



DIVISION OF  
CORPORATION FINANCE

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

March 28, 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 the W. Andrew Mims Trust (the "Proponent") for inclusion in the Company's proxy materials for its upcoming annual meeting of security holders. We also have received correspondence on the Proponent's behalf dated February 28, 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: Sanford Lewis  
sanfordlewis@strategiccounsel.net

March 28, 2019

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

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

The Proposal requests that the Company establish a societal risk oversight committee of the board and that the committee should provide an ongoing review of corporate policies and procedures, above and beyond legal and regulatory matters, to assess the potential societal consequences of the Company's products and services, and should offer guidance on strategic decisions.

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

Sincerely,

Eric Envall  
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.

# SANFORD J. LEWIS, ATTORNEY

February 28, 2019

Via electronic mail

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

Re: Shareholder Proposal to Amazon.com, Inc.  
Regarding Societal Risk Oversight Committee  
on Behalf of the W. Andrew Mims Trust

Ladies and Gentlemen:

The W. Andrew Mims Trust (the “Proponent”) is beneficial owner of common stock of Amazon.com, Inc. (the “Company”) and The Sustainability Group of Loring, Wolcott & Coolidge has submitted a shareholder proposal (the “Proposal”) on behalf of the Proponent to the Company. I have been asked by the Proponent to respond to the letter dated January 23, 2019 (“Company Letter”) sent to the Securities and Exchange Commission by Ronald Mueller of Gibson Dunn. In that letter, the Company contends that the Proposal may be excluded from the Company’s 2019 proxy statement. A copy of this letter is being emailed concurrently to Ronald Mueller of Gibson Dunn.

Based on the enclosed materials, we believe it is clear that the Company has provided no basis for the conclusion that the Proposal is excludable from the 2019 proxy statement pursuant to Rule 14a-8. As such, we respectfully request that the Staff inform the Company that it is denying the no-action letter request. If you have any questions, please contact me at 413-549-7333 or sanfordlewis@strategiccounsel.net.

Sincerely,  
  
Sanford Lewis

cc: Ronald Mueller

**Analysis and Response to  
No Action Request  
for 2019 Proxy Season**

**Proposal for a Societal Risk Oversight Committee  
Proponent: W. Andrew Mims Trust**

**SUMMARY**

The Proposal seeks the creation of a new Societal Risk Oversight Committee of the board to review potential societal consequences of Amazon.com, Inc.'s ("Amazon" or "the Company") products and services and offer guidance on strategic decisions.

The Company argues for exclusion on the basis of Rule 14a-8(i)(7), claiming that the Proposal relates to the ordinary business of determining what products and services the Company offers to its customers, and their related policies; its business practices and operations; and its choice of technologies.

The Proposal in its entirety is addressed toward a governance issue that does not relate to ordinary business. Furthermore, the Proposal seeks to ensure the Company has a clear and accountable framework for board members to elevate and oversee issues of societal risk and impact – and, therefore, focuses in its entirety on a significant policy issue. Presently, Amazon does not provide investors sufficient disclosure on how the board is overseeing these issues. As far as shareholders can tell, oversight of such issues appears to be scattershot. Additionally, statements by Amazon representatives, including the CEO, raise the concern that there is a lack of sufficient stewardship and oversight within the Company regarding the potential societal consequences of its products and services. There is, therefore, a clear nexus between the Proposal and significant policy issues to the Company.

Accordingly, the Proposal is not excludable pursuant to Rule 14a-8(i)(7).

## THE PROPOSAL

**Resolved**, shareholders request that Amazon.com, Inc. ("Amazon" or "the Company") establish a Societal Risk Oversight Committee ("the Committee") of the Board of Directors ("the Board"), composed of independent directors with relevant experience. The Committee should provide an ongoing review of corporate policies and procedures, above and beyond legal and regulatory matters, to assess the potential societal consequences of the Company's products and services, and should offer guidance on strategic decisions. As with the other Committees of the Board, a formal charter for the Committee and a summary of its functions should be made publicly available.

### **Supporting Statement:**

By streamlining logistics, increasing efficiency for consumers, businesses and governments, and transforming cloud computing, Amazon's products and services have quickly become embedded in everyday life. Without proper oversight, some applications of these technologies have the potential to cause serious, unintended social harm, including but not limited to violations of civil liberties and breaches of privacy. To secure the confidence of its stakeholders, including the general public, Amazon must properly identify and understand the potential societal and ethical ramifications of its products and services at every step of the development process.

In his 2017 founder's letter, CEO Bezos acknowledges that holistic thinking is beneficial, noting, "You can consider yourself a person of high standards in general and still have debilitating blind spots. There can be whole arenas of endeavor where you may not even know that your standards are low or nonexistent, and certainly not world class. It's critical to be open to that likelihood." Proponents agree that the Company should take all practical steps to identify any potential blind spots, especially those that carry the potential for negative and large-scale social consequences.

Because the Board operates outside of the day-to-day decision making process and is charged with managing higher-level, strategic issues, a Societal Risk Oversight Committee would be best positioned to protect investors and the Company by addressing Amazon's potential blind spots as they relate to the societal ramifications and potential ethical issues regarding the Company's technologies and relationships. As a result, the Proponents believe the establishment of this Committee is in the best longterm interest of the Company and urge all shareholders to vote in support of this proposal.

## BACKGROUND

From its humble roots as an intermediary connecting shoppers to third-party sellers, Amazon has evolved into one of the world's largest and most powerful companies. Today, its products and services are embedded into many peoples' everyday lives and the Company has tremendous impacts on communities. It is a logistics giant responsible for five billion shipments in 2017.<sup>1</sup> It hosts a substantial portion of the world's cloud-based data.<sup>2</sup> It produces media content and distributes that of others. It is a brick-and-mortar retailer. It is also a technology innovator that develops hardware, software, and deploys artificial intelligence ("AI") tools using data generated across all its business units. It is the second largest private employer in the U.S.<sup>3</sup> Given this size and influence, Amazon has significant societal and systemic ramifications, for good or ill.

Additionally, in 2018, significant social policy issues, including questions regarding the potential for implicit bias embedded in AI and possible resulting civil liberties violations; to issues of cybersecurity, user privacy, and data management; to the implications of the automation Amazon chooses to deploy—all of which are material to the Company—received significant attention from regulators and consumers. At the same time, Amazon is becoming an outlier as Company peers, including salesforce.com and Microsoft, are responding to similar controversies by providing comprehensive transparency regarding how they approach these impacts and increased accountability to manage them. As a result, questions related to how Amazon anticipates and addresses the societal risks posed by its technologies and services are a fundamental governance question for which the board should be accountable. Finally, the intent of the proposal is not to take a position on any potential social policy issues, or offer recommendations as to how Amazon directly addresses them. Rather, it is to ensure the Company has the structures in place to assess and manage these risks that are material to shareholders.

### *Artificial Intelligence and Civil Liberties*

In both research and policy circles, there has been a tremendous focus on the implicit and hidden biases of artificial intelligence, which have significant societal implications. For example, recent media reports make clear, "[a]rtificial intelligence is already heating up as a public policy issue,"<sup>4</sup> Moreover, specific concerns have been raised as they relate to individual AI-driven tools such as Amazon's Rekognition product. These social policy issues are profoundly material to Amazon as the Company's products and services are extremely reliant on AI. Its artificial intelligence team is rapidly moving AI technologies from development to the market.<sup>5</sup>

According to a February 2019 *Wired* article, Amazon has invested in becoming an AI

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<sup>1</sup> Amazon says over 5 billion items shipped in 2017 via Prime, Reuters (Jan. 2, 2018), <https://www.reuters.com/article/us-amazon-com-prime/amazon-says-over-5-billion-items-shipped-in-2017-via-prime-idUSKBN1ER11>.

<sup>2</sup> Lydia DePillis, *It's Amazon's World. We Just Live In It*, CNN Business (Oct. 4, 2018), <https://www.cnn.com/2018/10/03/tech/amazon-effect-us-economy/index.html>.

<sup>3</sup> Lianna Brinded, *Amazon has replaced Google as the best place to work in the US*, Quartz.com (Mar. 25, 2018), <https://qz.com/work/1236944/linkedin-amazon-is-a-better-place-to-work-than-google-apple-or-tesla/>.

<sup>4</sup> Alan Boyle, *Policy experts trade ideas for intelligent ways to regulate artificial intelligence*, GeekWire (April 10, 2018), <https://www.geekwire.com/2018/policy-experts-debate-regulate-artificial-intelligence-intelligently/>.

<sup>5</sup> Steven Levy, *Inside Amazon's Artificial Intelligence Flywheel*, *Wired* (Feb. 1, 2018), <https://www.wired.com/story/amazon-artificial-intelligence-flywheel/>.

powerhouse.

*“If you asked me seven or eight years ago how big a force Amazon was in AI, I would have said, ‘They aren’t,’” says Pedro Domingos, a top computer science professor at the University of Washington. ‘But they have really come on aggressively. Now they are becoming a force.’*

*Maybe the force.”*<sup>6</sup>

AI is now central to Amazon’s business model. The article also states:

*“Amazon loves to use the word flywheel to describe how various parts of its massive business work as a single perpetual motion machine. It now has a powerful AI flywheel, where machine-learning innovations in one part of the company fuel the efforts of other teams, who in turn can build products or offer services to affect other groups, or even the company at large. Offering its machine-learning platforms to outsiders as a paid service makes the effort itself profitable—and in certain cases scoops up yet more data to level up the technology even more.”*<sup>7</sup>

Further, the article also demonstrates how Amazon uses AI tools from other parts of its operations and turns them into advantages for AWS clients by bundling services:

*“These machine-learning services are both a powerful revenue generator and key to Amazon’s AI flywheel, as customers as disparate as NASA and the NFL are paying to get their machine learning from Amazon. As companies build their vital machine-learning tools inside AWS, the likelihood that they will move to competing cloud operations becomes ridiculously remote. (Sorry, Google, Microsoft, or IBM.)”*<sup>8</sup>

Other media reports, including the following from National Public Radio, provide a more complete picture of this flywheel in action:

*“While all large online retailers rely on AI, ‘Amazon definitely has the most powerful tools for all the little computational processes involved in moving the packages through many suppliers, routes of transit and all the steps that a package goes through,’ says Mike Liebhold, a senior tech researcher at the Institute for the Future.”*

*Indeed, AI is woven through every part of an Amazon purchase, from website to the warehouses to the actual delivery to your doorstep....*

*Whether you search on Amazon.com or shop using Alexa in the Echo*

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<sup>6</sup> *Ibid.*

<sup>7</sup> *Ibid.*

<sup>8</sup> *Ibid.*

*device, AI determines what results or recommendations you see and tells you how fast you might get each item.”<sup>9</sup>*

The Proponent’s proposal makes specific mention of the potential for Amazon’s technologies to cause potential civil liberties and privacy violations. For example, Amazon’s AI-driven facial recognition software, Rekognition, which can identify faces and other imagery in photographic and video recordings, poses unique risks in both areas that are often intertwined.

