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

DIVISION OF
CORPORATION FINANCE

March 6, 2019

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

Re: Amazon.com, Inc.
Incoming letter dated January 22, 2019

Dear Mr. Mueller:

This letter is in response to your correspondence dated January 22, 2019 concerning the shareholder proposal (the "Proposal") submitted to Amazon.com, Inc. (the "Company") by CtW Investment Group (the "Proponent") for inclusion in the Company's proxy materials for its upcoming annual meeting of security holders. We also have received correspondence from the Proponent dated March 6, 2019. 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,

M. Hughes Bates
Special Counsel

Enclosure

cc: Richard Clayton
CtW Investment Group
richard.clayton@ctwinvestmentgroup.com

March 6, 2019

Response of the Office of Chief Counsel
Division of Corporation Finance

Re: Amazon.com, Inc.
Incoming letter dated January 22, 2019

The Proposal urges the board to adopt a policy that the Company will not engage in any "Inequitable Employment Practice," which the Proposal defines as mandatory arbitration of employment-related claims; non-compete agreements with employees; agreements with other companies not to recruit each others' employees; and non-disclosure agreements ("NDAs") entered into in connection with arbitration or settlement of claims that any Company employee engaged in unlawful discrimination or harassment, unless such an NDA is requested by the person who was harassed or the victim of discrimination.

There appears to be some basis for your view that the Company may exclude the Proposal under rule 14a-8(i)(7), as relating to the Company's ordinary business operations. In this regard, we note that the Proposal relates generally to the Company's policies concerning its employees, and does not focus on an issue that transcends ordinary business matters. Accordingly, we will not recommend enforcement action to the Commission if the Company omits the Proposal from its proxy materials in reliance on rule 14a-8(i)(7).

Sincerely,

Jacqueline Kaufman
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.

CtW Investment Group

March 6, 2019

Via e-mail at shareholderproposals@sec.gov

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

Re: Request by Amazon.com Inc. to omit proposal submitted by CtW Investment Group

Ladies and Gentlemen,

Pursuant to Rule 14a-8 under the Securities Exchange Act of 1934, CtW Investment Group ("CtW") submitted a shareholder proposal (the "Proposal") to Amazon.com Inc. ("Amazon" or the "Company"). The Proposal asks Amazon's board to adopt a policy that Amazon will not engage in any Inequitable Employment Practice, as that term is defined in the Proposal.

In a letter to the Division dated January 22, 2019 (the "No-Action Request"), Amazon stated that it intends to omit the Proposal from its proxy materials to be distributed to shareholders in connection with the Company's 2019 annual meeting of shareholders. Amazon argues that it is entitled to exclude the Proposal in reliance on Rule 14a-8(i)(7), on the ground that the Proposal deals with Amazon's ordinary business operations. As discussed more fully below, Amazon has not met its burden of proving its entitlement to exclude the Proposal on that basis, and we respectfully request that Amazon's request for relief be denied.

The Proposal

The Proposal states:

> RESOLVED that shareholders of Amazon.com, Inc. ("Amazon") urge the Board of Directors to adopt a policy that Amazon will not engage in any Inequitable Employment Practice. "Inequitable Employment Practices" are mandatory arbitration of employment-related claims; non-compete agreements with employees; agreements with other companies not to recruit each others' employees; and non-disclosure agreements ("NDAs") entered into in connection with arbitration or settlement of claims that any Amazon employee engaged in unlawful discrimination or harassment, unless such an

NDA is requested by the person who was harassed or the victim of discrimination.

Ordinary Business

Rule 14a-8(i)(7) allows exclusion of proposals related to a company's ordinary business operations. Amazon argues that the Proposal relates to the Company's ordinary business operations because it addresses management of the workforce, without implicating a significant policy issue.

Introduction

Inequitable Employment Practices—mandatory arbitration, non-compete provisions, agreements between employers not to recruit each others' employees ("no-poach" agreements) and NDAs entered into in connection with discrimination or harassment claims--construct a private contractual regime that supplants existing legal protections and institutions. This regime is created when employees waive, in advance, their right to sue in court, work for another employer or disclose information about misconduct. By depriving employees of avenues to redress grievances and reducing worker mobility, Inequitable Employment Practices bolster employer leverage over wages and working conditions, increasing inequality. Employees have little or no ability to bargain over Inequitable Employment Practices and many are not even aware they have agreed to them until an employer enforces them or threatens to do so.

Inequitable Employment Practices not only give employers more power; they also reflect a labor market in which employers have power to hold down wages and dictate terms of employment, even when unemployment rates are low. Economists refer to this situation--which can occur when there is one or a small number of employers, or where frictions prevent worker mobility--as monopsony.[1] Inequitable Employment Practices are intertwined with monopsony power, whose deleterious effects on the economy are increasingly clear to economists and policy makers.

Inequitable Employment Practices and Their Impact on Workers, the Labor Market and the Broader Economy Are a Significant Policy Issue

Companies are generally not allowed to rely on the ordinary business exclusion to omit proposals addressing "management of the workforce," as Amazon

[1] "Labor Market Monopsony: Trends, Consequences and Policy Responses," Council of Economic Advisers Issue Brief, Oct. 2016, at 2 (https://obamawhitehouse.archives.gov/sites/default/files/page/files/20161025_monopsony_labor_mrkt_cea.pdf).

characterizes the Proposal, if they "focus[] on sufficiently significant social policy issues."[2] To determine whether a topic qualifies as a significant social policy issue, the Division analyzes whether it is a "consistent topic of widespread public debate."[3] Inequitable Employment Practices and their broader impacts have generated widespread debate among the public and policy makers and are therefore a significant policy issue.

The ways in which Inequitable Employment Practices work together to undermine legal protections for workers and reinforce employer power are well-recognized:

- The National Employment Law Project recently declared that the increasing use of non-compete, mandatory arbitration and non-disclosure provisions is "a backdoor repeal of the basic labor and employment laws that so many have fought to implement and protect."[4]
- In February 2018, the Brookings Institution's Hamilton Project released a study by economists Alan Krueger and Eric Posner that identified non-compete and no-poaching provisions as key supports for monopsony power.[5]
- The Economic Policy Institute's ("EPI's") "First Day Fairness" reform agenda unveiled in August 2018 counts among its core principles opposition to mandatory arbitration and non-compete provisions.[6] According to EPI, "[t[]he proliferating employer practice of requiring workers to waive their rights as a condition of employment shifts even more economic leverage from workers to employers."[7]
- The Economist, criticizing the widespread use of non-compete provisions in the U.S., made the connection to mandatory arbitration and increasing employer power: "Non-competes are also more worrying when the balance of power between companies and employees is already skewed. The spread of mandatory-arbitration clauses in employment contracts and the decline of trade unions are both signs of that imbalance."[8]
- An article in the University of Pennsylvania Law Review characterized non-compete and mandatory arbitration provisions as the "most controversial

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[2] Exchange Act Release No. 40018 (May 21, 1998).

[3] See, e.g., Duke Energy Corp. (Mar. 1, 2002); AT&T Inc. (Feb. 2, 2011).

[4] https://www.nelp.org/blog/non-compete-provisions-context-nelp-supports-calls-reform/#_edn9

[5] Alan B. Krueger & Eric Posner, "A Proposal for Protecting Low-Income Workers from Monopsony and Collusion," The Hamilton Project, Policy Proposal 2018-05, at 7 (Feb. 2018) (https://www.brookings.edu/wp-content/uploads/2018/02/es_2272018_protecting_low_income_workers_from_monopsony_collusion_krueger_posner_pp.pdf).

[6] https://www.epi.org/publication/first-day-fairness-an-agenda-to-build-worker-power-and-ensure-job-quality/

[7] https://www.epi.org/publication/first-day-fairness-an-agenda-to-build-worker-power-and-ensure-job-quality/

[8] "The Case Against Non-Compete Clauses," The Economist, May 19, 2018 (https://www.economist.com/leaders/2018/05/19/the-case-against-non-compete-clauses).

contractual instruments" and the "hottest topics" in employment law, arguing that they represent a "hybrid form of employment regulation" between rights and contract. The conflict between these provisions and the rights society has deemed so important as to be non-waivable, such as the right to be free from employment discrimination, has produced "parallel doctrinal problems" in the law involving the conditions under which waiver by an employee should be considered valid.[9]

- Practitioners advocate bundling the Inequitable Employment Practices due to their synergistic effects:
    - Requiring an employee to arbitrate the validity of a non-compete agreement prevents him from suing in a judicial forum that construes such agreements narrowly.[10]
    - An arbitration clause in an NDA reduces the expense associated with enforcement.[11]
    - A template employment agreement provided by the Society for Industrial and Organizational Psychology includes mandatory arbitration, non-compete, non-disclosure and no-poaching provisions.[12]

Monopsony has garnered increased academic, policymaker and public attention in recent years due to its impact on inequality and the economy. The Council of Economic Advisers (the "CEA") issued a report on labor market monopsony in October 2016. The CEA described the problems it believed monopsony causes for the U.S. economy:

> Over the past several decades, only the highest earners have seen steady wage gains; for most workers, wage growth has been sluggish and has failed to keep pace with gains in productivity (CEA 2015, Ch. 3). . . At the same time, labor income itself has become increasingly unequally divided. . . . [I]nstead of promoting growth, forces that undermine competition tend to reduce efficiency, and can lead to lower output, employment, and social welfare.[13]

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[9] Cynthia Estlund, "Between Rights and Contract: Arbitration Agreements and Non-Compete Covenants as a Hybrid Form of Employment Law," U. Penn. L. Rev. Vol. 155 (2006).

[10] See Stephen P. Safranski & Heather M. McElroy, "Use Arbitration to Protect Non-Competes," Today's General Counsel, June/July 2013 (https://www.robinskaplan.com/~/media/pdfs/use%20arbitration%20to%20protect%20non-competes.pdf?la=en); Neal F. Weinrich, Esq., "Arbitration Clause in Non-Compete Agreements: the United States Supreme Court Chimes In," Nov. 2015 (https://www.bfvlaw.com/wp-content/uploads/2015/11/Weinrich-Arb-Clauses-in-Non-Compete.pdf).

