passing anti-discrimination laws and invalidated those already in place. Thursday, in a rush to meet a deadline from the NCAA, which had announced it would keep championship events out of the state for six years unless HB2 was repealed, the legislature passed HB 142, which eliminates the bathroom ban, but still prohibits municipalities from enacting anti-discrimination measures for three years.

Lovett, Ian, Gershman, Jacob, and Radnofsky, Louise, “Trump Draft Order Would Expand Religious Rights, Could Allow Denial of Service to Gays”, The Wall Street Journal, February 3, 2017,

<https://www.wsj.com/articles/draft-of-executive-order-proposes-expanding-legal-protections-on-religious-grounds-1486071114>

Skinner, Curtis, “Judge Refuses to Block Mississippi Anti-LGBT Law”, Reuters, June 20, 2016, <https://www.reuters.com/article/us-mississippi-lgbt/judge-refuses-to-block-mississippi-anti-lgbt-law-idUSKCN0Z62I3>

“Law that permits people to deny wedding services to same-sex couples based on religious objections. U.S. District Judge Carlton Reeves argued in his four-page order that since none of the lawsuit’s plaintiffs would be harmed by the law in the immediate future, a preliminary injunction would be inappropriate.”

Cray, David, “A Year After Marriage Ruling, LGBT Rights Struggles Continue”, The Associated Press, June 18, 2016, <https://apnews.com/846243d4d6314adb995b9df581eae690>

“Since that ruling last June 26, same-sex marriage has been widely accepted as the law of the land, with only small pockets of defiance. Yet it has not been a year for LGBT-rights activists to bask in triumph, as starkly underscored by the June 12 attack that killed 49 patrons and staff at a gay nightclub in Orlando, Florida.” ...

“Even before the Orlando attack, LGBT gains were being challenged by many of the social conservatives who had opposed same-sex marriage. They have asserted that religious freedom is threatened by various legal advances for the lesbian, gay, bisexual and transgender community, and they are trying to prevent transgender people from accessing public bathrooms and locker rooms on the basis of their gender identity.” ...

“LGBT-rights groups are playing both defense and offense, city by city and state by state. They’re working to persuade more jurisdictions to broaden nondiscrimination protections, while fending off lawsuits and legislation by their opponents that threaten to weaken such protections.”

Peters, Jeremy W., Alvarez, Lizette, “After Orlando, a Political Divide on Gay Rights Still Stands”, The New York Times, June 15, 2016, <https://www.nytimes.com/2016/06/16/us/after-orlando-a-political-divide-on-gay-rights-still-stands.html>

“In Florida, activists noted that the state was still a place where gay and lesbian people could “get married on a Friday and fired on a Monday” because of inadequate nondiscrimination laws, in the words of Mallory Garner-Wells, the public policy director for Equality Florida.”

Berman, Mark, “Civil Rights Commission Says N.C. Bathroom Law Jeopardizes Physical Safety of Transgender People”, The Washington Post, April 19, 2016, <https://www.washingtonpost.com/news/post-nation/wp/2016/04/19/u-s-civil-rights-commission-says-north-carolinas-bathroom-law-jeopardizes-the-physical-safety-of-transgender-people/?utmterm=.a12ebe01e7d1>

“North Carolina Gov. Pat McCrory (R), who signed the law, signed an executive order last week seeking to quell some of the outrage sparked by the measure, although he defended it and left the highly criticized provisions intact. McCrory and other supporters of the bathroom law have defended it as “common sense” legislation.”

McPhate, Mike, “Mississippi Law on Serving Gays Proves Divisive”, The New York Times, April 14, 2016, <https://www.nytimes.com/2016/04/15/us/mississippi-gay-lgbt-discrimination-religion.html>

“But its provisions allowing people with religious objections to deny certain services to gay couples have ignited fierce opposition, with some critics portraying them as a free pass to open-ended discrimination.

“The Mississippi measure, the latest in a wave of similar legislative efforts across the country, has turned a harsh national spotlight on the state, as gay rights organizations, several major companies and at least five other states have publicly denounced it.

“Gov. Phil Bryant has strongly defended the law, known officially as the Protecting Freedom of Conscience from Government Discrimination Act, by arguing that it was drafted in the “most targeted manner possible.”

Berman, Mark, “North Carolina Governor Says He Wants Bathroom Law Partially Changed After Backlash”, The Washington Post, April 12, 2016, <https://www.washingtonpost.com/news/post-nation/wp/2016/04/12/deutsche-bank-halts-north-carolina-expansion-due-to-transgender-bathroomlaw/?tid=ainl&utmterm=.0dbc3fcd9ce1>

“McCrory said he was expanding protections for state employees, which would prevent these workers from being fired for being gay or transgender. He also said he would seek legislation restoring the right to sue for discrimination.

“In his order, McCrory stopped short of altering the bill’s most high-profile provision mandating that transgender people use bathrooms that correspond only with the gender on their birth certificate.”

Fausset, Richard, Blinder, Adam, “Rights Law Deepens Political Rifts in North Carolina”, The New York Times, April 11, 2016, <https://www.nytimes.com/2016/04/12/us/rights-law-deepens-political-rifts-in-north-carolina.html>

“North Carolina has been pummeled with boycotts, criticism and cancellations in the wake of its new law on gay and transgender rights. Now liberals and conservatives in the state have turned to pummeling one another.

“For North Carolina, a state that has long been considered one of the South’s most moderate, the intense reaction to the law, especially from business interests, has provided an ego-bruising moment.

“But beyond ego and self-image, the legislation is exacerbating the political divisions in a state almost evenly divided between conservative and liberal forces. The acrimony is certain to play out not just in one of the nation’s most closely contested races for governor but also in the rare Southern state that can be up for grabs in presidential politics.”

