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February 11, 2020

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

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

Ladies and Gentlemen:

On behalf of Republic Services, Inc. (the “*Company*”), we refer to our letter dated December 30, 2019 (the “*No-Action Request*”), pursuant to which we requested that the staff of the Division of Corporation Finance (the “*Staff*”) of the Securities and Exchange Commission (the “*Commission*”) concur with the Company that the shareholder proposal and supporting statement (the “*Proposal*”) submitted by the International Brotherhood of Teamsters General Fund (the “*Proponent*”) may be excluded from the proxy materials for the Company’s 2020 annual meeting of shareholders (the “*2020 Proxy Materials*”).

We are responding to the letter submitted by the Proponent, dated January 24, 2020 (the “*Proponent’s Response*”), and this letter supplements the No-Action Request. In accordance with Rule 14a-8(j) of the Securities Exchange Act of 1934 (the “*Exchange Act*”), a copy of this letter is also being sent to the Proponent.

**The Proposal May Be Omitted Under Rule 14a-8(i)(7) Because It Micromanages the Company.**

As described below and in the No-Action Request, because the Proposal seeks to micromanage the Company, the Proposal is excludable from the 2020 Proxy Materials under Rule 14a-8(i)(7). The Proponent’s Response argues that the Proposal should not be excluded under Rule 14a-8(i)(7) because the Proposal does not include a “level of prescriptiveness” that rises to the level of micromanagement. We disagree. The Proponent states that the “Proposal seeks a revision of the Company’s current policy with respect to “golden parachutes” for senior executives and recommends a policy that would seek shareholder approval for compensation packages providing for severance or termination packages exceeding a *specified value*, including the value of unearned equity as to which vesting is accelerated or performance conditions are waived.” [emphasis added]. Despite the Proponent’s argument that the No-Action Letter “entirely misses the point,” the actions requested in the Proposal involve the precise type of

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prescriptive approach to complex matters at the heart of the micromanagement prong of Rule 14a-8(i)(7).

As described in the No-Action Request, the Proposal's Supporting Statement provides that requiring shareholder approval of severance payments with a specific threshold of 2.99 times an executive officer's base salary and short-term bonus "will provide valuable feedback, encourage restraint, and *strengthen* the hand of the Board's [C]ompensation [C]ommittee." [emphasis added]. However, as noted in the No-Action Request, the Company's Board of Directors established the Management Development and Compensation Committee (the "*Compensation Committee*") to make such specific executive officer compensation determinations, including appropriately considering the myriad of factors upon which an executive compensation determination is based. Decisions related to whether and how to amend the terms or application of specific components of the Company's executive compensation program fall squarely within the purview of the Compensation Committee, not shareholders.

The Proponent's Response implies that the Proposal relates to a topic on which shareholders should be able to express a view. The Company does not disagree with the notion that certain shareholder proposals on the topic of executive compensation may be crafted in such a way as to not micromanage. Nevertheless, if implemented, the Proposal would effectively impose a shareholder vote requirement separate from what is already mandated by Rule 14a-21 of the Exchange Act, which has allowed the Company's shareholders the opportunity to provide the Company with an advisory vote on executive compensation since 2011. The Company's compensation program has never failed a 'say-on-pay' vote, and in 2019, 97% of shareholders approved the Company's compensation paid to its named executive officers, including the description of the Company's employment agreements with its named executive officers and the Executive Separation Policy adopted by the Company in 2010. By "recommending" a shareholder vote on a specific component of the Company's executive compensation program after a certain threshold is reached, and beyond what is already required pursuant to Commission rules, the Proponent is attempting to dictate the type, amount, and nature of compensation provided to the Company's executive officers under cover of a shareholder vote. This is precisely the type of effort that Rule 14a-8(i)(7) is intended to prevent.

Further, as provided in the No-Action Request, the Compensation Committee adopted the Company's Executive Separation Policy to ensure the Company is able to attract and retain highly qualified and capable candidates to serve as executive officers of the Company. The process contemplated by the Proposal would introduce complications that would limit the Company's ability to recruit the caliber of executive officers that it believes are necessary to maximize the Company's long-term value for its shareholders. It also would put the Company at a competitive disadvantage as compared to its peers and competitors when recruiting and hiring senior executive level employees as it would have to seek shareholder approval after employment terms were agreed upon with a senior executive. As a result, the actions requested in the Proposal involve the exact type of prescriptive approach to complex matters at the heart of the micromanagement prong of Rule 14a-8(i)(7) and would "unduly limit the ability of management and the [B]oard to manage complex matters with a level of flexibility necessary to fulfill [its] fiduciary duties to shareholders." *Staff Legal Bulletin No. 14K* (Oct. 16, 2019).