[11] Ben Oliveri, "The Essential Guide to NDAs (Non Disclosure Agreement Templates Included)," Nov. 15, 2017 (https://www.codementor.io/blog/guide-to-ndas-2j1yrvq40g).

[12] https://www.siop.org/EEI_Conf%20and%20Noncomp.pdf

[13] "Labor Market Monopsony: Trends, Consequences and Policy Responses," Council of Economic Advisers Issue Brief, Oct. 2016, at 1 (https://obamawhitehouse.archives.gov/sites/default/files/page/files/20161025_monopsony_labor_mrkt_cea.pdf).

Employer collusion and the use of non-compete agreements were identified by the CEA as factors contributing to labor market monopsony. According to the CEA, "the evidence shows several signs that [non-compete] agreements are often used to create or exercise market power."[14]

Monopsony has been the subject of significant academic interest. Research by economist Marshall Steinbaum found that the average labor market is "highly concentrated" and that the degree of concentration is associated with lower wages.[15] He opined that "[t]he monopsony story is consistent with a wide range of observed labor market phenomena: wage stagnation, declining geographic and job-to-job mobility, deterioration of the job ladder, especially for low-wage and young workers, and declines in entrepreneurship and 'business dynamism'" and that "the findings in this paper lend further support to the idea that monopsony power in the labor market is a practical economic problem that the antitrust status quo is not doing enough to solve."[16] The New York Times reported on Steinbaum's paper in an article exploring the relationship between the lack of growth in wages and employer concentration.[17]

A 2017 study by Simcha Barkai concluded that "the declines in the shares of labor and capital are due to a decline in competition [resulting from increased concentration] and they call into question the conclusion that the decline in the labor share is an efficient outcome."[18] Barkai's study was widely covered in mainstream media articles, including pieces in the Los Angeles Times,[19] The

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[14] "Labor Market Monopsony: Trends, Consequences and Policy Responses," Council of Economic Advisers Issue Brief, Oct. 2016, at 8 (https://obamawhitehouse.archives.gov/sites/default/files/page/files/20161025_monopsony_labor_mrkt_cea.pdf).

[15] http://rooseveltinstitute.org/how-widespread-labor-monopsony-some-new-results-suggest-its-pervasive/

[16] http://rooseveltinstitute.org/how-widespread-labor-monopsony-some-new-results-suggest-its-pervasive/

[17] Noam Scheiber & Ben Casselman, "Why is Pay Lagging? Maybe Too Many Mergers in the Heartland," The New York Times, Jan. 25, 2018 (https://www.nytimes.com/2018/01/25/business/economy/mergers-worker-pay.html)

[18] Simcha Barkai, "Declining Labor and Capital Shares," working paper 2017, at 4 (http://home.uchicago.edu/~barkai/doc/BarkaiDecliningLaborCapital.pdf)

[19] Harold Meyerson, "Like Frogs in a Slowly Boiling Pot, Americans are Finally Realizing How Dire Their Labor Situation Is," Los Angeles Times, Sept. 3, 2018 (https://www.latimes.com/opinion/op-ed/la-oe-meyerson-labor-question-20180903-story.html)

Washington Post,[20] Bloomberg,[21] and The New York Times,[22] on employer concentration and its impact on wages and inequality. It was also cited by Senator Cory Booker in a letter to the Federal Trade Commission and Department of Justice arguing that "your Agencies have not prioritized the responsibility to ensure that workers have meaningful choices that allow them to fairly bargain among potential employers."[23]

The Inequitable Employment Practices have also been controversial individually, for many of the same reasons.

Mandatory Arbitration

Eliminating mandatory arbitration provisions has been a major focus of the fight against workplace sexual harassment, with proponents arguing that arbitration lacks transparency, shields harassers from accountability and allows misconduct to continue, damaging employee morale and productivity. High-profile incidents of sexual harassment and assault at Uber, Google and Fox News generated abundant media coverage and highlighted the role arbitration plays in depriving employees of remedies and protecting wrongdoers.

Thousands of Google employees staged a walkout to protest the company's handling of sexual misconduct, with ending forced arbitration the first in a list of those employees' demands. They are now calling on the tech industry to eliminate the practice with the "endforcedarbitration social media campaign.[24] According to former Fox anchor Gretchen Carlson, who was prevented by a mandatory arbitration clause from suing Fox for sexual harassment by Roger Ailes, arbitration is "the harasser's best friend."[25] She is campaigning for a federal law barring such

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[20] James Downie, "Beyond United: How Oligopolies Hurt Americans' Pocketbooks," The Washington Post, Apr. 12, 2017 (https://www.washingtonpost.com/blogs/post-partisan/wp/2017/04/12/beyond-united-how-oligopolies-hurt-americans-pocketbooks/?utm_term=.565b9d453122).

[21] Noah Smith, "Cracking the Mystery of Labor's Falling Share of the GDP," Bloomberg, Apr. 24, 2017 (https://www.bloomberg.com/opinion/articles/2017-04-24/cracking-the-mystery-of-labor-s-falling-share-of-gdp).

[22] Noam Scheiber & Ben Casselman, "Why is Pay Lagging? Maybe Too Many Mergers in the Heartland," The New York Times, Jan. 25, 2018 (https://www.nytimes.com/2018/01/25/business/economy/mergers-worker-pay.html)

[23] Matthew Yglesias, "Booker Calls on Antitrust Regulators to Start Paying Attention to Workers," Vox, Nov. 1, 2017 (https://www.vox.com/policy-and-politics/2017/11/1/16571992/booker-antitrust-letter)

[24] Olivia Carville & Nico Grant, "Google Workers Stage Mass Walkout to Protest Handling of Sexual Misconduct," Bloomberg, Nov. 1, 2018 (https://www.bloomberg.com/news/articles/2018-11-01/google-workers-stage-mass-walkout-to-protest-handling-of-sexual-misconduct); Meira Gebel, "The Organizers of the Google Walkout Are Calling on the Tech Industry to End Forced Arbitration Employment Agreements Completely," Business Insider, Jan. 19, 2019 (https://www.businessinsider.com/google-walkout-call-for-end-to-forced-arbitration-2019-1)

[25] "When You Cannot Sue Your Employer," The Economist, Jan. 25, 2018 (https://www.economist.com/business/2018/01/25/when-you-cannot-sue-your-employer)

provisions.[26] A group of 12 law school women's associations recently condemned mandatory arbitration agreements.[27] As well, 47 groups, including the ACLU and NAACP, wrote to large tech companies in September 2018, urging that they stop requiring employees to agree to arbitrate employment-related disputes.[28]

It is not practicable to identify and cite all media coverage of the controversy over mandatory arbitration of sexual harassment claims; however, the coverage in Appendix A illustrates the extent of public attention to the issue.

Focus on mandatory arbitration for employment-related claims hasn't been limited to the sexual harassment context. Mandatory arbitration has remained in the spotlight due to Supreme Court cases affirming the validity of mandatory arbitration provisions and class action waivers, a study finding that 56% of private-sector non-unionized workers are subject to mandatory arbitration agreements, and stories of meritorious claims for which employees could not seek effective redress. Some examples of this coverage are included in Appendix A.

The public debate has spurred many responses by policy makers. In the past several years, bills have been introduced in Congress on the subject of mandatory arbitration:

- Arbitration Fairness Act (115th Congress H.R.1374, S.537 and S.2591): would invalidate a predispute agreement to arbitrate various kinds of claims, including employment and civil rights[29]
- Restoring Statutory Rights and Interests of the States Act (115th Congress H.R.1396, S.550): would provide that a written agreement to arbitrate a violation of federal or state law must is not valid if entered into before the claim has arisen[30]
- Ending Forced Arbitration of Sexual Harassment Act (115th Congress H.R.4570, S.2203): would invalidate a predispute written agreement to arbitrate a claim arising out of conduct that would form the basis for a

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[26] Hope Reese, "Gretchen Carlson on How Forced Arbitration Allows Companies to Protect Harassers," Vox, May 21, 2018 (https://www.vox.com/conversations/2018/4/30/17292482/gretchen-carlson-me-too-sexual-harassment-supreme-court).

[27] Asha Prihar, "Yale Law School Women's Groups Oppose Mandatory Arbitration," Yale Daily News, Dec. 5, 2018 (https://yaledailynews.com/blog/2018/12/05/yale-law-school-womens-groups-oppose-mandatory-arbitration/).