Katz, Jonathan M., Eckholm, Erik, “Anti-Gay Laws Bring Backlash in Mississippi and North Carolina”, The New York Times, April 5, 2016 <https://www.nytimes.com/2016/04/06/us/gay-rights-mississippi-north-carolina.html>

“The divide between social conservatives and diversity-minded corporations widened Tuesday with developments in Mississippi and North Carolina related to the rights of gay, lesbian bisexual and transgender people in both states.

“Mississippi’s governor signed far-reaching legislation allowing individuals and institutions with religious objections to deny services to gay couples, and the online-payment company PayPal announced it was canceling a \$3.6 million investment in North Carolina.”

Liptak, Adam, “Supreme Court Ruling Makes Same-Sex Marriage a Right Nationwide”, The New York Times, June 26, 2015, <https://www.nytimes.com/2015/06/27/us/supreme-court-same-sex-marriage.html>

***Because the proposal addresses a significant policy issue, the fact that it touches on issues of workforce management does not render it excludable.***

Since at least the SEC’s 1998 Release it has been clear that employment issues relating to a significant policy issue are not excludable:

However, proposals relating to such matters [employment] but focusing on sufficiently significant social policy issues (**e.g., significant discrimination matters**) 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." 1998 Release. [emphasis added]

Notably, Cato fails to recognize that in the Commission's 1998 release it expressly stated that when it comes to employment related proposals, the Staff would look to the underlying subject matter, such that if there were a significant policy issue it would not be excludable. The specific example of sexual orientation and gender identity discrimination has been confirmed repeatedly in the Staff decisions cited previously.

### ***Clear Nexus of the Significant Policy Issue to the Company***

Staff Legal Bulletin 14E states that for a significant policy issue to render a proposal not excludable there must be a nexus to the Company. In this instance, there is a clear nexus because of the disparate state laws governing states where Cato has store operations. Cato has stores in 9 states that prohibit discrimination based on sexual orientation and gender identity (Colorado, Delaware, Illinois, Iowa, Maryland, Nevada, New Jersey, New Mexico, and New York). Cato also has stores in 23 states that do not provide state level protections for LGBT people. Furthermore, Cato has stores in 18 states with Religious Freedom Laws. Many contend that Religious Freedom laws will be used to defend discrimination towards LGBT individuals. Cato has stores in 13 states which have considered controversial “Bathroom Bills” that require transgender individuals to use the bathroom corresponding to the gender on their birth certificate. This includes North Carolina, where Cato is headquartered. North Carolina is the only state thus far where a Bathroom Bill measure passed. Although it has since been repealed, controversy in North Carolina persists since HB 142 (the bill that replaced the original HB2 Bathroom Bill) still prohibits municipalities from enacting anti-discrimination measures for three years. Similar legislation preventing city and municipal governments from enacting local anti-discrimination rules has been considered in 4 other states where Cato operates, but has only passed in North Carolina. This measure effectively nullified city ordinances that provided LGBT individuals with more protections against discrimination, including one that was adopted in early 2016 by Charlotte, North Carolina<sup>10</sup>. A breakdown of state laws where Cato operates is attached as [Exhibit C](#).

<sup>10</sup> Harrison, Steve, “Charlotte City Council Approves LGBT Protections in a 7-4 Vote,” The Charlotte Observer, February 23, 2016, <http://www.charlotteobserver.com/news/politics-government/article61786967.html>

Moreover, Cato has operations in the 3 states under the jurisdiction of the 11<sup>th</sup> Circuit Court, which, as described previously, disagreed with the EEOC and decided “sex” in Title VII does not include protection for “sexual orientation” (Alabama, Florida, and Georgia) and one state that is included under the 7<sup>th</sup> Circuit’s jurisdiction, which agreed with the EEOC and decided “sex” does include protection for “sexual orientation” (Indiana).

***Company cited precedents are not apropos***

The Company letter cites a series of prior Staff decisions allowing exclusion in relation to workplace matters in which there was either a lack of an underlying significant policy issue recognized by the staff or the proposal strayed into requiring action on items of ordinary business that were outside of the scope of the significant policy issue. For instance, in *PG&E Corporation* (March 7, 2016) the proposal asked the company to issue a policy against discrimination based on, among other things, sexual orientation and gender in hiring, vendor contracts or **customer relations**. In *CVS Health Corporation* (February 27, 2015) the proposal sought to prohibit discrimination based on **political ideology, affiliation or activity** which is not recognized by the Staff as a significant policy issue; *The Walt Disney Corporation* (November 24, 2014) concurring in the exclusion of a proposal that sought to modify a company's anti-discrimination policies to protect **political processes and activities**; *Bank of America* (February 14, 2012) concurring in the exclusion of a proposal seeking to protect **employee expression outside of the workplace**; *Donaldson Company, Inc.* (Sept. 13, 2006) concurring in the exclusion of a proposal regarding the establishment of appropriate ethical standards related to employee relations; *American Brands, Inc.* (February 3, 1993) concurring in the exclusion of a proposal regarding the work environment, employees and **smoking**. All these cases included very specific examples that led to the favorable no-action decision from the Staff (in bold font above). None of these specific additions are included in the Walden proposal to Cato.

For all of these reasons, the Proposal is not excludable under Rule 14a-8(i)(7).

**CONCLUSION**

As demonstrated above, the Proposal is not excludable pursuant to Rule 14a-8(i)(7) or Rule 14a-8(i)(10). Therefore, we request the Staff to inform the Company that the SEC proxy rules require denial of the Company’s no-action request. In the event that the Staff should decide to concur with the Company, we respectfully request an opportunity to confer with the Staff.

Please call me at (617) 726-7235 with respect to any questions or if the Staff wishes any further information.