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Accordingly, as demonstrated in the No-Action Request, the Proposal is excludable under Rule 14a-8(i)(7).

### CONCLUSION

For the reasons stated above and in the No-Action Request, the Company respectfully requests that the Staff will not recommend enforcement action to the Commission if the Company omits the Proposal from the 2020 Proxy Materials. Should the Staff disagree with the conclusions set forth in this letter, or should you require any additional information in support of our position, we would welcome the opportunity to discuss these matters with you as you prepare your response. Any such correspondence should be sent to Kerry S. Burke at [kburke@cov.com](mailto:kburke@cov.com), or David H. Engvall at [dengvall@cov.com](mailto:dengvall@cov.com). If we can be of any further assistance in this matter, please do not hesitate to call me at (202) 662-5297, or David at (202) 662-5307.

Very truly yours,



Kerry S. Burke

cc: Catherine Ellingsen, Republic Services, Inc.  
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24 January 2020

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

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

Re: Shareholder proposal to Republic Services, Inc. from  
International Brotherhood of Teamsters General Fund

Dear Counsel:

I write on behalf of the International Brotherhood of Teamsters General Fund (the “Fund”) in response to a letter from counsel for Republic Services, Inc. (“Republic” or the “Company”) dated December 30, 2019 (“Republic Letter”) in which Republic advises that it intends to omit the Fund’s proposal (the “Proposal”) from the Company’s 2020 proxy materials. For the reasons set forth below, we respectfully ask the Division to advise Republic that the Division does not concur with the Company’s position that the Proposal may be excluded from Republic’s proxy materials.

The Proposal

The Proposal seeks a revision of the Company’s current policy with respect to “golden parachutes” for senior executives and recommends a policy that would seek shareholder approval for compensation packages providing for severance or termination packages exceeding a specified value, including the value of unearned equity as to which vesting is accelerated or performance conditions are waived. The resolution states:

**RESOLVED:** That the shareholders of Republic Services, Inc. (the “Company”), urge the Board of Directors to seek shareholder approval of any senior executive officer’s new or renewed compensation package

that provides for severance or termination payments with an estimated total value exceeding 2.99 times the sum of the executive's base salary plus target short-term bonus.

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

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

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

The Supporting Statement expresses a belief that a shareholder vote on golden parachute packages above the specified threshold “will provide valuable feedback, encourage restraint, and strengthen the hand of the Board's compensation committee.” The Supporting Statement notes that according to Republic's last proxy statement, a change in control and termination would have garnered the Chief Executive Officer a severance package worth three times the sum of his base salary and annual cash and long-term incentive plan awards. Had the event occurred at the end of the year covered by that proxy statement, his payout would have been worth \$54.6 million, \$17.9 million of it in cash and the balance in equity and other compensation.

### Discussion.

The Proposal does not relate to Republic's “ordinary business operations within the meaning of Rule 14a-8(i)(7).”

Thirty years ago the Division abandoned its prior view that executive compensation issues constitute “ordinary business” matters that should be left to management and the board. The Division then concluded, as we discuss in more detail below, that executive compensation issues “instead possess the sort of policy significance that makes a shareholder vote on the topic entirely proper.” The Proposal at issue here is a paradigmatic example . It deals with “excess golden

parachutes” and is similar or identical to a number of proposals that have been voted with strong shareholder support over the years. For example, in 2019 this resolution garnered 37 percent of the yes/no vote when presented at Verizon Communications, Inc.<sup>1</sup>

Nonetheless Republic argues in favor of exclusion, relying on Staff Legal Bulletins 14J and 14K for the proposition that executive compensation proposals may be excluded if they appear to be micromanaging the topic. What do those sources say?

Staff Legal Bulletin 14J states: “Historically, the Division has not agreed with the exclusion of proposals addressing senior executive and/or director compensation on the basis of micromanagement.” However, upon further consideration, the Division concluded that in the future, it may concur with a company as to “proposals addressing senior executive and/or director compensation that seek intricate detail, or seek to impose specific timeframes or methods for implementing complex policies.”

SLB 14J emphasized, however, that “micromanagement addresses the manner in which a proposal raises an issue, and not whether a proposal’s subject matter itself is proper for a shareholder proposal under Rule 14a-8.”

