

# COVINGTON

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December 30, 2019

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

**Re: Shareholder Proposal to Republic Services, Inc.**

Ladies and Gentlemen:

On behalf of Republic Services, Inc. (the “*Company*”), we are submitting this letter pursuant to Rule 14a-8(j) under the Securities Exchange Act of 1934, as amended (the “*Exchange Act*”), to notify the Securities and Exchange Commission (the “*Commission*”) of the Company’s intention to exclude from the proxy materials for its 2020 annual meeting of shareholders (the “*2020 Proxy Materials*”) a shareholder proposal (the “*Proposal*”) submitted by the International Brotherhood of Teamsters General Fund (the “*Proponent*”). We also request confirmation that the staff of the Division of Corporation Finance (the “*Staff*”) will not recommend enforcement action to the Commission if the Company omits the Proposal from the 2020 Proxy Materials for the reasons discussed below.

In accordance with Section C of Staff Legal Bulletin No. 14D (Nov. 7, 2008), we are emailing this letter to the Staff at [shareholderproposals@sec.gov](mailto:shareholderproposals@sec.gov). In addition, we are simultaneously sending a copy of this letter and its attachments to the Proponent as notice of the Company’s intent to omit the Proposal from the 2020 Proxy Materials. Likewise, we take this opportunity to inform the Proponent that if it elects to submit any correspondence to the Commission or the Staff with respect to the Proposal, a copy of that correspondence should be provided concurrently to the undersigned on behalf of the Company.

## THE PROPOSAL

The Proposal (attached hereto as Exhibit A) provides in pertinent part:

RESOLVED: That the shareholders of Republic Services, Inc. (the “*Company*”), urge the Board of Directors to seek shareholder approval of any senior executive officer’s new or renewed compensation package that provides for severance or termination payments with an estimated total value exceeding 2.99 times the sum of the executive’s base salary plus target short-term bonus.

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“Severance or termination payments” include: any cash, equity or other compensation that is paid out or vests due to a senior executive’s termination for any reason. Such payments including those provided under employment agreements, severance plans, and change-in-control clauses in long-term equity plans. Such payments do not include: life insurance, pension benefits, or other deferred compensation earned and vested prior to termination.

“Total value” of these payments includes: lumps-sum payments; payments offsetting tax liabilities; perquisites or benefits not vested under a plan generally available to management employees; post-employment consulting fees or office expense; and, equity awards if vesting is accelerated, or a performance condition waived, due to termination.

The Board shall retain the option to seek shareholder approval after material terms are agreed upon.

### BASIS FOR EXCLUSION

The Company hereby respectfully requests that the Staff concur in its view that the Company may exclude the Proposal from the 2020 Proxy Materials pursuant to Rule 14a-8(i)(7) because it micromanages the Company.

### ANALYSIS

Rule 14a-8(i)(7) permits the exclusion of shareholder proposals dealing with matters relating to a company’s “ordinary business operations.” The Commission has 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.” *Exchange Act Release No. 34-40018* (May 21, 1998)(the “1998 Exchange Act Release”). The term “ordinary business” in this context refers to “matters that are not necessarily ‘ordinary’ in the common meaning of the word, and is rooted in the corporate law concept providing management with flexibility in directing certain core matters involving the company’s business and operations.” *Id.*

The ordinary business exclusion rests on two central considerations: (1) the subject matter of the proposal (i.e., whether the subject matter involves a matter of ordinary business), provided the proposal does not raise significant social policy considerations that transcend ordinary business; and (2) the degree to which the proposal attempts to micromanage a company by “probing too deeply into matters of a complex nature upon which shareholders as a group, would not be in a position to make an informed judgment.” *Id.* A proposal may involve micromanagement if it “involves intricate detail, or seeks to impose specific time-frames or methods for implementing complex policies.” *Id.* Determinations as to the excludability of proposals on the basis of micromanagement “will be made on a case-by-case basis, taking into

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account factors such as the nature of the proposal and the circumstances of the company to which it is directed.” *Id.*