Sincerely,



Carly Greenberg, CFA  
Senior Environmental, Social & Governance Analyst  
Walden Asset Management | Boston Trust & Investment Management Company  
One Beacon St. | Boston, MA 02108 | 617.726.7235

Cc:

John Howe, Cato Corporation via email at [jhowe@catocorp.com](mailto:jhowe@catocorp.com)

Lowell Pugh, Cato Corporation via email at [lpugh@catocorp.com](mailto:lpugh@catocorp.com)

R. Douglas Harmon, Parker Poe Adams & Bernstein LLP via email at [dougharmon@parkerpoe.com](mailto:dougharmon@parkerpoe.com)

**Exhibit A: 2018 Shareholder Proposal**

## NON-DISCRIMINATION POLICY ON SEXUAL ORIENTATION AND GENDER IDENTITY

## RESOLVED

Shareholders request that Cato Corp (Cato) amend its written equal employment opportunity (EEO) policy to explicitly prohibit discrimination based on sexual orientation and gender identity or expression.

## SUPPORTING STATEMENT

Currently, Cato's EEO policy does not include "sexual orientation" and "gender identity or expression"—calling into question the extent to which these classes are protected given the absence of a federal law, lack of consensus among federal entities,<sup>1</sup> and inconsistent local laws.

Cato operates in 9 states that prohibit discrimination in employment on the basis of sexual orientation and gender identity and in 16 states where discrimination against LGBT (lesbian, gay, bisexual, transgender) people may be permissible under Religious Freedom Restoration Acts. A corporate-wide best practice EEO policy avoids the problem of sending mixed signals to company employees, including store managers, due to inconsistent state policies.

Since LGBT workplace discrimination continues to exist in the US,<sup>2</sup> the requested policy would enhance Cato's efforts to prevent discrimination and mitigate employees' fear of potential discrimination.

An inclusive policy also enhances our company's ability to recruit the most talented employees from the broadest possible labor pool, resolve complaints internally to avoid costly litigation or damage to its reputation, lower employee turnover, ensure a respectful and supportive work atmosphere that bolsters employee performance, and appeal to US LGBT consumers and individuals supportive of equality. In 2016, Bloomberg estimated US LGBT consumers represented \$900 billion in buying power, and public opinion polls consistently find that more than 75% of Americans support equal rights in the workplace.

We are concerned that Cato's opposition to adopting a uniform policy may undermine its reputation among potential employees and consumers.

Cato also risks standing out as an outlier among US companies on this matter. According to the Human Rights Campaign, 82% of the *Fortune 500*<sup>®</sup> companies had EEO policies that include sexual orientation and gender identity in 2017. In North Carolina, where Cato is headquartered, 21 out of 25 of the largest companies by market cap include sexual orientation and 18 include gender identity in their policies. Furthermore, retail peers such as American Eagle Outfitters and Gap Inc. explicitly prohibit discrimination on the basis of sexual orientation and gender identity.

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<sup>1</sup> In 2015, the Equal Employment Opportunity Commission (EEOC) advised that LGBT individuals were protected under "sex" by Title VII of the Civil Rights Act. However, in June 2017, the Justice Department contested the EEOC's guidance in an Amicus Brief to a US Court of Appeals stating explicitly that "Title VII does not reach discrimination based on sexual orientation."

<sup>2</sup> 92% of LGBT individuals surveyed agree that various levels of discrimination persist (Pew Research Center, June 2013). Transgender workers report even more widespread employment discrimination than gay and lesbian workers—up to 56% were fired, up to 47% were denied employment, and up to 31% were harassed based on their gender identity (Williams Institute, July 2011).

**Exhibit B: 2017 Shareholder Proposal****NON-DISCRIMINATION POLICY ON SEXUAL ORIENTATION AND GENDER IDENTITY  
RESOLVED**

The Shareholders request that Cato Corp amend its written equal employment opportunity policy to explicitly prohibit discrimination based on sexual orientation and gender identity or expression and report on its programs to substantially implement this policy.

**SUPPORTING STATEMENT**

Cato Corp does not explicitly prohibit discrimination based on sexual orientation, gender identity or expression in its written Equal Employment Opportunity (EEO) policy.

After signing a 2014 Executive Order that explicitly prohibited federal contractors from discriminating on the basis of sexual orientation or gender identity in employment, President Obama stated, "Equality in the workplace is not only the right thing to do, it turns out to be good business. That's why a majority of Fortune 500 companies already have nondiscrimination policies in place."

The Human Rights Campaign Foundation's 2016 survey notes that among the Fortune 500®:

- 93% have Equal Employment Opportunity Policies that include sexual orientation,
- 75% have Equal Employment Opportunity Policies that include gender identity or expression, a historic high.

Additionally, industry peers such as American Eagle Outfitters and Gap Inc. explicitly prohibits discrimination on the basis of sexual orientation and gender identity in their written equal employment policies.

Furthermore, public opinion polls consistently find more than three-quarters of people in the United States support equal rights in the workplace. In a 2015 nationwide survey conducted by Greenberg Quinlan Rosner Research, the vast majority (78 percent) of the 950 respondents supported protecting LGBT (lesbian, gay, bisexual, transgender) people from discrimination in employment.

Currently, 20 states, the District of Columbia and more than 225 cities prohibit discrimination in employment on the basis of sexual orientation and gender identity. Two additional states prohibit discrimination based on sexual orientation. Cato Corp has operations in 9 states with such policies (more than 1/4th of the states the company indicates having store locations).

Ninety-two percent of LGBT individuals surveyed agree that various levels of discrimination still persist against this group (Pew Research Center, June 2013). Transgender workers report even more widespread employment discrimination than gay and lesbian workers—up to 56% were fired, up to 47% were denied employment, and up to 31% were harassed based on their gender identity (Williams Institute, July 2011).

