



DIVISION OF  
CORPORATION FINANCE

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

April 3, 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 Oxfam America, Inc. et al. (the "Proponents") for inclusion in the Company's proxy materials for its upcoming annual meeting of security holders. We also have received correspondence from the Proponents dated March 4, 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: Sarah Zoen  
Oxfam America, Inc.  
sarah.zoen@oxfam.org

April 3, 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 commit to conducting and making available to shareholders human rights impact assessments for at least three food products the Company sells that present a high risk of adverse human rights impacts.

There appears to be some basis for your view that the Company may exclude the Proposal under rule 14a-8(i)(7). In our view, the Proposal would micromanage the Company by seeking to impose specific methods for implementing complex policies in place of the ongoing judgments of management as overseen by its board of directors. 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). In reaching this position, we have not found it necessary to address the alternative basis for omission upon which the Company relies.

Sincerely,

Lisa Krestynick  
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.

March 4, 2019

Via e-mail at [shareholderproposals@sec.gov](mailto: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 Oxfam America, the Adrian Dominican Sisters and Daughters of Charity, Inc.

Ladies and Gentlemen,

Pursuant to Rule 14a-8 under the Securities Exchange Act of 1934, Oxfam America (the "Proponent") submitted a shareholder proposal (the "Proposal") to Amazon.com Inc. ("Amazon" or the "Company"). The Proposal asks Amazon's board to commit to conducting and making available to shareholders Human Rights Impact Assessments ("Assessments") for at least three food products Amazon sells that present a high risk of adverse human rights impacts.

In a letter to the Division dated December 21, 2018 (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)(5), as irrelevant to the Company's business; and 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 either basis, and the Proponent respectfully requests 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 commit to conducting and making available to shareholders Human Rights Risk Assessments ("Assessments") for at least three food products Amazon sells that present a high risk of adverse human rights impacts. An Assessment should specify the standards used, identify and assess actual and potential adverse impacts associated with the product and describe how the findings will be integrated in order to prevent and/or remedy impacts.

## **Background**

The United Nations Guiding Principles on Business and Human Rights ("UNGPs"), a set of international legal norms, were developed to implement the United Nations' "protect, respect and remedy" framework for human rights and was endorsed by the UN's Human Rights Council in 2011. The goal of the UNGPs is "enhancing standards and practices with regard to business and human rights so as to achieve tangible results for affected individuals and communities, and thereby also contributing to a socially sustainable globalization."<sup>1</sup>

The UNGPs state that businesses "should avoid infringing on the human rights of others and should address adverse human rights impacts with which they are involved." Human rights encompass the rights in the Universal Declaration of Human Rights, and the two instruments codifying it, as well as the eight core conventions in the Declaration on Fundamental Principles and Rights at Work.<sup>2</sup>

The UNGPs make clear that companies not only should "[a]void causing or contributing to adverse human rights impacts through their own activities, and address such impacts when they occur," but also "[s]eek to prevent or mitigate adverse human rights impacts that are directly linked to their operations, products or services by their business relationships, even if they have not contributed to those impacts."<sup>3</sup> Three elements enable businesses to meet those responsibilities: a policy commitment to respect human rights; a "human rights due diligence process to identify, prevent, mitigate and account for how they address their impacts on human rights"; and a process for remedying adverse human rights impacts.<sup>4</sup>

The Proposal addresses the second element, human rights due diligence, a process that includes conducting human rights impact assessments. Human rights due diligence "should include assessing actual and potential human rights impacts,

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<sup>1</sup> United Nations Human Rights Office of the High Commissioner, *United Nations Guiding Principles on Business and Human Rights*, at 1 (2011) (hereinafter, "UNGP") (available at [https://www.ohchr.org/documents/publications/GuidingprinciplesBusinesshr\\_eN.pdf](https://www.ohchr.org/documents/publications/GuidingprinciplesBusinesshr_eN.pdf)).

<sup>2</sup> UNGP, at 14.

<sup>3</sup> UNGP, at 14.

<sup>4</sup> UNGP, at 16.

integrating and acting upon the findings, tracking responses, and communicating how impacts are addressed.”<sup>5</sup> The UNGPs recognize that companies with many business relationships may need to concentrate their efforts on the areas of highest risk and identifies “particular operations, products or services involved”<sup>6</sup> as a possible basis for finding that an area should be prioritized.

Identifying potential impacts involves “assessing the human rights context prior to a proposed business activity, where possible; identifying who may be affected; cataloguing the relevant human rights standards and issues; and projecting how the proposed activity and associated business relationships could have adverse human rights impacts on those identified.”<sup>7</sup>

### Relevance

Rule 14a-5, sometimes called the “relevance” exclusion, allows a company to omit a proposal that:

1. Relates to operations which account for less than 5 percent of the company’s total assets at the end of its most recent fiscal year;
2. Relates to operations which account for less than 5 percent of the company’s net earnings and gross sales for its most recent fiscal year; and
3. Is not “otherwise significantly related to the company’s business.”

Amazon claims that the Proposal is not relevant to the Company because (a) it relates to products which account for less than 5% of Amazon’s assets, earnings and revenues; and (b) there is not a sufficiently significant relationship between the Proposal and the Company’s business. The Proponents acknowledge that no three food products sold by Amazon or its subsidiary Whole Foods Market (“WFM”) account for 5% or more of Amazon’s annual revenues, annual revenues or total assets. However, the subject of the Proposal—human rights impacts associated with food products sold by Amazon and/or WFM—is otherwise significantly related to Amazon’s business, making exclusion on relevance grounds inappropriate.

### *Supply Chain Human Rights Abuses Can and Do Damage Companies*

Supply chain human rights abuses have tangible negative effects on companies by damaging their brands and lowering sales. For example, reports of human rights violations at Asian apparel factories dogged Nike through the 1990s, and as revenues sagged, its CEO admitted that “[t]he Nike product has become synonymous with slave wages, forced overtime, and arbitrary abuse . . . the American consumer doesn’t want to buy products made under abusive conditions.”

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<sup>5</sup> UNGP, at 17.

<sup>6</sup> UNGP, at 18.

<sup>7</sup> UNGP, at 19.

Nike then made efforts to curb the abuses, resulting in improved worker conditions and underscoring that the company's bottom line was harmed by the revelation of unaddressed human rights abuses in its supply chain.<sup>8</sup>

Food retailers are not immune from these effects. Companies' responses to controversies over human rights abuses suggest that fear of lost sales is a genuine concern. For example, reports by the Associated Press ("AP") and The New York Times in 2014 and 2015, for which the AP received a Pulitzer Prize, revealed horrific human rights abuses, including forced and child labor, physical punishment and even worker deaths, forced overtime and egregious health and safety violations, by companies processing shrimp in Thailand. That shrimp, sold in the U.S. by Thai Union, was traced to major U.S. supermarkets, including WFM. Much coverage of the abuses cited WFM's involvement and article headlines often named WFM.<sup>9</sup> (WFM denied the allegations after conducting its own investigation.) Amid calls for a boycott of Thai shrimp, an unnamed U.S. retailer stopped buying the product and acknowledged the potential harm, stating, "AP painted a very bad picture. Obviously, it is something we don't want to be associated with."<sup>10</sup>

Following those reports, Greenpeace started its own campaign against Thai Union, which also sells major canned tuna brands like Starkist, citing unsustainable tuna fishing practices and worker exploitation. The campaign's tactics included presenting nearly 700,000 signatures on a petition demanding that Thai Union use more sustainable fishing methods and make changes to help workers,<sup>11</sup> convincing Thai Union customers Mars and Nestle to make commitments and press Thai Union on its practices<sup>12</sup> and erecting a sculpture of a can of tuna outside the headquarters of Thai Union UK subsidiary John West.<sup>13</sup> That a consumer-oriented campaign led to improved policies and practices by Thai Union<sup>14</sup> shows that fear of lost sales motivates changes in behavior.

<sup>8</sup> Max Nisen, "How Nike Solved its Sweatshop Problem," Business Insider, May 9, 2013.

<sup>9</sup> E.g., Chris Isidore, "Whole Foods Denies its Shrimp is Prepared by Slave Labor," CNNMoney, Dec. 15, 2015; Adam Chandler, "Walmart, Whole Foods and Slave Labor Shrimp," The Atlantic, Dec. 16, 2015; Jonathan Chew, "Report Alleges Walmart and Whole Foods Are Selling Shrimp Peeled by Slaves," Fortune, Dec. 14, 2015.

<sup>10</sup> Christine Blank, "Are US Buyers Boycotting Thailand Shrimp?" Jan. 13, 2016 (<https://www.seafoodsource.com/news/supply-trade/are-u-s-buyers-boycotting-thailand-shrimp>).

<sup>11</sup> <http://www.greenpeace.org/seasia/Nearly-700000-people-call-on-Thai-Union-for-more-sustainable-ethical-tuna/>

<sup>12</sup> <http://www.greenpeace.org/archive-international/en/press/releases/2017/Mars-Nestle-commit-to-clean-up-pet-food-supply-chains-increasing-pressure-on-Thai-Union-to-act/>

<sup>13</sup> <https://www.euractiv.com/section/global-europe/news/tv-chef-and-greenpeace-in-thailand-tuna-protest/>

<sup>14</sup> <http://www.thaiunion.com/en/blog/sustainability/540/greenpeace-and-thai-union-reach-agreement-company-aims-to-drive-positive-change>. Thai Union's specific commitments are explained here: <https://www.greenpeace.org/archive-international/Global/international/documents/oceans/Thai-Union-Commitments.pdf>.

The financial effects of being associated with human rights violations are not limited to the specific product at issue but can also damage a company's brand,<sup>15</sup> which is a key element of the business case for preventing such abuses. WFM has recognized the importance of public trust and other intangible factors in building and maintaining its brand. In the "risk factors" section of its last 10-K before its acquisition by Amazon, WFM stated: "Brand value is based in large part on perceptions of subjective qualities, and even isolated incidents can erode trust and confidence, particularly if they result in adverse publicity, governmental investigations or litigation, which can negatively impact these perceptions and our business."<sup>16</sup> WFM's first national ad campaign, which trumpeted that "Values Matter," included shots of farmworkers alongside text stating, "We want people, and animals, and the places our food comes from to be treated fairly."<sup>17</sup>

Individual campaigns based on human rights abuses have led WFM to change its behavior. Controversy arose in 2015 about two products WFM was selling—Quixotic Farming tilapia and Haystack Mountain Goat Dairy—that were produced using U.S. prison labor. Activists pointed to the meager wages inmates earned and organized protests. WFM stopped carrying the products, explaining that "we always want to make sure we are in-tune with our customers' wishes."<sup>18</sup> In 2012, WFM halted sales of Scharffen Berger chocolate because its parent, Hershey's, could not certify that cocoa used to make the chocolate was produced without child labor. Reports indicate that consumer pressure factored into WFM's decision.<sup>19</sup>

In addition to generating consumer pressure and harming a company's brand, human rights abuses also can disrupt supply chains.<sup>20</sup> According to Business

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<sup>15</sup> The recent opposition to Amazon's Queens, NY HQ2, and Amazon's abandonment of its plan to site there, while not driven by supply chain human rights concerns, illustrates the concrete consequences of negative labor-related brand associations. (J. David Goodman, "Amazon Pulls Out of Planned New York City Headquarters," The New York Times, Feb. 14, 2019) (describing community opposition based on Amazon's anti-union stance))

<sup>16</sup> Filing on Form 10-K, filed on Nov. 17, 2017, at 4. Nestle, for example, was reported to have lost as much as \$40 million in sales in the early 1980s as a result of the consumer boycott of its products in spurred by unethical marketing of baby formula.

(<https://blogs.baruch.cuny.edu/mgt4880nestle/2013/04/24/financial-impact-and-image-rebuilding/>)

<sup>17</sup> Joe Dobrow, "The Un-Marketing and Re-Marketing of Whole Foods," Fast Company, Oct. 23, 2014.

<sup>18</sup> Susanna Kim, "Whole Foods Suppliers Defend Using Prison Labor," ABCNews.com, Oct. 5, 2015 (quoting Brookings Institution Senior Fellow Gary Burtless that WFM's decision was "based on a hard-headed calculation.")