The consideration of the excludability of a proposal based on micromanagement “looks only to the degree to which a proposal seeks to micromanage” and does not focus on the subject matter of the proposal. *Staff Legal Bulletin No. 14J* (Oct. 23, 2018) (“*SLB 14J*”). The Staff has consistently permitted exclusion of shareholder proposals that attempt to micromanage a company by substituting shareholder judgment for that of management with respect to such complex day-to-day business operations. *See, e.g., Eli Lilly and Company* (Mar. 1, 2019) (proposal requesting the board to implement a policy that it will not fund, conduct or commission the use of the “Forced Swim Test” on the basis that the proposal micromanaged the Company “by seeking to impose specific methods for implementing complex policies”); *SeaWorld Entertainment, Inc.* (Apr. 23, 2018) (proposal requesting a ban of all captive breeding excludable on the basis of micromanagement for “seeking to impose specific methods of implementing complex policies”) (“*SeaWorld II*”); *SeaWorld Entertainment, Inc.* (Mar. 30, 2017, reconsideration denied Apr. 17, 2017) (proposal requesting the replacement of live orca exhibits with virtual reality experiences excludable for “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”). Additionally, the Staff has indicated that when it evaluates micromanagement arguments under Rule 14a-8(i)(7), it conducts an assessment of the level of prescriptiveness of the proposal. Specifically, the Staff’s guidance states that “[w]hen a proposal prescribes specific actions that the company’s management or the board must undertake without affording them sufficient flexibility or discretion in addressing the complex matter presented by the proposal, the proposal may micromanage the company to such a degree that exclusion of the proposal would be warranted.” *Staff Legal Bulletin No. 14K* (Oct. 16, 2019) (“*SLB 14K*”).

Although the Staff historically did not permit exclusion of proposals addressing senior executive compensation on the basis of micromanagement, the Staff indicated in *SLB 14J* that it no longer “believe[s] there is a basis for treating executive compensation proposals differently than other types of proposals” when analyzing a micromanagement argument. *Id.* The Staff recently has permitted exclusion of proposals under Rule 14a-8(i)(7) that involved matters related to senior executive compensation, on the basis that the proposals sought to micromanage the company. For example, in *AbbVie Inc.* (Feb. 15, 2019) and *Johnson & Johnson* (Feb. 14, 2019), the Staff granted relief under Rule 14a-8(i)(7) for proposals in which the proponents requested the companies adopt a policy that legal or compliance costs not be excluded from financial performance metrics used to evaluate performance for determining the amount or vesting of senior executive incentive compensation awards. The Staff granted relief pursuant to Rule 14a-8(i)(7) and concluded that each proposal “micromanages the Company by seeking to impose specific methods for implementing complex policies. Specifically, the Proposal[s], if implemented, would prohibit any adjustment of the broad categories of expenses covered by the Proposal without regard to specific circumstances or the possibility of reasonable exceptions.” Similarly, in *JPMorgan Chase & Co.* (Mar. 22, 2019), the Staff concurred in the exclusion of a proposal pursuant to Rule 14a-8(i)(7) that the board adopt a policy prohibiting the vesting of equity-based awards for senior executives due to a voluntary resignation to enter government service. The Staff granted relief under Rule 14a-8(i)(7) on the basis that the proposal

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“micromanages the Company by seeking to impose specific methods for implementing complex policies.”

When the Proposal is considered within the framework set forth in SLB 14J and SLB 14K and the no-action letters cited above, it is clear that it seeks to micromanage the Company. Here, the Proposal seeks a shareholder vote of any new or renewed executive officer compensation package that provides for severance or termination payments that exceed a total value of 2.99 times the sum of the executive officer’s base salary plus target short-term bonus. The Proposal sets limits on compensation that may be paid in connection with a termination of employment of an executive officer and would require that the Company seek shareholder approval of compensation if it exceeded such limit. However, pursuant to the charter of the Management Development and Compensation Committee (the “*Compensation Committee*”) of the Company’s board of directors (the “*Board*”), the Compensation Committee is tasked with determining the Company’s compensation philosophy and programs and making recommendations to the Board with respect to such programs.<sup>1</sup> This includes reviewing and approving employment contracts and other agreements entered into between the Company and its executive officers.

For example, as provided in the Company’s proxy statement for its 2019 annual meeting of shareholders (the “*2019 Proxy Statement*”), the Compensation Committee adopted the Company’s Executive Separation Policy (the “*Separation Policy*”) in 2010, to ensure the Company is able to attract and retain highly qualified and capable candidates to serve as executive officers of the Company “to maximize the value of [the Company] for the benefit of [the Company’s] shareholders.”<sup>2</sup> *2019 Proxy Statement*, at page 76. As disclosed in the 2019 Proxy Statement, pursuant to the Separation Policy, together with the Company’s compensation plans and applicable executive officer award agreements, an executive officer that is covered under the Separation Policy will receive designated compensation amounts dependent on the occurrence of certain scenarios. The 2019 Proxy Statement further provides that the Compensation Committee “may, in its discretion, make the Separation Policy applicable to other members of management” and “may use its discretion to make post-termination payments to executive officers that may not be required pursuant to...the Separation Policy if such payments are determined to be in [the Company’s] best interests.” *2019 Proxy Statement*, at pages 76-77. Given the Compensation Committee’s mandate to administer the Company’s executive compensation programs, the Proposal attempts to supplant the judgement of the Compensation Committee and Board with that of shareholders. The actions requested in the Proposal involve the precise type of prescriptive approach to complex matters at the heart of the micromanagement prong of Rule 14a-8(i)(7) and would “unduly limit the ability of management and the [B]oard to manage complex matters with a level of flexibility necessary to fulfill [its] fiduciary duties to shareholders.” *SLB 14K*.