We believe employment discrimination on the basis of sexual orientation, gender identity or gender expression diminishes employee morale and productivity. Because local laws differ with respect to employment discrimination, the company would benefit from a consistent, corporate-wide policy. We believe an inclusive EEO policy would help our company enhance efforts to prevent discrimination; resolve complaints internally, avoid costly litigation or damage to its reputation, access employees from the broadest possible talent pool, and ensure a respectful and supportive atmosphere for all employees. We further believe Cato Corp will enhance its competitive edge by joining the growing ranks of companies guaranteeing equal opportunity for all employees and prospective employees.

**Exhibit C: State Policies in States Where Cato Operates**

State where Cato has Stores	State has Religious Exemption Law (all states below have statutory religious exemption laws, except for Alabama which has a constitutional religious exemption law)	State Prohibits Employment Discrimination Based on Sexual Orientation and Gender Identity	States that have considered legislation that would restrict access to multiuser restrooms, locker rooms, and other sex- segregated facilities on the basis of a definition of sex or gender consistent with sex assigned at birth or “biological sex.”	States that have considered legislation that would preempt municipal and county-level anti-discrimination laws.
Alabama	x		x	
Arizona	x			
Arkansas	x		x	
Colorado		x		
Delaware		x		
Florida	x			
Georgia				
Illinois	x	x	x	
Indiana	x			
Iowa		x		
Kansas	x		x	
Kentucky	x		x	
Louisiana	x			
Maryland		x		
Michigan				
Mississippi	x			
Missouri	x		x	x
Nebraska				
Nevada		x		
New Jersey		x		
New Mexico	x	x		
New York		x	x	
North Carolina*			X*	x*
Ohio				
Oklahoma	x			
Pennsylvania	x			
South Carolina	x		x	x
South Dakota			x	
Tennessee	x		x	
Texas	x		x	x
Virginia	x		x	x
West Virginia				
<b>Total</b>	<b>18</b>	<b>9</b>	<b>13</b>	<b>5</b>

\* Headquarters State

\* provision passed/later repealed

\* provision passed

Sources

[http://www.lgbtmap.org/equality-maps/religious\\_exemption\\_laws](http://www.lgbtmap.org/equality-maps/religious_exemption_laws)

<http://www.ncsl.org/research/education/-bathroom-bill-legislative-tracking635951130.aspx>

<https://www.hrc.org/state-maps/employment>



The CATO Corporation

January 17, 2018

Via e-mail to [shareholderproposals@sec.gov](mailto:shareholderproposals@sec.gov)

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

Re: The Cato Corporation—Notice of Intent to Omit a Shareholder Proposal Submitted by Walden Asset Management from Proxy Material Pursuant to Rule 14a-8 Promulgated under the Securities Exchange Act of 1934, as amended (the “Exchange Act”), and Request for No-Action Ruling

Ladies and Gentlemen:

The purpose of this letter is to inform you that The Cato Corporation (the “Company” or “Cato”) intends to exclude a shareholder proposal (the “Proposal”) filed by Walden Asset Management (the “Proponent”) from the Company’s proxy materials for the Company’s 2018 Annual Meeting of Shareholders (the “2018 Proxy Materials”). The Proposal is substantially identical to the shareholder proposal that was submitted by the Proponent and others in 2017 (the “2017 Proposal”) pursuant to which the staff of the Division of Corporate Finance (the “Staff”) of the Securities and Exchange Commission (the “Commission”) permitted the Company to exclude the 2017 Proposal from its proxy materials. This year again, we respectfully request that the Staff agree that the shareholder Proposal may be excluded from the 2018 Proxy Materials for the reasons set forth below.

Pursuant to Staff Legal Bulletin No. 14D (CF), Shareholder Proposals (November 7, 2008), question C, we have submitted this letter and its attachments to the Commission via e-mail to [shareholderproposals@sec.gov](mailto:shareholderproposals@sec.gov) and therefore have not provided six additional copies of this letter pursuant to Rule 14a-8(j). Copies of these materials are also being concurrently sent to the Proponent to inform the Proponent of the Company’s intention to exclude the Proposal. The Company intends to file its definitive 2018 Proxy Materials with the Commission no earlier than April 13, 2018. Accordingly, we have submitted this letter not later than 80 days before the Company intends to file its 2018 Proxy Materials in accordance with Rule 14a-8(j).

## I. The Proposal

In letters dated October 16, 2017, the Proponent and The Wallace Global Fund, proposed the following resolution:

**RESOLVED**

Shareholders request that Cato Corp amend its written equal employment opportunity (EEO) policy to explicitly prohibit discrimination based on sexual orientation and gender identity or expression.

On October 20, 2017, The Wallace Global Fund withdrew its support of the Proposal. A copy of the Proposal and correspondence received from the Proponent and The Wallace Global Fund is attached as Exhibit A.

**II. Reasons for Exclusion**

**A. Rule 14a-8(i)(10) – The Proposal has been substantially implemented by the Company**

Under Rule 14a-8(i)(10), a Company is permitted to exclude a shareholder proposal from its proxy statement if the company has substantially implemented the proposal. The Commission has stated that a proposal has been substantially implemented when the company's "particular policies, practices and procedures compare favorably with the guidelines of the proposal." *Texaco, Inc.* (March 28, 1991).

The Company's Equal Opportunity Employer policy (the "EEO Policy"), which is attached as Exhibit B, prohibits discrimination in hiring and terms and conditions of employment based on an individual's "race, color, religion, ancestry or national origin, disability, age, sex, or any other legally-protected classification. . ." The Equal Employment Opportunity Commission (the "EEOC") and several federal courts have indicated that lesbian, gay, bisexual and transgender ("LGBT") individuals may bring discrimination claims on the basis of "sex" under Title VII of the Civil Rights Act of 1964. While the Department of Justice ("DoJ") has released a memorandum reversing its prior position on the topic and is now conflict with the EEOC's interpretation, the EEOC is the agency responsible for the enforcement of Title VII and the Company continues to follow the EEOC's interpretation. Accordingly, based on the EEOC's and other federal courts' interpretations, the existing EEO Policy already prohibits the type of discrimination that the Proposal seeks to prohibit.