<sup>19</sup> <https://laborrights.org/releases/whole-foods-drops-hershey%E2%80%99s-scharffen-berger-chocolates-over-child-labor-abuses>

<sup>20</sup> Paul Toyne, "How CSR Can Help Manage Risk," Management Issues, Nov. 12, 2004; "UN Guiding Principles Reporting Framework With Implementation Guidance," at 16, 18, 23 (2015)

([https://www.ungpreporting.org/wp-content/uploads/UNGPRreportingFramework\\_withguidance2017.pdf](https://www.ungpreporting.org/wp-content/uploads/UNGPRreportingFramework_withguidance2017.pdf));

Christoph M. Schiller, "Global Supply-Chain Networks and Corporate Social Responsibility," at 7 (working paper 2013)

for Social Responsibility, “a supplier with ongoing labor challenges could create delivery delays due to labor stoppages or poor productivity. . . Managing these risks helps companies meet the demands of their customer bases, thereby protecting their market share, and control their costs.”<sup>21</sup>

*Investors Support the Approach Recommended in the Proposal*

The Proposal asks WFM and Amazon to shift from being reactive to being proactive and to identify potential human rights risks before they lead to boycotts or other disruptions. This approach has investor support:

- Fifty-five signatories to the Principles for Responsible Investment (“PRI”) with US \$3.9 trillion in assets under management have endorsed the “Investor Expectations on Labour Practices in Agricultural Supply Chains,” which recommends that companies implement the UNGP and assess labor-related risks in the supply chain by both geography and product.<sup>22</sup>
- The International Corporate Governance Network (“ICGN”), which counts institutional investors with over US \$34 trillion in AUM as members,<sup>23</sup> supports the UNGP and “encourages investors to consider these principles in assessing human rights risks in portfolio companies.”<sup>24</sup>
- In “Investor Expectations of the Human Rights Responsibilities of Mining Companies,” the Shareholder Association for Research and Education (SHARE), which provides responsible investment services to over 30 Canadian institutional investors, states that “[d]ue diligence is at the heart of the responsibility to respect” human rights.<sup>25</sup>
- The Investor Alliance on Human Rights (“IAHR”), whose 135 members include large institutional investors like the New York State Common Retirement System, undertook an “urgent action” in 2018, pressing companies to conduct human rights due diligence to identify actual and potential human rights impacts related to contracts with the U.S. government in light of the “zero tolerance” immigration policy and family separations.<sup>26</sup>

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(<https://www1.villanova.edu/content/dam/villanova/VSB/assets/marc/marc2018/SSRN-id3089311.pdf>).

<sup>21</sup> Business for Social Responsibility, “The Business Case for Supply Chain Sustainability,” at 6 (Dec. 2010).

<sup>22</sup> See

[https://www.domini.com/sites/default/files/01012017\\_Investor%20ExpectationsOnLabourPracticesinAgriculturalSupplyChains\\_Statement\\_PRIEndorsed-CoSigner.pdf](https://www.domini.com/sites/default/files/01012017_Investor%20ExpectationsOnLabourPracticesinAgriculturalSupplyChains_Statement_PRIEndorsed-CoSigner.pdf)

<sup>23</sup> See [http://icgn.flpbks.com/icgn\\_2017-2018\\_annual\\_review/#p=2](http://icgn.flpbks.com/icgn_2017-2018_annual_review/#p=2).

<sup>24</sup> International Corporate Governance Network, “ICGN Viewpoint: Human Rights Through a Corporate Governance Lens,” Apr. 2015.

<sup>25</sup> SHARE, “Investor Expectations of the Human Rights Responsibilities of Mining Companies,” at 5 (Oct. 2013).

<sup>26</sup> See <https://investorsforhumanrights.org/rapid-response/guidance-corporate-human-rights-due-diligence-related-immigration-detention-and->

- Sixty IAHR members sent letters in 2018 to 32 companies in the jewelry industry, including retailers, urging them to conduct human rights due diligence on their supply chains.<sup>27</sup>

*The Proposal's Request That Amazon Identify and Disclose Actual and Potential Risks is Consistent with the UNGP and Does Not Imply That Harms from Supply Chain Human Rights Abuses are Speculative*

Amazon argues that the Proposal raises only “[t]he mere possibility of reputational or economic harm,”<sup>28</sup> citing the Proposal’s reference to “identify[ing] potential impacts” and the use of “may” in connection with human rights violations. Asking Amazon to identify *potential and existing* adverse impacts is consistent with the purpose of human rights due diligence and the UNGP’s focus on preventing, as well as remedying, adverse impacts. The Proposal’s reference to potential impacts thus should not be read as conceding that no actual adverse impacts exist. As discussed above, supply chain human rights abuses have negative consequences for companies, and WFM has changed its behavior in response to customer campaigns regarding abuses; accordingly, this link is not merely speculative.

Moreover, the Proposal qualifies certain statements using the word “may” because those statements would not otherwise be accurate: For example, pricing pressure on suppliers may, but does not always, lead to human rights abuses. Whether a particular human rights abuse becomes a problem for a company downstream in the supply chain likely depends on many factors, including the extent and severity of the abuse, the amount of media attention the abuse receives and the measures, if any, proposed to remedy the violation. Especially given the lack of disclosure by Amazon, it would be unreasonable to require the Proponents to show the existence of actual human rights impacts or prove that human rights impacts always cause financial harm to avoid exclusion on relevance grounds.

*A Substantial Gap Exists Between the Proposal's Request and the Steps Amazon Has Already Taken*

Amazon points to the steps it has already taken to manage human rights risk as evidence that the Proposal is not relevant to the Company. The proponents acknowledge that Amazon has adopted a Supplier Code of Conduct—WFM has its own standards and requires suppliers to be audited—claims to use a variety of tools to identify human rights risk and benchmark its practices, and participates in various organizations and programs with some connection to human rights. Even considered together, Amazon’s current measures do not accomplish the central

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<sup>27</sup> See <https://www.hrw.org/news/2018/09/27/investors-call-jewelry-industry-stronger-human-rights-practices>.

<sup>28</sup> No-Action Request, at 7.

objective of the Proposal—Amazon performing and disclosing to shareholders human rights impact assessments.

First, none of the measures cited by Amazon involve public disclosure of risk assessments, audit results or any other data about adverse human rights impacts, which is a core element of the Proposal. Many experts in the field believe that the most effective human rights due diligence processes involve public reporting of impacts.<sup>29</sup> Demand for transparency comes from many constituencies, including investors, consumers, employees and communities in which companies operate.<sup>30</sup> According to a 2016 guide by the Global Reporting Initiative, “Transparency and reporting play an important role in a company’s success, not only since stakeholders are demanding more and more information on how sustainability is being integrated into the business, but also because reporting contributes to companies’ awareness and understanding of where their impacts are and what they can do to minimize the negative while maximizing the positive.”<sup>31</sup>

As well, Amazon and WFM do not conduct human rights impact assessments, but instead rely on supplier audits, which appear to reach only first-tier suppliers, and certification programs.<sup>32</sup> Human rights impact assessments differ in several fundamental ways from conventional supplier audits, which on their own generally “fail to pick up serious labour rights abuses.”<sup>33</sup>

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<sup>29</sup> See Ethical Trading Initiative, “Human Rights Due Diligence Framework,” at 5 ([https://www.ethicaltrade.org/sites/default/files/shared\\_resources/eti\\_human\\_rights\\_due\\_diligence\\_framework.pdf](https://www.ethicaltrade.org/sites/default/files/shared_resources/eti_human_rights_due_diligence_framework.pdf)).

<sup>30</sup> Shift & Mazars LLP, “UN Guiding Principles Reporting Framework With Implementation Guidance,” at 13 (2015) ([https://www.ungpreporting.org/wp-content/uploads/UNGPRreportingFramework\\_withguidance2017.pdf](https://www.ungpreporting.org/wp-content/uploads/UNGPRreportingFramework_withguidance2017.pdf)); <https://www.bsr.org/en/our-insights/blog-view/five-best-practices-in-human-rights-reporting>; “Investor Expectations on Labour Practices in Agricultural Supply Chains,” at 2 ([https://www.domini.com/sites/default/files/01012017\\_Investor%20ExpectationsOnLabourPracticesinAgriculturalSupplyChains\\_Statement\\_PRIEndorsed-CoSigner.pdf](https://www.domini.com/sites/default/files/01012017_Investor%20ExpectationsOnLabourPracticesinAgriculturalSupplyChains_Statement_PRIEndorsed-CoSigner.pdf))

<sup>31</sup> “Shining a Light on Human Rights: Corporate Human Rights Performance Disclosure in the Mining, Energy and Financial Sectors,” at 3 (Oct. 2016).

<sup>32</sup> No-Action Request, at 9-10.

<sup>33</sup> Ethical Trading Initiative, “Human Rights Due Diligence Framework,” at 23; see also IEH-Ethical Trading Initiative Norway, “A Guide to Human Rights Due Diligence in Global Supply Chains,” at 14 (2013) (“Although systematic, [auditing] has shown to be only partly successful, such as in the area of occupational health and safety. In other important areas such as freedom of association, collective bargaining, working hours and wages, the model has shown to be insufficient.”); Shift, “From Audit to Innovation: Advancing Human Rights in Global Supply Chains,” at 8 (Aug. 2013) (“By 2005, [H&M] had grown quite discouraged by the results of its audit program: while audits were catching the small infractions, they were missing the bigger picture issues; the program was failing to produce improvements over time; and its supplier base seemed uncommitted to making those improvements.”)

- Audits are a snapshot of compliance at a point in time,<sup>34</sup> while human rights impact assessment identifies both current and potential impacts.<sup>35</sup>
- Human rights impact assessment is not limited to first-tier suppliers and does not rely on representations of those suppliers regarding the conduct of their upstream suppliers, as Amazon and WFM appear to do.<sup>36</sup>
- Human rights impact assessment involves significant stakeholder consultation, which does not occur in audits.<sup>37</sup>
- Audits do not generally identify the root cause of violations,<sup>38</sup> which can be crucial in determining whether a company is contributing to violations. For example, the price a company pays to its suppliers may be too low to allow the supplier to pay adequate wages and provide safe working conditions<sup>39</sup> or a company may change requirements suddenly without considering adverse impacts on suppliers.<sup>40</sup>

Supplier audits can be a source of information, then, for human rights impact assessment,<sup>41</sup> but are not alone up to the task of identifying and assessing actual and potential adverse human rights impacts. A substantial gap thus exists between the human rights impact assessment requested in the Proposal and Amazon and WFM's current practices.

*The Board's Analysis of the Proposal's Relevance Was Not Well-Reasoned and Relied on Inappropriate Factors*

In the No-Action Request, Amazon described an analysis performed by the Nominating and Corporate Governance Committee (the "Committee"), which concluded that the Proposal was not otherwise significantly related to Amazon's business. Because the Committee's analysis took into account inappropriate factors and its conclusion was not well-reasoned, it should not be accorded deference.

<sup>34</sup> <https://www.ethicaltrade.org/issues/audits-and-beyond>

<sup>35</sup> UNGP, at 18.

<sup>36</sup> See No-Action Request, at 9 (Amazon "engages with [suppliers] to confirm that they uphold all of the Company's standards and expectations as detailed in the Supplier Code of Conduct"; WFM "will not knowingly work with suppliers who engage in practices such as forced labor or human trafficking, and expects its suppliers to ensure that they abide by the same standards.")

<sup>37</sup> EY, "Human Rights and Professional Wrongs: Rethinking Corporate Social Compliance in the Supply Chain," at 3 ([https://www.ey.com/Publication/vwLUAssets/EY\\_-\\_Human\\_rights\\_and\\_professional\\_wrongs/\\$FILE/ey-Social-compliance-and-human-rights-report.pdf](https://www.ey.com/Publication/vwLUAssets/EY_-_Human_rights_and_professional_wrongs/$FILE/ey-Social-compliance-and-human-rights-report.pdf))

<sup>38</sup> Ethical Trading Initiative, "Human Rights Due Diligence Framework," at 18.

<sup>39</sup> Ethical Trading Initiative, "Human Rights Due Diligence Framework," at 13.

<sup>40</sup> Shift, "From Audit to Innovation: Advancing Human Rights in Global Supply Chains," at 6, 20 (Aug. 2013)

<sup>41</sup> See, e.g., Shift & Mazars LLP, "UN Guiding Principles Reporting Framework With Implementation Guidance," at 81-82, 84 (supplier audits may help companies track their performance or determine whether its efforts to address human rights issues are effective).