[28] https://insights.dice.com/2018/09/26/tech-employees-forced-arbitration-end-good/; https://www.citizen.org/sites/default/files/employment_arb_signon_letter.2nd_letter.amazon.pdf

[29] https://www.congress.gov/bill/115th-congress/house-bill/1374; https://www.congress.gov/bill/115th-congress/senate-bill/537; https://www.govtrack.us/congress/bills/115/s2591/text; https://www.govtrack.us/congress/bills/115/s550?utm_campaign=govtrack_feed&utm_source=govtrack/feed&utm_medium=rss

[30] https://www.congress.gov/bill/115th-congress/house-bill/1396/text?format=txt&r=46

violation of the Civil Rights Act of 1964 based on sex, regardless of whether such a violation is alleged.[31]

- Mandatory Arbitration Transparency Act (115th Congress H.R.4130, S.647): would prohibit a predispute arbitration agreement from including a confidentiality provision regarding various kinds of claims, including employment, if that provision would violate a whistleblower statute or prevent disclosure of tortious or unlawful conduct, or issues of public policy or concern[32]

Fifty-six attorneys general of all 50 states, the District of Columbia and U.S. territories sent a letter to Congressional leadership in 2018 urging them to "free [victims of sexual harassment] from the injustice of forced arbitration and secrecy when it comes to seeking redress for egregious misconduct condemned by all concerned Americans."[33]

State legislatures have also taken action on mandatory arbitration of employment-related claims. As of August 2018, four states had bills pending to bar employers from requiring employees to agree to arbitrate sexual harassment claims.[34] New York enacted a law in fall 2018 barring predispute arbitration agreements for sexual harassment claims.[35] Last year, the state of Washington passed a law invalidating any provision of an employment agreement that (a) requires the employee to waive her right to "publicly pursue" a discrimination claim or file a complaint with the "appropriate state or federal agencies" or (b) requires an employee to resolve a discrimination claim in a "dispute resolution process that is confidential."[36] A California bill prohibiting predispute agreements to arbitrate sexual harassment claims passed both houses of the legislature, though it was vetoed by Governor Brown.[37] A bill was introduced in New York City to require

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[31] https://www.congress.gov/bill/115th-congress/house-bill/4570; https://www.congress.gov/bill/115th-congress/senate-bill/2203/text?format=txt

[32] https://www.congress.gov/bill/115th-congress/house-bill/4130/text; https://www.congress.gov/bill/115th-congress/senate-bill/647

[33] http://myfloridalegal.com/webfiles.nsf/WF/HFIS-AVWMYN/$file/NAAG+letter+to+Congress+Sexual+Harassment+Mandatory+Arbitration.pdf

[34] Susan Kay Leader & Jenna Nalchajian, "Insight: The Brightening Spotlight on Mandatory Arbitration Clauses," Bloomberg Law, Aug. 24, 2018 (https://www.bna.com/insight-brightening-spotlight-n73014481979/).

[35] https://www.seyfarth.com/publications/MA102518-LE?utm_source=Mondaq&utm_medium=syndication&utm_campaign=View-Original

[36] http://lawfilesext.leg.wa.gov/biennium/2017-18/Pdf/Bills/Session%20Laws/Senate/6313-S.SL.pdf#page=1

[37] Edward Lozowicki, "Governor Brown Vetoes California Bill Prohibiting Arbitration of Employment Claims," American Bar Association, Jan. 15, 2019 (https://www.americanbar.org/groups/litigation/committees/alternative-dispute-resolution/practice/2016/gvr-brown-vetoes-ca-bill-prohibiting-arbitration-employment-claims/)

employers to disclose in job ads if they require employees to agree to arbitrate claims.[38]

The secrecy afforded by arbitration[39] allows management to conceal patterns of misbehavior from the board, which can prevent timely corrective action. According to Professor Robert Bruno, of the School of Labor & Employment Relations at the University of Illinois at Urbana-Champaign, "mandatory arbitration could allow companies to hide systemic bad behavior at a time when the #MeToo and other movements are showing the need for more corporate transparency . . . I can't imagine how it's good for the long-term shareholder value of those companies."[40]

Non-Disclosure Agreements

Non-disclosure agreements in connection with the settlement of sexual harassment claims, which (like arbitration) hide wrongdoing from other employees, the board and regulators, have also generated substantial public debate. As with mandatory arbitration, media coverage of non-disclosure agreements has been driven by the substantial increase in attention being paid to sexual harassment and assault. In high-profile cases involving Bill Cosby, Harvey Weinstein, Bill O'Reilly and Les Moonves, nondisclosure agreements were used to suppress information about sexual misconduct. Examples of media coverage include:

- Alexia Fernandez Campbell, "A New House Bill Would Bar Companies From Using Nondisclosure Agreements to Hide Harassment," Vox, July 18, 2018 (https://www.vox.com/2018/7/18/17586532/sexual-harassment-bill-ban-nondisclosure-agreements-ndas-congress-metoo)
- Stacy Perman,"#MeToo Law Restricts Use of Nondisclosure Agreements in Sexual Misconduct Cases," Los Angeles Times, Dec. 31, 2018 (https://www.latimes.com/business/hollywood/la-fi-ct-nda-hollywood-20181231-story.html) ("The flood of revelations about nondisclosure agreements has also laid bare the power imbalance between claimants and the accused.")

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[38] Erin Durkin, "Letitia James Pushes for Law to Shine Light on Mandatory-Arbitration Employers," Daily News, May 23, 2018 (https://www.nydailynews.com/new-york/letitia-james-employers-disclose-mandatory-arbitration-article-1.4004658).

[39] See Kimberly Kalmanson & Randi M. Cohen, "The Real Cost of Mandatory Arbitration," New York Law Journal, Nov. 23, 2018 (https://www.law.com/newyorklawjournal/2018/11/23/the-real-cost-of-mandatory-arbitration/?slreturn=20190029112740) (arbitration "is often shrouded in secrecy")

[40] Laurent Belsie & Mark Trumbull, "Setback for Workers: What Fallout as Supreme Court Oks Forced Arbitration?" Christian Science Monitor, May 21, 2018 (https://www.csmonitor.com/Business/2018/0521/Setback-for-workers-What-fallout-as-Supreme-Court-OKs-forced-arbitration)

- "States Move to Limit Workplace Confidentiality Agreements," CBS News, Aug. 27, 2018 (https://www.cbsnews.com/news/states-move-to-limit-workplace-confidentiality-agreements/)
- Jessica Levinson, "Non-disclosure Agreements Can Enable Abusers. Should We Get Rid of NDAs for Sexual Harassment?" NBC News, Jan. 24, 2019 (https://www.nbcnews.com/think/opinion/non-disclosure-agreements-can-enable-abusers-should-we-get-rid-ncna840371)
- Casey Quinlan, "This Bill Won't Let Employers Force People to Sign on-disclosure Agreements Related to Harassment," June 6, 2018 (https://thinkprogress.org/bill-prohibits-non-disclosure-agreements-harassment-workplace-f469f50eb132/)
- Andrea Gonzalez-Ramirez, "New Bipartisan Bill Would Fight Sexual Harassment at the Workplace," Refinery 29, July 18, 2018 (https://www.refinery29.com/en-us/2018/07/204641/sexual-harassment-workplace-legislation-bipartisan-empower-act)
- Cara Buckley, "Powerful Hollywood Women Unveil Anti-Harassment Action Plan," The New York Times, Jan. 1, 2018 (https://www.nytimes.com/2018/01/01/movies/times-up-hollywood-women-sexual-harassment.html)
- Claudia Koerner, "California is on the Verge of Banning Nondisclosure Agreements for Sexual Harassment Victims," BuzzfeedNews, Aug. 24, 2018 (https://www.buzzfeednews.com/article/claudiakoerner/california-lawmakers-have-voted-to-ban-secret-settlements)
- Areva Martin, "How NDAs Help Some Victims Come Forward Against Abuse," Time, Nov. 28, 2017 (http://time.com/5039246/sexual-harassment-nda/)
- Michelle Kaminsky, "The Harvey Weinstein Effect: The End of Nondisclosure Agreements in Sexual Assault Cases?" Forbes, Oct. 26, 2017 (https://www.forbes.com/sites/michellefabio/2017/10/26/the-harvey-weinstein-effect-the-end-of-nondisclosure-agreements-in-sexual-assault-cases/#201914362c11)
- Hiba Hafiz, "How Legal Agreements Can Silence Victims of Workplace Sexual Assault," The Atlantic, Oct. 18, 2017 (https://www.theatlantic.com/business/archive/2017/10/legal-agreements-sexual-assault-ndas/543252/)
- Sara Ganem & Sunlen Serfaty, "Why Some Victims of Sexual Harassment Can't Speak Out," CNN, Nov. 24, 2017 (https://www.cnn.com/2017/11/24/politics/non-disclosure-agreements-sexual-harassment/index.html)

In 2018, the EMPOWER Act, which would ban employers from requiring employees to sign non-disclosure agreements covering workplace harassment, was introduced in the House and Senate.[41]

According to the National Conference on State Legislatures, bills on NDAs in the context of sexual harassment or assault were introduced in 20 state legislatures in 2018.[42] In 16 states, bills have been introduced to ban the use of NDAs in connection with sexual harassment claims. Last year, the state of Washington banned predispute NDAs that would prevent an employee from disclosing sexual harassment or assault related to employment.[43] A California law that took effect on January 1 bars agreements that prohibit the disclosure of factual information in sexual harassment, discrimination and retaliation claims."[44] New York banned non-disclosure agreements related to sexual harassment claims unless the NDA was the employee's preference.[45] Vermont passed a law barring employers from requiring employees to sign agreements not to disclose or report sexual harassment.[46]

In January 2018, 300 actresses and female Hollywood players, including Reese Witherspoon, Shonda Rhimes and America Ferrara, formed Time's Up to fight sexual harassment and promote gender parity. Among the group's efforts is legislation to discourage the use of NDAs in sexual harassment cases.[47]

Non-Compete Provisions

Evidence shows that non-compete provisions not only disadvantage individual workers but also exacerbate inequality and discourage entrepreneurship. According to The Economist, "[t]he evidence shows wages in states that enforce noncompetes are 10 percent lower than in states that restrict their use."[48] "States with strict enforcement," an article in The New York Times states, "end up suffering

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41 https://www.congress.gov/bill/115th-congress/house-bill/6406/text; https://www.harris.senate.gov/news/press-releases/harris-murkowski-introduce-legislation-to-curb-workplace-harassment-and-increase-transparency-and-accountability

42 http://www.ncsl.org/research/labor-and-employment/addressing-sexual-harassment-in-the-workplace.aspx

43 http://lawfilesext.leg.wa.gov/biennium/2017-18/Pdf/Bills/Session%20Laws/Senate/5996-S.SL.pdf#page=1

44 Stacy Perman,"#MeToo Law Restricts Use of Nondisclosure Agreements in Sexual Misconduct Cases," Los Angeles Times, Dec. 31, 2018 (https://www.latimes.com/business/hollywood/la-fi-ct-nda-hollywood-20181231-story.html)

45 https://legislation.nysenate.gov/pdf/bills/2017/s7507c

46 "States Move to Limit Workplace Confidentiality Agreements," CBS News, Aug. 27, 2018 (https://www.cbsnews.com/news/states-move-to-limit-workplace-confidentiality-agreements/)