Studies indicate that there is the potential for unforeseen or unintentional biases to be built into AI tools generally, and Rekognition specifically, and in specific circumstances, could have negative civil liberties implications.<sup>10</sup> In May 2018, The U.S. Congressional Black Caucus wrote Amazon to express concern regarding the use of Rekognition by law enforcement to make clear that they were troubled by the implications of the technology on specific communities.<sup>11</sup> In July 2018 and November 2018, a group of U.S. congressional leaders wrote Amazon to request more information about Rekognition’s use by law enforcement and the implications any implicit

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<sup>9</sup> Alina Selyukh, *Optimized Prime: How AI And Anticipation Power Amazon's 1-Hour Deliveries*, NPR Morning Edition (Nov. 21, 2018), <https://www.npr.org/2018/11/21/660168325/optimized-prime-how-ai-and-anticipation-power-amazons-1-hour-deliveries>.

<sup>10</sup> For example, MIT researcher Joy Buolamwini, a leading researcher in the field of artificial intelligence (AI) and facial recognition, wrote in January 2019:

“In our recent study of bias in commercial facial analysis systems, Deborah Raji and I show Amazon Rekognition, an AI service the company sells to law enforcement, exhibits gender and racial bias for gender classification...Unlike its peers, Amazon did not submit their AI systems to the National Institute of Standards and Technology (NIST) for the latest rounds of facial recognition evaluations. Their claims of being bias free are based on internal evaluations. *This is why we did an external evaluation to provide an outside perspective. Despite receiving preliminary reports of gender and racial bias in a June 25, 2018 letter, Amazon’s approach thus far has been one of denial, deflection, and delay. We cannot rely on Amazon to police itself or provide unregulated and unproven technology to police or government agencies.*”

Joy Buolamwini, *Response: Racial and Gender bias in Amazon Rekognition—Commercial AI System for Analyzing Faces* (Jan. 25, 2019), <https://medium.com/@Joy.Buolamwini/response-racial-and-gender-bias-in-amazon-rekognition-commercial-ai-system-for-analyzing-faces-a289222eeced> (emphasis added).

The Company’s general manager of artificial intelligence, however, Dr. Matt Wood, said the Company’s own internal study found no major difference in gender classification across all ethnicities, while noting the M.I.T. study did not reflect Amazon’s internal research, and did not use the latest version of Rekognition. Zoe Kleinman, *Amazon: Facial Recognition Bias Claims are ‘Misleading’*, BBC News (Feb. 4, 2019), <https://www.bbc.com/news/technology-47117299>.

Buolamwini has addressed Dr. Wood’s criticism by stating the M.I.T. study used “profile images of people looking straight into a camera”, rather than using more difficult real-world conditions, thus making it easier for Rekognition to have accurate results despite their low accuracy rate. She also argued that although Amazon’s benchmark of over 1 million faces may have performed well internally, the skin types used in the benchmarks is not known and therefore the performance of that benchmark cannot be adequately evaluated. Furthermore, while the Company may have an updated version of Rekognition, Buolamwini points out that older versions are still in use.

<sup>11</sup> Congressional Black Caucus, Letter to Jeffrey Bezos, CEO, Amazon.com Inc., May 24, 2018, [https://cbc.house.gov/uploadedfiles/final\\_cbc\\_amazon\\_facial\\_recognition\\_letter.pdf](https://cbc.house.gov/uploadedfiles/final_cbc_amazon_facial_recognition_letter.pdf).

biases may have on communities of color.<sup>12</sup>

Regarding privacy concerns, the American Civil Liberties Union (“ACLU”) has noted that “Face surveillance also threatens to chill First Amendment-protected activity like engaging in protest or practicing religion, and it can be used to subject immigrants to further abuse from the government.”<sup>13</sup> Long-standing rules that have precluded the FBI and Department of Homeland Security from tracking the identity of individuals during the exercise of free speech appear to be at risk. The Georgetown Law Center on Privacy and Technology, a leading academic analyst of privacy issues explains:

*“...The federal Privacy Act generally prohibits the government from keeping records ’describing how any individual exercises rights guaranteed by the First Amendment.’<sup>14</sup> But the FBI is now petitioning for its face recognition system to be exempt from the enforcement of this provision.*

*...Major federal and state law enforcement agencies have recognized the threat that face recognition presents to free speech. A Privacy Impact Assessment drafted in 2011 by DHS, the FBI, and a number of state police agencies, considered the effects of law enforcement face recognition on the ’erosion or compromise of anonymity.’<sup>15</sup> The document recognizes that “surveillance has the potential to make people feel extremely uncomfortable, cause people to alter their behavior, and lead to self-censorship and inhibition.”<sup>16</sup>*

In June, media reports indicate the Company’s attempt to sell Rekognition to Immigration and Customs Enforcement (ICE) officials as a means to identify immigrants in homeland security investigations fueled a backlash among Amazon employees.<sup>17</sup> The employees wrote an open letter to the Company in protest and demanded the Company reject contracts that could be used for government surveillance. They expressed that the powerful surveillance capabilities of

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<sup>12</sup> Letter from Senator Edward J. Markey et al. to Jeffrey Bezos, CEO, Amazon.com Inc., Nov. 29, 2018, <https://www.markey.senate.gov/imo/media/doc/Bicameral%20Amazon%20Recognition.pdf>.

<sup>13</sup> Jacob Snow, *Amazon’s Face Recognition Falsely Matched 28 Members of Congress With Mugshot* (July 26, 2018), <https://www.aclu.org/blog/privacy-technology/surveillance-technologies/amazons-face-recognition-falsely-matched-28>.

<sup>14</sup> Administrative Procedure Act, 5 U.S.C. § 552a(e)(7) (2014).

<sup>15</sup> Privacy Impact Assessment: Report for the Utilization of Facial Recognition Technologies to Identify Subjects in the Field, The International Justice and Public Safety Network, (June 30, 2011), Document pp. 016625–016693, 016648–016649.

<sup>16</sup> Alvaro Bedoya, Jonathan Frankle, Clare Garvie, *The Perpetual Line-Up, Unregulated Police Face Recognition in America*, Georgetown Law Center on Privacy & Technology (Oct. 18, 2016), <https://www.perpetuallineup.org/findings/free-speech>.

<sup>17</sup> Andrea Peterson and Jake Laperruque, *Amazon Pushes ICE to Buy Its Face Recognition Surveillance Tech*, POGO (Oct. 24, 2018), <https://www.pogo.org/investigation/2018/10/amazon-pushes-ice-to-buy-its-face-recognition-surveillance-tech/>. Drew Harwell, *Amazon Met with ICE Officials Over Facial-Recognition System That Could Identify Immigrants*, The Washington Post (Oct. 23, 2018), [https://www.washingtonpost.com/technology/2018/10/23/amazon-met-with-ice-officials-over-facial-recognition-system-that-could-identify-immigrants/?noredirect=on&utm\\_term=.a1f6a0bde678](https://www.washingtonpost.com/technology/2018/10/23/amazon-met-with-ice-officials-over-facial-recognition-system-that-could-identify-immigrants/?noredirect=on&utm_term=.a1f6a0bde678).

Recognition had the potential to harm the most marginalized, and they refused to contribute to tools that violate human rights and build platforms that power Immigration and Customs Enforcement.<sup>18</sup> More than 450 anonymous employees are now reported to have signed the letter.<sup>19</sup> Drew Harwell of the *Washington Post* described how the June meeting has more broadly fueled a Silicon Valley “culture clash” between executives in pursuit of government contracts and outraged rank-and-file workers.<sup>20</sup>

### **Cybersecurity**

Amazon gathers a tremendous amount of data on its users and stores enormous quantities of data on the cloud for its clients. At the same time, high profile examples of data breaches have raised concerns in the U.S. and internationally around the policy protections necessary to secure consumers’ data. According to a January 2019, *Harvard Business Review* article, “2018 has been the year of privacy.”<sup>21</sup> In response, governments are taking action. For example, the General Data Protection Regulation, which recently came into force in the EU and there has been hearings and legislation introduced in US at both the state and Federal levels.<sup>22</sup> Given these conditions, the public policy debate around data collection and privacy is highly relevant to Amazon. In 2018, issues related to data collection and digital privacy and their intrinsic societal ramifications received attention from policymakers. Moreover, currently Amazon provides limited information regarding how it protects privacy and identifies emerging threats. For this reason, increased transparency and accountability is imperative.

In particular, some signature products, such as the *Amazon Echo* with the *Alexa* digital assistant, and its smart doorbell, *Ring*, raise specific and unique questions around data collection and the appropriate public policies required to protect users. Moreover, Amazon has not been immune to breaches in trust, making increased disclosure regarding how such risks are managed even more imperative.

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<sup>18</sup> Kate Conger, *Amazon Workers Demand Jeff Bezos Cancel Face Recognition Contracts With Law Enforcement*, Gizmodo (Feb. 21, 2018), <https://gizmodo.com/amazon-workers-demand-jeff-bezos-cancel-face-recognition-1827037509>.

<sup>19</sup> Andrea Peterson and Jake Laperruque, *Amazon Pushes ICE to Buy Its Face Recognition Surveillance Tech*, POGO (Oct. 24, 2018), <https://www.pogo.org/investigation/2018/10/amazon-pushes-ice-to-buy-its-face-recognition-surveillance-tech/>. Drew Harwell, *Amazon Met with ICE Officials Over Facial-Recognition System That Could Identify Immigrants*, *The Washington Post* (Oct. 23, 2018). Sen. Ron Wyden (D-Ore.) also issued a statement regarding the meeting between ICE officials and the Company, in which he discussed the potential for dangerous misuse by the government without clear protections in place. Drew Harwell, *Amazon Met with ICE Officials Over Facial-Recognition System That Could Identify Immigrants*, *The Washington Post* (Oct 23, 2018), [https://www.washingtonpost.com/technology/2018/10/23/amazon-met-with-ice-officials-over-facial-recognition-system-that-could-identify-immigrants/?noredirect=on&utm\\_term=.a1f6a0bde678](https://www.washingtonpost.com/technology/2018/10/23/amazon-met-with-ice-officials-over-facial-recognition-system-that-could-identify-immigrants/?noredirect=on&utm_term=.a1f6a0bde678).

<sup>20</sup> Drew Harwell, *Amazon Met with ICE Officials Over Facial-Recognition System That Could Identify Immigrants*, *The Washington Post* (Oct 23, 2018), [https://www.washingtonpost.com/technology/2018/10/23/amazon-met-with-ice-officials-over-facial-recognition-system-that-could-identify-immigrants/?noredirect=on&utm\\_term=.a1f6a0bde678](https://www.washingtonpost.com/technology/2018/10/23/amazon-met-with-ice-officials-over-facial-recognition-system-that-could-identify-immigrants/?noredirect=on&utm_term=.a1f6a0bde678).

<sup>21</sup> Andrew Burt, *Privacy and Cybersecurity Are Converging. Here’s Why That Matters for People and for Companies*, *Harvard Business Review* (Jan. 3, 2019), <https://hbr.org/2019/01/privacy-and-cybersecurity-are-converging-heres-why-that-matters-for-people-and-for-companies>.

