



DIVISION OF
CORPORATION FINANCE

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

March 13, 2020

Elizabeth Ising
Gibson, Dunn & Crutcher LLP
shareholderproposals@gibsondunn.com

Re: Marriott International, Inc.
Incoming letter dated January 17, 2020

Dear Ms. Ising:

This letter is in response to your correspondence dated January 17, 2020 and February 21, 2020 concerning the shareholder proposal (the "Proposal") submitted to Marriott International, Inc. (the "Company") by People for the Ethical Treatment of Animals (the "Proponent") for inclusion in the Company's proxy materials for its upcoming annual meeting of security holders. We also have received correspondence from the Proponent dated February 3, 2020 and March 2, 2020. 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>.

Sincerely,

M. Hughes Bates
Special Counsel

Enclosure

cc: Jared Goodman
People for the Ethical Treatment of Animals
jaredg@petaf.org

March 13, 2020

Response of the Office of Chief Counsel
Division of Corporation Finance

Re: Marriott International, Inc.
Incoming letter dated January 17, 2020

The Proposal encourages the Company to prohibit wild-animal displays at all its hotels.

There appears to be some basis for your view that the Company may exclude the Proposal under rule 14a-8(i)(5). The Board of Directors' Nominating and Corporate Governance Committee's analysis was dispositive to the staff's ability to grant relief under Rule 14a-8(i)(5). In our view, the committee's analysis explained in detail how and why the committee concluded that the Proposal is not otherwise significantly related to the Company's business. Of particular importance to the staff's concurrence are the following representations from the committee:

- The fees received by the Company and its franchisees for wild animal related events are economically insignificant to the Company.
- Wild animal related events at the Company's managed and franchised hotels occur in very limited situations, and hosting such functions is not the Company's primary business.
- Wild animal displays are not Company-offered services and thus the policy concerns raised by the Proposal are not significantly related to the Company's business.
- No other investor besides the Proponent has raised the issue of the Company's policy permitting wild animal displays at its hotels.

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)(5). In reaching this position, we have not found it necessary to address the alternative basis for omission upon which the Company relies.

Sincerely,

Lisa Krestynick
Special Counsel

March 12, 2020

Via e-mail

Bancroft S. Gordon
Marriott International, Inc.
bancroft.gordon@Marriott.com

Re: Marriott International, Inc.'s statement in opposition to PETA's shareholder proposal

Dear Mr. Gordon:

I am writing on behalf of People for the Ethical Treatment of Animals (PETA) and pursuant to 17 C.F.R. § 240.14a-8(m)(2), in response to your March 9, 2020 letter enclosing Marriott International, Inc.'s ("Marriott") intended statement in opposition to PETA's shareholder proposal ("opposition statement"). As discussed below, the opposition statement contains materially false and misleading statements in violation of 17 C.F.R. § 240.14a-9 ("Rule 14a-9"). Please clarify each of these statements and provide a revised opposition statement as soon as possible for PETA's review, such that PETA can promptly notify Commission Staff, pursuant to § 240.14a-8(m)(2), if we are unable to resolve these concerns.

Pursuant to Rule 14a-9 it is unlawful for solicitations in a company's proxy statement to include any statement that "is false or misleading with respect to any material fact, or which omits to state any material fact necessary in order to make the statements therein not false or misleading or necessary to correct any statement in any earlier communication with respect to the solicitation of a proxy for the same meeting or subject matter which has become false or misleading." In its opposition statement, Marriott makes the following statements that are misleading and/or omit material facts, in violation of Rule 14a-9.

"Recognizing that animal welfare is an important part of conducting business operations with integrity, in partnership with our suppliers and business partners, we are committed to raising the standard of animal welfare across our global operations and supply chain. For example, we recognize and respect the internationally recognized 'Five Freedoms' of care, animal welfare standards endorsed by the World Organization for Animal Health. Further, we expect our suppliers, vendors and business partners to comply with local standards and encourage them to surpass, where feasible, international standards on the ethical, humane and legal treatment of animals."

This statement is misleading, in that it creates the misimpression that the company has any mandatory or enforceable animal welfare standards applicable to the display of wild animals at its properties.