The Committee's analysis considered the fact (really itself an opinion) that "the Proposal does not relate to the Company's core business activities" because it focuses on three food products sold by Amazon. That assertion is inconsistent with Amazon's statement that its business is "sell[ing] or offer[ing] for sale hundreds of millions of products through the Company's online and physical stores"<sup>42</sup>—Amazon does not explain how the Proposal's focus on products the Company sells somehow falls outside of that core business. Amazon's argument here is also at odds with its later contention that it is entitled to omit the Proposal in reliance on the ordinary business exclusion.

The Committee's analysis appears to rest on the incorrect notion that the Proposal is not "tailored to" the Company's operations because it seeks to "mandat[e] a standard for selection of [the products on which to report] that does not take into account whether the Company is responsible for or controls the production of such products."<sup>43</sup> Put more simply, Amazon urges that the Proposal is not relevant to its business because it asks the Company to report on impacts associated with products made by suppliers. That objection is illogical, given Amazon's business, which primarily involves selling products for which the Company not responsible and whose production Amazon does not control.

The Committee erroneously considered the quantitative significance of the food products on which the Proposal requests reporting in determining whether the qualitative part of Rule 14a-8(i)(5)'s test—whether the Proposal is "otherwise significantly related" to Amazon's business--was satisfied. The qualitative test does not even come into play unless, as is the case here, a proposal does not satisfy the 5% test. Thus, the quantitative impact of the Proposal is irrelevant to whether the qualitative standard is met.

Amazon's existing "standards, policies and practices relating to human rights in the Company's supply chain"<sup>44</sup> were also taken into account in the Committee's analysis. From the discussion contained in the No-Action Request, there is no basis for viewing as well-reasoned<sup>45</sup> the Committee's conclusion that "the differences

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<sup>42</sup> No-Action Request, at 8.

<sup>43</sup> No-Action Request, at 8.

<sup>44</sup> No-Action Request, at 8-10.

<sup>45</sup> SLB 14I (Nov. 1, 2017) states that a "well-developed discussion" of the board's analysis of a particular policy issue will assist the Staff in its review. In a webcast held shortly after the SLB was issued, Matt McNair, Senior Special Counsel, Office of Chief Counsel of the Division of Corporation Finance, stated that "[t]he most important thing is to make sure that the description of the board process and their findings is sufficiently detailed so that we can get a good sense as to whether those conclusions are well-informed and well-reasoned." (See Transcript of Webcast Hosted by TheCorporateCounsel.net on Nov. 14, 2017, "Shareholder Proposals: Corp. Fin. Speaks," (available at [https://www.thecorporatecounsel.net/Webcast/2017/11\\_14/transcript.htm#1](https://www.thecorporatecounsel.net/Webcast/2017/11_14/transcript.htm#1))) The Proponents acknowledge that the views presented in the webcast were those of Mr. McNair personally and not official views of the Division or Commission.

between the specific request of the Proposal and the Company's existing policies, practices and disclosures [are not] significant to the Company's operations."

The Committee seems not to have considered whether the "many" policies and practices accomplish the same objective as the Proposal, and many of the items to which Amazon points are irrelevant to the Proposal's request. For example, training, many aspects of the certification programs and industry associations Amazon identifies, and benchmarking of standards do not relate to the Proposal's goal of having Amazon conduct human rights impact assessments. A large quantity of initiatives is not the same thing as initiatives working toward the Proposal's objective.

As discussed above, many investors, acting individually and through organizations such as the PRI, IAHR and ICGN, view human rights abuses as significant investment risks and support companies conducting human rights impact assessments in order to remedy and prevent violations. That "[t]he Company's shareholders generally have not expressed narrow product-specific supply chain concerns"<sup>46</sup> does not mean that human rights impacts are not relevant to Amazon's business. Indeed, without human rights impact assessments, shareholders have insufficient information about which food products sold by Amazon or WFM are associated with actual or a high risk of potential human rights abuses. The 25% shareholder support achieved on the 2016 human rights due diligence proposal is a significant showing,<sup>47</sup> and the increase between 2015 and 2016 shows that investor interest is growing.

Finally, Amazon asserts that the Committee considered the impracticality and inefficiency of the approach suggested in the Proposal in deciding that the Proposal is not otherwise significantly related to Amazon's business. Those factors appropriately belong in Amazon's statement in opposition to the Proposal, where Amazon can make the case that its existing measures for addressing human rights impacts are more practical and efficient than the actions suggested in the Proposal. Practicality and efficiency are not, however, pertinent to the question of whether the Proposal is excludable on relevance grounds.

The Proposal's subject—supply chain human rights abuses, and, more specifically, the use of human rights impact assessment to identify existing and potential impacts—is otherwise significantly related to Amazon's business. Human rights abuses in the supply chain cause real, not merely speculative, harm to companies by damaging brands, lowering sales and disrupting the supply chain.

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<sup>46</sup> No-Action Request, at 10.

<sup>47</sup> See *Eli Lilly and Company (Mar. 2, 2018)* (declining to allow exclusion on ordinary business grounds; proponent noted that previous proposal on the same subject had received support from holders of 25% of shares voted and the "board's analysis [did] not adequately address these voting results").

Amazon's current policies and practices fall far short of satisfying the Proposal's objective. In deciding that the Proposal is not otherwise significantly related to Amazon's business, the Committee considered several inappropriate factors and reached unsupported conclusions. Accordingly, Amazon has not met its burden of showing it is entitled to omit the Proposal in reliance on Rule 14a-8(i)(5) and its request for relief should be denied.

### Ordinary Business

Rule 14a-8(i)(7) allows exclusion of proposals related to a company's ordinary business operations. Amazon urges that the Proposal deals with the Company's ordinary business operations because:

- The primary focus of the Proposal is Amazon's sale and sourcing of specific products, which is not a significant policy issue;
- Even if the Proposal could be said to involve a significant policy issue, it also addresses matters that do not rise to that level; and
- The Proposal would micromanage Amazon.

### *The Proposal's Subject is Human Rights, Not the Sale of Specific Products*

Amazon claims that the Proposal deals with the Company's ordinary business operations because it "seeks to influence product sale decisions" and "effectively subject [those decisions] to shareholder oversight."<sup>48</sup> In the alternative, Amazon argues that the Proposal "touches upon the significant policy issue of human rights," but also "is focused on the Company's role as a retailer of food products," justifying exclusion on ordinary business grounds.

Amazon presents "human rights" and "sale of products" as two distinct topics, but that approach is both illogical and inconsistent with past Staff determinations. Amazon's sale of products is subsumed in, and inseparable from, the Proposal's request that the Company conduct supply chain human rights due diligence. A supply chain involves the manufacture and processing of a product before it arrives at the downstream company, like Amazon, for use or sale. The problem of human rights violations in company supply chains is well-established, as shown by the controversies discussed above in the relevance section. Thus, there is no principled basis for asserting that a proposal on human rights must not implicate the sale of products or risk being classified as ordinary business.

Four years ago, Amazon made, and the Staff rejected, a similar argument to the one Amazon now advances in an effort to exclude a proposal on human rights due diligence.<sup>49</sup> In 2015, a proposal (the "2015 Proposal") was submitted asking

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<sup>48</sup> No-Action Request, at 14.

<sup>49</sup> We note that the 2015 and current requests were both made on Amazon's behalf by the same attorney.

Amazon to report on its “process for comprehensively identifying and analyzing potential and actual human rights risks of Amazon's entire operations and supply chain (a ‘human rights risk assessment’) addressing the following:

- Human rights principles used to frame the assessment;
- Methodology used to track and measure performance;
- Nature and extent of consultation with relevant stakeholders in connection with the assessment; and
- Actual and/or potential human rights risks identified in the course of the human rights risk assessment related to (a) Amazon's use of labor contractors/subcontractors, temporary staffing agencies or similar employment arrangements (or a statement that no such risks have been identified).<sup>50</sup>

The 2015 Proposal, like the Proposal, asked for information on human rights risks in Amazon’s supply chain and sought disclosure of certain actual and/or potential human rights impacts. Now, Amazon tries to distinguish the 2015 determination by asserting that it focused on the Company’s own operations, not products or services. But Amazon did not view the 2015 Proposal that way at the time; the Company claimed that the 2015 Proposal “relates to the products and services offered for sale by the Company because it requests a report assessing the ‘potential and actual human rights risks’ related to the Company’s ‘entire operations and supply chain.’”<sup>51</sup> The proponents urged that the 2015 Proposal addressed the sale of products only in the context of human rights, a significant policy issue. The Staff declined to grant relief, explaining, “In our view, the proposal focuses on the significant policy issue of human rights.”<sup>52</sup>

Similarly, in Yahoo, Inc.,<sup>53</sup> the proposal asked Yahoo to adopt human rights principles to guide its business in China. Several principles directly addressed product and service-related matters:

No information technology products or technologies will be sold, and no assistance will be provided to authorities in China and other repressive countries that could contribute to human rights abuses. No user information will be provided, and no technological assistance will be made available, that would place individuals at risk of persecution based on their access or use of the Internet or electronic communications for free speech and free association purposes. Yahoo will support the efforts to assist users to have access to encryption and other protective technologies and approaches, so that their

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<sup>50</sup> Amazon.com, Inc. (Mar. 25, 2015).

<sup>51</sup> Amazon did advance a separate argument that the 2015 Proposal’s subject was management of the workforce and cited the portions of the 2015 Proposal referring to issues associated with Amazon’s own operations. That argument was also unsuccessful.

<sup>52</sup> Amazon.com, Inc. (Mar. 25, 2015).

<sup>53</sup> Yahoo, Inc. (Apr. 5, 2011).

access and use of the Internet will not be restricted by the Chinese and other repressive authorities.

Yahoo conceded that “certain matters involving human rights raise significant policy issues,” but urged that the proposal was excludable because it also addressed “the ordinary business matters of determining the manner in which the Company should or should not provide its products and services, [and] determining what products and services to offer.”<sup>54</sup> The Staff did not grant Yahoo’s request for relief, stating that “the proposal focuses on the significant policy issue of human rights.”

The Yahoo and 2015 Amazon determinations undermine Amazon’s argument that the Proposal’s subject is not human rights, or that it is human rights *and* the ordinary business matter of the sale of products. The Yahoo proposal, which specifically prohibited the sale of certain products and services to a particular kind of Chinese customer, focused at least as much on specific products as the Proposal does. Likewise, the 2015 Proposal sought disclosure of specific types of human rights impacts associated with the supply chain. In both cases, the Staff determined that the proposal focused on the significant policy issue of human rights.

A similar argument made recently by a retailer also fell short. In Walgreens Boots Alliance Inc.,<sup>55</sup> the company challenged on ordinary business grounds a proposal asking it to “report to shareholders by June 30, 2019 describing the corporate governance changes Walgreens has implemented since 2012 to more effectively monitor and manage financial and reputational risks related to the opioid crisis,” including certain specific items. Walgreens argued that the proposal’s subject was the company’s sale of particular products (i.e., opioids), which was not a significant policy issue. Like Amazon, Walgreens also claimed that if part of the proposal was deemed a significant policy issue, the proposal was nonetheless excludable because another part focused on the ordinary business matter of “the sale of particular products.” The proponents countered that the proposal’s sole subject was risk related to the opioid-crisis, which was a significant policy issue. The Staff declined to grant relief.

Amazon’s claim that the Proposal seeks to dictate or control Amazon’s choice of products to sell lacks any support in the Proposal’s text. The resolved clause asks Amazon to conduct and disclose three human rights impact assessments, and does not suggest that those assessments would be used to select products to sell. The supporting statement also focuses exclusively on the benefits of human rights impact assessments and their utility for Amazon. Amazon urges that disclosure of the assessment would “limit” its ability to select products, but does not explain why and how that would occur. It seems unlikely that WFM would, for example, elect

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<sup>54</sup> Yahoo, Inc. (Apr. 5, 2011).

<sup>55</sup> Walgreens Boots Alliance Inc. (Nov. 20, 2018).

not to sell shrimp at all if an impact assessment showed adverse impacts; instead, such an assessment could give WFM information it needed to strengthen its policies, change or consolidate suppliers, or intensify its monitoring to ensure that it's respecting human rights.