SLB 14K reiterated this points and, looking back on the 2019 no-action decisions, explained that when it concurred with a company’s micromanagement, the focus was “the level of prescriptiveness of the proposal.” Cited as an example was a proposal to adjust performance metrics to exclude legal or compliance costs, the theory being that it prohibits those adjustments without regard to special circumstances or reasonable exceptions. The Republic Letter notes cited letter, SLB 14K, Johnson & Johnson (14 February 2019) and a similar letter, AbbVie Inc. (15 February 2019). Republic also cites JPMorgan Chase & Co. (22 March 2019), which concurred with the exclusion of a proposal to bar equity-based awards to senior executives who resign to enter government service, the reason being that the proposal seeks “to impose specific methods for implementing complex policies.”

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<sup>1</sup>The vote on this “Severance Approval Policy resolution” is reported in Verizon’s Form 8-K filed on May 8, 2019 and available at <https://www.sec.gov/Archives/edgar/data/732712/000119312519141213/d708606d8k.htm>. We note that Verizon unsuccessfully sought to exclude that proposal in that case using arguments from Staff Legal Bulletin 14J other than micromanagement. Verizon Communications, Inc. (14 February 2019). We submit that the rationale for denying relief in that case are as compelling in this one.

The Republic Letter then makes a very generic, boilerplate argument that could be raised by any company, namely, that setting executive compensation levels is a very complex process. Republic asserts that the Proposal seeks to “supplement the judgement” of the compensation committee and that the Proposal is the “precise type of prescriptive approach to complex matters at the heart of” the micromanagement element” of the “ordinary business” exclusion. Republic Letter at 4.

Republic’s discussion entirely misses the point.

What the Proposal recommends is a vote. Period. Full stop. Republic’s compensation committee is free to design “golden parachute” packages for senior executives with whatever features the compensation committee deems appropriate and at whatever level. The Proposal does not in any way seek to “prescribe” anything in terms of what may be offered as compensation. The Proposal simply says that beyond a certain level, the board should put the matter to a vote – and even that requirement is hedged with an exception to provide flexibility, i.e., language that the board “shall retain the option to seek shareholder approval after material terms are agreed upon.”

Does a shareholder vote “micromanage” the process in the ways specified in SLBs 14J and 14K? The answer is clearly “no.” Consider the fact that shareholders already have a right to vote on golden parachute packages under section 951(b) of the Dodd-Frank Wall Street Reform and Consumer Protection Act, entitled “Shareholder Approval of Golden Parachute Compensation” (15 U.S.C. § 78n-1(b)). That provision mandates a vote on any agreements or understandings with named executive officers on “any type of compensation (whether present, deferred, or contingent) that is based on or otherwise relates to the acquisition, merger, consolidation, sale, or other disposition of all or substantially all of the assets of the issuer and the aggregate total of all such compensation that may (and the conditions upon which it may) be paid or become payable to or on behalf of such executive officer.” The Commission issued regulations implementing that provision in Shareholder Approval of Executive Compensation and Golden Parachute Compensation, Release No. 34-9178, 76 Fed. Reg. 6010 (2 February 2011).

This provision tells us two things. First, golden parachute severance agreements have enormous policy significance. It is exceedingly rare for Congress to require that state-chartered corporations, subject to state corporate laws on shareholder voting, must allow their shareholders to vote on a given topic. Nonetheless, Congress regarded the issues surrounding golden parachutes as important enough to require such a vote in this instance in to addition the say-on-pay vote mandated in section 951(a).

Second, even if the design of severance packages may be a complex task that

is best left to the compensation committee, an up-or-down vote on the end product of those deliberations is not too complex for shareholders to decide. When the concept of micromanagement was discussed in the 1998 rulemaking on Rule 14a-8, the Commission explained that this factor should be considered as a way to preventing shareholders from “probing too deeply into matters of a complex nature upon which shareholders, as a group, would not be in a position to make an informed judgment.” Amendments to Rules on Shareholder Proposals, Release No. 34-40018, 63 Fed. Reg. 29106, 29108 (28 May 1998) (footnote omitted). Cited as an example of where this could happen was a proposal that involves “intricate detail, or seeks to impose specific time-frames or methods for implementing complex policies.” *Id.* But if Congress could conclude that golden parachutes are not too “intricate” or “complex” for shareholders “as a group, to be in a position to make an informed judgment,” how can Republic make such an argument here?