47 Cara Buckley, "Powerful Hollywood Women Unveil Anti-Harassment Action Plan," The New York Times, Jan. 1, 2018 (https://www.nytimes.com/2018/01/01/movies/times-up-hollywood-women-sexual-harassment.html)

48 "The Case Against Non-Compete Clauses," The Economist, May 19, 2018 (https://www.economist.com/leaders/2018/05/19/the-case-against-non-compete-clauses).

a brain drain, by encouraging their best and smartest workers to move elsewhere for better pay."[49] Professor Orly Lobel, who studies non-compete agreements, has asserted, "There is strong data showing that [non-competes] reduce employee motivation, entrepreneurship and sharing of knowledge, the fundamental building blocks of innovation and economic growth."[50]

The Brookings Institution's Hamilton Project issued a report last year reviewing the empirical evidence about non-compete agreements. It found that non-competes reduce worker mobility and make it more likely that workers will shift to other industries or occupations, squandering valuable human capital.[51] The study also concluded that states with strict enforcement of non-compete provisions lose skilled employees to states with less strict enforcement, impede the flow of information and have fewer (and less successful) start-ups.[52]

Over the last few years, the use of non-compete provisions, especially for low-wage workers, has attracted public attention and prompted public debate. The debate has focused not only on the effect non-compete provisions have on individual employees but also on the broader effects of the provisions' widespread use discussed above. Some examples of media coverage are:

- Sophie Quinton, "These Days, Even Janitors Are Being Required to Sign Non-Compete Clauses," USA Today, May 27, 2017 (https://www.usatoday.com/story/money/2017/05/27/noncompete-clauses-jobs-workplace/348384001/)
- Stephen Mihm, "Send Noncompete Agreements Back to the Middle Ages," Bloomberg, Dec. 5, 2018 (https://www.bloomberg.com/opinion/articles/2018-12-05/noncompete-agreements-are-bad-for-employees-and-the-economy)
- Sabri Ben-Achour, "For American Workers, Noncompete Agreements Are Pervasive—and Might Hold Down Their Wages," Marketplace, July 5, 2018 (https://www.marketplace.org/2018/07/05/business/american-workers-non-compete-agreements-are-pervasive-and-might-hold-down-wages)
- Conor Dougherty, "How Noncompete Clauses Keep Workers Locked In," The New York Times, May 13, 2017

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[49] Conor Dougherty, "How Noncompete Clauses Keep Workers Locked In," The New York Times, May 13, 2017 (https://www.nytimes.com/2017/05/13/business/noncompete-clauses.html)

[50] Orly Lobel, "Companies Compete But Won't Let Their Workers Do the Same," The New York Times, May 4, 2017 (https://www.nytimes.com/2017/05/04/opinion/noncompete-agreements-workers.html)

[51] Matt Marx, "Reforming Non-Competes to Support Workers," Policy Proposal 2018-04, Feb. 2018, at 8-9 (https://www.brookings.edu/wp-content/uploads/2018/02/es_2272018_reforming_noncompetes_support_workers_marx_policy_proposal.pdf).

[52] Matt Marx, "Reforming Non-Competes to Support Workers," Policy Proposal 2018-04, Feb. 2018, at 9-10 (https://www.brookings.edu/wp-content/uploads/2018/02/es_2272018_reforming_noncompetes_support_workers_marx_policy_proposal.pdf).

(https://www.nytimes.com/2017/05/13/business/noncompete-clauses.html) ("But the move to tie workers down with noncompete agreements falls in line with the decades-long trend in which their mobility and bargaining power has steadily declined, and with it their share of company earnings.")

- Duarte Geraldino, "What You Should Know About Noncompete Agreements," PBS Newshour, July 14, 2016 (https://www.pbs.org/newshour/economy/know-non-compete-agreements)
- Spencer Woodman, "Amazon Makes Even Temporary Warehouse Workers Sign 18-Month Non-Competes," The Verge, Mar. 26, 2015 (https://www.theverge.com/2015/3/26/8280309/amazon-warehouse-jobs-exclusive-noncompete-contracts)
- Yuki Noguchi, "Under Pressure, WeWork Backs Down on Employee Noncompete Requirements," NPR (heard on "All Things Considered"), Sept. 18, 2018 (https://www.npr.org/2018/09/18/648881004/wework-backs-down-on-employee-noncompete-requirements)
- Orly Lobel, "Companies Compete But Won't Let Their Workers Do the Same," The New York Times, May 4, 2017 (https://www.nytimes.com/2017/05/04/opinion/noncompete-agreements-workers.html)
- Matt O'Brien, "Even Janitors Have Noncompetes Now. Nobody is Ssfe," The Washington Post, Oct. 18, 2018 (https://www.washingtonpost.com/business/2018/10/18/even-janitors-have-noncompetes-now-nobody-is-safe/?utm_term=.a4e35f5e9f4d)
- Nancy Collamer, "Could a Noncompete Keep You From Getting Work?" Forbes, Nov. 13, 2017 (https://www.forbes.com/sites/nextavenue/2017/11/13/could-a-noncompete-keep-you-from-getting-work/#2ebf79d467c1)
- Steve Sbraccia, "Several States Are Investigating Non-Compete Clauses in Fast Food Jobs," July 12, 2018 (https://www.cbs17.com/news/investigators/several-states-investigating-non-complete-clauses-in-fast-food-jobs/1298896501)

Non-competes have come in for scrutiny at the federal level. The LADDER and MOVE Acts would have prohibited non-compete agreements for low-wage employees.[53]

The Treasury Department also undertook an initiative on non-compete provisions. Its Office of Economic Policy analyzed the prevalence and impact of these provisions, releasing a report in 2016 pegging the proportion of U.S. workers

[53] Limiting the Ability to Demand Detrimental Employment Restrictions Act (114th Congress, H.R.2873) (https://www.congress.gov/bill/114th-congress/house-bill/2873); Mobility and Opportunity for Vulnerable Employees Act (114th Cong. S.1504) (https://www.congress.gov/bill/114th-congress/senate-bill/1504)

who have ever been subject to them at 37%.[54] The report discussed the broader economic impact of non-compete agreements, concluding that stricter non-compete enforcement is "associated with both lower wage growth and lower initial wages."[55] As well, the reduced worker mobility caused by non-compete provisions "is itself a concern for the U.S. economy," according to the report, because job "churn" leads to better employer-employee fit and "may facilitate the development of industrial clusters like Silicon Valley." The report also warned that "[n]on-competes are often used by employers in non-transparent ways."[56]

Citing rising inequality, "stagnant wage growth," and the stifling of entrepreneurship, the Obama White House put out a "call to action" in 2016 urging state policymakers to ban non-compete agreements for workers in certain categories, allow non-competes only if the employee is told about it before she accepts an offer of employment, and/or provide that a non-compete agreement is unenforceable in its entirety if any part is unenforceable.[57] The White House also highlighted an issue brief prepared by the Council of Economic Advisers reviewing the evidence of employer monopsony power and discussing the policy implications of that power.[58]

Vice President Joe Biden solicited accounts regarding the impact of non-compete provisions and related some of the stories he received. They included a teacher whose previous summer job precluded taking a summer job selling pet food and a 56-year-old salesman whose loss of income for two years after a layoff cost him almost all his retirement savings.[59]

Measures to limit or ban the use of non-compete agreements have been introduced in state legislatures. Hawaii banned non-compete agreements for tech workers, and bills seeking to ban non-competes or limit their use were introduced

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[54] Office of Economic Policy, U.S. Department of the Treasury, "Non-compete Contracts: Economic Effects and Policy Implications," Mar. 2016, at 6 (https://www.treasury.gov/resource-center/economic-policy/Documents/UST%20Non-competes%20Report.pdf).

[55] Office of Economic Policy, U.S. Department of the Treasury, "Non-compete Contracts: Economic Effects and Policy Implications," Mar. 2016, at 19 (https://www.treasury.gov/resource-center/economic-policy/Documents/UST%20Non-competes%20Report.pdf).

[56] Office of Economic Policy, U.S. Department of the Treasury, "Non-compete Contracts: Economic Effects and Policy Implications," Mar. 2016, at 4 (https://www.treasury.gov/resource-center/economic-policy/Documents/UST%20Non-competes%20Report.pdf).

[57] https://obamawhitehouse.archives.gov/sites/default/files/competition/noncompetes-calltoaction-final.pdf

[58] https://obamawhitehouse.archives.gov/the-press-office/2016/10/25/fact-sheet-obama-administration-announces-new-steps-spur-competition

[59] Joe Biden, "We Heard Your Stories. It's Time to #LetUsCompete," Medium, Oct. 25, 2016 (https://medium.com/@VPOTUS44/we-heard-your-stories-its-time-to-letuscompete-1b440782a8ae).

in nine other states.[60] New Mexico and Utah enacted laws limiting the use of non-compete agreements for certain kinds of employees.[61]

State attorneys general have focused closely on non-compete agreements. Last year, the attorneys general of 11 states, including California, New Jersey, New York and Massachusetts, unveiled an investigation of fast-food franchisors for using non-compete or no-poaching provisions to prevent competition for employees among franchisees.[62] In September 2018, New York's Attorney General Barbara Underwood announced the settlement of a case against WeWork for using overly broad non-compete provisions for its employees nationwide. She also issued guidance on non-compete agreements in New York.[63] The WeWork case followed several other enforcement actions,[64] including a 2016 settlement with Jimmy John's.[65] Illinois' attorney general had also sued Jimmy John's for using "highly restrictive non-compete agreements" in 2016.[66]

No-Poach Agreements

No-poach agreements, like noncompete provisions, not only can depress wages by inhibiting worker mobility but also can reduce innovation and deprive consumers of choices in the market. The use of no-poach agreements has captured public attention through media coverage of the practice as well as initiatives aimed at preventing and remedying the effects.