*The Board's Analysis of Whether the Proposal's Subject is a Significant Policy Issue Was Flawed*

Amazon asserts that the Committee based its analysis regarding application of the ordinary business exclusion to the Proposal on the Company's "extensive responsible sourcing initiatives," "the fact that the Proposal is primarily focused on an extremely small portion of the Company's operations," the Proposal's effort to "pre-empt" management's determination of how best to assess supply chain risks and Amazon's "core business as a retailer instead of a producer or manufacturer." It appears that the Committee also considered all of the relevance factors in reaching its conclusion that the Proposal does not implicate a significant policy issue.

We reiterate our objections to the factors taken into account in the Committee's relevance analysis discussed above. The gap between Amazon's current practices and the Proposal's request is substantial: Amazon does not conduct human rights impact assessment or publicly disclose human rights assessments or data of any kind, including the audits it describes in the No-Action Request. Despite these differences, the No-Action Request does not describe the Committee's comparison of Amazon's current practices with the specific request in the Proposal, opting instead to list initiatives, some of which are irrelevant to the Proposal. Because the Committee's analysis was based on inaccurate factors and was not well-reasoned, it should not be accorded deference by the Staff.

*The Proposal Would Not Micromanage Amazon*

Amazon claims that the Proposal "seeks to dictate which products the Company devotes its time and resources to . . . the criteria for that selection" and the "action the Company should take based on its assessment."<sup>56</sup> As a result, Amazon urges, the Proposal would micromanage the Company.

Two of those assertions mischaracterize the Proposal. The Proposal only asks for disclosure of how the findings of assessments will be integrated to prevent or remedy adverse impacts. If those findings would not be integrated into Amazon's operations, the Company could simply state that fact and be in full compliance with the Proposal. Although the Proposal urges Amazon to conduct human rights impact assessment on three high-risk food products, it does not specify how Amazon should define "high-risk" or choose from among products designated as high-risk. In that

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<sup>56</sup> No-Action Request, at 16-17.

way, the Proposal differs from those cited by Amazon, which were detailed and specific, giving the companies no discretion in implementation.

The proposal in Marriott International Inc.<sup>57</sup> urged that “[s]howerheads that deliver no more than 1.6 gallons per minute (gpm) of flow” be installed in “several test properties,” along with “[a] mechanical switch that will allow for full water flow to almost no flow.” In addition, the proposal advocated that “[e]nergy saved, guest reaction and related factors shall be ascertained.” Similarly, in SeaWorld Entertainment Inc.,<sup>58</sup> the proposal urged SeaWorld to “retire the current resident orcas to seaside sanctuaries and replace the captive-orca exhibits with innovative virtual and augmented reality or other types of non-animal experiences.”

Both the Marriott and SeaWorld proposals requested multiple specific actions and left no aspect of implementation to the board’s discretion. The Marriott proposal included technical specifications and identified the kinds of information the company should collect to assess the showerheads’ impact. Not only did the SeaWorld proposal urge the company to eliminate live orca exhibits, it also instructed the company what to put in their stead. The Proposal is less specific than either of those proposals and would not micromanage Amazon.

In sum, Amazon has failed to meet its burden of proving it is entitled to omit the Proposal in reliance on Rule 14a-8(i)(7). The Proposal’s subject, human rights, is a significant policy issue, even though it implicates Amazon’s sale of products. The analysis engaged in by the Committee considered inaccurate factors, which undermines its conclusion. The Proposal would not micromanage Amazon, as it focuses on disclosure and leaves key implementation details to the Board. The Proponents therefore respectfully ask that Amazon’s request for relief on ordinary business grounds be denied.

\* \* \*

For the reasons set forth above, Amazon has not satisfied its burden of showing that it is entitled to omit the Proposal in reliance on Rule 14a-8(i)(5) or Rule 14a-8(i)(7). The Proponents thus respectfully ask that Amazon’s request for relief be denied.

We appreciate the opportunity to be of assistance in this matter. If you have any questions or need additional information, please contact me at (617) 728-2456 or [sarah.zoen@oxfam.org](mailto:sarah.zoen@oxfam.org).

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<sup>57</sup> Marriott International Inc. (Mar. 17, 2010; *reconsideration denied*, Apr. 19, 2010).

<sup>58</sup> SeaWorld Entertainment Inc. (Mar. 30, 2017; *reconsideration denied*, Apr. 17, 2017).

Sincerely,

A handwritten signature in black ink, consisting of several loops and a long horizontal stroke extending to the right.

Sarah Zoen  
Oxfam America

cc: Ronald O. Mueller  
Gibson, Dunn & Crutcher LLP  
RMueller@gibsondunn.com

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 Oxfam America, Inc. et al.*  
*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 statements in support thereof (the “Supporting Statement”) received from Oxfam America, Inc., the Adrian Dominican Sisters, and Daughters of Charity, Inc. (the “Proponents”).

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 copies of this correspondence to the Proponents.

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 Proponents that if the Proponents elect 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.

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## THE PROPOSAL

The Proposal states:

**RESOLVED**, that shareholders of Amazon.com, Inc. (“Amazon”) urge the Board of Directors to commit to conducting and making available to shareholders Human Rights Impact Assessments (“Assessments”) for at least three food products Amazon sells that present a high risk of adverse human rights impacts. An Assessment should specify the standards used, identify and assess actual and potential adverse impacts associated with the product and describe how the findings will be integrated in order to prevent and/or remedy impacts.

The Supporting Statement:

- states that there is “increasing recognition that company risks related to human rights violations, such as reputational damage, project delays and disruptions, and litigation, can adversely affect shareholder value” and that such risks exist even for retailers or distributors;
- states that companies must assess these risks to shareholder value posed by human rights impacts in companies’ supply chains, referring to guidance from the United Nations on human rights assessments;
- asserts that because of the Company’s AmazonFresh and Whole Foods Market businesses, “Amazon’s business model exposes the company to significant human rights risks from food suppliers” and that “increasing downward pricing pressures recently, including from Whole Foods policies . . . may lead [suppliers] to commit human rights violations such as using child or forced labor”;
- states that such “concerns have been raised about specific products” and refers, by example, to alleged human rights abuses in the shrimp industry in Southeast Asia (claiming that Whole Foods sells shrimp produced in that region), and to the Department of Labor’s identification of “dozens of common food products, including palm oil, cocoa and bananas, that are produced using forced or child labor in some countries”; and
- acknowledges that the Company’s Supplier Code of Conduct addresses many human rights and “describes supplier- and site-specific audits but does not disclose or indicate that it performs any human rights impact assessment for product types across suppliers.” Instead of addressing retailers, in this regard the

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Supporting Statement cites two producers (Coca-Cola and Mondelez International) as producing human rights impact assessments focused on high-risk products in their supply chains.

A copy of the Proposal and its Supporting Statement, as well as related correspondence with the Proponents, is attached to this letter as Exhibit A.

## **BASES FOR EXCLUSION**

For the reasons discussed below, we believe that the Proposal may properly be excluded from the 2019 Proxy Materials pursuant to:

- Rule 14a-8(i)(5) because the Proposal relates to operations that are not economically significant or otherwise significantly related to the Company's business within the meaning of Rule 14a-8(i)(5); and
- Rule 14a-8(i)(7) because the Proposal relates to the Company's ordinary business operations within the meaning of Rule 14a-8(i)(7) and seeks to micromanage the Company.

## **ANALYSIS**

The Company is a retailer that sells hundreds of millions of products and services through its online and physical stores, including hundreds of thousands of food products that are sold through its retail websites, AmazonFresh grocery delivery business, and Amazon Go and Whole Foods Market stores. The Company strives to offer its customers the broadest selection and the lowest prices possible.

The Company is strongly committed to protecting human rights in its operations and supply chain, and to conducting business in a lawful and ethical manner, both in its own operations and through engagement with suppliers that are committed to the same principles. As the Supporting Statement concedes, the Company addresses many human rights impacts through the Company's Supplier Code of Conduct, and the Company's Sustainability website contains extensive disclosures about its responsible sourcing standards.<sup>1</sup>

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<sup>1</sup> See <https://www.aboutamazon.com/sustainability/responsible-sourcing>; see also the Company's Sustainability Question Bank on Responsible Sourcing, available at <https://www.amazon.com/qb/#?category=responsibleSourcing>.

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For example, the Company requires its suppliers to comply with its Supplier Code of Conduct, and, as detailed below, Whole Foods Market has its own supplier practices and policies.<sup>2</sup> The Company also partners closely with suppliers to drive continuous improvement in worker conditions. The Company maintains training programs for suppliers, employees who manage its supply chain, and operations leadership on the standards and conduct required by the Supplier Code of Conduct.

Among the key areas the Company focuses on are:

- Health and safety in production areas and any living quarters.
- The right to legal wages and benefits.
- Appropriate working hours and overtime pay.
- Prevention of child labor or forced labor.
- Fair and ethical treatment, including non-discrimination.

The Company uses international risk indices, risk analyses, worker surveys, and audit tools, including audit protocols, trainings, and scorecards to identify and manage human rights impacts in its supply chain. The Company has teams in North America, Europe, and Asia with expertise in social responsibility. The Company engages with suppliers to ensure they uphold the Company's standards and expectations as detailed in the Supplier Code of Conduct, and conducts benchmarking with industry experts to review the Company's criteria against globally-recognized international standards and other grocery businesses. In addition, the Company is a member of human rights related industry associations and working groups to leverage standardized assessments and focus on key supply chain issues, including the Responsible Business Alliance, the Responsible Labor Initiative, the Responsible Minerals Initiative, Tech Against Trafficking, and the Supplier Ethical Data Exchange.

The Company's Whole Foods Market business, which was recently acquired, engages directly with suppliers of its food products with respect to standards regarding the protection of human rights of the workers in its supply chain. Whole Foods Market will not knowingly work with suppliers who engage in practices such as forced labor or human trafficking, and expects its suppliers to ensure that they abide by the same standards. Whole Foods Market maintains responsible sourcing training for employees who manage supplier relationships.

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<sup>2</sup> See <http://www.amazon.com/gp/help/customer/display.html?nodeId=200885140>.

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Whole Foods Market requires suppliers of its Exclusive Brands to satisfy certain standards throughout their entire supply chain (including to adhere to the main conventions of the International Labor Organization), expressly stating that it does not tolerate any human trafficking or slavery at any point of the supply chain, and requires those suppliers to undergo audits, either by independent third parties approved by Whole Foods Market or by Whole Foods Market's own internal certified specialists (depending on the level of risk associated with the supplier's country of origin). In addition, Whole Foods Market maintains the "Whole Trade Guarantee" program.<sup>3</sup> Under this program, Whole Foods Market works with a variety of third parties (such as Fair Trade USA, Rainforest Alliance, IMO Social and Fair Trade Certification, and Fairtrade International) to certify produce and floral products imported from developing nations that meet certain production criteria, including with respect to wages and working conditions. Whole Foods Market also participates in a number of initiatives such as the Equitable Food Initiative,<sup>4</sup> which provides on-the-ground training and support for leadership teams at farms to improve communication and collaboration between workers and management to meet standards for labor practices, food safety, and pest management, and has procedures for certifying and auditing farmers.

## **I. The Proposal May Be Excluded Under Rule 14a-8(i)(5).**

### *A. Background.*

Rule 14a-8(i)(5) provides that a shareholder proposal may be excluded "[i]f the proposal relates to operations which account for less than five percent of the company's total assets at the end of its most recent fiscal year, and for less than five percent of its net earnings and gross sales for its most recent fiscal year, and is not otherwise significantly related to the company's business." Prior to adoption of the current version of the exclusion in Rule 14a-8(i)(5), the rule permitted companies to omit any proposal that "deals with a matter that is not significantly related to the issuer's business." In proposing changes to that version of the rule in 1982, the Commission noted that the Staff's practice had been to agree with exclusion of proposals that bore no economic relationship to a company's business, but that "where the proposal has reflected social or ethical issues, rather than economic concerns, raised by the issuer's business, and the issuer conducts any such business, no matter how small, the [S]taff has not issued a no-action letter with respect to the omission of the proposal." Exchange Act Release No. 19135 (Oct. 14, 1982). The Commission stated that this interpretation of the rule may have "unduly limit[ed] the exclusion," and proposed adopting the economic tests that appear in the rule today. *Id.* In adopting the rule, the Commission characterized it as relating

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<sup>3</sup> See <https://www.wholefoodsmarket.com/mission-values/whole-trade-program>.