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<sup>1</sup> The Compensation Committee’s charter is available on the Company’s website at: <https://investor.republicservices.com/static-files/219c14b2-39e5-45c7-8c98-cc67b279629f>.

<sup>2</sup> The 2019 Proxy Statement is available at: [https://www.sec.gov/Archives/edgar/data/1060391/000119312519098378/d650337ddef14a.htm#tx650337\\_140](https://www.sec.gov/Archives/edgar/data/1060391/000119312519098378/d650337ddef14a.htm#tx650337_140).

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The Proposal's Supporting Statement reinforces the micromanagement conclusion. For example, the Supporting Statement provides that requiring shareholder approval of severance payments with a specific threshold of 2.99 times an executive officer's base salary and short-term bonus "will provide valuable feedback, encourage restraint, and *strengthen* the hand of the Board's [C]ompensation [C]ommittee." [emphasis added]. However, the Board established the Compensation Committee precisely to make such specific executive officer compensation determinations. Thus, contrary to the Proponent's belief, the Proposal actually *weakens* the "hand" of the Compensation Committee by attempting to remove one of its designated responsibilities as set forth in its charter. Decisions related to whether and how to amend the terms or application of the Separation Policy fall squarely within the purview of the Compensation Committee, not shareholders. If implemented, the Proposal would effectively impose specific methods for implementing complex policies and therefore, "prob[es] too deeply into matters of a complex nature upon which shareholders, as a group, are not in a position to make an informed judgment." *1998 Exchange Act Release*. This is precisely the type of effort that Rule 14a-8(i)(7) is intended to prevent.

Finally, the Compensation Committee's decisions with respect to its executive compensation policies and programs involve complex determinations that are dependent on expertise and are informed by a myriad of factors. Similar to the *AbbVie Inc.*, *Johnson & Johnson* and *JPMorgan Chase & Co.* no-action letters cited above, the Proponent is attempting to impose specific conditions around the Company's implementation of intricate compensation policies and programs. The Proposal attempts to overtake the Compensation Committee's process by dictating when and how severance and termination payments are payable to executive officers. Mandating that shareholders be given the ability to effectively determine the type and amount of severance and termination payments that may be payable to executive officers micromanages intricate details of the Compensation Committee's decision-making process surrounding a critical component of the Company's executive compensation program. Despite the Proposal's contrary suggestion, the Board, through the Compensation Committee, remains in a better position than shareholders to oversee executive officer severance and termination payments. As a result, the Proposal is precisely the type of proposal that the Commission has stated would limit the judgement and discretion of the Board and management and may be excluded under Rule 14a-8(i)(7).

Consistent with the Staff's guidance and the no-action letters cited above, the Proposal would impermissibly micromanage the Company and the Proposal, therefore, may be excluded from the 2020 Proxy Materials pursuant to Rule 14a-8(i)(7).

## CONCLUSION

Based upon the foregoing analysis, we respectfully request that the Staff concur that the Company may exclude the Proposal from the 2020 Proxy Materials. Should the Staff disagree with the conclusions set forth in this letter, or should you require any additional information in support of our position, we would welcome the opportunity to discuss these matters with you as you prepare your response. Any such correspondence should be sent to Kerry S. Burke at [kburke@cov.com](mailto:kburke@cov.com), or David H. Engvall at [dengvall@cov.com](mailto:dengvall@cov.com). If we can be of any further

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assistance in this matter, please do not hesitate to call me at (202) 662-5297, or David at (202) 662-5307.