<sup>22</sup> Matt Burgess, *What is GDPR? The Summary Guide to GDPR Compliance In the UK*, *Wired* (Jan. 21, 2019). Jeffrey Atteberry, *A Survey of Proposed Federal Privacy Legislation and the Year Ahead*, *Corporate Counsel*, (Feb. 4, 2019), <https://www.law.com/corpcounsel/2019/02/04/a-survey-of-proposed-federal-privacy-legislation-and-the-year-ahead/>.

According to a media report, “Amazon’s Alexa is among the most ubiquitous personal voice assistants on the planet, and it also happens to live inside the living rooms and bedrooms of millions of Alexa device owners around the world. That gives Amazon the responsibility of being a proper steward of the data it collects when we ask Alexa a question and or engage in back-and-forth conversations with the software.”<sup>23</sup> The personal information and emerging public policy expectations for this new technology raise significant questions regarding how Amazon protects consumer data.

Beyond *Alexa*, other existing Amazon featured products and products in its development pipeline raise substantial and ominous privacy concerns. For example, the Company collects data when the Echo is used to turn a device on and off, but it is now seeking to partner with smart-home gadget makers to send continuous “status reporting”— information regarding the on/off status of smart features such as lights, locks, and televisions, including the television channel selection.<sup>24</sup> Researchers have called this data collection a “Trojan horse”.<sup>25</sup> While the Company is presenting status reporting as a helpful feature for consumers, in reality that information could be misused by infringing on privacy rights without permission, as a means to obtain a greater market position.<sup>26</sup> Privacy concerns are now heightened by the Company’s filing of a patent application for an algorithm that would allow the Echo to identify statements related to hobbies, thus allowing it to target related advertising.<sup>27</sup>

Additionally, Ring, acquired last February is a smart video-doorbell company that has facial and object recognition software, in addition to video recording, live video feeds, and notification capabilities.<sup>28</sup> It can be mounted anywhere in or around a home, allowing consumers to keep tabs on their home while they are away. While there are benefits to the user, there are also significant privacy concerns. For example, in 2016 customers’ unencrypted video feeds from every video created by every Ring camera worldwide, were reportedly made accessible to a Ukraine-based research and development team. This team could download and share customer video files, and had access to a corresponding database linking each video file with specific Ring customers. Meanwhile, Ring provided executives and engineers with access to its technical support video portal, allowing unfiltered round-the-clock access to live feeds of customers’ cameras.<sup>29</sup>

Two facial recognition-related patent applications filed by the Company featured a technology

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<sup>23</sup> Nick Slatt, *Amazon sent 1,700 Alexa voice recordings to the wrong user following data request*, The Verge, (Dec. 20, 2018), <https://www.theverge.com/2018/12/20/18150531/amazon-alexa-voice-recordings-wrong-user-gdpr-privacy-ai>.

<sup>24</sup> Matt Day, *Your Smart Light Can Tell Amazon and Google When You go to Bed*, Bloomberg (Feb. 12, 2019), <https://www.bloomberg.com/technology>.

<sup>25</sup> *Ibid.*

<sup>26</sup> *Ibid.*

<sup>27</sup> Alex Hern, *Shhh...Alexa Might Be Listening*, *The Guardian* (April 11, 2018), <https://www.theguardian.com/technology/shortcuts/2018/apr/11/shhh-alexa-might-be-listening>

<sup>28</sup> Laura Stevens and Douglas MacMillan, *Amazon Acquires Ring, Maker of Video Doorbells*, *The Wall Street Journal* (Feb. 27, 2018), <https://www.wsj.com/articles/amazon-acquires-ring-maker-of-video-doorbells-1519768639/>.

<sup>29</sup> Sam Biddle, *For Owners of Amazon’s Ring Security Cameras, Strangers May have Been Watching Too*, *The Intercept* (Jan. 10, 2019), <https://theintercept.com/2019/01/10/amazon-ring-security-camera/>.

that could use multiple cameras to create a composite image of a person’s partially seen face, and then could automatically alert law enforcement if a “suspicious” person or known criminal was in view of Ring’s cameras.<sup>30</sup> The ACLU has strongly come out against these patent applications, arguing that such technology creates a dangerous future where the public would be subject to a widespread decentralized surveillance network.<sup>31</sup>

In 2019, the growing focus on policy solutions to questions around data collection, management, and privacy will likely not abate. The Proponent believes the Proposal’s request—the creation of a Societal Risk Oversight Committee—would protect Amazon and its shareholders by bringing the Company’s practices more in-line with exemplary peers, making its subject matter not merely appropriate for shareholders, but vital to them. It is imperative that Amazon have stewardship structures in place at the board level to anticipate and mitigate society-wide consequences of the Company’s platforms, services, technologies, and relationships. Moreover, these societal considerations are both deeper and broader than the Audit Committee’s scope of responsibilities, necessitating the creation of a new board-level body tasked specifically with such oversight.

The Company’s current approach to issues of risk to society has been referred to as a “*break-then-fix*” approach.<sup>32</sup> This assumes that *society* will eventually fix the problems with these technologies, even as the technologies hyper-power new abuses of human and civil rights, personal privacy and safety. Given the wide-reaching impact the Company’s internal decisions can have on society, the Proponent believes board oversight is urgently needed, as the nature of these risks can subject Amazon to broad regulatory, legal, and reputational risk. The Proponent believes managing these risks are a fundamental governance question because these issues are material to the long-term future of the company and to its investors. Therefore, this is an entirely appropriate request for shareholders to make and the board should be accountable for how it is overseeing these risks.

## ANALYSIS

### **The Proposal is not excludable under Rule 14a-8(i)(7)**

The Proposal seeks the creation of a new committee of the Company’s Board of Directors, a Societal Risk Oversight Committee, which would review potential societal consequences of the Company’s products and services and offer guidance on strategic decisions. The Company Letter asserts that the Proposal violates 14a-8(i)(7) because it pertains to matters directly relating to Amazon’s ordinary business operations — decisions regarding products and services.

However, the Proposal is non-excludable under Rule 14a-8(i)(7) as a governance proposal and

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<sup>30</sup> Ben Fox Rubin, *Amazon's Ring takes heat for considering facial recognition for its video doorbells*, CNET (December 14, 2018) <https://www.cnet.com/news/amazons-ring-takes-heat-for-considering-facial-recognition-for-its-video-doorbells/>.

<sup>31</sup> *Ibid.*

<sup>32</sup> “Companies can’t continue to pretend that the ‘break-then-fix’ approach works,” Nicole Ozer, technology and civil liberties director for the ACLU of California, said in a statement to Fortune magazine. Danielle Abril, *Coalition Pressures Amazon, Microsoft, and Google to Keep Facial Recognition Surveillance Away From Government*, Fortune (Jan 16, 2019), <http://fortune.com/2019/01/15/coalition-p pressures-amazon-microsoft-google-facial-recognition-surveillance-government/>.

because the underlying subject matter is limited to a significant policy issue – societal risk caused by Amazon’s products and services, a subject matter with a clear nexus to the Company.

**Staff Legal Bulletin 14E is directly applicable to non-exclusion of the current Proposal**

In Staff Legal Bulletin 14E, October 27, 2009, the Staff reversed its prior position that treated as excludable ordinary business all resolutions relating to “risk evaluation.” Under the new Staff policy, if the subject matter of the resolution relates to a significant social policy issue, then the fact that the resolution asks for evaluation of risks will not be a basis for exclusion. The issue of risk governance was also identified as a significant policy issue. The bulletin stated:

In addition, we note that there is widespread recognition that the board’s role in the oversight of a company’s management of risk is a significant policy matter regarding the governance of the corporation. In light of this recognition, a proposal that focuses on the board’s role in the oversight of a company’s management of risk may transcend the day-to-day business matters of a company and raise policy issues so significant that it would be appropriate for a shareholder vote.

The Company Letter acknowledges that Staff Legal Bulletin 14E had established the principle that “the board’s role in the oversight of a company’s management of risk,” could itself be a transcendent social policy issue precluding exclusion.

But the Company Letter attempts to assert that the Proposal’s focus goes beyond that contemplated by SLB 14E. The Company Letter cites *Western Union Co.* (Mar. 14, 2011) and *Sempra Energy* (Jan. 12, 2012, *recon. denied* Jan. 23, 2012) in support of this supposition, in arguing that the present Proposal is similar to these cases in that it seeks such a focused degree of analysis and specificity in risk assessment and management, that it falls into the realm of ordinary business operations. However, in both of the cases cited by the Company, Staff found the proposals addressed matters of ordinary business, and – unlike the present Proposal – they requested assessment of risks that were not confined to a significant policy issue.

Though the *Sempra* and *Western Union* proposals also sought the creation of board-level risk management committees, they both – in contrast to the Proposal here – tasked their oversight committees with analyzing particular, named risks that were clearly matters of ordinary business. As such, they are distinguishable from this Proposal which is properly framed for oversight and governance of a significant policy issue.

In *Western Union*, the proposal requested the establishment of a board of directors risk committee, which would periodically report on “the company’s approach to monitoring and control of potentially material risk exposures, including those identified in the 10-K.” The proposal itself listed particular risks drawn from Western Union’s 10-K in the Supporting Statement, indicating that the committee should analyze these particular risks: *changes in consumer confidence; changes in reliability of customer payment; competition from similar businesses; license termination; and changes in consumer protection laws.* The proposal further identified risks to customer base, fee structure, community and customer good will, and growing

competition, as four particular risk categories that should be considered by the new committee. The Staff concurred with the company's request for exclusion of this proposal on the basis of Rule 14a-8(i)(7), noting that, "although the proposal requests the establishment of a risk committee, which is a matter that focuses on the board's role in oversight of Western Union's management of risk, the proposal also requests a report that describes how Western Union monitors and controls particular risks. We note that the underlying subject matters of these risks appear to involve ordinary business matters."

Thus, when the Staff examined the underlying subject matter, it found that the set of risks that were to be analyzed did not address a significant policy issue. In contrast the present Proposal exclusively addresses risks associated with a significant policy issue, namely the Company's impact on society.

In *Sempra Energy*, proponents sought board oversight of "the Company's management of political, legal and financial risks posed by Sempra operations in any country that may pose an elevated risk of corrupt practices," and the company sought exclusion under Rule 14a-8(i)(7). The proposal went into detail about specific allegations of bribery and corruption against the company and a subsequent FBI investigation. The proponent's supporting letter added a detailed discussion of the Foreign Corrupt Practices Act and a notable rise in the prosecution of corporations under that Act. Sempra objected that the request for this review of the company's management of legal risks should be viewed as a request for "an evaluation of the efforts and safeguards the Company has in place to ensure ethical and legal behavior." In support of its argument, Sempra cited examples of similar proposals which sought to have companies adopt or edit an existing code of ethics, or engage in additional oversight, management or change the conduct of legal compliance programs. The Staff concurred with the company's request for exclusion, finding that "the underlying subject matter of these risks appears to involve ordinary business matters."<sup>33</sup>

Unlike the *Western Union* and *Sempra* proposals, the present Proposal neither directs the Company to engage in oversight or management of its legal compliance programs, nor directs it to assess an array of ordinary and extraordinary risks enumerated in the Company's 10K. Instead, the underlying subject matter focuses on what is a significant policy issue for the Company: the impacts on society from the Company's activities.