<sup>4</sup> See <https://equitablefood.org/>.

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“to proposals concerning the functioning of the economic business of an issuer and not to such matters as shareholders’ rights, e.g., cumulative voting.” Exchange Act Release No. 20091 (Aug. 16, 1983).

In the years following the decision in *Lovenheim v. Iroquois Brands, Ltd.*, 618 F. Supp. 554 (D.D.C. 1985), the Staff did not agree with exclusion under Rule 14a-8(i)(5), even where a proposal has related to operations that accounted for less than 5% of total assets, net earnings and gross sales, when the company conducted business, no matter how small, related to the issue raised in the proposal. In Staff Legal Bulletin No. 14I (Nov. 1, 2017) (“SLB 14I”), the Staff reexamined its historic approach to interpreting Rule 14a-8(i)(5) and determined that the “application of Rule 14a-8(i)(5) has unduly limited the exclusion’s availability because it has not fully considered the second prong of the rule as amended in 1982 – the question of whether the proposal ‘deals with a matter that is not significantly related to the issuer’s business’ and is therefore excludable.” *Id.* Accordingly, the Staff noted that, going forward, it “will focus, as the rule directs, on a proposal’s significance to the company’s business when it otherwise relates to operations that account for less than 5% of total assets, net earnings and gross sales.” *Id.* Under this framework, the analysis is “dependent upon the particular circumstances of the company to which the proposal is submitted.” *Id.* “Where a proposal’s significance to a company’s business is not apparent on its face, [it] may be excludable unless the proponent demonstrates that it is ‘otherwise significantly related to the company’s business.’” *Id.* Although the proposal could raise social or ethical issues, those must tie to a significant effect on the company’s business, and the “mere possibility of reputational or economic harm will not preclude no-action relief.” *Id.*

Furthermore, the Staff noted in SLB 14I that a “board acting with the knowledge of the company’s business and the implications for a particular proposal on that company’s business is better situated than the staff to determine whether a particular proposal is ‘otherwise significantly related to the company’s business’” and thus the Staff “would expect a company’s Rule 14a-8(i)(5) no-action request to include a discussion that reflects the board’s analysis of the proposal’s significance to the company.” *Id.* Moreover, in Staff Legal Bulletin No. 14J (Oct. 23, 2018) (“SLB 14J”), the Staff indicated that a well-developed discussion of the board’s analysis that focuses on specific substantive factors can assist the Staff in evaluating a company’s no-action request.

*B. The Proponents Have Not Satisfied Their Burden Under Rule 14a-8(i)(5).*

The Proposal, which focuses on potential adverse human rights impacts in connection with “three food products [the Company] sells,” is not economically or otherwise significant to the Company’s business. The Company has confirmed that no three food products accounted for even remotely close to five percent of the Company’s total assets, net income, or gross sales for 2018. The Company also has confirmed that it does not expect these percentages to

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increase meaningfully for 2019. The quantitative importance of food products to the Company's business therefore is not significant within the meaning of Rule 14a-8(i)(5).

In addition, nothing in the Proposal or Supporting Statement indicates that the Proposal is on its face significant to the Company within the meaning of Rule 14a-8(i)(5). Instead, most of the Supporting Statement consists of statements regarding a mere possibility of reputational or economic harm. For example, the Supporting Statement asserts that “[r]isks *may* exist for companies even if they are retailers” (emphasis added) and that pricing pressure “*may* lead [food suppliers] to commit human rights violations” (emphasis added). Even in explaining the need for the reports requested by the Proposal, the Supporting Statement refers to the ability to “identify *potential* impacts earlier” (emphasis added). Moreover, the Supporting Statement admits that the Company already addresses “[m]any human rights” in its Supplier Code of Conduct, and that the Company has reported that it conducts “supplier- and site-specific audits” of its supply chain. The Staff stated in SLB 14I that, when evaluating the “otherwise significantly related to the company’s business” prong of the rule, “the proponent could continue to raise social or ethical issues in its arguments, but it would need to tie those to a significant effect on the company’s business. The mere possibility of reputational or economic harm will not preclude no-action relief.”<sup>5</sup> Under this standard, the Proposal and Supporting Statement do not demonstrate that the reports requested by the Proposal are otherwise significantly related to the Company’s business within the meaning of Rule 14a-8(i)(5).

Notwithstanding the Proposal and the Supporting Statement addressing human rights in the supply chain, the Proposal merely seeks to have the Company alter its approach to this issue. Specifically, the Supporting Statement asserts that by performing human rights impact assessments for “product types across suppliers,” instead of utilizing a supplier- or site-specific approach, the Company may be able to identify potential human rights impacts earlier. However, the manner in which the Company develops and implements policies for assessing the human rights standards in its supply chain involves complex management considerations of issues such as the extent to which the Company relies on only one or a few suppliers, and the extent to which producers or manufacturers who supply products to the Company have established and reliable supply chain human rights programs and policies. Thus, the Proposal does not otherwise raise significant issues with respect to or significantly relate to the Company’s business within the meaning of Rule 14a-8(i)(5).

The Nominating and Corporate Governance Committee (the “Governance Committee”) of the Company’s Board of Directors (the “Board”) also has determined that the issue raised by the Proposal is not otherwise significantly related to the Company’s business within the

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<sup>5</sup> SLB 14I, at part C.3.

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meaning of Rule 14a-8(i)(5) and, as discussed in the following section of this letter, is not sufficiently significant in relation to the Company within the meaning of Rule 14a-8(i)(7). In reaching this determination, the Governance Committee considered the factors summarized below, and subsequently discussed these factors with management.

Consistent with the Staff's guidance in SLB 14I and SLB 14J, the Governance Committee considered the following:

- ***The Proposal does not relate to the Company's core business activities.*** The Proposal does not address the Company's core business. The Company sells or offers for sale hundreds of millions of products through the Company's online and physical stores, while the Proposal addresses the supply chain of only three food products that the Company sells. By focusing on a very narrow and discrete part of the Company's business ("three food products Amazon sells") and mandating a standard for selection of those products that does not take into account whether the Company is responsible for or controls the production of such products, the Proposal is not tailored to addressing the Company's operations and as such, does not relate to the Company's core operations.
- ***The Proposal is not quantitatively significant to the Company.*** As noted above, the Governance Committee considered the fact that the Proposal relates to only three products among hundreds of millions of products sold by or through the Company's retail operations. No three food products account for any amount near one percent of the Company's total assets, net income, or gross sales for 2018. In addition, the Company has not experienced any financial or operational impact as a result of human rights considerations in the Company's supply chain for food products that the Company sells. As a result, the Governance Committee concluded that the Proposal is not quantitatively significant to the Company within the meaning of Rule 14a-8(i)(5).
- ***The Company is already addressing the issue raised by the Proposal.*** The Company is strongly committed to protecting human rights in its operations and supply chain and conducting its business in a lawful and ethical manner, both in its own operations and through engagement with suppliers that are committed to the same principles. The Governance Committee reviewed the Company's many standards, policies, and practices relating to human rights in the Company's supply chain, including:

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- the Company requires its suppliers to comply with its Supplier Code of Conduct<sup>6</sup> and partners closely with them to drive continuous improvement in worker conditions, and, as detailed below, Whole Foods Market has its own supplier practices and policies;
  - the Company provides training to suppliers (as well as to the Company's employees) and engages with them to confirm that they uphold all of the Company's standards and expectations as detailed in the Supplier Code of Conduct;
  - the Company uses international risk indices, risk analyses, worker surveys, and audit tools, including audit protocols, trainings, and scorecards to identify and manage human rights impacts in its supply chain;
  - the Company conducts benchmarking with industry experts to review the Company's criteria against globally-recognized international standards and other grocery businesses; and
  - the Company is a member of human rights related industry associations and working groups to leverage standardized assessments and focus on key supply chain issues, including the Responsible Business Alliance, the Responsible Labor Initiative, the Responsible Minerals Initiative, Tech Against Trafficking, and the Supplier Ethical Data Exchange.
- Whole Foods Market currently operates under its own policies and procedures;
  - Whole Foods Market engages directly with suppliers of its food products with respect to standards regarding the protection of human rights of the workers in its supply chain. Whole Foods Market will not knowingly work with suppliers who engage in practices such as forced labor or human trafficking, and expects its suppliers to ensure that they abide by the same standards. Whole Foods Market maintains responsible sourcing training for employees who manage supplier relationships;
  - Whole Foods Market requires suppliers of its Exclusive Brands to satisfy certain standards throughout their entire supply chain (including to adhere to the main conventions of the International Labor Organization), expressly stating that it does not tolerate any human trafficking or slavery at any point of the supply chain, and requires those suppliers to undergo audits, either by independent third parties approved by Whole Foods Market or by Whole Foods Market's own internal certified specialists

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<sup>6</sup> See <http://www.amazon.com/gp/help/customer/display.html?nodeId=200885140>.

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- (depending on the level of risk associated with the supplier's country of origin);
- Whole Foods Market maintains the "Whole Trade Guarantee" program under which it works with a variety of third parties (such as Fair Trade USA, Rainforest Alliance, IMO Social and Fair Trade Certification, and Fairtrade International) to certify produce and floral products imported from developing nations that meet certain production criteria, including with respect to wages and working conditions; and
  - Whole Foods Market participates in a number of initiatives such as the Equitable Food Initiative, which provides on-the-ground training and support for leadership teams at farms to improve communication and collaboration between workers and management to meet standards for labor practices, food safety, and pest management, and has procedures for certifying and auditing farmers.

The Governance Committee also considered the fact that the Supporting Statement acknowledges that the Company already has in place extensive disclosures regarding the many human rights considerations that the Company addresses in its supply chain, but merely seeks to have the Company approach its human rights assessments in a different manner, assessing three food products across suppliers. The Governance Committee viewed the approach advocated by the Proposal as both impractical for many food products (due to its reliance on the Company being able to track the supply chain of products through many levels of intermediaries and the inability to efficiently implement a system across the hundreds of thousands of food products (much less the hundreds of millions of other products) sold by and through the Company) and inefficient (due to the inability to leverage the work of others in the supply chain when assessing by product type). In this regard, it was noted that the two companies identified in the Supporting Statement as conducting the type of assessments requested in the Proposal are both food product manufacturers, not retailers. Accordingly, the Governance Committee viewed the differences between the specific request of the Proposal and the Company's existing policies, practices, and disclosures as neither significant to the Company's operations within the meaning of Rule 14a-8(i)(5) nor transcending the Company's ordinary business within the meaning of Rule 14a-8(i)(7).

- ***The Company's shareholders generally have not expressed narrow product-specific supply chain concerns.*** The Company maintains proactive and on-going engagement with its institutional investors, regularly meeting in person or telephonically with larger unaffiliated shareholders, including each shareholder that owns at least 1% of the Company's stock. Through these meetings and the

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Company's other shareholder engagement activities, the Company understands that many of its larger shareholders are concerned with the Company's overall sustainability and supply chain oversight policies and practices. However, no shareholders other than the Proponents have sought to address those concerns on a product-by-product basis. Based on its engagement activities, the Company believes that its larger shareholders recognize that the Company is mindful of human rights issues in its supply chain, and also recognize that the Company has invested substantial time and effort to make visible its strong commitment to sustainability, including responsible sourcing.

- ***The Company is not aware of any other shareholders or other stakeholders who have requested the type of report sought by the Proposal.*** Shareholders and other stakeholders regularly submit comments and questions to the Company through its website and other channels, but no other shareholders have requested that the Company prepare the type of report requested in the Proposal.
- ***Similar prior proposals that the Company's shareholders have voted on have not received substantial support.*** Over the last ten years, there have been only two other proposals addressing human rights risks in the Company's supply chain that were voted on by the Company's shareholders. Those proposals, which were on the ballots for the Company's annual meetings of shareholders in 2015 and 2016, received support (calculated in accordance with the Company's applicable voting standard) of less than 5% and 25%, respectively. Each of these proposals requested a human rights assessment addressing the Company's process for comprehensively identifying and analyzing potential and actual human rights risks across its entire operations and supply chain. The Governance Committee considered foremost that the Company has significantly expanded its responsible sourcing and supply chain oversight processes and policies, and its public disclosure on such issues, since the vote on these proposals. In addition, the Governance Committee considered the fact that each of these proposals addressed human rights across the Company's entire operations, as well as its entire supply chain, and thus did not focus on a narrow, product-specific human rights assessment. Accordingly, the Governance Committee determined that the vote on the prior proposals was not necessarily representative of how shareholders would view the Proposal.