Consistent with the language of the EEO Policy, a key value of Cato's culture is treating everyone with respect, regardless of individual circumstances. A written copy of the EEO Policy is widely accessible to employment candidates and associates on Cato's website. The EEO Policy is also reviewed with all new associates as part of their on-boarding. In that regard, the Senior Vice President of Human Resources personally meets with all new corporate headquarters associates to share with them several basic expectations that Cato has of all its associates. The first expectation is that they will treat everyone with respect. This expectation extends to all employment candidates, associates, vendors, and other business partners.

The Proposal implies that additional action by Cato is necessary to achieve its goals. The Company disagrees. The Company has not received complaints or other indications from its associates that discrimination on the basis of sexual orientation, gender identity or gender

expression is or has been practiced within the Company. Furthermore, the Company continues to receive employment applications from a wide variety of qualified individuals. There is no evidence that the pool of employment candidates has been adversely affected by the Company's existing EEO Policy. Nor has the Company received any indications from its suppliers, customers or other business partners that the Company's employment policies or practices negatively impact or jeopardize its relationship with any of them.

Given that the Company has no notice that its existing policies and practices have created a barrier to employment or other business relationships at Cato, the request that Cato change its EEO Policy is an unnecessary attempt to address a potential problem where none exists, would not provide any apparent benefit to Cato's stockholders or associates, and would not be a productive use of Company resources. Attempting to address a potential problem where none exists would divert Company resources that could otherwise be used to advance important Company initiatives that would clearly benefit our stockholders and associates and enhance the Company's competitive edge.

Less than a year ago, in February 2017, the Commission concluded that Cato could exclude the 2017 Proposal under Rule 14a-8(i)(10) because it appeared that "Cato's policies, practices and procedures compare favorably with the guidelines of the proposal and that Cato has, therefore substantially implemented the proposal." *The Cato Corporation* (February 28, 2017). Since then, there has been no material change in the Company's policies, practices and procedures with respect to matters related to the Proposal. Accordingly, this year the Company again respectfully requests that the Commission concur with the exclusion of the Proposal under Rule 14a-8(i)(10).

#### **B. Rule 14a-8(i)(7) – The Proposal Deals With Matters Relating to the Company's Ordinary Business Operations**

Rule 14a-8(i)(7) of the Exchange Act provides that a shareholder proposal may be excluded from a company's proxy statement if the proposal "deals with matters relating to the company's ordinary business operations." The Commission issued guidance explaining the underlying policy of the ordinary business exclusion in Exchange Act Release No. 34-40018 (May 21, 1998) (the "1998 Release"), which stated the exclusion is meant 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." In determining whether the ordinary business exclusion applies, the Commission focuses on two central considerations.

The first consideration is the subject matter of the proposal. The 1998 Release provides that "[c]ertain tasks are so fundamental to management's ability to run a company on a day-to-day basis that they could not, as a practical matter, be subject to direct shareholder oversight." However, the 1998 Release also stated that proposals that relate to such matters but focus on sufficiently significant social policy issues generally are not excludable because such proposals are deemed to transcend the day-to-day business matters and raise policy issues so significant that it would be appropriate for a shareholder vote. Furthermore, Staff Legal Bulletin 14E (CF), *Shareholder Proposals* (October 27, 2009), states that in order for a significant social policy issue to render a proposal not excludable there must be a sufficient nexus between the nature of proposal and the Company.

The second consideration relates to the degree to which the proposal seeks to "micromanage" the company by probing too deeply into matters of a complex nature upon which shareholders, as a group, would not be in a position to make an informed judgment.

1. **The Proposal is too fundamental to management's ability to manage the company, and does not focus on a sufficiently significant social policy issue with a clear nexus to the Company.**

Shareholder proposals that concern the relations between a company and its employees are excludable under Rule 14a-8(i)(7) because they affect the day-to-day management of a company's operations. When a shareholder proposal seeks to infringe upon the relationship between a company's management and its employees, it is interfering with the management's right to conduct its ordinary business practices. *CVS Health Corporation* (February 27, 2015). Accordingly, prior no-action letters from the Commission have supported the exclusion of proposals that deal with workplace policies. See e.g. *PG&E Corporation* (March 7, 2016) ("PG&E") (concurring in the exclusion of a proposal to institute a policy that there shall be no discrimination based on, among other things, sexual orientation and gender in hiring, vendor contracts or customer relations); *CVS Health Corporation* (February 27, 2015) ("CVS Health") (concurring in the exclusion of a proposal to amend an equal employment opportunity policy to explicitly prohibit discrimination based on political ideology, affiliation or activity); *The Walt Disney Corporation* (November 24, 2014) (concurring in the exclusion of a proposal that sought to modify a company's antidiscrimination policies to protect political processes and activities); *Bank of America* (February 14, 2012) (concurring in the exclusion of a proposal seeking to protect employee expression outside of the workplace); *Donaldson Company, Inc.* (Sept. 13, 2006) (concurring in the exclusion of a proposal regarding the establishment of appropriate ethical standards related to employee relations); *American Brands, Inc.* (Feb. 3, 1993) (concurring in the exclusion of a proposal regarding the work environment, employees and smoking). In fact, the Commission specifically stated in the 1998 Release that "hiring, promotion and [the] termination of employees" are "so fundamental to management's ability to run a company on a day-to-day basis that [it] could not, as a practical matter, be subject to direct shareholder oversight."