The U.S. Department of Justice's ("DOJ's") Antitrust Division announced in October 2016 that it it would pursue criminal changes for "naked" no-poach agreements, those that "are not reasonably necessary to any separate, legitimate business collaboration between the employers."[67] In the announcement, the Antitrust Division tied no-poach agreements to monopsony, explaining that

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[60] Office of Economic Policy, U.S. Department of the Treasury, "Non-compete Contracts: Economic Effects and Policy Implications," Mar. 2016, at 17 (https://www.treasury.gov/resource-center/economic-policy/Documents/UST%20Non-competes%20Report.pdf); https://www.tradesecretsandemployeemobility.com/2018/07/articles/non-compete-agreements/state-attorneys-general-investigating-use-of-non-competes-by-fast-food-franchisors/

[61] https://www.tradesecretsandemployeemobility.com/2018/07/articles/non-compete-agreements/state-attorneys-general-investigating-use-of-non-competes-by-fast-food-franchisors/

[62] https://www.tradesecretsandemployeemobility.com/2018/07/articles/non-compete-agreements/state-attorneys-general-investigating-use-of-non-competes-by-fast-food-franchisors/

[63] https://ag.ny.gov/press-release/ag-underwood-announces-settlement-wework-end-use-overly-broad-non-competes-restricted

[64] https://www.employmentlawspotlight.com/2018/09/new-york-attorney-generals-office-reaches-another-settlement-over-non-competes/

[65] https://ag.ny.gov/press-release/ag-schneiderman-announces-settlement-jimmy-johns-stop-including-non-compete-agreements

[66] https://www.tradesecretsandemployeemobility.com/2018/07/articles/non-compete-agreements/state-attorneys-general-investigating-use-of-non-competes-by-fast-food-franchisors/

[67] See https://www.justice.gov/atr/division-operations/division-update-spring-2018/antitrust-division-continues-investigate-and-prosecute-no-poach-and-wage-fixing-agreements

"workers, like consumers, are entitled to the benefits of a competitive market" and that "[r]obbing employees of labor market competition deprives them of job opportunities, information, and the ability to use competing offers to negotiate better terms of employment."[68]

That announcement followed the issuance of guidance (the "2016 Guidance") on no-poach agreements by the Antitrust Division and Federal Trade Commission.[69] The 2016 Guidance made the case for the importance of labor market competition for consumers as well as employees:

> Just as competition among sellers in an open marketplace gives consumers the benefits of lower prices, higher quality products and services, more choices, and greater innovation, competition among employers helps actual and potential employees through higher wages, better benefits, or other terms of employment. Consumers can also gain from competition among employers because a more competitive workforce may create more or better goods and services.[70]

The Antitrust Division has aggressively pursued civil claims against companies for naked no-poach agreements. Last year, the Division settled a case alleging that three companies in the rail industry entered into multi-year naked no-poach agreements in restraint of trade, mainly affecting recruiting for project management, engineering, sales, and corporate officer roles.[71] A primary focus of the DOJ's enforcement efforts has been the tech industry: A high-profile case was brought against Adobe Systems, Apple, Google, Intel, Intuit and Pixar and settled in 2010, alleging that the companies agreed not to cold-call each others' employees.[72] Two similar cases involving agreements between Lucasfilm and Pixar and between eBay and Intuit were settled in 2011[73] and 2014,[74] respectively. A class-action lawsuit brought by employees of Apple, Google, Intel and Adobe claiming that the companies colluded to keep engineers' salaries down was settled

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[68] See https://www.justice.gov/atr/division-operations/division-update-spring-2018/antitrust-division-continues-investigate-and-prosecute-no-poach-and-wage-fixing-agreements

[69] Department of Justice Antitrust Division & Federal Trade Commission, "Antitrust Guidance for Human Resource Professionals," Oct. 2016 (https://www.justice.gov/atr/file/903511/download)(hereinafter, "2016 Guidance").

[70] 2016 Guidance, at 2.

[71] United States v. Knorr-Bremse AG and Westinghouse Airbrake Technologies Corp., Competitive Impact Statement, filed Apr. 3, 2018 (https://www.justice.gov/atr/case-document/file/1048891/download).

[72] https://www.justice.gov/opa/pr/justice-department-requires-six-high-tech-companies-stop-entering-anticompetitive-employee

[73] See https://www.justice.gov/atr/case/us-v-lucasfilm-ltd

[74] See https://www.justice.gov/atr/case/us-v-ebay-inc

for $415 million in 2015.[75] Extensive media coverage accompanied the initiation and settlement of these cases.[76]

Employers have entered into no-poach agreements affecting even lower-paid, less-skilled workers than those involved in the tech company cases. In the fast food industry, such agreements have prevented employees from moving between franchises in a chain. A 2017 article in The New York Times revealed this practice, highlighting the impact of no-poach agreements on worker mobility and wage stagnation.[77] The practice has generated significant media attention.[78] Several chains agreed to stop including no-poach provisions in franchise agreements after investigations by state attorneys general.[79] Some attorneys general, as well as the head of the International Franchise Association, emphasized the commonalities between no-poach and non-compete provisions.[80]

The Brookings Institution's 2018 study by Alan Krueger and Eric Posner addressed no-poach agreements. It built on research conducted by one of the study's authors who had examined 2016 data from 156 franchise chains and found that 58 percent had no-poach agreements operating at the franchisee (rather than

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[75] Jeff John Roberts, "Tech Workers Will Get Average of $5,770 Under Final Anti-Poaching Settlement," Fortune, Sept. 3, 2015.

[76] See, e.g., "Silicon Valley's No-Poaching Case: The Growing Debate Over Employee Mobility," Knowledge@Wharton, Apr. 30, 2014 ("[T]he case has provoked a heated debate on the damage that no-poaching agreements cause."); "Judge Approves Settlement in Apple, Google Wage Case," Los Angeles Times, Sept. 3, 2015; David Streitfeld, "Bigger Settlement Said to be Reached in Silicon Valley Antitrust Case," The New York Times, Jan. 14, 2015; Dominic Rushe, "Apple and Google Settle Antitrust Lawsuit Over Hiring Collusion Charges," The Guardian, Apr. 24, 2014; Megan Geuss, "Judge Oks $415 Million No-Poaching Payout to Apple, Google Employees," Ars Technica, Mar. 4, 2015; Davey Alba, "Apple, Google, and Other Tech Giants Reach $415M Settlement in Poaching Suit," Wired, Jan. 14, 2015; Gregory Wallace, "Steve Jobs Was 'Central Figure' in Silicon Valley's 'No Poaching' Case," CNN Business, Aug. 11, 2014; Josh Harkinson, "'I Don't Want to Create a Paper Trail': Inside the Secret Apple-Google Pact," Mother Jones, Feb. 19, 2014.

[77] Rachel Abrams, "Why Aren't Paychecks Growing? A Burger-Joint Clause Offers a Clue," The New York Times, Sept. 27, 2017.

[78] See, e.g., Rachel Abrams, "'No Poach' Deals for Fast-Food Workers Face Scrutiny by States," The New York Times, July 9, 2018; James Doubek, "8 Restaurant Chains Agree to End 'No-Poach' Agreements Under Threat of Lawsuit," NPR, Aug. 22, 2018; "11 States Probe Fast-Fod Companies on 'No-Poach' Pacts," Bloomberg, July 9, 2018; Billy Jean Louis, "Burger King Faces Class Action Lawsuit For 'No-Poaching' Rule," South Florida Business Journal, Oct. 17, 2018; Jeff Stein, "Booker, Warren Take Aim at Chains That Use 'Non-Poaching' Deals to Keep Workers Stuck at One Store," The Washington Post, Mar. 1, 2018; Anita Hamilton, "The Hidden Reason Why Your Pay is Stuck in Neutral," Vice, July 16, 2018 (citing both fast food and tech company no-poaching agreements).

[79] See Jackie Wattles, "7 Fast Food Chains Agree to End 'No-Poach' Rules," CNN Business, July 12, 2018; Diane Bartz & Alana Wise, "U.S. States Probe Fast-Food Franchise Deals Not to Poach Workers," Reuters, July 9, 2018; Michael L. Diamond, "State Attorneys General Want to Know More About Fast-Food 'No-Poach' and Noncompete Agreements," USA Today, July 9, 2018.

[80] See Michael L. Diamond, "State Attorneys General Want to Know More About Fast-Food 'No-Poach' and Noncompete Agreements," USA Today, July 9, 2018 (quoting IFA head as stating that noncompete and no-poach provisions "help protect the investment employers make in training their workers").

employee) level.[81] The earlier paper had found that no-poach agreements among franchisees have the effect of increasing employer labor market concentration to uncompetitive levels.[82] The Brookings Institution study noted uncertainty regarding the legal status of no-poach agreements among franchisees of a single chain—given that they may be considered part of a single economic entity—and recommended banning them.[83]

No-poach agreements have also been the subject of legislative initiatives. Senators Cory Booker and Elizabeth Warren introduced legislation last year, the End Employer Collusion Act, to clarify that no-poach agreements violate antitrust law.[84] They also wrote a letter pressing 89 CEOs of large franchises to stop using such agreements.[85] Representative Keith Ellison sponsored similar legislation in the House.[86]

The Proposal Is Not a Mix of a Significant Policy Issue and an Ordinary Business Matter

Amazon claims that even if "some employment agreements addressed in the Proposal could be viewed in some contexts as touching upon what the Staff considers to be a significant policy issue,"[87] the Proposal also encompasses ordinary business issues, supporting exclusion. Amazon does not identify which parts of the Proposal implicate significant policy issues and which do not, stating only that "there is not widespread agreement that all of [the Inequitable Employment Practices] are controversial."[88]

We disagree. The previous sections described the consistent widespread public debate over Inequitable Employment Practices, establishing that their use is a significant policy issue. The determinations Amazon cites involved proposals that pushed beyond the boundaries of previously-recognized significant policy issues,

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[81] Alan B. Krueger & Orly Ashenfelter, "Theory and Evidence on Employer Collusion in the Franchise Sector," at 4 (2018) (http://ftp.iza.org/dp11672.pdf).
[82] Alan B. Krueger & Orly Ashenfelter, "Theory and Evidence on Employer Collusion in the Franchise Sector," at 13 (2018) (http://ftp.iza.org/dp11672.pdf).
[83] Alan B. Krueger & Eric Posner, "A Proposal for Protecting Low-Income Workers from Monopsony and Collusion," The Hamilton Project, Policy Proposal 2018-05, at 11, 13 (Feb. 2018) (https://www.brookings.edu/wp-content/uploads/2018/02/es_2272018_protecting_low_income_workers_from_monopsony_collusion_krueger_posner_pp.pdf).
[84] See https://www.booker.senate.gov/?p=press_release&id=760; https://www.congress.gov/bill/115th-congress/senate-bill/2480/related-bills
[85] See https://www.warren.senate.gov/oversight/letters/warren-booker-urge-nearly-100-franchise-ceos-to-abandon-collusive-no-poach-clauses
[86] https://www.congress.gov/bill/115th-congress/house-bill/5632
[87] No-Action Request, at 2.
[88] No-Action Request, at 8.

addressed subjects the Staff believed did not implicate a significant policy issue or yoked together disparate topics, and are therefore inapposite.