Very truly yours,



Kerry S. Burke

cc: Catherine Ellingsen, Republic Services, Inc.  
Adrienne Wilhoit, Republic Services, Inc.  
Lauren McKeon, Republic Services, Inc.  
Ken Hall, International Brotherhood of Teamsters  
David H. Engvall, Covington & Burling LLP

**Exhibit A**

Cover Letter and Proposal

# INTERNATIONAL BROTHERHOOD OF TEAMSTERS

JAMES P. HOFFA  
General President

25 Louisiana Avenue, NW  
Washington, DC 20001



KEN HALL  
General Secretary-Treasurer

202.624.6800  
www.teamster.org

December 4, 2019

**BY FAX: 480.627.2351**

**BY EMAIL: cellingsen@republicservices.com**

**BY UPS GROUND**

Catharine D. Ellingsen, Esq.  
Executive Vice President, Chief Legal Officer,  
Chief Ethics & Compliance Officer and Corp. Secy.  
Republic Services, Inc.  
18500 North Allied Way  
Phoenix, AZ 85054

Dear Ms. Ellingsen:

I hereby submit the enclosed resolution on behalf of the Teamsters General Fund, in accordance with SEC Rule 14a-8, to be presented at the Company's 2020 Annual Meeting.

The General Fund has owned 356 shares of Republic Services, Inc., continuously for at least one year and intends to continue to own at least this amount through the date of the annual meeting. Enclosed is relevant proof of ownership.

Any written communication should be sent to the above address via U.S. Postal Service, UPS, or DHL, as the Teamsters have a policy of accepting only union delivery. If you have any questions about this proposal, please direct them to Louis Malizia of the Capital Strategies Department at (202) 624-6930.

Sincerely,

A handwritten signature in black ink that reads "Ken Hall".

Ken Hall  
General Secretary-Treasurer

KH/lm  
Enclosures

**RESOLVED:** That the shareholders of Republic Services, Inc. (“the Company”), urge the Board of Directors to seek shareholder approval of any senior executive officer’s new or renewed compensation package that provides for severance or termination payments with an estimated total value exceeding 2.99 times the sum of the executive’s base salary plus target short-term bonus.

“Severance or termination payments” include: any cash, equity or other compensation that is paid out or vests due to a senior executive’s termination for any reason. Such payments including those provided under employment agreements, severance plans, and change-in-control clauses in long-term equity plans. Such payments do not include: life insurance, pension benefits, or other deferred compensation earned and vested prior to termination.

“Total value” of these payments includes: lump-sum payments; payments offsetting tax liabilities; perquisites or benefits not vested under a plan generally available to management employees; post-employment consulting fees or office expense; and, equity awards if vesting is accelerated, or a performance condition waived, due to termination.

The Board shall retain the option to seek shareholder approval after material terms are agreed upon.

**SUPPORTING STATEMENT:**

We believe that requiring shareholder ratification of “golden parachute” severance packages with a total cost exceeding 2.99 times an executive’s base salary plus bonus will provide valuable feedback, encourage restraint, and strengthen the hand of the Board’s compensation committee.

According to the Summary of Potential Payments Upon Termination or Change in Control on page 78 of the Company’s April 2019 Proxy Statement, if there is a change of control and termination, the CEO will receive three times the sum of his base salary and annual cash and long-term incentive plan awards.

If there had been a change of control and termination on Dec. 31 2018, the CEO would have received a cash severance of \$17.9 million upon termination, in addition to payments for equity awards and other benefits. In the CEO’s case, he would receive a total of \$54.6 million in a change in control and termination scenario.

If you agree with us that the Company should seek shareholder ratification of severance packages with a total cost exceeding 2.99 times an executive’s base salary plus annual incentive bonus, then please vote for this proposal.



**December 4, 2019**

Catharine D. Ellingsen, Esq.  
Executive Vice President, Chief Legal Officer,  
Chief Ethics & Compliance Officer & Corp. Secy.  
Republic Services, Inc.  
18500 N. Allied way  
Phoenix, AZ 85054

**RE: Republic Services, Inc. - Cusip # 760759100**

Dear Ms. Ellingsen:

Amalgamated Bank is the record owner of 356 shares of common stock (the "Shares") of Republic Services Inc., beneficially owned by the International Brotherhood of Teamsters General Fund. The shares are held by Amalgamated Bank at the Depository Trust Company in our participant account # 2352. The International Brotherhood of Teamsters General Fund has held the shares continuously since 12/08/2008 and will continue to hold these shares through the date of the Annual Shareholder Meeting.

If you have any questions or need anything further, please do not hesitate to call me at (212) 895-4974.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Suzette Spooner', with a long horizontal flourish extending to the right.

Suzette Spooner  
Vice President

cc: Louis Maliza

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***America's Labor Bank®***

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