A long history of Staff decisions documents that proposals directed broadly to issues of societal impact address a significant policy issue. Moreover, in the instance of Amazon, there is ample evidence to document the nexus of the subject matter to the Company.

### **The underlying subject matter of the proposal addresses a significant policy issue**

The legal framework for Rule 14a-8(i)(7) developed by the Commission, Staff and the courts, one

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<sup>33</sup> The precedent in *PepsiCo, Inc.* (February 16, 2012) is also relevant. PepsiCo requested permission to omit a shareholder proposal from its 2012 proxy materials, which simply asked PepsiCo to establish a risk oversight committee of the board of directors. However, the proposal, as in the Western Union proposal, had discussed certain issues of corporate social responsibility. The whereas clauses of the proposal noted certain issues of concern including risks related to changing consumer preferences and bottled water quality. However, the proposal was not considered excludable by the Staff under Rule 14a-8(i)(7).

begins with the question of whether a topic is integral to the day-to-day management and operations of the company.<sup>34</sup> These “nitty-gritty” operational considerations might include for instance, decisions regarding whether to sell a particular product or service, use a particular technology, hire a particular individual or group, or to decide where to invest or expand capital. In general, such ordinary business questions are reserved to the board and management.

The exception is where the subject matter addresses a significant policy issue. In this instance, we believe the Proposal does not even touch on ordinary business, as it is strictly a governance proposal. However, if the focus of the subject matter is considered potentially ordinary business, in the present instance we would need to then ask “does the proposal address a significant policy issue?” In other words, does the proposal's underlying subject matter transcend the day-to-day business matters of the company and raise policy issues so significant that it would be appropriate for a shareholder vote? Staff decisions have made it clear that “transcendent” issues that constitute significant policy relate to whether the proposal addresses an issue of widespread public debate. Examples recognized by the Commission and the Staff include such topics of public controversy such as environmental impact, human rights, climate change, and discrimination. Numerous other categories of public controversy have been recognized.

There are dozens of Staff decisions allowing (notwithstanding Rule 14a-8(i)(7) objections), proposals requesting various forms of reporting on corporate social responsibility, and materially significant disclosures regarding companies’ environmental and social impact on society. Examples include: *Wendy’s International, Inc.* (February 10, 2005); *Dean Foods Company* (March 25, 2005); *Lehman Brothers Holdings Inc.* (January 29, 2008); *Wal-Mart Stores, Inc.* (February 17, 2004); *SunTrust Banks, Inc.* (January 13, 2010); *Johnson Controls, Inc.* (November 14, 2002); and *Hormel Foods Corporation* (October 22, 2004).

### **The subject matter of the Proposal has a clear nexus to the Company**

In the event that the proposal relates to a significant policy issue, 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.<sup>35</sup> To determine whether there is a nexus of the significant policy issue to the Company, one asks whether the subject matter relates significantly to the company’s business or strategy? The Staff has extended an invitation to the board of directors of each company, under Staff Legal Bulletins 14 I and 14 J, to provide evidence and findings to assert and demonstrate that an issue is insignificant for the company. Proponents are also expected to continue to provide their own evidence regarding these questions of significance to the company. Ultimately, the determination of insignificance to a company is the obligation of the Staff, the Commission, or the courts.

Notably, in the present instance, the Board of Directors has not submitted evidence regarding the significance to the company.

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<sup>34</sup> Staff Legal Bulletin 14H published in 2015 described ordinary business in terms of the “nitty gritty” of corporate management: “a proposal may transcend a company's ordinary business operations even if the significant policy issue relates to the “nitty-gritty of its core business.” This makes the distinction between and ordinary business determination and a significant policy determination clear.

<sup>35</sup> Staff Legal Bulletin No. 14E (October 27, 2009).

### **CEO Jeff Bezos has effectively demonstrated nexus in his public comments.**

When recently confronted with the concerns circling the company’s rapid application of new technologies in products and services, and the potential severe impact on society, CEO Jeff Bezos was recently quoted glibly dismissing the profound implications of the Company’s impacts:

*“He compared current technology to the invention of books, which have been used for good and bad, including creating ‘fascist empires.’  
‘The last thing we’d ever want to do is stop the progress of new technologies,’ said Bezos.  
Eventually, society will develop an ‘immune response’ to bad uses of technology,’ according to Bezos.  
... ‘I worry that some of these technologies will be very useful for autocratic regimes to enforce their role ... But that’s not new, that’s always been the case. And we will figure it out.’”<sup>36</sup>*

However, at the same time, in the same article, he made clear that investors and consumers are right to seek clarity regarding how the Company addresses these issues.

*“He went on to defend scrutiny of large companies like Amazon, as well as other large institutions such as governments and big non-profits.*

*‘I preach inside Amazon, this is going to happen, it’s normal, don’t take it personally,’ he said. ‘You want to live in a society where that happens.’”<sup>37</sup>*

The CEO’s assumption that society will eventually place limits and develop an “immune response” to abuses—while the company abstains from placing effective limits on its own - has been referred to as a “break-then-fix” approach. This approach yields maximum exposure for the company, as society is forced to react and place limits on the company’s social impacts.

### **Recent experience of Facebook demonstrates volatility associated with tech leaders’ societal risk profile**

The experience of Facebook provides ample evidence that the prominent technology sector companies, especially those that are entrusted with key consumer data, are highly vulnerable to reputational crises associated with impact on society. Further, exposure to these risks and related crises can have a material impact on company valuations, impacting shareholders.

In 2018, multiple scandals involving user privacy resulted in a “tumultuous year” at Facebook. In addition to the two top executives being asked to testify before the U.S. Congress, the market value of the company came under tremendous pressure throughout the year. Following the news that Cambridge Analytic had collected personal data of more than 50 million users, shares of FB

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<sup>36</sup> Heather Kelly, *Jeff Bezos: Amazon will keep working with the DoD*, CNN Business (Oct. 15, 2018), <https://www.cnn.com/2018/10/15/tech/jeff-bezos-wired/index.html>.

<sup>37</sup> Heather Kelly, *Jeff Bezos: Amazon will keep working with the DoD*, CNN Business (Oct. 15, 2018), <https://www.cnn.com/2018/10/15/tech/jeff-bezos-wired/index.html>.

fell nearly 7% in one day.<sup>38</sup> On that day, Wall Street research firm Stifel Nicolaus reported the following justification for downgrading FB shares from Buy to Hold: “At the time of the downgrade, we didn’t believe the company was moving fast enough to address its emerging platforms issues and that it risked losing consumer trust.... [W]e thought management and its investors were being complacent about the legitimate platform issues being raised by reputable informed parties in Silicon Valley and elsewhere. Our views remain unchanged.”<sup>39</sup>

The scandals at Facebook have “fundamentally changed how we run this company. We've changed how we build services to focus more on preventing harm. We've invested billions of dollars in security, which has affected our profitability,” CEO Mark Zuckerberg told analysts in a January 2019 conference call.<sup>40</sup> Further, according to Bloomberg, “One analyst cautioned the risk to Facebook’s stock may be further in the future, when European regulators get more deeply involved in their privacy probes. Several different bodies are investigating Facebook, including the Irish Data Protection Commissioner. The consequences may not come this year, but they will eventually, said Brian Wieser, an analyst for Pivotal Research. ‘Unfortunately, Wall Street can be very short-sighted,’ he said.”<sup>41</sup>

While Amazon has not experienced a breach of the size seen at Facebook, it has not been entirely immune to breaches in privacy. For example, in conjunction with the EU’s recent GDPR policy, a German man requested all of the information Amazon had collected on him. Reportedly, the Company sent over 1,700 recordings which were not his. The information handed over contained enough personally identifying information that it was possible to track down the individual in the recordings.<sup>42</sup> While Amazon claims that the incident was attributable to human error and that it has made the fixes necessary to ensure that this type of error does not happen again, it does raise the significant risks and responsibilities the Company faces owing to all the data it has amassed.

In a separate case, an *Echo* was unintentionally triggered and recorded a private conversation that was then inadvertently sent to a third party, all without the user’s knowledge.<sup>43</sup> Again, Amazon indicated this was an “unlikely” chain of events, but does raise concerns related to user privacy and safeguards around collection. With the passage of GDPR and an increased focus from consumers on their digital footprint, it is likely that similar requests will increase over time, raising more risk for the Company.

It is clear that due to the tremendous amount, and personal nature, of the information Amazon

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<sup>38</sup> Marlene Awaad, *Here Are The Scandals And Other Incidents That Have Sent Facebook’s Share Price Tanking In 2018* [Bloomberg](https://www.bloomberg.com/news/articles/2018-11-20/facebook-scandals-in-2018-effect-on-stock) (Nov. 11, 2018), <https://www.cnbc.com/2018/11/20/facebooks-scandals-in-2018-effect-on-stock.html>

<sup>39</sup> Stifel Nicolaus, *Our thoughts on Facebook; Maintain Hold* (March 19th, 2018).

<sup>40</sup> *Facebook, Inc. (FB) CEO Mark Zuckerberg on Q4 2018 Results - Earnings Call Transcript* (Jan. 30, 2019), <https://seekingalpha.com/article/4236897-facebook-inc-fb-ceo-mark-zuckerberg-q4-2018-results-earnings-call-transcript>.

<sup>41</sup> Sarah Frier, *Facebook’s Shares Surge as Advertisers Ignore Scandals*, Bloomberg (Jan. 30, 2019), <https://www.bloomberg.com/news/articles/2019-01-30/facebook-sales-profit-beat-wall-street-estimates-shares-surge>.

<sup>42</sup> *Amazon error allowed Alexa user to eavesdrop on another home*, Reuters (Dec. 20, 2018), <https://www.reuters.com/article/us-amazon-data-security/amazon-error-allowed-alexa-user-to-eavesdrop-on-another-home-idUSKCN1OJ15J>.

<sup>43</sup> *Ibid.*

collects on its users—and increasingly the general public through its technologies—there are significant social policy implications regarding how such information is used and protected. Currently, Amazon fails to provide sufficient disclosure on how it is managing such risks.

In response to widespread violations of consumer privacy, U.S. policymakers are starting to respond. For example, in September, the Senate Committee on Commerce, Science, and Transportation held a hearing—where Amazon was a witness—to discuss opportunities to safeguard consumer data privacy.<sup>44</sup> Further, also in September, the Federal Trade Commission (FTC) held a hearing that was “the first in a series of hearings that will examine whether broad-based changes in the economy, evolving business practices, new technologies, or international developments might require adjustments to competition and consumer protection enforcement priorities of the Commission.”<sup>45</sup> Last year, lawmakers of both parties introduced bills concerning online privacy.<sup>46</sup> It is evident from these developments that data collection and management regulations, and privacy protections, are on the legislative and enforcement agenda ahead.