Based on the foregoing, in accordance with the framework set forth in SLB 14I and SLB 14J, the Company believes and the Governance Committee has concurred that the Proposal is not significantly related to the Company's business within the meaning of Rule 14a-8(i)(5) and, accordingly, is excludable.

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## II. The Proposal May Be Excluded Under 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. The first is 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 second consideration is related to "the degree to which the proposal seeks to 'micro-manage' the company by probing too deeply into matters of a complex nature upon which shareholders, as a group, would not be in a position to make an informed judgment." *Id.* (citing Exchange Act Release No. 12999 (Nov. 22, 1976)).

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.")

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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).

*B. The Proposal May Be Excluded Under Rule 14a-8(i)(7) Because The Primary Focus Of The Proposal Is The Sale And Sourcing Of Specific Products Sold By The Company.*

The Proposal is excludable pursuant to Rule 14a-8(i)(7) as relating to the Company’s ordinary business operations because it is focused on the sale and sourcing of specific products – specifically, any “three food products Amazon sells that present a high risk of adverse human rights impacts.”

Decisions regarding the products the Company sells or permits third parties to sell through the Company’s websites implicate a myriad of factors that must be considered by the Company’s management, including the tastes and preferences of customers, the products offered by the Company’s competitors, the laws where the Company’s products are sold, the availability of sufficient quantity and quality of products to meet demand, and the prices charged by the Company’s suppliers. Balancing such interests is a complex issue and is “so fundamental to management’s ability to run [the C]ompany on a day-to-day basis that [it] could not, as a practical matter, be subject to direct shareholder oversight.” *See* 1998 Release.

The Staff consistently has concurred in the exclusion of proposals relating to the sale of particular products. For example, in *Amazon.com, Inc.* (avail. Mar. 27, 2015) (“*Amazon.com 2015*”) the Company received a proposal requesting that it disclose the “reputational and financial risks that it may face . . . pertaining to the treatment of animals used to produce products it sells.” The Staff concurred in the exclusion of the proposal under Rule 14a-8(i)(7), noting in particular that “the proposal relates to the products and services offered for sale by the company.” As the Staff further explained, “[p]roposals concerning the sale of particular products and services are generally excludable under [R]ule 14a-8(i)(7).” The Staff concurred with exclusion again when the same proponent submitted a similar proposal requesting a risk assessment report that included highlighting guidelines for identifying animal cruelty and proposing policy options for strengthening such guidelines. *See Amazon.com, Inc.* (avail. Mar. 11, 2016) (“*Amazon.com 2016*”); *see also Rite Aid Corp.* (avail. Mar. 24, 2015) (concurring in the exclusion under Rule 14a-8(i)(7) of a proposal requesting that a committee of the company’s board “[p]rovide oversight concerning the

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formulation, implementation and public reporting of policies and standards that determine whether or not the [c]ompany should sell a product that (1) [e]specially endangers public health and well-being[,] (2) [h]as substantial potential to impair the reputation of the [c]ompany and/or (3) [w]ould reasonably be considered by many to be offensive to the values integral to the [c]ompany's promotion of its brand"); *Wal-Mart Stores, Inc.* (avail. Mar. 20, 2014) (granting no-action relief with respect to a proposal requesting board oversight of determinations of whether to sell certain products that endanger public safety and well-being, could impair the reputation of the company and/or would be offensive to family and community values, on the basis that the proposal related to "the products and services offered for sale by the company"), *aff'd and cited in Trinity Wall Street v. Wal-Mart Stores, Inc.*, 792 F.3d 323, 327 (3d Cir. 2015).

Just as the proposal in *Amazon.com 2015* sought reports on the "reputational and financial risks that it may face . . . pertaining to the treatment of animals used to produce products it sells," the Proposal requests that the Company conduct and publish "Human Rights Impact Assessments ("Assessments") for at least three food products Amazon sells." By calling for disclosure of how any findings from the requested supply chain assessments "will be integrated in order to prevent and/or remedy impacts," the Company's ability to determine which products to sell and from which suppliers to source products would be limited and effectively subject to shareholder oversight. The Company sells and offers for sale hundreds of millions of products, and it is a fundamental responsibility of management to decide which products to sell and from which suppliers to source the products notwithstanding potential controversy around such products. Accordingly, just as in *Amazon.com 2016*, *Amazon.com 2015*, *Rite Aid Corp.*, and *Wal-Mart*, the Proposal seeks to influence product sale decisions.

The Staff consistently has concurred in the exclusion of proposals encompassing ordinary business matters that also happen to touch upon a significant policy matter. *See, e.g., Amazon.com, 2016* (concurring with the exclusion of a proposal requesting a report on animal cruelty in the supply chain because the "sale of particular products and services are generally excludable under rule 14a-8(i)(7)" as relating to the Company's ordinary business operations); *PetSmart, Inc.* (avail. Mar. 24, 2011) (granting no-action relief with respect to a proposal requesting the board require suppliers to certify that they had not violated animal cruelty-related laws, finding that while animal cruelty is a significant policy issue, the scope of laws covered by the proposals was too broad); *Apache Corp.* (avail. Mar. 5, 2008) (concurring with the exclusion of a proposal requesting the implementation of equal employment opportunity policies based on principles specified in the proposal prohibiting discrimination based on sexual orientation and gender identity because "some of the principles" related to the company's ordinary business operations); *Union Pacific Corp.* (avail. Feb. 25, 2008) (concurring with the exclusion of a proposal requesting disclosure of efforts to safeguard the company's operations from terrorist attacks and other homeland

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security incidents, finding that the proposal implicated matters relating to the company's ordinary business operations). Thus, even though the Proposal touches upon the significant policy issue of human rights, the Proposal may be excludable on ordinary business grounds because it is focused on the Company's role as a retailer of food products.

Furthermore, the Proposal is distinguishable from other animal or human rights-related proposals where the Staff did not concur in their exclusion as ordinary business because the Proposal addresses products the Company sells. For example, in *Amazon.com, Inc.* (avail. Mar. 25, 2015), the proposal sought a report on human rights risks of the Company's entire operations and supply chain. In this regard, the supporting statements of the proposal referenced the Company's operations and provided examples of alleged incidents that occurred as a part of the Company's operations and within the Company's workforce. As another example, in *Wal-Mart Stores, Inc.* (avail. Mar. 31, 2010) ("*Wal-Mart 2010*"), the proposal encouraged the board to "require the company's chicken and turkey suppliers to switch to animal welfare-friendly controlled-atmosphere killing (CAK), a less cruel method of slaughter, within five years." The proposal in *Wal-Mart 2010* did not address the company's choice of products sold, but instead focused solely on a specific slaughter method used by the company's suppliers of a specific product.

Accordingly, because the Proposal relates to decisions concerning the products offered for sale by the Company, the Proposal may be excluded pursuant to Rule 14a-8(i)(7) as relating to the Company's ordinary business operations.

*C. Even If The Proposal Touches Upon A Significant Policy Issue, It May Be Excluded Under Rule 14a-8(i)(7) Because The Board Of Directors Has Determined That The Proposal Does Not Transcend The Company's Ordinary Business Operations.*

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." Accordingly, even if a proposal touches upon a significant policy issue, the proposal may be excludable on ordinary business grounds if there is not a sufficient connection to a company's business.

Similar to its discussion with respect to whether a proposal is otherwise significantly related to a company's business, SLB 14I also states that a board of directors' analysis can be useful for demonstrating whether there is a sufficient connection between a proposal and a particular company to implicate significant policy considerations. In SLB 14I, the Staff stated that, "A board of directors, acting as steward with fiduciary duties to a company's

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shareholders . . . and with the knowledge of the company's business and the implications for a particular proposal on that company's business is well situated to analyze, determine and explain whether a particular issue is sufficiently significant because the matter transcends ordinary business and would be appropriate for a shareholder vote." The Staff reaffirmed this position in SLB 14J and provided examples of the substantive factors that a board of directors may consider in its analysis.

As discussed above, the Governance Committee carefully reviewed and considered materials addressing the Proposal and the Company's existing responsible sourcing policies, practices, and disclosures. Because of the extensive responsible sourcing initiatives that the Company already pursues and the disclosure that the Company already provides on such activities, the fact that the Proposal is primarily focused on an extremely small portion of the Company's operations (as few as three food products) and the fact that the Proposal, as admitted in its Supporting Statement, is simply seeking to pre-empt management's business determinations on the best approach for addressing supply chain risks (by "product type across suppliers" instead of through a supplier- or site-specific approach), and taking into account the Company's core business as a retailer instead of a producer or manufacturer, the Governance Committee concurred that the Proposal does not transcend the Company's ordinary business.

*D. The Proposal May Be Excluded Under Rule 14a-8(i)(7) Because It Seeks To Micro-Manage The Company.*

As explained above, the Commission stated in the 1998 Release that one of the considerations underlying the ordinary business exclusion is "the degree to which the proposal seeks to 'micro-manage' the company by probing too deeply into matters of a complex nature upon which shareholders, as a group, would not be in a position to make an informed judgment." The 1998 Release further states that "[t]his consideration may come into play in a number of circumstances, such as where the proposal involves intricate detail, or seeks to impose specific time-frames or methods for implementing complex policies." In SLB 14J, the Commission reaffirmed that the framework for evaluating whether a proposal micro-manages a company "applies to proposals that call for a study or report." Under that framework, if "the substance of the report relates to the imposition or assumption of specific time-frames or methods for implementing complex policies" it may properly be excluded under Rule 14a-8(i)(7) on micro-management grounds. *Id.*

The Proposal micro-manages the Company because it seeks to impose a specific method for implementing complex policies regarding assessing human rights implications of the Company's supply chain. In this respect, the Proposal seeks to dictate which products the Company devotes its time and resources to ("at least three food products Amazon sells"), the criteria for that selection ("that present a high risk of adverse human rights impacts," as opposed to picking products based on sales volume or where Amazon might have the

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greatest ability to address the supply chain), how assessments are conducted (“for product types across suppliers” instead of through supplier-specific or site-specific reviews), what is addressed in the assessments (the “actual and potential adverse impacts”), and what action the Company should take based on its assessment (“to prevent and/or remedy impacts”). Due to its focus on the detail of how the Company addresses a complex matter as well as how the Company reports on and addresses its findings, the Proposal seeks to micro-manage the Company and for this reason as well may be excluded under Rule 14a-8(i)(7).

The Staff consistently has concurred that shareholder proposals attempting to micro-manage a company by providing specific details for implementing a proposal as a substitute for the judgment of management are excludable under Rule 14a-8(i)(7). For example, in *Marriott International, Inc.* (avail. Mar. 17, 2010, *recon. denied* Apr. 19, 2010), the Staff concurred in the exclusion of a proposal requiring the installation of low-flow showerheads at certain of the company’s hotels because “although the proposal raises concerns with global warming, the proposal seeks to micromanage the company to such a degree that exclusion of the proposal is appropriate.” In particular, the Staff in *Marriott International* noted that the proposal required the use of “specific technologies.” See also *SeaWorld Entertainment, Inc.* (avail. Mar. 30, 2017, *recon. denied* Apr. 17, 2017) (concurring in the exclusion under Rule 14a8(i)(7) of a proposal requesting the replacement of live orca exhibits with virtual reality experiences as “seek[ing] to micromanage the company by probing too deeply into matters of a complex nature upon which shareholders, as a group, would not be in a position to make an informed judgment”).

As discussed above and on the Company’s Responsible Sourcing website, the Company has carefully evaluated the most impactful means for addressing sustainability implications of its businesses, including those related to human rights considerations in its supply chain, and has already undertaken numerous initiatives to address this issue in ways that the Company believes are best for its customers, its business, people involved in the supply chain, and the planet.