Thus it cannot be said that the Proposal involves a “level of prescriptiveness” that rises to the level of micromanagement. The Proposal simply asks for a vote on a topic on which they already have a statutory right to express themselves, and the board is given flexibility about when to schedule and hold the vote. The Proposal is about as un-prescriptive as one can imagine on a topic of unquestioned policy significance.

Republic’s argument would seemingly place many standard compensation proposals off-limits. SLBs 14J and 14K seem to deny any such intent,<sup>2</sup> but offer little specific guidance in terms of identifying compensation proposals that would not be construed as micromanagement. Wherever the line may be drawn, however, the issues raised by this Proposal surely transcend Republic’s “ordinary business.”

The Proposal is similar to other compensation proposals that have been voted over the years and that ask a company’s board to adopt or amend a policy on a particular topic (e.g., clawbacks) or to prohibit a certain practice (e.g., backdating stock options, executives’ hedging or pledging their equity awards, accelerating vesting of unearned equity after a change in control). We do not read either Staff Legal Bulletin as requiring such an interpretation. After all, micromanagement cannot mean simply that a proposal that asks a company to do something

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<sup>2</sup> SLB 14J states that granting relief on micromanagement grounds “does not necessarily mean that the subject matter raised by the proposal is improper for shareholder consideration”; rather “it is the manner in which a proposal seeks to address an issue that results in exclusion on micromanagement grounds.” Similarly, SLB 14K states that a proposal to bar the exclusion of compliance costs when determining executive compensation was micromanagement because it prohibited “any such adjustments without regard to specific circumstances or the possibility of reasonable exceptions.”

differently. All shareholder proposals are essentially a request that a company do things differently.

Where then does the Division draw the line in the compensation area? The key factors in the cited letters appear to be: (1) whether the subject matter of the proposal is itself not a matter of policy significance, (2) whether the subject matter is interconnected with a larger, more complex issue from which it cannot easily be severed, and (3) to the extent the issue can be severed, whether there is flexibility in implementing the policy.

These appear to be the objective factors with respect to proposals to prohibit the exclusion of legal or compliance costs from performance metrics (AbbVie and Johnson & Johnson), the inclusion of such costs in performance metrics has not drawn the same attention or policy concerns as excessive golden parachutes, and the proposals there did not seem to provide for exceptions. In JPMorgan Chase & Co., the proponent candidly admitted that although the proposal involved severance (in that case, paying an executive who leaves the company for government service), the proposal did not “not address the Company’s provision of severance benefits following a change-in-control (traditionally known as a “golden parachute”). See [file:///D:/Change%20to%20Win/IBT/RSG%2020\\_noact\\_JPMorgan.pdf](file:///D:/Change%20to%20Win/IBT/RSG%2020_noact_JPMorgan.pdf) at PDF p. 10.

This approach would appear to be consistent with the comment in SLB 14K that the Division denied no-action relief as to a climate change proposal asking “if and how” the company planned to align its operations and investments with the Paris Agreement. Anadarko Petroleum Corp. (4 March 2019). The proposal dealt with a topic of unquestioned policy significance, and the company was given flexibility on the “if and how” elements of executing the requested policy.<sup>3</sup>

In the same manner here, Republic’s compensation committee and board are left with the freedom to choose “if and how” they will shape “golden parachute” packages for senior executives. The Proposal says simply that if the package exceeds a certain level, the shareholders should have a say.

We see no evidence that excess golden parachute provisions have lost any policy significance since Division issued the letter in Transamerica Corp. (10 January 1990) that reversed prior policy and opined that the “ordinary business” exception could not be invoked to bar a shareholder proposal that would deny

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<sup>3</sup> In some cases, the level of flexibility may depend on the complexity of the subject matter. For a large petroleum company such as Anadarko, deciding how to factor climate change into company operations is a large and complex question. For compensation decisions, by contrast, the policy question on whether to offer a certain type of compensation is often far less complex

compensation to executives if the payment is contingent upon a merger or acquisition. The decision followed in the wake of investor concern about hostile takeover bids fueled by junk bond financing. As summarized in a HARVARD BUSINESS REVIEW by Professor Peer Fiss entitled Fiss, A Short History of Golden Parachutes (Oct. 2016), available at <https://hbr.org/2016/10/a-short-history-of-golden-parachutes>., the size of these severance packages prompted significant concern. He writes: “Investors began to see such large payments as rewards for failure, denouncing them as an unjustified waste of corporate assets or even fraud.”