The Proposal Requests a Board-Level Policy and Would Not Seek to Control Day-to-Day Decisions About Inequitable Employment Practices

Amazon urges that the Proposal deals with ordinary business matters because "decisions with respect to management of [Amazon's] workforce, including whether and under what circumstances to enter into contractual relationships with employees, are multifaceted, complex and based on factors beyond the knowledge and expertise of shareholders, such as the amount of compensation associated with such arrangements, competitive practices in different lines of business or geographic regions, and differing legal regimes." As a result, Amazon argues, a decision to implement the Policy "would be impractical for shareholders voting at an annual meeting."[89]

The Proposal does not, however, address considerations weighing in favor of or against the Inequitable Employment Practices in specific instances. Nor does it reserve an ongoing role for shareholders in implementation. Instead, the Proposal requests a single vote on a board-level policy. Shareholders regularly vote on the adoption of board-level policies dealing with topics such as human rights, executive compensation clawbacks and poison pills, at annual meetings. Shareholders have experience assessing the arguments in favor of and against such policies. Adoption of policies obviates the need to consider the facts and circumstances of individual cases, which we agree would be impractical for shareholders to do. Thus, voting on the Policy would not be impractical.

* * *

In sum, Inequitable Employment Practices are a significant policy issue because they inhibit mobility and deprive employees of legal rights and remedies, leading to lower wages, decreased productivity, greater inequality and more sluggish economic growth. They are imposed in non-transparent ways, when employees have the least bargaining power. All of these factors have contributed to consistent widespread public debate, including numerous legislative and regulatory initiatives and substantial media coverage. Despite their relationship to management of the workforce, then, Inequitable Employment Practices transcend ordinary business, making exclusion in reliance on Rule 14a-8(i)(7) inappropriate.

For these reasons, Amazon has not satisfied its burden of showing that it is entitled to omit the Proposal in reliance on Rule 14a-8(i)(7). We thus respectfully request that Amazon's request for relief be denied.

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[89] No-Action Request, at 6.

CtW appreciates the opportunity to be of assistance in this matter. If you have any questions or need additional information, please contact me at (202) 721-6038.

Sincerely,

Richard W. Clayton III
Research Director, CtW Investment Group

cc: Ronald I. Mueller
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Appendix A

Coverage of mandatory arbitration of sexual harassment or assault claims:

- Kerri Anne Renzulli, "Workers at Google, Facebook, eBay and Airbnb Can Now Sue Over Sexual Harassment—Here's What That Means for Employees," CNBC.com, Nov. 19, 2018 (https://www.cnbc.com/2018/11/19/google-facebook-airbnb-employees-can-now-sue-over-sexual-harassment.html)(reporting four tech firms "ending the controversial legal practice" of requiring employees to take claims to arbitration)
- Daisuke Wakabayashi & Jessica Silver-Greenberg, "Facebook to Drop Forced Arbitration in Harassment Cases," The New York Times, Nov. 9, 2018 (https://www.nytimes.com/2018/11/09/technology/facebook-arbitration-harassment.html)
- Terri Gerstein, "End Forced Arbitration for Sexual Harassment. Then Do More," The New York Times, Nov. 14, 2018 (https://www.nytimes.com/2018/11/14/opinion/arbitration-google-facebook-employment.html)
- Gerrit De Vynck et al., "Google Curbs Forced Arbitration After Protest on Harassment," Bloomberg, Nov. 8, 2018 (https://www.bloomberg.com/news/articles/2018-11-08/google-changes-policies-on-sexual-misconduct-after-staff-walkout)
- Susan Antilla, "Google and Facebook Ended Mandatory Arbitration for Sexual Harassment Claims. Will Workers Outside the Tech Industry Benefit?" The Intercept, Nov. 21, 2018 (https://theintercept.com/2018/11/21/google-sexual-harassment-arbitration/)
- Jing Cao, "Microsoft Eliminates Arbitration in Sexual Harassment Cases," Bloomberg, Dec. 19, 2017 (https://www.bloomberg.com/news/articles/2017-12-19/microsoft-eliminates-arbitration-in-sexual-harassment-cases)
- Rachel Gillette, "More Than Half of American Workers Wouldn't be Able to Take Their Sexual Harassment Claims to Court," Business Insider, Nov. 30, 2017 (https://www.businessinsider.com/mandatory-arbitration-clause-sexual-harassment-claims-2017-11)
- Madison Malone Kircher, "Airbnb and Ebay Follow Google's Example, Change Sexual-Harassment Policies," New York, Nov. 13, 2018 (https://nymag.com/intelligencer/2018/11/tech-companies-end-forced-arbitration-after-google-does.html)
- Emily Stewart, "Uber and Lyft Are Getting Rid of Tactics That Keep Sexual Assault Victims Silent," Vox, May 15, 2018

(https://www.vox.com/technology/2018/5/15/17355702/uber-driver-arbitration-nondisclosure-sexual-harassment-assault)

- Nitasha Tiku, "Big Tech Eyes Supreme Court's Employee-Arbitration Case," Wired, Oct. 2, 2017 (https://www.wired.com/story/big-tech-eyes-supreme-courts-employee-arbitration-case/)
- Nitasha Tiku, "Tech Workers Unite to Fight Forced Arbitration," Wired, Jan. 14, 2019 (https://www.wired.com/story/tech-workers-unite-fight-forced-arbitration/)
- Sam Levin, "Susan Fowler's Plan After Uber? Tear Down the System That Protects Harassers," The Guardian, Apr. 11, 2018 (https://www.theguardian.com/technology/2018/apr/11/susan-fowler-uber-interview-forced-arbitration-law)
- Gretchen Carlson, "How Arbitration Clauses Allow Sexual Harassment to Continue," Time, Mar. 10, 2017 (http://time.com/4698538/gretchen-carlson-sexual-harassment-arbitration-clauses/)
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January 22, 2019

VIA E-MAIL

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

Re: *Amazon.com, Inc.*
Shareholder Proposal of CtW Investment Group
Securities Exchange Act of 1934—Rule 14a-8

Ladies and Gentlemen:

This letter is to inform you that our client, Amazon.com, Inc. (the "Company"), intends to omit from its proxy statement and form of proxy for its 2019 Annual Meeting of Shareholders (collectively, the "2019 Proxy Materials") a shareholder proposal (the "Proposal") and statement in support thereof (the "Supporting Statement") received from CtW Investment Group (the "Proponent").

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

- filed this letter with the Securities and Exchange Commission (the "Commission") no later than eighty (80) calendar days before the Company intends to file its definitive 2019 Proxy Materials with the Commission; and

- concurrently sent a copy of this correspondence to the Proponent.

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

THE PROPOSAL

The Proposal states:

> RESOLVED that shareholders of Amazon.com, Inc. ("Amazon") urge the Board of Directors to adopt a policy that Amazon will not engage in any Inequitable Employment Practice. "Inequitable Employment Practices" are mandatory arbitration of employment-related claims; non-compete agreements with employees; agreements with other companies not to recruit each others' employees; and non-disclosure agreements ("NDAs") entered into in connection with arbitration or settlement of claims that any Amazon employee engaged in unlawful discrimination or harassment, unless such an NDA is requested by the person who was harassed or the victim of discrimination.

A copy of the Proposal and the Supporting Statement, as well as related correspondence with the Proponent, is attached hereto as Exhibit A.

BASIS FOR EXCLUSION

For the reasons discussed below, we believe the Proposal properly may be excluded from the 2019 Proxy Materials pursuant to Rule 14a-8(i)(7) because the Proposal deals with matters relating to the Company's ordinary business operations within the meaning of Rule 14a-8(i)(7). In this regard, even if some employment agreements addressed in the Proposal could be viewed in some contexts as touching upon what the Staff considers to be a significant policy issue, the Proposal is overly broad in nature and encompasses ordinary business matters that under well-established Staff precedent render it excludable under Rule 14a-8(i)(7).

ANALYSIS

The Proposal May Be Excluded Pursuant To Rule 14a-8(i)(7) Because It Involves Matters Related To The Company's Ordinary Business Operations.

A. Background.

Rule 14a-8(i)(7) permits a company to omit from its proxy materials a shareholder proposal that relates to the company's "ordinary business" operations. According to the Commission's release accompanying the 1998 amendments to Rule 14a-8, the term "ordinary business" "refers to matters that are not necessarily 'ordinary' in the common meaning of the word," but instead the term "is rooted in the corporate law concept [of] providing management with

flexibility in directing certain core matters involving the company's business and operations." Exchange Act Release No. 40018 (May 21, 1998) (the "1998 Release").