As in *Marriott International* and *SeaWorld Entertainment*, the Proposal provides specific details for implementation as a substitute for the judgment of management. The Proposal does not merely request that the Company amend its policies and procedures to address human rights considerations in its supply chain – which the Company has already done and continues to enhance and refine – but instead seeks to dictate specific product areas and processes for those actions. The extent to which the detailed requirements of the Proposal seek to micro-manage the Company are comparable to the “specific technologies” mandated in *Marriott International* and the virtual reality experiences proposed in *SeaWorld Entertainment*. The shareholder proposal process is not intended to provide an avenue for shareholders to impose detailed requirements of this sort in areas which are appropriately addressed through management’s informed processes. As discussed above,

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decisions about how to address and report on responsible sourcing in the supply chain are appropriately left to management, as they involve details and intricate considerations that are beyond the appropriate purview of shareholders.

The Company's determination on how best to address supply chain issues, as discussed above, each involve complex considerations regarding what initiatives are within the scope of the Company's control, how best to conduct such assessments, what factors to take into account in measuring impact, and how best to respond to findings. Actions taken towards these objectives, each of which requires significant management judgment, have been intentionally prioritized over the adoption of practices that could focus on an arbitrary and less effective approach to the issues raised by the Proposal. Because the Proposal seeks to delve too deeply into these complex determinations by asking shareholders to vote on a plan that would impact how the Company devotes its time and resources to addressing sustainability initiatives, the Proposal seeks to micro-manage the Company's business and therefore may be excluded under Rule 14a-8(i)(7).

## 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.

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](mailto: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

Enclosures

cc: Mark Hoffman, Amazon.com, Inc.  
Sarah Zoen, Oxfam America, Inc.  
Caroline Boden, Mercy Investment Services, Inc.

**EXHIBIT A**

**From:** Sarah Zoen <[Sarah.Zoen@Oxfam.org](mailto:Sarah.Zoen@Oxfam.org)>  
**Sent:** Thursday, December 6, 2018 12:04 PM  
**To:** [zapolsky@amazon.com](mailto:zapolsky@amazon.com)  
**Cc:** Irit Tamir <[irit.tamir@Oxfam.org](mailto:irit.tamir@Oxfam.org)>; Hurst, Kara <[karahurs@amazon.com](mailto:karahurs@amazon.com)>  
**Subject:** Oxfam shareholder proposal

Dear Mr. Zapolsky,

Attached please find a proposal to be included in the proxy statement for Amazon's 2019 annual meeting of shareholders. A hard copy was sent to you via overnight mail today.

Best,  
Sarah

...

**SARAH ZOEN** | Sr Advisor, Private Sector Department  
Oxfam America | Boston | (o) +1 202.851.2137 | (m) +1 617.417.2115 | skype: sarah.zipkin.oa

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December 6, 2018

**BY EMAIL AND OVERNIGHT DELIVERY**

Amazon.com, Inc.  
Attn: Senior Vice President, General Counsel and Secretary David A. Zapolsky  
410 Terry Ave. North  
Seattle, WA  
Email: [zapolsky@amazon.com](mailto:zapolsky@amazon.com)

Re: Shareholder proposal for 2019 Annual Shareholder Meeting

Dear Mr. Zapolsky,

Enclosed please find a proposal of Oxfam America, Inc. ("Oxfam America") and other co-filers to be included in the proxy statement of Amazon.com, Inc. (the "Company") for its 2019 annual meeting of shareholders.

Oxfam America has continuously held, for at least one year as of the date hereof, sufficient shares of the Company's common stock to meet the requirements of Rule 14a-8 of the general rules and regulations of the Securities and Exchange Act of 1934, as amended. Verification of this ownership will be forthcoming. Oxfam America intends to continue to hold such shares through the date of the Company's 2019 annual meeting of shareholders.

Oxfam America is the lead filer for this proposal and expects to be joined by other shareholders as co-filers. Oxfam America as lead filer is authorized to negotiate on behalf of each co-filer any potential withdrawal of this proposal.

Oxfam America welcomes the opportunity to discuss this proposal with representatives of the Company. Please feel free to contact me with any questions.

Sincerely,

Sarah Zoen  
Senior Advisor, Private Sector Department  
Oxfam America

[Enclosure]

## SHAREHOLDER RESOLUTION REGARDING HUMAN RIGHTS DUE DILIGENCE

RESOLVED, that shareholders of Amazon.com, Inc. ("Amazon") urge the Board of Directors to commit to conducting and making available to shareholders Human Rights Impact Assessments ("Assessments") for at least three food products Amazon sells that present a high risk of adverse human rights impacts. An Assessment should specify the standards used, identify and assess actual and potential adverse impacts associated with the product and describe how the findings will be integrated in order to prevent and/or remedy impacts.

The Assessments should be prepared at reasonable cost and should omit proprietary information.

### SUPPORTING STATEMENT

There is increasing recognition that company risks related to human rights violations, such as reputational damage, project delays and disruptions, and litigation, can adversely affect shareholder value. Risks may exist for companies even if they are retailers or distributors of a product.

To manage such risks effectively, companies must assess the risks to shareholder value posed by human rights impacts in their supply chain. The United Nations Guiding Principles on Business and Human Rights (the "Guiding Principles") urge that "business enterprises should carry out human rights due diligence" or Assessments.

([http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR\\_EN.pdf](http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf)) The assessments recommended by the Guiding Principles use a statement to define human rights expectations; cover impacts created directly by the company or indirectly through the activities of a third-party partner; and involve consideration of affected stakeholders' views, either through direct engagement or by consulting experts.

As the owner of online grocer AmazonFresh and grocery chain Whole Foods Markets, Amazon's business model exposes the company to significant human rights risks from food suppliers. More generally, food suppliers have experienced increasing downward pricing pressures recently, including from Whole Foods policies. Such pressures may lead them to commit human rights violations such as using child or forced labor.

As well, concerns have been raised about specific products. For example, research by several organizations has highlighted human rights abuses in the shrimp industry in Southeast Asia, and Whole Foods sells shrimp produced there. The Department of Labor has identified dozens of common food products, including palm oil, cocoa and bananas, that are produced using forced or child labor in some countries.

Many human rights are addressed in Amazon's Supplier Code of Conduct, including forced labor, child labor and freedom of association and anti-discrimination. Amazon describes supplier- and site-specific audits but does not disclose or indicate that it performs any human rights impact assessment for product types across suppliers. We believe that such assessments would allow Amazon to identify potential impacts earlier and take steps to prevent them, as well as allowing more timely remedy of actual impacts. Leading companies such as Coca-Cola and Mondelez International have produced human rights impact assessments focused on high-risk products in their supply chains.

We urge shareholders to vote for this proposal.

Fidelity Clearing & Custody  
Solutions

100 Crosby Parkway KC1J  
Covington, KY 41015



December 06, 2018

Oxfam America Inc.  
Activist Fund  
226 Causeway St, FL 5  
Boston, MA 02114-2155

RE: 4 shares of Amazon.com, Inc - Account ending in \*\*\*

To Whom It May Concern:

Please accept this letter as confirmation that National Financial Services (NFS) holds 4 shares of Amazon.com, Inc. (AMZN) for the benefit of Oxfam America, Inc. Per our records 4 shares were purchased on September 15, 2017.

Certification of Beneficial Ownership

This Certification relates to the 4 shares of common stock (the "Shares") of Amazon.com, Inc.. (The "Issuer") owned beneficially by Oxfam America, Inc. (the "Proponent".)

This Certification is given in connection with the submission on December 6, 2018 (the "Proposal Submission Date") by the Proponent of the Issuer of a shareholder proposal under Rule 14a-8 under the Securities Exchange Act of 1934, as amended. The undersigned hereby certifies, as of the date set forth above, as follow.

- I. The undersigned is and has been the record holder of the shares from and including the Proposal Submission Date and through and including the date hereof.
- II. The proponent is the beneficial owner of the Shares and has owned 4 shares continuously since September 15, 2017.

The undersigned acknowledges and agrees that this Certification may be delivered to the Issuer as proof of the Proponent's beneficial ownership of the Shares pursuant to Rule 14a-8.

Sincerely,

A handwritten signature in cursive script that reads "Linda M. Gilman".

Linda Gilman  
Client Services Manager  
Our file: W547960-06DEC18



RECEIVED

DEC 18 2018

AMAZON.COM, INC.  
LEGAL DEPARTMENT

ADRIAN DOMINICAN SISTERS  
1257 East Siena Heights Drive  
Adrian, Michigan 49221-1793  
517-266-3400 Phone  
517-266-3524 Fax

Portfolio Advisory Board

December 17, 2018

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

Dear Mr. Zapolsky:

The Portfolio Advisory Board for the Adrian Dominican Sisters has long been concerned not only with the financial returns of its investments, but also with the social and ethical implications of its investments. We believe that a demonstrated corporate responsibility in matters of the environment, social and governance concerns fosters long-term business success. The Adrian Dominican Sisters, a long-term investor, are currently the beneficial owner of shares of Amazon.com, Inc.

This resolution requests the Board of Directors commit to conducting and making available to shareholders Human Rights Impact Assessments for at least three food products Amazon sells that present a high risk of adverse human rights impacts.

The Adrian Dominican Sisters are co-filing the enclosed shareholder proposal with lead filer, Oxfam America, for inclusion in the 2019 proxy statement, in accordance with Rule 14a-8 of the General Rules and Regulations of the Securities Exchange Act of 1934. We have been a shareholder continuously for more than one year and will continue to invest in these through the annual shareholders' meeting. The verification of ownership by our custodian, a DTC participant, is enclosed. Oxfam America may withdraw the proposal on our behalf. We respectfully request direct communications from Amazon.com, and to have our supporting statement and organization name included in the proxy statement.

We look forward to having productive conversations with the company. Please direct all future correspondence, including an email acknowledgement of receipt of this letter and resolution, to Caroline Boden, representative of the Adrian Dominican Sisters, email: [cboden@mercyinvestments.org](mailto:cboden@mercyinvestments.org); phone: 314-909-4650; address: 2039 No. Geyer Rd., St. Louis, MO 63131.

Best regards,

Frances Nadolny, OP  
Administrator  
Adrian Dominican Sisters  
[www.pab.adriandominicans.org](http://www.pab.adriandominicans.org)

## SHAREHOLDER RESOLUTION REGARDING HUMAN RIGHTS DUE DILIGENCE

RESOLVED, that shareholders of Amazon.com, Inc. ("Amazon") urge the Board of Directors to commit to conducting and making available to shareholders Human Rights Impact Assessments ("Assessments") for at least three food products Amazon sells that present a high risk of adverse human rights impacts. An Assessment should specify the standards used, identify and assess actual and potential adverse impacts associated with the product and describe how the findings will be integrated in order to prevent and/or remedy impacts.

The Assessments should be prepared at reasonable cost and should omit proprietary information.

### SUPPORTING STATEMENT

There is increasing recognition that company risks related to human rights violations, such as reputational damage, project delays and disruptions, and litigation, can adversely affect shareholder value. Risks may exist for companies even if they are retailers or distributors of a product.

To manage such risks effectively, companies must assess the risks to shareholder value posed by human rights impacts in their supply chain. The United Nations Guiding Principles on Business and Human Rights (the "Guiding Principles") urge that "business enterprises should carry out human rights due diligence" or Assessments.

([http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR\\_EN.pdf](http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf)) The assessments recommended by the Guiding Principles use a statement to define human rights expectations; cover impacts created directly by the company or indirectly through the activities of a third-party partner; and involve consideration of affected stakeholders' views, either through direct engagement or by consulting experts.

As the owner of online grocer AmazonFresh and grocery chain Whole Foods Markets, Amazon's business model exposes the company to significant human rights risks from food suppliers. More generally, food suppliers have experienced increasing downward pricing pressures recently, including from Whole Foods policies. Such pressures may lead them to commit human rights violations such as using child or forced labor.

As well, concerns have been raised about specific products. For example, research by several organizations has highlighted human rights abuses in the shrimp industry in Southeast Asia, and Whole Foods sells shrimp produced there. The Department of Labor has identified dozens of common food products, including palm oil, cocoa and bananas, that are produced using forced or child labor in some countries.