In *CVS Health*, the Commission granted the exclusion of a shareholder proposal that sought to modify the company's equal employment opportunity policy and/or other antidiscrimination policies to explicitly prohibit discrimination based on an employee's political activities and political ideology. In reaching its determination to exclude the Proposal, the Commission noted that the "proposal relates to *CVS Health's* policies concerning its employees."

Similarly, in *PG&E*, the Commission granted the exclusion of a shareholder proposal requesting that the company's board of directors institute a policy prohibiting any discrimination against persons based on race, religion, donations, gender, or sexual orientation in hiring, vendor contracts or customer relations. The Commission agreed that the proposal related to *PG&E's* ordinary business operations and permitted it to be excluded from the company's proxy materials.

Like the proposals that were excluded by *CVS Health* and *PG&E*, the Proposal relates to the Company's policies concerning its employees, its hiring practices and the Company's relationship with its employees. The Company employs approximately 10,200 full-time and

part-time associates and is in the best position to determine how to best attract, hire and retain its personnel. Such strategic and day-to-day decisions and activities are fundamental to management's ability to run the Company and relate to ordinary business matters. Accordingly, the proposal intrudes on the Company's management of business operations and should be excluded pursuant to Rule 14a-8(i)(7).

In addition, the Proposal does not focus on a significant social policy issue. In determining whether a significant social policy issue is present, the Commission considers the "presence of widespread public debate regarding [the] issue. . ." *Staff Legal Bulletin 14A* (July 12, 2002). In recent years, the Commission has permitted the exclusion of proposals where the underlying social policy issues involved same-sex marriage and/or sexual orientation. See e.g. *PG&E Corporation* (March 7, 2016); *PG&E Corporation* (February 27, 2015). In 2015, the U.S. Supreme Court held in *Obergefell v. Hodges*, 135 S. Ct. 2584 (2015), that the Fourteenth Amendment requires a state to license a marriage between two people of the same sex and to recognize a marriage between two people of the same sex when their marriage was lawfully performed out-of-state. While the DoJ has recently reversed its prior position on the protections under Title VII, the EEOC is the agency which is responsible for the enforcement of Title VII and has maintained its position that Title VII prohibits discrimination based on sexual orientation and gender-based associational discrimination. As indicated above, Cato's associates are well aware of the Company's support of a workplace free from discrimination and harassment of any kind. Therefore, the Company believes that the subject of the Proposal is not a matter of widespread public debate or a significant social policy issue with a clear nexus to the Company that transcends day-to-day business matters.

Finally, the Company's board of directors reviewed and discussed the Proposal and concluded that the Proposal deals with matters relating to the Company's ordinary business operations and is not appropriate for a shareholder vote. In reaching this conclusion, the board reviewed, evaluated and discussed, among other items, (a) the current legal landscape with respect to the protections afforded under Title VII of the Civil Rights Act, (b) the workplace environment, (c) Cato's relationship with its associates, and (d) Cato's efforts to train its associates to comply with the Company's EEO Policy and other employment policies.

## **2. The Proposal seeks to micromanage the Company.**

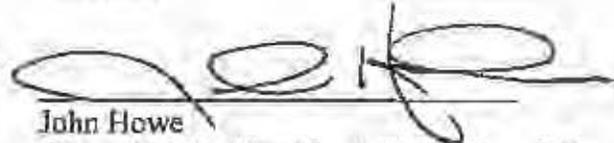
In addition, the Proposal attempts to micromanage the Company. As stated above in Section II.A, the Company's current EEO Policy and practices already achieve the objectives of the Proposal. Accordingly, the Proposal is essentially an attempt to "wordsmith" one of the Company's employment policies. Cato's decisions about how to draft and communicate certain workplace policies and manage its relationship with employees are decisions that are beyond the purview of shareholders, and the Proposal is an unwarranted attempt to micromanage the Company to a degree that is inappropriate.

## **III. Conclusion**

For the foregoing reasons, the Company believes that the Proposal may be excluded from the 2018 Proxy Materials pursuant to Rules 14a-8(i)(10) and 14a-8(i)(7). Consistent with the Staff's decision last year, the Company respectfully requests that the Staff provide confirmation that it will not recommend any enforcement action if the Proposal is excluded.

We would appreciate a response from the Staff by February 15, 2018, in order to provide the Company with sufficient time to finalize and print its 2018 Proxy Materials. If you have any questions regarding this request or desire additional information, please contact me by phone at (704) 551-7315 or by e-mail at [controller@catocorp.com](mailto:controller@catocorp.com) or [jhowe@catocorp.com](mailto:jhowe@catocorp.com).

Sincerely,

A handwritten signature in black ink, appearing to read 'John Howe', written over a horizontal line.

John Howe  
Executive Vice President, Chief Financial  
Officer

Attachments: Exhibits A and B

cc: Carly Greenberg, Walden Asset Management via e-mail at [cgreenberg@bostontrust.com](mailto:cgreenberg@bostontrust.com)  
R. Douglas Harmon, Parker Poe Adams & Bernstein LLP via e-mail at  
[dougharmon@parkerpoe.com](mailto:dougharmon@parkerpoe.com)

**EXHIBIT A**



The Boston Trust & Walden Funds

A Registered Investment Company



October 16, 2017

Ms. Christin Reische  
Assistant Corporate Secretary  
Cato Corporation  
8100 Denmark Road  
Charlotte, NC 28273-5975

Dear Ms. Reische,

Walden Small Cap Fund holds 450 shares of Cato Corporation and we are submitting the enclosed shareholder resolution as the primary filer. On behalf of our clients, Walden's investment process integrates financial analysis with an assessment of corporate performance on environment, social and governance (ESG) policies and practices.