In the 1998 Release, the Commission stated that the underlying policy of the ordinary business exclusion is "to confine the resolution of ordinary business problems to management and the board of directors, since it is impracticable for shareholders to decide how to solve such problems at an annual shareholders meeting," and identified two central considerations that underlie this policy. As relevant here, one of these considerations was 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."

The 1998 Release further distinguishes proposals pertaining to ordinary business matters from those involving "significant social policy issues." *Id.* (citing Exchange Act Release No. 12999 (Nov. 22, 1976)). Note 4 of Staff Legal Bulletin 14E (Oct. 27, 2009) states that "[i]n those cases in which a proposal's underlying subject matter transcends the day-to-day business matters of the company and raises policy issues so significant that it would be appropriate for a shareholder vote, the proposal generally will not be excludable under Rule 14a-8(i)(7) as long as a sufficient nexus exists between the nature of the proposal and the company." The Staff reaffirmed this position in Note 32 of Staff Legal Bulletin 14H (Oct. 22, 2015), explaining "[w]hether the significant policy exception applies depends, in part, on the connection between the significant policy issue and the company's business operations." In this regard, when assessing proposals under Rule 14a-8(i)(7), the Staff considers the terms of the resolution and its supporting statement as a whole. *See* Staff Legal Bulletin No. 14C, part D.2 (June 28, 2005) ("In determining whether the focus of these proposals is a significant social policy issue, we consider both the proposal and the supporting statement as a whole.")

A shareholder proposal being framed in the form of a request for a report does not change the nature of the proposal. The Commission has stated that a proposal requesting the dissemination of a report may be excludable under Rule 14a-8(i)(7) if the subject matter of the report is within the ordinary business of the issuer. *See* Exchange Act Release No. 20091 (Aug. 16, 1983). In addition, the Staff has indicated that "[where] the subject matter of the additional disclosure sought in a particular proposal involves a matter of ordinary business . . . it may be excluded under [R]ule 14a-8(i)(7)." *Johnson Controls, Inc.* (avail. Oct. 26, 1999). Similarly, the Staff has concurred that a proposal requesting adoption of a policy is excludable if the underlying subject matter pertains to ordinary business and does not implicate a significant social policy issue. *See, e.g., The TJX Companies, Inc.* (avail. Apr. 16, 2018) (concurring in the exclusion under Rule 14a-8(i)(7) of a proposal requesting that the company adopt "a new universal and comprehensive animal welfare policy applying to all of the [c]ompany's stores, merchandise and suppliers" because the proposal related to ordinary

business operations)*; Time Warner Inc. (Ridenour*) (avail. Mar. 13, 2018) (concurring in the exclusion under Rule 14a-8(i)(7) of a proposal requesting that the company "adopt a policy requiring that the Company's news operations tell the truth, and issue an annual report to shareholders explaining instances where the Company failed to meet this basic journalistic obligation" because the proposal related to ordinary business operations); *The Walt Disney Co.* (avail. Dec. 12, 2017) (same).

B. The Proposal Is Excludable Because It Relates To The Management Of The Company's Workforce.

The Commission recognized in the 1998 Release that 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." 1998 Release. Examples of the tasks cited by the Commission include "management of the workforce, such as the hiring, promotion, and termination of employees, decisions on production quality and quantity, and the retention of suppliers." *Id.* The Staff has consistently recognized that proposals pertaining to the management of a company's workforce, including a company's employment practices, are excludable under Rule 14a-8(i)(7). For example, a proposal in *Berkshire Hathaway Inc.* (avail. Jan. 31, 2012) mandated the dismissal of employees who engaged in behavior that would create a conflict of interest, "constitut[e] cause [for dismissal]" or violate certain other principles specified in the proposal. The Staff concurred that the proposal could be excluded under Rule 14a-8(i)(7) because it dealt with "management of [the company's] workforce." Similarly, in *Northrop Grumman Corp.* (avail. Mar. 18, 2010), the Staff concurred that a proposal requesting that the board provide certain disclosures in the context of the company's reduction-in-force review process could be excluded, noting that "[p]roposals concerning a company's management of its workforce are generally excludable under [R]ule 14a-8(i)(7)." *See also Merck & Co., Inc.* (avail. Mar. 6, 2015) (concurring that a proposal requesting that the company fill only entry-level positions with outside candidates and adopt a policy of developing individuals for its higher level positions exclusively from employees meeting certain standards could be excluded because "the proposal relates to procedures for hiring and promoting employees"); *Starwood Hotels & Resorts Worldwide, Inc.* (avail. Feb. 14, 2012) (concurring that a proposal requesting verification and documentation of U.S. citizenship for the company's U.S. workforce could be excluded because it concerned "procedures for hiring and training employees"); *National Instruments Corp.* (avail. Mar. 5, 2009) (concurring that a proposal requesting that the company adopt a detailed succession policy could be excluded because it related to "ordinary business operations (i.e., the termination, hiring, or promotion of employees)"); *Wells Fargo & Co.* (avail. Feb. 22, 2008) (concurring that a proposal requesting a policy stating that the company would not employ individuals who worked at a credit rating agency within the last year could be excluded because it related to "ordinary business operations (i.e., the termination, hiring, or promotion of employees)"); *Consolidated Edison, Inc.* (avail. Feb. 24, 2005) (concurring that a proposal

requesting the termination of certain supervisors could be excluded as it related to "the termination, hiring, or promotion of employees"); *Allegheny Energy, Inc.* (avail. Mar. 3, 2003) (concurring that a proposal requesting removal of certain officers could be excluded because it related to "ordinary business operations (i.e., the termination, hiring, or promotion of employees)"); (*Merck & Co., Inc.* (avail. Mar. 7, 2002) (concurring that a proposal requesting that the company keep shareholders informed regarding the resolution of employment disputes could be excluded as it related to the company's "management of the workforce"); *Burlington Northern Santa Fe Corp.,* (avail. Feb. 15, 2000) (concurring that a proposal relating to employment policies could be excluded as it related to "management of the workforce").

In addition, the Staff has consistently concurred in the exclusion of proposals under Rule 14a-8(i)(7) that request the adoption of policies concerning a company's employees. For example, in *Intel Corp.* (avail. Mar. 18, 1999), the Staff concurred in the exclusion of a proposal requesting implementation of an employee bill of rights policy. *See also*, *Bristol-Myers Squibb Co.* (avail. Jan. 7, 2015) (concurring in the exclusion of a proposal requesting that the board consider adoption of anti-discrimination principles concerning employees' right to engage in legal activities relating to the political process on their personal time); *YUM! Brands, Inc.* (avail. Jan. 7, 2015) (same); *The Walt Disney Co.* (avail. Nov. 24, 2014, *recon. denied* Jan. 5, 2015) (concurring in the exclusion of a proposal requesting that the board consider adopting "anti-discrimination principles that protect employees' human right to engage in legal activities relating to the political process, civic activities and public policy without retaliation in the workplace" because the proposal related to the company's "policies concerning its employees"); *Costco Wholesale Corp.* (avail. Nov. 14, 2014, *recon. denied* Jan. 5, 2015) (concurring in the exclusion of a proposal requesting adoption of a company-wide Code of Conduct including an anti-discrimination policy that protects employees' right to engage in political and civic activities).

The Staff also has previously concurred that proposals addressing settlement terms in the employment litigation context are excludable under Rule 14a-8(i)(7). In *Point Blank Solutions, Inc.* (avail. Mar. 10, 2008, *recon. denied* Mar. 20, 2008), the Staff concurred with exclusion under Rule 14a-8(i)(7) of a proposal requesting that the company reject a settlement in a suit against former employees unless certain settlement terms were met. The Staff noted that the proposal related to the company's "ordinary business operations (*i.e.*, litigation strategy and related decisions)."

The Proposal requests that the Company "adopt a policy that [it] will not engage in any Inequitable Employment Practice," which the Proposal defines to mean a range of contractual arrangements entered into between the Company and its employees in connection with their employment, including arbitration, non-compete, and non-disclosure agreements. The Supporting Statement further emphasizes the Proposal's focus on a variety of routine

contractual arrangements with employees, stating that "companies have increasingly relied on a suite of contractual arrangements involving their employees." While Amazon is committed to fair employment practices and has policies in place that protect employees from unlawful discrimination and harassment, by seeking a blanket policy prohibiting the Company from entering into any of the specified contractual arrangements with its employees regardless of the context, the Proposal demonstrates that its scope relates to the Company's management of its workforce. For example, the Supporting Statement to the Proposal asserts that "Companies increasingly seek to impose non-compete restrictions, originally designed for higher-level knowledge workers, on entry-level workers." Nevertheless, the Proposal would prohibit the use of non-compete provisions worldwide, even for "higher-level knowledge workers." Although some states in the U.S. do not enforce non-competition agreements, many states will enforce reasonably drafted provisions, as they recognize that such provisions help protect a company's intellectual property and trade secrets (such as terms of customer contracts). Indeed, the majority of the contractual arrangements highlighted in the Proposal are legal and longstanding practices that are routinely utilized by many companies across the country. However, the Proposal would prohibit such agreements regardless of the context or the amount of compensation that may be associated with an employee's agreement to enter into such an agreement.

The Company's decisions with respect to management of its workforce, including whether and under what circumstances to enter into contractual arrangements with employees, are fundamental to the management of the Company's business. These decisions are multifaceted, complex, and based on factors beyond the knowledge and expertise of shareholders, such as the amount of compensation associated with such arrangements, competitive practices in different lines of business or geographic regions, and differing legal regimes. Here, a decision to implement the Proposal's requested policy would require an understanding of Company-specific effects across tens or hundreds of thousands of employees who are employed in a wide range of positions around the world, and thus would be impractical for shareholders voting at an annual meeting.

For these reasons, similar to the proposals discussed above, the Proposal is excludable under Rule 14a-8(i)(7) because the requested policy directly implicates the Company's employment practices and management of its workforce, which are ordinary business matters.