While there has been some momentum at the federal level, states are also taking action. “Several U.S. states have recently introduced and passed legislation to expand data breach notification rules and to mirror some of the protections provided by Europe’s newly enacted GDPR.”<sup>47</sup>

In particular, in June 2018, California passed a law that gives consumers more control over their data and expands the definition of personal information.<sup>48</sup> According to the *Intercept*, “Amazon and other big tech companies pushed back forcefully on the new reforms, citing excessive penalties, compliance costs, and data collection restrictions—and each spent nearly \$200,000 to defeat it.”<sup>49</sup>

The ACLU, along with a coalition of civil rights organizations, sent a public letter to the Company in May 2018 demanding that it stop selling its Rekognition software to government agencies.<sup>50</sup> “This development was followed by another open letter sent on January 15, 2019, this

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<sup>44</sup> U.S. Senate Committee on Commerce, Science, and Transportation Press Release, *Committee to Hold Hearing Examining Consumer Privacy Protections*, October 12, 2018, <https://www.commerce.senate.gov/public/index.cfm/2018/9/committee-to-hold-hearing-examining-consumer-privacy-protections>.

<sup>45</sup> FTC Hearing #1: Competition and Consumer Protection in the 21st Century, Federal Trade Commission (Oct. 10, 2018), <https://www.ftc.gov/news-events/events-calendar/2018/09/ftc-hearing-1-competition-consumer-protection-21st-century>.

<sup>46</sup> Jeffrey Atteberry, *A Survey of Proposed Federal Privacy Legislation and the Year Ahead*, Corporate Counsel, (Feb. 4, 2019), <https://www.law.com/corpcounsel/2019/02/04/a-survey-of-proposed-federal-privacy-legislation-and-the-year-ahead/>.

<sup>47</sup> Jeewon Kim Serrato *et al*, *US states pass data protection laws on the heels of the GDPR*, Data Protection Report, (July 9, 2019), <https://www.dataprotectionreport.com/2018/07/u-s-states-pass-data-protection-laws-on-the-heels-of-the-gdpr/>.

<sup>48</sup> Belle Lin, *Amazon’s Accent Recognition Technology Could Tell The Government Where You’re From*, The Intercept (Nov. 15, 2018), <https://theintercept.com/2018/11/15/amazon-echo-voice-recognition-accent-alexa/>.

<sup>49</sup> *Ibid*.

<sup>50</sup> May 22, 2018 Coalition Letter to Amazon, [https://www.aclunc.org/docs/20180522\\_AR\\_Coalition\\_Letter.pdf](https://www.aclunc.org/docs/20180522_AR_Coalition_Letter.pdf) .

January 15, 2019 Letter to Amazon,

[https://www.aclu.org/sites/default/files/field\\_document/nationwide\\_coalition\\_on\\_face\\_surveillance\\_-\\_amazon.pdf](https://www.aclu.org/sites/default/files/field_document/nationwide_coalition_on_face_surveillance_-_amazon.pdf)

Iqra Asghar and Kade Crockford, *Amazon Should Follow Google’s Lead and Stop Selling Face Surveillance Tech to Cops*, PRIVACY SOS (June 2, 2018), <https://privacysos.org/blog/amazon-follow-googles-lead-stop-selling-face>

time by a coalition of more than 85 activist groups, including the ACLU, the National Lawyers Guild chapters, and Freedom of the Press Foundation.<sup>51</sup> These groups expressed their concern for how the Rekognition technology threatens members' of the community safety, privacy, and human rights.

Given these concerns regarding the accuracy and implicit bias in facial recognition software, there have been calls to limit—or discontinue—the technology's use. In its 2018 report, the AI Now Institute at New York University notes the following:

*“The events of this year have strongly underscored the urgent need for stricter regulation of both facial and affect recognition technologies. Such regulations should severely restrict use by both the public and the private sector, and ensure that communities affected by these technologies are the final arbiters of whether they are used at all. This is especially important in situations where basic rights and liberties are at risk, requiring stringent oversight, audits, and transparency. Linkages should not be permitted between private and government databases. At this point, given the evidence in hand, policymakers should not be funding or furthering the deployment of these systems in public spaces.”<sup>52</sup>*

### **Shareholder democracy is rooted in the right of investors to weigh in on a company's societal impacts.**

If the Company's technologies have the ability to dramatically undermine civil rights and fuel tyrannical and autocratic regimes leaving it to society to build up an “immune response,” is the release of that technology still a choice that is reserved to management alone? The legal history of the shareholder proposal process provides a compelling indication that this is not the type of issue that is reserved to board and management, but rather one that goes to the core of shareholders' rights and duties to exercise the instruments of corporate democracy.

The shareholder right and duty to weigh in on a company's impacts on society was addressed in *Medical Committee for Human Rights v. SEC*, 432 F.2d 659 (D.C. Cir. 1985) in which the D.C. Circuit Court of Appeals found that shareholder proposals are proper (not ordinary business) when they raise issues of corporate social responsibility or question the “political and moral predilections” of board or management. The takeaway from this decision is that board and management have no monopoly on expertise over investors when it comes to guiding company strategy on issues with broad and significant social consequence. Investors are entitled to weigh in through the shareholder proposal process.

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[surveillance-tech-cops/](#)

<sup>51</sup> Danielle Abril, *Coalition Pressures Amazon, Microsoft, and Google to Keep Facial Recognition Surveillance Away From Government*, Fortune (Jan 16, 2019), <http://fortune.com/2019/01/15/coalition-pressures-amazon-microsoft-google-facial-recognition-surveillance-government/>.

<sup>52</sup> *AI Now Report 2018*, AI Now Institute at New York University (December 2018), [https://ainowinstitute.org/AI\\_Now\\_2018\\_Report.pdf](https://ainowinstitute.org/AI_Now_2018_Report.pdf).

*Medical Committee* involved a proposal at Dow Chemical seeking an end to the production and sale of napalm during the Vietnam War. The proposal requested the Board of Directors adopt a resolution setting forth an amendment to the Composite Certificate of Incorporation of the Dow Chemical Company that napalm shall not be sold to any buyer unless that buyer gives reasonable assurance that the substance will not be used on or against human beings.

In deciding *Medical Committee*, the court noted that it would be appropriate for shareholders to use the mechanism of shareholder democracy to pose “to their co-owners, in accord with applicable state law, the question of whether they wish to have their assets used in a manner which they believe to be more socially responsible.” Strategic business choices regarding whether to produce and sell products with large impacts on society has been baked into the shareholder proposal process since the *Medical Committee* decision.

In Amazon’s case many of the leading strategic social impact issues relate to civil and human rights – a significant policy issue with previously confirmed nexus for the Company. In *Amazon.com, Inc.* (March 25, 2015) the proposal urged the Board of Directors to report to shareholders on Amazon’s process for comprehensively identifying and analyzing potential and actual human rights risks of Amazon’s entire operations and supply chain addressing 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 Amazon’s use of labor contractors/subcontractors, temporary staffing agencies or similar employment arrangements (or a statement that no such risks have been identified). In that instance, despite focus of the proposal on nitty-gritty issues like the use of laborers and temporary staffing agencies, the Staff denied an exclusion under Rule 14a-8(i)(7).<sup>53</sup>

**The Proposal is not excludable under Rule 14a-8(i)(7) because of its relationship to products and services, business practices or business strategy.**

The Company Letter also asserts that the Proposal should be excludable as relating to products and services, business practices, and company strategic decisions. Because the proposal is directed only toward a significant policy issue, it transcends these ordinary business issues.

The Company Letter asserts that the Proposal is excludable because it impermissibly focuses upon particular products and services that the Company offers. In its request for no-action, the Company mischaracterizes the nature of the Proposal, stating:

...the underlying subject matter of the review sought by the Proposal is not how the Company manages oversight of risks to the Company, but instead ordinary business matters of overseeing the products and services the Company determines to sell.

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<sup>53</sup> See also *Yahoo! Inc.* (April 5, 2011) where Yahoo! requested permission to omit a shareholder proposal which directed the company to formally adopt human rights principles to guide its business in China and other repressive countries. Yahoo! sought exclusion by arguing that the human rights abuses were not under its control, but the Staff disallowed Rule 14a-8(i)(7) exclusion. The proposal focused on the significant policy issue of human rights connected to the company.

The Supporting Statement makes clear, however, that the purpose of the Proposed Committee is to address Amazon’s potential societal consequences: society-wide risks posed by the ubiquity of the Company’s various businesses and platforms, as Amazon itself has become “embedded in everyday life”, due neither to an individual product or service, a specific business practice or certain strategic decision, nor a particular choice of technology. In the Supporting Statement, Proponents argue:

“Because the Board operates outside of the day-to-day decision making process and is charged with managing higher-level, strategic issues, a Societal Risk Oversight Committee would be best positioned to protect investors and the Company...”

Thus, the underlying subject matter of the review sought by the Proposal is precisely how the Company manages oversight of risks to the Company, “especially those that carry the potential for negative and large-scale social consequences.”

As the CEO’s own comments indicate, the societal impacts of the Company’s products and services is a significant policy issue because it is embroiled in massive controversies and remains vulnerable to risks as a result of related societal impacts. The background section of the present letter provides ample evidence of the nexus between the Company and the Proposal, while there is a notable corresponding lack of counter-evidence presented by the board.

The Company cites numerous cases concerning proposals targeting the particular products and services of various companies, however, they do not include an exclusive focus on the risks to society to a degree that transcended ordinary business. These include proposals concerning products such as solar technology *Pepco Holdings, Inc.* (February 18, 2011); packaged local food products *Wal Mart Stores, Inc. (Albert)* (March 30, 2010); glue traps *Lowe’s Companies, Inc.* (February 1, 2008); and, a particular type of shopping card (*The Kroger Co.*) (March 20, 2003). The Company tries to expand its argument with another set of proposals found excludable for addressing “company policies regarding...products and services and the use of products by third parties”, but each of these cases are, again, concerned only with one particular type of product offered by the companies. Unlike the present Proposal, the proposals in each of these examples were focused on the sale of a particular type or set of products and services without a transcendent focus on a significant policy issue, or were focused on both ordinary business and non-ordinary business subjects, and therefore were properly excludable under Rule 14a-8(i)(7).

The present Proposal does not focus upon particular products or services of the Company, but rather exclusively on risks to society resulting from Company activities. Nor does the Proposal concern whether or not the Company should or should not sell its products or services. As this Proposal does not relate to products and services, and instead focuses upon the significant policy issue of high-level board risk management oversight, these examples are not relevant.

### **The Proposal does not focus on ordinary business practices and operations**

The Company also argues that the Proposal is excludable because it deals with the ordinary day-to-day business matters of monitoring the business practices and operations of the Company. The Company cites cases that, unlike the present Proposal, concern proposals that dealt with Company operations such as accounting and employment practices, and adherence to existing, internal codes of conduct and ethics.

Here, the Company is misconstruing the Proposal. This Proposal does not seek review of or reporting on current business practices or operations, or the Company's adherence to its own existing codes of conduct or policies. Instead, the Proposal seeks a higher-level, holistic review of how the Company's corporate policies impact society, and what the related risks entail for the Company. The Proposal specifically states that the Societal Risk Oversight Committee would consider matters "outside of the day-to-day decision making process and [be] charged with managing higher-level strategic issues." Thus, the Proposal seeks ongoing Board-level review of the Company's policies and procedures above and beyond legal and regulatory matters, and concerns the significant policy issue of Board risk management oversight.