We continue to believe that having a consistent corporate-wide Equal Employment Opportunity (EEO) policy that explicitly includes "sexual orientation" and "gender identity or expression" is best practice and will benefit Cato and its shareholders. Furthermore, we are concerned that Cato's opposition to amending its policy may undermine the company's reputation among potential employees as well as Lesbian, Gay, Bisexual, and Transgender (LGBT) consumers and those supportive of LGBT equality.

Since Cato still does not have a best-practice policy Walden is submitting the enclosed shareholder resolution. We believe the context for this resolution has changed this year given the open disagreement between the EEOC and the Department of Justice on how to interpret Title VII of the Civil Rights Act.

The attached proposal is submitted for inclusion in the 2018 proxy statement in accordance with Rule 14a-6 of the General Rules and Regulations of the Securities Act of 1934. Walden is the beneficial owner of these shares as defined in Rule 13d-3 of the Act. We have been a shareholder for more than one year holding over \$2,000 worth of Cato Corp shares and will continue to hold at least \$2,000 of Cato Corp stock through the date of the next stockholder's annual meeting. Verification of our ownership position will be provided on request by our sub-custodian who is a DTC participant.

A representative will attend the shareholder's meeting to move the resolution as required by SEC rules.

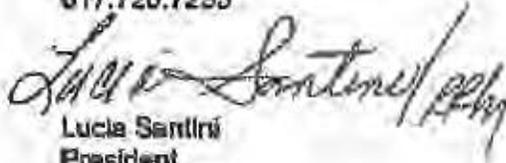
As you know, our preference would be to have a dialogue with the company on this matter, and we would be pleased to withdraw the resolution following any commitments to improve the EEO policy.

You may contact me at 617.726.7235 or [cgreenberg@bostontrust.com](mailto:cgreenberg@bostontrust.com) if you have any questions. We look forward to your response.

Sincerely,



Carly Greenberg  
Environmental, Social & Governance Analyst  
Walden Asset Management  
Boston Trust & Investment Management Company  
One Beacon St.  
Boston, MA 02108  
617.726.7235



Lucia Santini  
President  
Walden Funds

C: Lowell Pugh, Chief Legal Officer, CATO Corporation

## NON-DISCRIMINATION POLICY ON SEXUAL ORIENTATION AND GENDER IDENTITY

### RESOLVED

Shareholders request that Cato Corp (Cato) amend its written equal employment opportunity (EEO) policy to explicitly prohibit discrimination based on sexual orientation and gender identity or expression.

### SUPPORTING STATEMENT

Currently, Cato's EEO policy does not include "sexual orientation" and "gender identity or expression"—calling into question the extent to which these classes are protected given the absence of a federal law, lack of consensus among federal entities,<sup>1</sup> and inconsistent local laws.

Cato operates in 9 states that prohibit discrimination in employment on the basis of sexual orientation and gender identity and in 16 states where discrimination against LGBT (lesbian, gay, bisexual, transgender) people may be permissible under Religious Freedom Restoration Acts. A corporate-wide best practice EEO policy avoids the problem of sending mixed signals to company employees, including store managers, due to inconsistent state policies.

Since LGBT workplace discrimination continues to exist in the US,<sup>2</sup> the requested policy would enhance Cato's efforts to prevent discrimination and mitigate employees' fear of potential discrimination.

An inclusive policy also enhances our company's ability to recruit the most talented employees from the broadest possible labor pool, resolve complaints internally to avoid costly litigation or damage to its reputation, lower employee turnover, ensure a respectful and supportive work atmosphere that bolsters employee performance, and appeal to US LGBT consumers and individuals supportive of equality. In 2016, Bloomberg estimated US LGBT consumers represented \$900 billion in buying power, and public opinion polls consistently find that more than 75% of Americans support equal rights in the workplace.

We are concerned that Cato's opposition to adopting a uniform policy may undermine its reputation among potential employees and consumers.

Cato also risks standing out as an outlier among US companies on this matter. According to the Human Rights Campaign, 82% of the Fortune 5000 companies had EEO policies that include sexual orientation and gender identity in 2017. In North Carolina, where Cato is headquartered, 21 out of 25 of the largest companies by market cap include sexual orientation and 18 include gender identity in their policies. Furthermore, retail peers such as American Eagle Outfitters and Gap Inc. explicitly prohibit discrimination on the basis of sexual orientation and gender identity.

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<sup>1</sup> In 2015, the Equal Employment Opportunity Commission (EEOC) advised that LGBT individuals were protected under "sex" by Title VII of the Civil Rights Act. However, in June 2017, the Justice Department contested the EEOC's guidance in an Amicus Brief to a US Court of Appeals stating explicitly that "Title VII does not reach discrimination based on sexual orientation."

<sup>2</sup> 92% of LGBT individuals surveyed agree that various levels of discrimination persist (Pew Research Center, June 2013). Transgender workers report even more widespread employment discrimination than gay and lesbian workers—up to 55% were fired, up to 47% were denied employment, and up to 31% were harassed based on their gender identity (Williams Institute, July 2011).

The Wallace Global Fund  
1990 M Street, NW, Suite 250  
Washington, DC 20036  
(202) 452-1530

October 16, 2017

Ms. Christin Reische  
Asst. Corporate Secretary  
Cato Corporation  
8100 Denmark Road  
Charlotte, NC 28273-5975

Dear Ms. Reische:

The Wallace Global Fund's mission is to promote an informed and engaged citizenry, to fight injustice, and to protect the diversity of nature and the natural systems upon which all life depends.

The Wallace Global Fund is co-filing the enclosed shareholder proposal with Walden Asset Management as the primary filer for inclusion in the 2018 proxy statement, in accordance with Rule 14a-8 of the General Rules and Regulations of the Securities Exchange Act of 1934.