Many human rights are addressed in Amazon's Supplier Code of Conduct, including forced labor, child labor and freedom of association and anti-discrimination. Amazon describes supplier- and site-specific audits but does not disclose or indicate that it performs any human rights impact assessment for product types across suppliers. We believe that such assessments would allow Amazon to identify potential impacts earlier and take steps to prevent them, as well as allowing more timely remedy of actual impacts. Leading companies such as Coca-Cola and Mondelez International have produced human rights impact assessments focused on high-risk products in their supply chains.

We urge shareholders to vote for this proposal.

December 17, 2018

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

RE: ADRIAN DOMINICAN SISTERS ACCOUNT AT COMERICA

Dear David,

In regards to the request for verification of holdings, the above referenced account currently holds 3 shares of Amazon common stock. The attached tax lot detail indicates the date the stock was acquired. Also, please note that Comerica, Inc. is a DTC participant.

Please feel free to contact me should you have any additional questions or concerns.

Sincerely,



**Erica Carter** | Senior Analyst | Institutional Trust  
| Comerica Bank | 411 West Lafayette | MC 3462 | Detroit, MI 48226 | P: 313.222.7115  
Fax : 313.222.3208 | [EBcarter@comerica.com](mailto:EBcarter@comerica.com)



December 21, 2018

**VIA EMAIL**

Caroline Boden  
Adrian Dominican Sisters  
cboden@mercyinvestments.org

Dear Ms. Boden:

I am writing on behalf of Amazon.com, Inc. (the “Company”), which received on December 18, 2018, the shareholder proposal submitted by the Adrian Dominican Sisters (the “Proponent”) entitled “Human Rights Due Diligence” pursuant to Securities and Exchange Commission (“SEC”) Rule 14a-8 for inclusion in the proxy statement for the Company’s 2019 Annual Meeting of Shareholders (the “Proposal”).

The Proposal contains certain procedural deficiencies, which SEC regulations require us to bring to your attention. Rule 14a-8(b) under the Securities Exchange Act of 1934, as amended, provides that shareholder proponents must submit sufficient proof of their continuous ownership of at least \$2,000 in market value, or 1%, of a company’s shares entitled to vote on the proposal for at least one year as of the date the shareholder proposal was submitted. The Company’s stock records do not indicate that the Proponent is the record owner of sufficient shares to satisfy this requirement. In addition, to date we have not received adequate proof that the Proponent has satisfied Rule 14a-8’s ownership requirements as of the date that the Proposal was submitted to the Company. The December 17, 2018 letter from Comerica that you provided is insufficient because it states the number of shares the Proponent held as of December 17, 2018 but does not cover the full one-year period preceding and including December 17, 2018, the date the Proposal was submitted to the Company.

To remedy this defect, the Proponent must obtain a new proof of ownership letter verifying the Proponent’s continuous ownership of the required number or amount of Company shares for the one-year period preceding and including December 17, 2018, the date the Proposal was submitted to the Company. As explained in Rule 14a-8(b) and in SEC staff guidance, sufficient proof must be in the form of:

- (1) a written statement from the “record” holder of the Proponent’s shares (usually a broker or a bank) verifying that the Proponent continuously held the required number or amount of Company shares for the one-year period preceding and including December 17, 2018; or
- (2) if the Proponent has filed with the SEC a Schedule 13D, Schedule 13G, Form 3, Form 4 or Form 5, or amendments to those documents or updated forms, reflecting the Proponent’s ownership of the required number or amount of Company shares as of or

before the date on which the one-year eligibility period begins, a copy of the schedule and/or form, and any subsequent amendments reporting a change in the ownership level and a written statement that the Proponent continuously held the required number or amount of Company shares for the one-year period.

If the Proponent intends to demonstrate ownership by submitting a written statement from the “record” holder of the Proponent’s shares as set forth in (1) above, please note that most large U.S. brokers and banks deposit their customers’ securities with, and hold those securities through, the Depository Trust Company (“DTC”), a registered clearing agency that acts as a securities depository (DTC is also known through the account name of Cede & Co.). Under SEC Staff Legal Bulletin No. 14F, only DTC participants are viewed as record holders of securities that are deposited at DTC. You can confirm whether the Proponent’s broker or bank is a DTC participant by asking the Proponent’s broker or bank or by checking DTC’s participant list, which is available at <http://www.dtcc.com/~media/Files/Downloads/client-center/DTC/alpha.ashx>. In these situations, shareholders need to obtain proof of ownership from the DTC participant through which the securities are held, as follows:

- (1) If the Proponent’s broker or bank is a DTC participant, then the Proponent needs to submit a written statement from the Proponent’s broker or bank verifying that the Proponent continuously held the required number or amount of Company shares for the one-year period preceding and including December 17, 2018.
- (2) If the Proponent’s broker or bank is not a DTC participant, then the Proponent needs to submit proof of ownership from the DTC participant through which the shares are held verifying that the Proponent continuously held the required number or amount of Company shares for the one-year period preceding and including December 17, 2018. You should be able to find out the identity of the DTC participant by asking the Proponent’s broker or bank. If the Proponent’s broker is an introducing broker, you may also be able to learn the identity and telephone number of the DTC participant through the Proponent’s account statements, because the clearing broker identified on the account statements will generally be a DTC participant. If the DTC participant that holds the Proponent’s shares is not able to confirm the Proponent’s individual holdings but is able to confirm the holdings of the Proponent’s broker or bank, then the Proponent needs to satisfy the proof of ownership requirements by obtaining and submitting two proof of ownership statements verifying that, for the one-year period preceding and including December 17, 2018, the required number or amount of Company shares were continuously held: (i) one from the Proponent’s broker or bank confirming the Proponent’s ownership, and (ii) the other from the DTC participant confirming the broker or bank’s ownership.

The SEC’s rules require that any response to this letter be postmarked or transmitted electronically no later than 14 calendar days from the date you receive this letter. Please address any response to me care of Gibson, Dunn & Crutcher LLP, 1050 Connecticut Avenue NW, Washington, DC 20036.

Caroline Boden  
December 21, 2018  
Page 3

If you have any questions with respect to the foregoing, please contact me at 202-955-8500. For your reference, I enclose a copy of Rule 14a-8 and Staff Legal Bulletin No. 14F.

Sincerely,

A handwritten signature in blue ink, reading "Ronald O. Mueller", is enclosed in a light blue rectangular box.

Ronald O. Mueller

Enclosures

**From:** Laurie Case <[lcase@Mercyinvestments.org](mailto:lcase@Mercyinvestments.org)>  
**Sent:** Wednesday, December 26, 2018 11:46 AM  
**To:** Mueller, Ronald O. <[RMueller@gibsondunn.com](mailto:RMueller@gibsondunn.com)>  
**Cc:** Caroline Boden <[cboden@Mercyinvestments.org](mailto:cboden@Mercyinvestments.org)>; Laurie Case <[lcase@Mercyinvestments.org](mailto:lcase@Mercyinvestments.org)>  
**Subject:** Notice of Deficiency: Adrian Dominican Sisters proposal to Amazon.com, Inc.

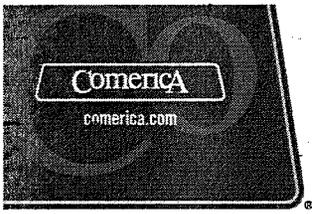
[External Email]  
Mr. Mueller,

Please find attached a revision to the bank confirmation of ownership letter of Amazon.com shares held by the Adrian Dominican Sisters, as requested.

Best wishes for a Happy New Year!

Laurie Case  
Reporting and Research Manager  
Mercy Investment Services, Inc.

[lcase@mercyinvestments.org](mailto:lcase@mercyinvestments.org)  
Phone/Text: 920-540-5548  
Skype: Laurie.j.Case



INSTITUTIONAL SERVICES GROUP  
411 WEST LAFAYETTE BOULEVARD  
MC 3462  
DETROIT, MI 48226

December 17, 2018

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

RE: ADRIAN DOMINICAN SISTERS ACCOUNT AT COMERICA

Dear David,

In regards to the request for verification of holdings, the above referenced account currently holds 3 shares of Amazon common stock, and has owned the security continuously for a one-year period preceding and including December 17, 2018. The attached tax lot detail indicates the date the stock was acquired. Also, please note that Comerica, Inc. is a DTC participant.

Please feel free to contact Erica Carter at (313) 222-7115 should you have any additional questions or concerns.

Regards,

Matthew H. Wasmund  
V.P, Sr. Relationship Manager  
(313) 222-7092  
[mhwasmund@comerrica.com](mailto:mhwasmund@comerrica.com)





# DAUGHTERS of CHARITY

PROVINCE of ST. LOUISE

**RECEIVED**

**DEC 18 2018**

**AMAZON.COM, INC.  
LEGAL DEPARTMENT**

December 17, 2018

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

Dear Mr. Zapolsky:

Daughters of Charity, Inc. ("Daughters of Charity") has long been concerned not only with the financial returns of its investments, but also with the social and ethical implications of its investments. We believe that a demonstrated corporate responsibility in matters of the environment, social and governance concerns fosters long-term business success. Daughters of Charity is currently the beneficial owner of shares of Amazon.com, Inc.

Daughters of Charity is filing the enclosed resolution requesting the Board of Directors commit to conducting and making available to shareholders Human Rights Impact Assessments for at least three food products Amazon sells that present a high risk of adverse human rights impacts.

Daughters of Charity is co-filing this proposal submission with lead filer, Oxfam America. The enclosed proposal is for inclusion in the 2019 proxy statement, in accordance with Rule 14a-8 of the General Rules and Regulations of the Securities Exchange Act of 1934. Daughters of Charity has been a shareholder continuously for more than one year holding at least \$2,000 in market value and will continue to invest in at least the requisite number of shares for proxy resolutions through the annual shareholders' meeting. The verification of ownership by our custodian, a DTC participant, is enclosed with this letter. Oxfam America may withdraw the proposal on our behalf. We respectfully request direct communications from Amazon.com, and to have our supporting statement and organization name included in the proxy statement.

We look forward to having productive conversations with the company. Please direct future correspondence to Caroline Boden, who will be working on behalf of the Daughters of Charity, Province of St. Louis. Her contact information is: phone - 314-909-4650; email - [cboden@mercyinvestments.org](mailto:cboden@mercyinvestments.org); address - 2039 No. Geyer Rd., St. Louis, MO 63131.

Best regards,

Sister Teresa George, D.C.

Provincial Treasurer

Daughters of Charity, Province of St. Louis

## SHAREHOLDER RESOLUTION REGARDING HUMAN RIGHTS DUE DILIGENCE

RESOLVED, that shareholders of Amazon.com, Inc. ("Amazon") urge the Board of Directors to commit to conducting and making available to shareholders Human Rights Impact Assessments ("Assessments") for at least three food products Amazon sells that present a high risk of adverse human rights impacts. An Assessment should specify the standards used, identify and assess actual and potential adverse impacts associated with the product and describe how the findings will be integrated in order to prevent and/or remedy impacts.

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([http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR\\_EN.pdf](http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf)) The assessments recommended by the Guiding Principles use a statement to define human rights expectations; cover impacts created directly by the company or indirectly through the activities of a third-party partner; and involve consideration of affected stakeholders' views, either through direct engagement or by consulting experts.

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We urge shareholders to vote for this proposal.

50 South La Salle Street  
Chicago, Illinois 60603  
(312) 557-2000



December 17, 2018

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

**Re: Certification of Ownership: Daughters of Charity Inc. Account Number \*\*\***

This letter will certify that as of December 17, 2018 The Northern Trust Company held for the beneficial interest of The Daughters of Charity Inc. 5 shares of Amazon.com, Inc. (CUSIP: 023135106).

We confirm that the Daughters of Charity has beneficial ownership of the voting Amazon.com, Inc. and that such beneficial ownership has existed continuously since October 26, 2017 in accordance with rule 14a-8(a)(I) of the Securities Exchange Act of 1934.

Further, it is the intent to hold these securities through the next annual meeting.

Please be advised, Northern Trust Securities Inc., employs National Financial Services for clearing purposes. National Financial Services DTC number is 0226.

If you have any questions, please feel free to give me a call.

Best,



Ava Gordon

[Amg14@ntrs.com](mailto:Amg14@ntrs.com)  
312-557-3033

Not FDIC Insured	May Lose Value	No Bank Guarantee
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