The significance of this issue was not lost on Congress, which responded by enacting a provision in the Deficit Reduction Act of 1984 that amended the Internal Revenue Code to add section 280G(a), which disallows in change-in-control situations any corporate deduction for “excess parachute payments,” and section 4999(a), which imposes a 20 per cent excise tax on their recipients. The excise tax is not deductible by the payor for federal income tax purposes. Congress defined “excess” as amounts equal to or exceeding three times average annual taxable compensation during the base period prior to the date the change occurs.

(This law had a perverse effect, as was quickly recognized, however. The response was a rush to enact golden parachutes worth 2.99 times an executive’s base compensation and also to include “other benefits such as stock grants, retirement benefits, and more exotic perks,” not to mention gross-ups, under which the company assumed the departing executive’s tax liability.)

Excess golden parachutes continue to garner extensive public and investor concern, most recently with respect to the anticipated eight-figure payout to the CEO of Boeing, who was ousted after two fatal air crashes resulted in the deaths of hundreds of passengers and crew.<sup>4</sup> There is no reason for the Commission to reverse its past policy in this case.

In sum: :

- The Proposal deals with an unquestioned issue of executive compensation, indeed the prototypical issue that prompted the Division to change policy in Transamerica letter 30 years ago.

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<sup>4</sup> E.g., Boeing’s CEO Has Made Millions. His Total Payout Could Be Worth More Than a 737 MAX Jet, Barron’s (23 December 2019), available at <https://www.barrons.com/articles/boeing-ceo-dennis-muilenburg-pay-51577136749>; Tucker Cites Former Boeing CEO’s Massive Golden Parachute As A Reason Why ‘Americans Are Warming Up To Socialism, Daily Caller (3 January 2020), available at <https://dailycaller.com/2020/01/03/tucker-carlson-boeing-dennis-muilenburg-socialism/>

- The Proposal does not “seek intricate detail.” Indeed, details are provided annually in the Company’s Compensation Discussion and Analysis.
- The Proposal does not “seek to impose timeframes.” In fact, the Proposal explicitly gives the board discretion on that score.
- The Proposal does not propose “ methods for implementing complex policies.” The Proposal acknowledges that the board has made its decision; the request is simply to let shareholders make their own decision.

Conclusion

For these reasons, we respectfully ask the Division to advise Republic that the Division does not concur that the Fund’s Proposal may be omitted under Rule 14a-8(i)(7).

Thank you for your consideration of these points. Please feel free to contact me if any additional information would be helpful.

Very truly yours,



Cornish F. Hitchcock

cc: Kerry Shannon Burke.

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December 30, 2019

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

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

Ladies and Gentlemen:

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

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

## THE PROPOSAL

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

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

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

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

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

### BASIS FOR EXCLUSION

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

### ANALYSIS

Rule 14a-8(i)(7) permits the exclusion of shareholder proposals dealing with matters relating to a company’s “ordinary business operations.” The Commission has stated that the underlying policy of the ordinary business exclusion is “to confine the resolution of ordinary business problems to management and the board of directors, since it is impracticable for shareholders to decide how to solve such problems at an annual shareholders meeting.” *Exchange Act Release No. 34-40018* (May 21, 1998)(the “1998 Exchange Act Release”). The term “ordinary business” in this context refers to “matters that are not necessarily ‘ordinary’ in the common meaning of the word, and is rooted in the corporate law concept providing management with flexibility in directing certain core matters involving the company’s business and operations.” *Id.*

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

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

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

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

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

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

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

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

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

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

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

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

## CONCLUSION

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

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

Very truly yours,



Kerry S. Burke

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

**Exhibit A**

Cover Letter and Proposal

# INTERNATIONAL BROTHERHOOD OF TEAMSTERS

JAMES P. HOFFA  
General President

25 Louisiana Avenue, NW  
Washington, DC 20001



KEN HALL  
General Secretary-Treasurer

202.624.6800  
www.teamster.org

December 4, 2019

**BY FAX: 480.627.2351**

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

**BY UPS GROUND**

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

Dear Ms. Ellingsen:

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

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

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

Sincerely,

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

Ken Hall  
General Secretary-Treasurer

KH/lm  
Enclosures

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

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

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

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

**SUPPORTING STATEMENT:**

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

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

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

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



**December 4, 2019**

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

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

Dear Ms. Ellingsen:

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

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

Very truly yours,

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

Suzette Spooner  
Vice President

cc: Louis Maliza

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***America's Labor Bank®***

275 SEVENTH AVENUE NEW YORK, NY 10001 212-255-6200 [www.amalgamatedbank.com](http://www.amalgamatedbank.com)