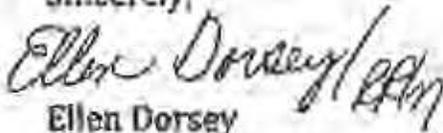
We are the beneficial owner of at least \$2,000 worth of Cato Corporation stock, as defined in Rule 13d-3 of the Securities Exchange Act of 1934, intend to maintain ownership of the required number of shares through the date of the next annual meeting and have been a continuous shareholder for over a year. We will be pleased to provide additional proof of ownership from our sub-custodian, a DTC participant, upon request.

The resolution will be presented in accordance with the SEC rules by a shareholder representative.

The Wallace Global Fund is the holder of 200 shares of Cato stock.

We hereby deputize Walden Asset Management to act on our behalf in withdrawing this resolution. Please copy correspondence both to me and Carly Greenberg ([cgreenberg@bostontrust.com](mailto:cgreenberg@bostontrust.com)) at Walden Asset Management, our investment manager.

Sincerely,

A handwritten signature in cursive script that reads "Ellen Dorsey" followed by a stylized flourish or initials.

Ellen Dorsey  
Executive Director

Cc: Lowell Pugh, Chief Legal Officer

## NON-DISCRIMINATION POLICY ON SEXUAL ORIENTATION AND GENDER IDENTITY

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Shareholders request that Cato Corp (Cato) amend its written equal employment opportunity (EEO) policy to explicitly prohibit discrimination based on sexual orientation and gender identity or expression.

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Cato operates in 9 states that prohibit discrimination in employment on the basis of sexual orientation and gender identity and in 16 states where discrimination against LGBT (lesbian, gay, bisexual, transgender) people may be permissible under Religious Freedom Restoration Acts. A corporate-wide best practice EEO policy avoids the problem of sending mixed signals to company employees, including store managers, due to inconsistent state policies.

Since LGBT workplace discrimination continues to exist in the US,<sup>2</sup> the requested policy would enhance Cato's efforts to prevent discrimination and mitigate employees' fear of potential discrimination.

An inclusive policy also enhances our company's ability to recruit the most talented employees from the broadest possible labor pool, resolve complaints internally to avoid costly litigation or damage to its reputation, lower employee turnover, ensure a respectful and supportive work atmosphere that bolsters employee performance, and appeal to US LGBT consumers and individuals supportive of equality. In 2016, Bloomberg estimated US LGBT consumers represented \$900 billion in buying power, and public opinion polls consistently find that more than 75% of Americans support equal rights in the workplace.

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<sup>1</sup> In 2015, the Equal Employment Opportunity Commission (EEOC) advised that LGBT individuals were protected under "sex" by Title VII of the Civil Rights Act. However, in June 2017, the Justice Department contested the EEOC's guidance in an Amicus Brief to a US Court of Appeals stating explicitly that "Title VII does not reach discrimination based on sexual orientation."

<sup>2</sup> 82% of LGBT individuals surveyed agree that various levels of discrimination persist (Pew Research Center, June 2013). Transgender workers report even more widespread employment discrimination than gay and lesbian workers—up to 58% were fired, up to 47% were denied employment, and up to 31% were harassed based on their gender identity (Williams Institute, July 2011).

The Wallace Global Fund  
1990 M Street, NW, Suite 250  
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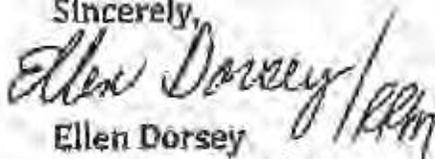
October 20, 2017

Ms. Christin Reische  
Asst. Corporate Secretary  
Cato Corporation  
8100 Denmark Road  
Charlotte, NC 28273-5975

Dear Ms. Reische:

Please accept this notice that The Wallace Global Fund hereby  
withdraws its filing letter with LGBTQ shareholder resolution led by  
primary filer Walden Asset Management.

Sincerely,

A handwritten signature in cursive script that reads "Ellen Dorsey" followed by a vertical line and the initials "EDM".

Ellen Dorsey  
Executive Director

Cc: Lowell Pugh, Chief Legal Officer



October 16, 2017

To Whom It May Concern:

**Citibank N.A. ("Citibank") acts as custodian for Walden Small Cap Fund with Walden Asset Management as the manager for this portfolio as of March 15, 2016.**

**We are writing to verify that Walden Small Cap Fund currently owns 450 shares of Cato Corporation (Cusip #149205106). We confirm that Walden Equity Fund has beneficial ownership from March 15, 2016 to August 29, 2016 of at least \$2,000 in market value of the voting securities of Cato Corporation and that such beneficial ownership has continuously existed as of March 15, 2016 in accordance with rule 14a-8(e)(1) of the Securities Exchange Act of 1934.**

In addition, we confirm that we are a DTC participant.

Should you require further information, please contact me at 614-470-8471.

Sincerely,

A handwritten signature in black ink, appearing to read "J. Hankins", with a long horizontal flourish extending to the right.

Jennifer J. Hankins  
Senior Vice President & Client Executive

**EXHIBIT 9**

## EQUAL OPPORTUNITY EMPLOYER

As an Equal Opportunity employer, The CATO Corporation does not discriminate in hiring or terms and conditions of employment because of an individual's race, color, religion, ancestry or national origin, disability, age, sex, or any other legally-protected classification, except where a reasonable, bona fide occupational qualification exists.

CATO will make reasonable accommodation for qualified individuals with known disabilities unless doing so would result in an undue hardship. This policy governs all aspects of employment, including selection, job assignment, compensation, discipline, termination, and access to benefits and training.

The CATO Management team shares in the commitment and responsibility to ensure our Equal Opportunity policy is applied to all. If an Associate has reason to believe that this policy has not been followed, they are encouraged to immediately go through the Associate's chain of command:

- a. Their Supervisor, then
- b. Their Department Head, then
- c. Their Pyramid Head, and finally
- d. The Director of Associate Relations, Human Resources.