### **The Proposal does not relate to ordinary business strategy.**

The Proposal, in seeking high-level, holistic review of how the Company's policies and practices impact society and management of what risks this impact might entail for the Company, transcends the ordinary business matter of the Company's choice of general business strategy. The Company seeks to draw an analogy to two cases where shareholders sought information about their company's basic strategic planning and engagement in that process: *CVS Corporation, Mobil Corp.* (February 1, 2000) and *Mobil Corp.* (February 13, 1989). This Proposal seeks creation of a higher level Board Committee – not a shareholder committee, as in *Mobil Corp.* (February 13, 1989), or "the company" as in *CVS* – to engage in risk management oversight, certainly an activity related to *strategy*, but not the ordinary business matter of basic strategic planning.

Inherent in the shareholder proposal process is the right of shareholders of all sizes to pose questions regarding a Company's strategic decisions regarding societal impact. The right of shareholders to focus in proposals on societal impacts by a company is in accord with positions set forth by the Commission and the courts. The Commission has made clear since 1976 that proposals addressing business choices with major implications for society transcend ordinary business:

[A] proposal that a utility company not construct a proposed nuclear power plant has in the past been considered excludable ... In retrospect, however, it seems apparent that the economic and safety considerations attendant to nuclear power plants are of such magnitude that a determination whether to construct one is not an "ordinary" business matter. Accordingly, proposals of that nature, as well as others that have major implications, will in the future be considered beyond the realm of an issuer's ordinary business operations, and future interpretative letters of the Commission's staff will reflect that view. Exchange Act Release 3412999 (Nov. 22, 1976).

The Staff decisions in the decades subsequent to 1976 identified various significant policy issues

that transcend ordinary business where the proposal asked the company to reduce its impacts on society in various arenas, including: pollution; human rights violations; climate change; discrimination; slavery; and doing business with governments and companies implicated in genocide.

The Proposal here urges the board to take a more deliberative and responsibly preemptive approach to stewardship of technology, by assessing and disclosing risks, rather than continuing in the vein of “we break it, the government—or society—fixes it.” To secure the public’s and shareholders’ trust, it is imperative that the Company have board oversight securely in place to identify and address social consequences of the Company’s platforms, products, services, technologies, and relationships. Currently, it appears that the Company does not have these structures in place and it is not clear to investors whether the board is overseeing related risks.

Providing oversight over potential societal risks should be a core competency of the Board. The creation of a Societal Risk Oversight Committee would give investors assurances, along with a contractual level of clarity of the fiduciary duty and accountability, under which members of the Board of Directors of Amazon are overseeing and managing the risks associated with potential ethical and societal implications of the Company’s technologies and operations.

Furthermore, other technology companies are providing increased transparency on how they assess societal impacts and disclose more about their internal management structures to address these risks. The creation of a Societal Risk Oversight Committee—would protect Amazon and its shareholders by ensuring the Board is providing oversight and bringing the Company’s practices more in-line with those of its industry peers. As a result, the request of this proposal is not only merely appropriate for shareholders, but vital to them.

Accordingly, the Proponent urges the Staff to find that the Proposal is not excludable pursuant to Rule 14a-8(i)(7).

January 22, 2019

VIA E-MAIL

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

Re: *Amazon.com, Inc.*  
*Shareholder Proposal of the W. Andrew Mims Trust*  
*Securities Exchange Act of 1934—Rule 14a-8*

Ladies and Gentlemen:

This letter is to inform you that our client, Amazon.com, Inc. (the “Company”), intends to omit from its proxy statement and form of proxy for its 2019 Annual Meeting of Shareholders (collectively, the “2019 Proxy Materials”) a shareholder proposal (the “Proposal”) and statement in support thereof (the “Supporting Statement”) received from the Sustainability Group of Loring, Wolcott & Coolidge Fiduciary Advisors, LLP on behalf of the W. Andrew Mims Trust (the “Proponent”).

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

- filed this letter with the Securities and Exchange Commission (the “Commission”) no later than eighty (80) calendar days before the Company intends to file its definitive 2019 Proxy Materials with the Commission; and
- concurrently sent 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**, shareholders request that Amazon.com, Inc. (“Amazon” or “the Company”) establish a Societal Risk Oversight Committee (“the Committee”) of the Board of Directors (“the Board”), composed of independent directors with relevant experience. The Committee should provide an ongoing review of corporate policies and procedures, above and beyond legal and regulatory matters, to assess the potential societal consequences of the Company’s products and services, and should offer guidance on strategic decisions. As with the other Committees of the Board, a formal charter for the Committee and a summary of its functions should be made publicly available.

In the Supporting Statement, the Proponent elaborates on the request for an ongoing review made in the resolved clause, stating that the “Societal Risk Oversight Committee” requested by the Proposal (the “Proposed Committee”) would be best positioned to address “the societal ramifications and potential ethical issues regarding the Company’s technologies and relationships.”

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

## BASIS FOR EXCLUSION

For the reasons discussed below, the Proposal properly may be excluded from the 2019 Proxy Materials pursuant to 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).

## ANALYSIS

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

The Proposal is excludable under Rule 14a-8(i)(7) because it relates to the Company’s ordinary business activities, including: (1) the products and services that the Company sells and the Company’s related policies; (2) the Company’s business practices and operations; (3) the Company’s strategic decisions; and (4) the Company’s choice of technologies.

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## *A. Background.*

Rule 14a-8(i)(7) permits a company to omit from its proxy materials a shareholder proposal that relates to the company's "ordinary business" operations. According to the Commission's release accompanying the 1998 amendments to Rule 14a-8, the term "ordinary business" "refers to matters that are not necessarily 'ordinary' in the common meaning of the word," but instead the term "is rooted in the corporate law concept [of] providing management with flexibility in directing certain core matters involving the company's business and operations." Exchange Act Release No. 40018 (May 21, 1998) (the "1998 Release").

In the 1998 Release, the Commission stated that the underlying policy of the ordinary business exclusion is "to confine the resolution of ordinary business problems to management and the board of directors, since it is impracticable for shareholders to decide how to solve such problems at an annual shareholders meeting," and identified two central considerations that underlie this policy. As relevant here, one of these considerations was that "[c]ertain tasks are so fundamental to management's ability to run a company on a day-to-day basis that they could not, as a practical matter, be subject to direct shareholder oversight." Examples of the tasks cited by the Commission include "management of the workforce, such as the hiring, promotion, and termination of employees, decisions on production quality and quantity, and the retention of suppliers."

Although the Commission has stated that "proposals ... focusing on sufficiently significant social policy issues (*e.g.*, significant discrimination matters) generally would not be considered excludable," the Staff has indicated that proposals relating to both "ordinary business matters" and "significant social policy issues" (within the meaning of Rule 14a-8(i)(7)) may be excludable in their entirety in reliance on Rule 14-8(i)(7) if they do not "transcend the day-to-day business matters" discussed in the proposals. 1998 Release. 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.")

Including within the shareholder proposal a request that the company form a committee does not change the nature of the proposal. The Commission has stated that a proposal requesting the formation of a committee may be excludable under Rule 14a-8(i)(7) if the subject matter of the proposed committee is within the ordinary business of the issuer. *See* Exchange Act Release No. 20091 (Aug. 16, 1983) (the "1983 Release"). A proposal's request for a board-level review of certain risks also does not preclude exclusion if the underlying subject matter of the proposal is ordinary business. In Staff Legal Bulletin No. 14E (Oct. 27, 2009) ("SLB 14E"), the Staff explained how it evaluates shareholder proposals relating to risk:

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[R]ather than focusing on whether a proposal and supporting statement relate to the company engaging in an evaluation of risk, we will instead focus on the subject matter to which the risk pertains or that gives rise to the risk . . . . [S]imilar to the way in which we analyze proposals asking for the preparation of a report, the formation of a committee or the inclusion of disclosure in a Commission-prescribed document—where we look to the underlying subject matter of the report, committee or disclosure to determine whether the proposal relates to ordinary business—we will consider whether the underlying subject matter of the risk evaluation involves a matter of ordinary business to the company.

The Staff has continued to concur in the exclusion of shareholder proposals seeking risk assessments when the subject matter concerns ordinary business operations. *See, e.g., FedEx Corp.* (avail. July 11, 2014) (concurring with the exclusion of a proposal asking the board to report on how the company could “better respond to reputational damage from its association with the Washington D.C. NFL franchise team name controversy,” which involved ordinary business matters—*i.e.*, the manner in which the company advertises its products and services); *Exxon Mobil Corp.* (avail. Mar. 6, 2012) (concurring with the exclusion of a proposal asking the board to prepare a report on “environmental, social and economic challenges associated with the oil sands,” which involved ordinary business matters (the economic challenges associated with oil sands)); *Pfizer Inc.* (avail. Feb. 16, 2011) (concurring in exclusion under Rule 14a-8(i)(7) of a proposal requesting an annual assessment of the risks created by the actions the company takes to avoid or minimize U.S. federal, state and local taxes and provide a report to shareholders on the assessment); *TJX Companies, Inc.* (avail. Mar. 29, 2011) (same); *Amazon.com, Inc.* (avail. Mar. 21, 2011) (same); *Wal-Mart Stores, Inc.* (avail. Mar. 21, 2011) (same); *Lazard Ltd.* (avail. Feb. 16, 2011) (same).

SLB 14E also gives specific guidance applicable to proposal that implicate a board role in risk oversight. It states:

[T]here is widespread recognition that the board’s role in the oversight of a company’s management of risk is a significant policy matter regarding the governance of the corporation. In light of this recognition, a proposal that focuses on the board’s role in the oversight of a company’s management of risk may transcend the day-to-day business matters of a company and raise policy issues so significant that it would be appropriate for a shareholder vote.

Consistent with its positions in SLB 14E, the Staff has repeatedly concurred in exclusion of proposals related to the board’s role in the oversight of a company’s management of risk, *when those proposals also request a review of risks and the underlying subject matter of the risk review involves ordinary business.* *See, e.g., Sempra Energy* (avail. Jan. 12, 2012, *recon. denied* Jan. 23, 2012) (concurring with the exclusion of a proposal requesting that the audit committee

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or any other independent committee of the company's board review and report on the company's management of certain "risks posed by Sempra operations in any country that may pose an elevated risk of corrupt practices," where "the underlying subject matter of these risks appears to involve ordinary business matters"); *The Western Union Co.* (avail. Mar. 14, 2011) (concurring in the exclusion of a proposal requesting the establishment of a board risk committee and a report by the committee on how the company was monitoring and controlling particular risks, where the subject matters of the risks involved ordinary business matters).

*B. The Proposal May Be Excluded Under Rule 14a-8(i)(7) Because It Relates To The Products And Services That The Company Offers To Its Customers, And To The Company's Related Policies.*

The Proposal focuses upon potential societal consequences of the Company's products and services.