C. The Proposal Does Not Transcend The Company's Ordinary Business Operations.

The well-established precedent set forth above demonstrates that the Proposal addresses ordinary business matters and therefore is excludable under Rule 14a-8(i)(7). While the Staff stated in the 1998 Release that proposals "focusing on sufficiently significant social policy issues (e.g., significant discrimination matters) generally would not be considered to be

excludable," the Proposal does not focus on that policy issue but instead touches upon the issue of discrimination in the context of addressing a proposed policy that would apply to the settlement of certain types of claims. However, even where a proposal references or addresses a significant policy issue within the meaning of the Staff's interpretations of Rule 14a-8(i)(7), it may be excluded when the proposal also involves ordinary business issues. For example, in *JPMorgan Chase & Co.* (avail. Mar. 9, 2015), the Staff concurred in the exclusion of a proposal that requested that the company amend its human rights-related policies "to address the right to take part in one's own government free from retribution," and also included examples of companies that had adopted non-retaliation policies to protect employees' expressed political views and contributions in its supporting statement, because the proposal related to "[the company's] policies concerning its employees"). *See also Deere & Co.* (avail. Nov. 14, 2014) (concurring in the exclusion of a proposal requesting the implementation and enforcement of a company-wide employee code of conduct that included an anti-discrimination policy where the proposal also related to the company's "policies concerning its employees," an ordinary business matter).

Similarly, even where a proposal addresses a significant policy issue within the meaning of the Staff's interpretations of Rule 14a-8(i)(7), it may be excluded when it also addresses matters that relate to a company's ordinary business operations. For example, in *Bank of America Corp.* (avail. Feb. 19, 2014, *recon. denied* Mar. 10, 2014, *Comm. review denied* May 22, 2014), the Staff concurred in exclusion of a proposal under Rule 14a-8(i)(7) that addressed compensation arrangements raising a significant policy issue because the proposal also encompassed non-incentive based compensation arrangements that implicated the company's ordinary business operations. In *PetSmart, Inc.* (avail. Mar. 24, 2011), the proposal requested that the board require its suppliers to certify they had not violated "the Animal Welfare Act, the Lacey Act, or any state law equivalents," the principal purpose of which related to preventing animal cruelty. The Staff granted no-action relief under Rule 14a-8(i)(7) and stated, "[a]lthough the humane treatment of animals is a significant policy issue, we note your view that the scope of the laws covered by the proposal is 'fairly broad in nature from serious violations such as animal abuse to violations of administrative matters such as record keeping.'" *See also Apache Corp.* (avail. Mar. 5, 2008) (concurring in the exclusion of a proposal requesting the implementation of equal employment opportunity policies based on certain principles and noting that "some of the principles relate to Apache's ordinary business operations"); *General Electric Co.* (avail. Feb. 10, 2000) (concurring in the exclusion of a proposal relating to the accounting and use of funds for the company's executive compensation program because it both touched upon the significant policy issue of senior executive compensation, and involved the ordinary business matter of choice of accounting method); *Mattel, Inc.* (avail. Feb. 10, 2012) (concurring in the exclusion of a proposal that requested the company require its suppliers publish a report detailing their compliance with the International Council of Toy Industries Code of Business Practices, noting that the ICTJ encompasses "several topics that relate to…ordinary business operations

and are not significant policy issues"); *JPMorgan Chase & Co.* (avail. Mar. 12, 2010) (concurring in the exclusion of a proposal that requested the adoption of a policy banning future financing of companies engaged in a particular practice that impacted the environment because the proposal addressed "matters beyond the environmental impact of JPMorgan Chase's project finance decisions").

Here, the Proposal requests the adoption of a policy that would prohibit a broad range of contractual agreements with employees and other practices, regardless of context. The Proposal defines "inequitable employment practices" to mean a range of routine contractual agreements with employees, including arbitration, non-compete, and settlement agreements, that are longstanding and lawful practices commonly used by many companies across the country. *See Point Blank Solutions, Inc.* (avail. Mar. 10, 2008). Thus, the "inequitable employment practices" enumerated in the Proposal do not focus only on "significant discrimination matters" or other significant policy issues like those contemplated by the 1998 Release. Like the precedents discussed above, the Proposal relates to a broad range of ordinary business matters that extend beyond any significant policy issue touched upon by the Proposal. While we acknowledge that there has long been public debate surrounding some of the types of employee agreements covered by the Proposal in certain contexts, there is not widespread agreement that all of these practices are controversial.[1] Indeed, the Proponent acknowledges in its Supporting Statement that non-compete restrictions may be appropriate for "higher-level knowledge workers." Because the Proposal relates to a broad range of ordinary course employment practices, it does not focus on a significant policy issue within the meaning of the Staff's interpretations of Rule 14a-8(i)(7), and therefore, may be properly excluded.

CONCLUSION

Based upon the foregoing analysis, the Company intends to exclude the Proposal from its 2019 Proxy Materials, and we respectfully request that the Staff concur that the Proposal may be excluded under Rule 14a-8.

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[1] *See, e.g.*, *Non-compete Contracts: Economic Effects and Policy Implications*, Office of Econ. Policy, U.S. Dept. of Treasury (March 2016) at 15-16, *available at* https://www.treasury.gov/resource-center/economic-policy/Documents/UST%20Non-competes%20Report.pdf.

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

Sincerely,

Ronald O. Mueller

Enclosure

cc: Mark Hoffman, Amazon.com, Inc.
Richard Clayton, CtW Investment Group

EXHIBIT A

CtW Investment Group

December 18, 2018

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

Dear Mr. Zapolsky,

We hereby submit the enclosed shareholder proposal ("Proposal") for inclusion in Amazon.com, Inc.'s ("Company") proxy statement to be circulated to Company shareholders in conjunction with the next annual meeting of shareholders. The Proposal is submitted under Rule 14(a)-8 (Proposals of Security Holders) of the U.S. Securities and Exchange Commission's proxy regulations.

CtW is the beneficial owner of approximately 30 shares of the Company's common stock, which been held continuously for more than a year prior to this date of submission. The Proposal requests that the Board adopt a policy that in will not engage in any inequitable employment practices, which are:

- Mandatory arbitration of employment-related claims,
- Non-compete agreements with employees,
- No poach agreements with another company, and
- Non-disclosure agreements entered into in connection with arbitration or settlement of claims that any Citigroup employee engaged in unlawful discrimination or harassment.

CtW intends to hold the shares through the date of the Company's next annual meeting of shareholders. The record holder of the stock will provide the appropriate verification of the Fund's beneficial ownership by separate letter. Either the undersigned or a designated representative will present the Proposal for consideration at the annual meeting of shareholders.

If you have any questions or wish to discuss the Proposal, please contact Richard Clayton, Director of Research, at (202) 721-6038 or richard.clayton@ctwinvestmentgroup.com. Copies of correspondence or a request for a "no-action" letter should be forwarded to Mr. Clayton in care of the CtW Investment Group, 1900 L St. NW, Suite 900, Washington, DC 20036.

Sincerely,

Dieter Waizenegger
Executive Director, CtW Investment Group

RESOLVED that shareholders of Amazon.com, Inc. ("Amazon") urge the Board of Directors to adopt a policy that Amazon will not engage in any Inequitable Employment Practice. "Inequitable Employment Practices" are mandatory arbitration of employment-related claims; non-compete agreements with employees; agreements with other companies not to recruit each others' employees; and non-disclosure agreements ("NDAs") entered into in connection with arbitration or settlement of claims that any Amazon employee engaged in unlawful discrimination or harassment, unless such an NDA is requested by the person who was harassed or the victim of discrimination.

SUPPORTING STATEMENT

In recent years, companies have increasingly relied on a suite of contractual arrangements involving their employees, Inequitable Employment Practices, that burden the economy, impede labor mobility and prevent the discovery and redress of misconduct. As a result, there is a robust public debate over their use, including responses by legislators, regulators and state attorneys general.

Companies increasingly seek to impose non-compete restrictions, originally designed for higher-level knowledge workers, on entry-level workers. The Obama Administration opposed this expansion, and measures to curb it have been introduced in Congress and many states. Non-compete provisions stifle innovation and entrepreneurship, harming the broader economy. Amazon has been characterized as "more aggressive" than other Seattle-area tech companies in enforcing these provisions.[1]

Mandatory arbitration and NDAs undermine public policy by limiting remedies for wrongdoing and keeping misconduct secret. Mandatory arbitration precludes employees from suing in court for wrongs like wage theft, discrimination and harassment, and requires them to submit to private arbitration, which has been found to favor companies and discourage claims. Reports indicate that Amazon requires independent contractors who work for the company to agree to mandatory arbitration of claims against it, though Amazon denies doing so for employees.

Recent high-profile sexual harassment cases involving Fox News and Uber highlighted the impact of arbitration clauses. In December 2017, a bill to end mandatory arbitration of sexual harassment claims bill was introduced in Congress. All 56 state and territorial attorneys general urged Congressional leaders to support it.

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[1] https://www.geekwire.com/2017/business-personal-amazon-web-services-decides-enforce-non-compete-contracts/

The secrecy NDAs provide can allow a toxic culture to flourish, increasing the severity of eventual consequences and harming employee morale. NDAs were allegedly used to keep sexual harassment by Harvey Weinstein and Bill O'Reilly secret. Over 20% of Amazon employees who responded to a 2018 survey indicated that an NDA had kept them or their coworkers "from speaking up about important issues."[2]

Washington state recently banned the use of NDAs in sexual harassment cases and similar legislation has been proposed in New York, California and Pennsylvania. Federal legislation has been introduced to limit employers' ability to secure NDAs upfront and require employers to disclose information about sexual harassment claims.

Our Proposal asks Amazon to commit not to use any of the Inequitable Employment Practices, which we believe will encourage focus on human capital management and improve accountability. We urge shareholders to vote for this Proposal.

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[2] https://www.cio.com/article/3304297/careers-staffing/ndas-stifling-tech-workers-voices.html