The Staff consistently has concurred that decisions regarding the sale of particular products or services are part of a company's ordinary business operations and thus may be excluded under Rule 14a-8(i)(7). *See, e.g., Pepco Holdings, Inc.* (avail. Feb. 18, 2011) (proposal urging the company to pursue the market for solar technology excludable as concerning the sale of particular products and services); *Wal Mart Stores, Inc. (Albert)* (avail. Mar. 30, 2010) (proposal requiring that all company stores stock certain amounts of locally produced and packaged food excludable as concerning the sale of particular products); *Lowe's Companies, Inc.* (avail. Feb. 1, 2008) (proposal encouraging the company to end the sale of glue traps excludable as relating to the sale of a particular product); *The Kroger Co.* (avail. Mar. 20, 2003) (proposal requesting the company cease making available certain shopping cards to its customers excludable as relating to the manner in which a company sells and markets its products).

The Staff also has concurred consistently in the exclusion of shareholder proposals that relate not only to a company's products and services themselves but also to company policies regarding those products and services and the use of products by third parties. For example, in *Amazon.com, Inc.* (avail. Mar. 17, 2016) a shareholder proposal requested that, in the words of the Staff, "the board prepare a report on the company's policy options to reduce potential pollution and public health problems from electronic waste generated as a result of its sales to consumers, and to increase the safe recycling of such wastes." In its no-action request, the Company pointed out that the Staff "has consistently concurred in the exclusion of shareholder proposals that relate not only to a company's products and services themselves but also to company policies regarding those products and services and the use of those products by third parties." The Staff concurred in the exclusion of the proposal, noting that "the proposal relates to the company's products and services." Similarly, in *FMC Corp.* (avail. Feb. 25, 2011, *recon. denied* Mar. 16, 2011) a shareholder proposal recommended that the company establish a "product stewardship program" for certain of its pesticides that were "suspected to have been

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misused by third parties to harm wildlife or humans.” In its no-action request, the company pointed out that the Staff “has taken the position that decisions regarding the sale, content or presentation of a particular product, whether considered controversial or not, are part of a company’s ordinary business operations and thus may be excluded under Rule 14a-8(i)(7).” The Staff concurred in the exclusion of the proposal, noting that the proposal related to “products offered for sale by the company.” In response to the proponent’s request for reconsideration, the company emphasized that the proposal dealt with the use of its products by third parties. Specifically, the company stated:

[T]he [p]roposal is concerned with the alleged third party criminal misuse of legal, regulated products to poison wildlife and third party “contamination of the soil and groundwater from the unregulated dumping of these chemicals.” These are not acts carried out or sanctioned by the [c]ompany or anyone acting on behalf of or at the direction of the [c]ompany.

The Staff reaffirmed its prior view that the company could exclude the proposal from its proxy materials under Rule 14a-8(i)(7). Similarly, in *Wal-Mart Stores, Inc. (Green Century)* (avail. Mar. 24, 2006) a shareholder proposal requested that the board of directors issue a report “evaluating [c]ompany policies and procedures for systematically minimizing customers’ exposure to toxic substances in products” the company sells. The Staff concurred in the exclusion of the proposal under Rule 14a-8(i)(7), noting that the proposal related to the “sale of particular products.”

Here, the Proposal requests that the Proposed Committee engage in “an ongoing review of corporate *policies and procedures* . . . to assess the potential societal consequences of *the Company’s products and services*” (emphasis added). Like the proposals in *Amazon, FMC*, and the other precedent cited above, the subject matter specified in the Proposal for the Proposed Committee’s review relates to the ordinary business matters involving the evaluation of the Company’s products and services and the related policies and may therefore be excluded pursuant to Rule 14a-8(i)(7).

*C. The Proposal Is Excludable Because It Relates To The Company’s Business Practices and Operations.*

The Proposal may be excluded pursuant to Rule 14a-8(i)(7) as relating to the Company’s ordinary business operations because it deals with the Company’s business practices and operations. The Supporting Statement adds additional color to the Proponent’s request for a review of policies and procedures by stating that the Proposed Committee would be well positioned to address “the societal ramifications and potential ethical issues regarding the Company’s technologies and relationships.”

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The Staff has previously concurred in the exclusion of proposals addressing a company's business practices and operations. In *Westinghouse Electric Corp.* (avail. Jan. 27, 1993), the Staff concurred with the exclusion of a shareholder proposal that requested a report of the business practices and operations of the company for a six-year period because the proposal dealt with the ordinary business matter of "business practices and operations." The Staff has also concurred in the exclusion of shareholder proposals that seek a more targeted review of, or disclosure about, specific corporate practices and policies. *See, e.g., Potomac Electric Power Co.* (avail. Mar. 1, 1991) (concurring in the exclusion of a proposal requesting the company establish and provide disclosure on a "contingent liability account" as implicating ordinary business matters "(i.e., the accounting policies and practices of the Company)"); *Wal-Mart Stores, Inc.* (avail. Apr. 10, 1991) (concurring in the exclusion of a proposal recommending that the board establish a program to provide information on the company's equal employment opportunity and affirmation action efforts to its stockholders and suppliers was excludable because it, in part, involved "the [c]ompany's practices and policies for selecting suppliers of goods and services").

Similarly, the Staff has also consistently concurred in the exclusion of shareholder proposals related to a company's adherence to ethical business practices and policies. For example, in *Verizon Communications, Inc.* (avail. Jan. 10, 2011) involved a proposal directing the board to form a Corporate Responsibility Committee charged with monitoring the company's commitment to integrity, trustworthiness, and reliability—and the extent to which it lived up to its Code of Business Conduct. The Staff concurred that it would not recommend enforcement action if Verizon omitted the proposal because "[p]roposals that concern general adherence to ethical business practices" are generally excludable. Similarly, *The Walt Disney Co.* (avail. Dec. 12, 2011), the proposal asked the board to report on board compliance with Disney's Code of Business Conduct and Ethics for directors. In its response concurring with Disney's exclusion of the proposal, the Staff stated, "[p]roposals that concern general adherence to ethical business practices and policies are generally excludable under [R]ule 14a-8(i)(7)." *See also International Business Machines Corp.* (avail. Jan. 7, 2010, *recon. denied* Feb. 22, 2010) (proposal directing officers to restate and enforce certain standards of ethical behavior was excludable because it related to general adherence to ethical business practices).

Like the proposals in the precedent cited above, the Proposal relates to the business practices of the Company, as it seeks an "ongoing review of corporate policies and procedures." The Supporting Statement confirms the ordinary business nature of the review requested by suggesting that the review should address the "potential ethical issues regarding the Company's technologies and relationships." Because the Proposal's subject matter focuses on ordinary business matters, it should be excluded pursuant to Rule 14a-8(i)(7).

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*D. The Proposal Is Excludable Because It Relates To The Company's Strategic Decisions.*

The Proposal may be excluded pursuant to Rule 14a-8(i)(7) as relating to the Company's ordinary business operations because it deals with the Company's strategic decisions. The Staff has consistently concurred that proposals addressing a company's general business strategies and operations may be excluded under Rule 14a-8(i)(7).

The Staff has also indicated that proposals directed at a company's business strategies, policies, and programs may be properly excluded under Rule 14a-8(i)(7). In *CVS Corporation* (avail. Feb. 1, 2000), the shareholder's proposal requested that the company prepare an annual strategic plan report describing its goals, strategies, policies, and programs. The Staff agreed that the proposal could be excluded in stating, "there appears to be some basis for your view that CVS may exclude the proposal under rule 14a-8(i)(7) as relating to its ordinary business operations (i.e., business practices and policies)." *See also Mobil Corp.* (avail. Feb. 13, 1989) ("there appears to be some basis for your view that the proposal [relating to the formation of a stockholder committee to review corporate objectives and their implementation] may be omitted from the [c]ompany's proxy materials under Rule 14a-8(i)(7) since it appears to deal with a matter relating to the ordinary business operations of the [c]ompany (i.e., questions of corporate objectives and goals)").

*E. The Proposal Is Excludable Because It Relates To The Company's Choice Of Technologies.*

The Staff has on multiple occasions concluded that shareholder "[p]roposals that concern a company's choice of technologies for use in its operations are generally excludable under rule 14a-8(i)(7)" as related to ordinary business matters. *FirstEnergy Corp.* (avail. Mar. 8, 2013). *See also Dominion Resources, Inc.* (Feb. 14, 2014) (concurring in exclusion of a proposal seeking a report on the risks of the company's solar generation plan and the "benefits of increased solar generation"); *AT&T Inc.* (avail. Feb. 13, 2012) (concurring in exclusion of a proposal requesting a report on financial and reputational risks posed by continuing to use technology that inefficiently consumed electricity). Here, the Proposal and Supporting Statement make clear that the Proponent intends that the requested ongoing review cover "potential ethical issues regarding the Company's technologies." Choices of technology cannot "as a practical matter, be subject to direct shareholder oversight." 1998 Release. Thus, because the underlying subject matter of the requested review addresses the Company's choice of technologies the Proposal is excludable under Rule 14a-8(i)(7).

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*F. The Proposal Does Not Transcend The Company's Ordinary Business.*

The Proposal properly can be excluded under Rule 14a-8(i)(7) because the underlying subject matter of the review sought by the Proposal is not how the Company manages oversight of risks to the Company, but instead ordinary business matters of overseeing the products and services the Company determines to sell. The Staff consistently has concurred in the exclusion of proposals even if they are deemed to touch upon a “significant policy issue” within the meaning of Rule 14a-8(i)(7) if the proposals also encompass ordinary business matters. This position prevents proponents from circumventing the standards of Rule 14a-8(i)(7) by combining ordinary business matters with a significant policy issue.

In SLB 14E, the Staff stated:

[W]e note that there is widespread recognition that the board's role in the oversight of a company's management of risk is a significant policy matter regarding the governance of the corporation. In light of this recognition, a proposal that focuses on the board's role in the oversight of a company's management of risk may transcend the day-to-day business matters of a company . . . .

The Staff has made clear that this acknowledgement in SLB 14E regarding the board's role in risk oversight does not override its position set forth earlier in SLB 14E that “in those cases in which a proposal's underlying subject matter involves an ordinary business matter to the company, the proposal generally will be excludable under Rule 14a-8(i)(7). For example, in *The Western Union Co.* (avail. Mar. 14, 2011), the Staff concurred in the exclusion of a proposal requesting that the company establish a risk committee of the board of directors for oversight of risk management, which would periodically report on “the company's approach to monitoring and control of potentially material risk exposures, including those identified in the 10-K.” In its request for no-action, the company acknowledged that, under SLB 14E, “a proposal that focuses on the board's role in the oversight of a company's management of risk may transcend the day-to-day business matters of a company.” The company argued that the proposal went “well beyond whatever is contemplated by the above-quoted excerpt from SLB 14E” because it requested periodic reporting on certain risks, the underlying subject matter of which involved the company's ordinary business operations. In concurring with exclusion of the proposal under Rule 14a-8(i)(7), the Staff commented:

“[A]lthough the proposal requests the establishment of a risk committee, which is a matter that focuses on the board's role in the oversight of Western Union's management of risk, the proposal also requests a report that describes how Western Union monitors and controls particular risks. . . . [T]he underlying subject matters of these risks appear to involve ordinary business matters.”

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Similarly, in *Sempra Energy* (avail. Jan. 12, 2012, *recon. denied* Jan. 23, 2012) the Staff concurred in exclusion of a proposal that urged the company's board to conduct an independent oversight review each year of the company's management of certain "risks posed by Sempra operations in any country that may pose an elevated risk of corrupt practices" and to publish a report on its review. The proposal specifically requested that the review be conducted by the Audit Committee or by any other independent committee of the board. The company argued that the proposal could be excluded under Rule 14a-8(i)(7) because the subject matter underlying the risks to be reviewed by the independent committee related to the company's ordinary business operations. In a response letter, the proponent argued that the proposal was not excludable because it related to the board's role in risk oversight, pointing out that:

As noted in SLB 14E, proposals dealing with the board's role in the oversight of a company's management of risk inherently involve "a significant policy matter regarding the governance of the corporation," and therefore may not be excluded on ordinary business grounds.

The Staff rejected the proponent's argument and concurred in exclusion, noting that "although the proposal requests the board to conduct an independent oversight review of . . . management of particular risks, the underlying subject matter of these risks appears to involve ordinary business matters."

Just as the proposals in *Western Union* and *Sempra* were excludable pursuant to Rule 14a-8(i)(7) because the underlying subject matter of the requested risk review involved ordinary business operations, the Proposal is excludable pursuant to Rule 14a-8(i)(7) because it requests a review of certain risks where the underlying subject matter involves the Company's ordinary business operations. The proposal in *Western Union* requested establishment of a risk committee of the board and the proposal in *Sempra* requested the a task be performed by a specific board committee. Similarly, the Proposal requests that the company establish a "Societal Risk Oversight Committee." The proposal in *Western Union* requested that the risk committee provide a periodic report of the company's approach to monitoring certain risks and the proposal in *Sempra* requested the committee conduct an annual oversight review of certain risks posed by Sempra's operations. Similarly, the Proposal requests that the Proposed Committee conduct "an ongoing review of corporate policies and procedures . . . to assess the potential societal consequences of the Company's products and services."<sup>1</sup> The underlying subject matter of the risks to be reviewed in *Western Union* (*i.e.*, "potentially material risk exposures, including those

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<sup>1</sup> The proposals in *Western Union* and *Sempra* both requested that reports be produced following the requested reviews. However, on numerous occasions the Staff has concurred in the exclusion of a proposal seeking a review, even if the proposal does not ask for a report. *See, e.g., Pfizer Inc.* (avail. Feb. 14, 2008) (concurring in the exclusion of a proposal to form a committee to study an issue even though the proposal did not request any report from the committee).

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identified in the 10-K”) involved ordinary business matters and the underlying subject matter of the risks to be reviewed in Sempra (*i.e.*, “political, legal, and financial risks posed by Sempra operations” in certain countries) also involved ordinary business matters. Similarly, although the Proposal and Supporting Statement contain generalized references to “potential societal consequences” (“including but not limited to” civil liberties and privacy), the principal thrust and focus of the risks that the Proposal addresses relate to the Company’s ordinary business operations, namely: (1) the products and services that the Company sells and the Company’s related policies; (2) the Company’s business practices and operations; (3) the Company’s strategic decisions; and (4) the Company’s choice of technologies. As a result, the Proposal is properly excludable under Rule 14a-8(i)(7), just as the proposals in *Western Union* and *Sempra* were excludable.

## 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

Enclosure

cc: Mark Hoffman, Amazon.com, Inc.  
Larisa Ruoff, the Sustainability Group of Loring, Wolcott & Coolidge Fiduciary Advisors, LLP

**EXHIBIT A**



RECEIVED

DEC 20 2018

AMAZON.COM, INC.  
LEGAL DEPARTMENT

December 19, 2018

Mr. David A. Zapolsky  
Senior Vice President, General Counsel, and Secretary  
Amazon.com, Inc.  
410 Terry Avenue North  
Seattle, Washington 98109

**RE: Shareholder Proposal for 2019 Annual Meeting**

Dear Mr. Zapolsky,

I am writing to file a shareholder proposal on behalf of the W. Andrew Mims Trust (“WAM Trust”). Loring, Wolcott & Coolidge Fiduciary Advisors, LLP maintains all stock holdings of the WAM Trust through Loring, Wolcott and Coolidge Trust, LLC. The Sustainability Group is a part of Loring, Wolcott & Coolidge Fiduciary Advisors, LLP.

The Sustainability Group is hereby filing the enclosed shareholder resolution on the subject of establishing a Societal Risk Oversight Committee of the Board of Directors on behalf of the WAM Trust pursuant to Rule 14a-8 of the Securities Exchange Act of 1934 for inclusion in Amazon.com, Inc.’s (“AMZN” or “the Company”) Proxy Statement for the 2019 Annual Meeting of Shareholders. For this proposal, the Sustainability Group will act as the lead filer.

We have been authorized and requested to file the proposal by W. Andrew Mims, the sole original and current trustee of the WAM Trust, who has the sole, current authority to act on behalf of the WAM Trust to buy, sell, and vote shares of stock held in the Trust and to authorize the filing of shareholder proposals on behalf of the WAM Trust.

The WAM Trust is the beneficial owner of at least \$2,000 worth of AMZN stock, has held the requisite number of shares for over one year, and plans to continue to hold sufficient shares in the Company through the date of the annual shareholders’ meeting. In accordance with Rule 14a-8 of the Securities Exchange Act of 1934, verification of ownership is attached. A representative designated by the WAM Trust will attend the shareholders’ meeting to move the resolution as required by SEC rules.

Because of the impending deadline for proposals, we are filing our proposal today in order to protect our rights as shareholders. It is our preference to resolve our concerns through dialogue



rather than the formal resolution process. If we are able to come to common ground in this process, we would be happy to remove the proposal from the Company's proxy ballot. If you would like to discuss this proposal, please feel free to contact me.

Sincerely,

**Larisa Ruoff**  
Director of Shareholder Advocacy  
The Sustainability Group

617-622-2213 | [lruoff@lwcotrust.com](mailto:lruoff@lwcotrust.com)

Enclosures



the  
**SUSTAINABILITY**  
GROUP

**Resolved**, shareholders request that Amazon.com, Inc. (“Amazon” or “the Company”) establish a Societal Risk Oversight Committee (“the Committee”) of the Board of Directors (“the Board”), composed of independent directors with relevant experience. The Committee should provide an ongoing review of corporate policies and procedures, above and beyond legal and regulatory matters, to assess the potential societal consequences of the Company’s products and services, and should offer guidance on strategic decisions. As with the other Committees of the Board, a formal charter for the Committee and a summary of its functions should be made publicly available.

**Supporting Statement:**

By streamlining logistics, increasing efficiency for consumers, businesses and governments, and transforming cloud computing, Amazon’s products and services have quickly become embedded in everyday life. Without proper oversight, some applications of these technologies have the potential to cause serious, unintended social harm, including but not limited to violations of civil liberties and breaches of privacy. To secure the confidence of its stakeholders, including the general public, Amazon must properly identify and understand the potential societal and ethical ramifications of its products and services at every step of the development process.

In his 2017 founder’s letter, CEO Bezos acknowledges that holistic thinking is beneficial, noting, “You can consider yourself a person of high standards in general and still have debilitating blind spots. There can be whole arenas of endeavor where you may not even know that your standards are low or non-existent, and certainly not world class. It’s critical to be open to that likelihood.” Proponents agree that the Company should take all practical steps to identify any potential blind spots, especially those that carry the potential for negative and large-scale social consequences.

Because the Board operates outside of the day-to-day decision making process and is charged with managing higher-level, strategic issues, a Societal Risk Oversight Committee would be best positioned to protect investors and the Company by addressing Amazon’s potential blind spots as they relate to the societal ramifications and potential ethical issues regarding the Company’s technologies and relationships. As a result, the Proponents believe the establishment of this Committee is in the best long-term interest of the Company and urge all shareholders to vote in support of this proposal.



*Shape your world.*

December 19, 2018

Mr. David A. Zapolsky  
Senior Vice President, General Counsel, and Secretary  
Amazon.com, Inc.  
410 Terry Avenue North  
Seattle, Washington 98109

**RE: Shareholder Proposal for 2019 Annual Meeting**

Dear Mr. Zapolsky,

I am writing to confirm that I have requested and authorized the Sustainability Group of Loring, Wolcott & Coolidge to file a shareholder proposal on behalf of the W. Andrew Wims Trust (the "WAM Trust") at Amazon.com, Inc.'s 2019 Annual Meeting of Shareholders on the subject of establishing a Societal Risk Oversight Committee of the Board of Directors. I am the sole original and current trustee of the WAM Trust and have the sole, current authority to act on behalf of the WAM Trust to buy, sell, and vote shares of stock held in the WAM Trust and to authorize the filing of shareholder proposals on behalf of the WAM Trust. In addition, please be advised that I intend to hold in the WAM Trust the requisite shares in Amazon.com, Inc. through the date of the annual meeting and to ensure that a representative of the WAM Trust attends the shareholders' meeting to present the proposal.

If you have any questions or require any additional information, please contact my associate Larisa Ruoff at 617-622-2213 or [lruff@lwcotrust.com](mailto:lruff@lwcotrust.com).

Sincerely,

W. Andrew Mims  
Partner

The Sustainability Group of Loring, Wolcott & Coolidge

*LORING, WOLCOTT & COOLIDGE OFFICE*

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AMY L. DOMINI  
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THOMAS R. APPLETON  
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W. ANDREW MIMS  
AMORY LORING LOGAN  
NUSHIN KORMI

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LAWRENCE COOLIDGE  
FREDERICK D. BALLOU

December 19, 2018

Mr. David A. Zapolsky  
Senior Vice President, General Counsel, and Secretary  
Amazon.com, Inc.  
410 Terry Avenue North  
Seattle, Washington 98109

**RE: Shareholder Proposal for 2019 Annual Meeting**

Dear Mr. Zapolsky,

Loring, Wolcott & Coolidge Trust, LLC is the custodian to the W. Andrew Mims ("WAM Trust") and holds shares on behalf of the WAM Trust in our account at Bank of America. With this letter, we confirm that the WAM Trust is the beneficial owner of at least \$2,000 in Amazon.com, Inc. stock and has held this position for at least one year prior to, and including, December 19, 2018.

Sincerely,



**Wendy S. Holding**  
Manager  
Loring, Wolcott & Coolidge Trust, LLC

December 19th, 2018

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

RE: Loring, Wolcott & Coolidge Ownership of Amazon.com, Inc. (CUSIP: 023135106, Ticker: AMZN)

Dear Mr. Zapolsky,

Loring, Wolcott & Coolidge Trust, LLC is the beneficial owner of at least \$2,000 in market value of AMZN stock and held this position continuously for the one year period up to and including December 19th, 2018. Loring, Wolcott & Coolidge continues to be the beneficial owner of at least \$2,000 in market value of AMZN stock as of today's date. This letter also serves to confirm that Bank of America Merrill Lynch is a participant in DTC.

If you need any additional information or have any questions, please feel free to contact me at (312)992-5771 or by email at [dg.gcas\\_client\\_service\\_1@bankofamerica.com](mailto:dg.gcas_client_service_1@bankofamerica.com).

Thanks,

*Brian W. Riley*  
Brian W Riley  
Vice President