PEOPLE FOR
THE ETHICAL
TREATMENT
OF ANIMALS
FOUNDATION

Washington, D.C.
1536 16th St. N.W.
Washington, DC 20036
202-483-PETA

Los Angeles
2154 W. Sunset Blvd.
Los Angeles, CA 90026
323-644-PETA

Norfolk
501 Front St.
Norfolk, VA 23510
757-622-PETA

Berkeley
2855 Telegraph Ave.
Ste. 301
Berkeley, CA 94705
510-763-PETA

PETA FOUNDATION IS AN
OPERATING NAME OF FOUNDATION
TO SUPPORT ANIMAL PROTECTION.

AFFILIATES:

- PETA U.S.
- PETA Asia
- PETA India
- PETA France
- PETA Australia
- PETA Germany
- PETA Netherlands
- PETA Foundation (U.K.)

First, the only portion of Marriott's Animal Welfare Position Statement that specifically identifies any standards that pertain to the actual display of captive wild animals is the company's "recognition" of the Five Freedoms of care, which Marriott states it "expects" and "encourages," but does not require itself, its vendors, or its business partners to adhere to. The other portions of Marriott's Position Statement only explicitly address the sourcing of wild animals and animal-derived products, rather than the captive display of such animals, and have no bearing on the welfare issues identified by PETA's shareholder proposal.

Second, the statement omits that while Marriott encourages adherence to these standards, *none of them* are mandatory or prerequisites for conducting business with the Company. The opposition statement falsely implies to shareholders that these merely aspirational statements actually ensure animal welfare, the issue central to PETA's proposal and, therefore, indisputably material.

Marriott should clarify this by including in its opposition statement that the Company's Animal Welfare Position Statement does not directly address the display of wild animals and the Company does not maintain or require adherence to any welfare standards in the events at issue.

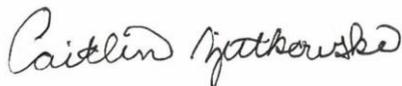
"We have been recognized as having world class status when it comes to safety and security and have implemented best practices and processes as measured by the American National Standards Institute."

This statement is misleading in that the American National Standards Institute does not appear to have issued standards directly pertaining to wild animals or their use in displays, or otherwise relevant to the topic of the proposal. If Marriott asserts the company adheres to any standards issued by the American National Standards Institute applicable to protecting the public from wild animals brought by vendors hired by lessees, please direct PETA to them.

I look forward to hearing from you soon regarding these concerns, so as to ensure there is sufficient time to bring this to the attention of the Commission Staff if we are unable to reach a resolution.

Thank you.

Sincerely,



Caitlin Zittkowski
Counsel
CaitlinZ@petaf.org
216.408.3721

March 2, 2020

Via e-mail

Office of Chief Counsel
Division of Corporation Finance
Securities and Exchange Commission
shareholderproposals@sec.gov

Re: Marriott International, Inc. Annual Meeting Shareholder Proposal
Submitted by PETA

Dear Sir or Madam:

I am writing on behalf of People for the Ethical Treatment of Animals (PETA) in response to Marriott International, Inc.'s ("Marriott" or "Company") February 21, 2020 supplemental letter ("**Supplemental Letter**") to its request for no-action relief under Rule 14a-8(i)(5). As **PETA's shareholder proposal ("Proposal") encouraging the Company to prohibit cruel and dangerous wild-animal displays at its hotels significantly relates to Marriott's business, PETA urges the Staff to deny Marriott's request.**

Rule 14a-8(i)(5) allows a company to exclude a proposal "[i]f the proposal relates to operations which account for less than **5 percent of the company's total assets at the end of its most recent fiscal year**, and for less than 5 percent of its net earnings and gross sales for its most recent fiscal year, and is not otherwise significantly related to **the company's business.**"

Marriott states in its supplemental letter that the Proposal may be excluded under Rule 14a-8(i)(5) because "the fees paid to the Company and its franchisees for these Wild Animal Related Events was less than \$3 million in fiscal year 2019," which represented **less than 5 percent of the Company's total assets**, net earnings, and gross sales for fiscal year 2018, and the Company expects to have similar findings concerning fiscal year 2019. *Supplemental Letter*, at 4. The Company contends the Proposal may be excluded under this provision because it is also not otherwise significantly related to the **Company's business**. *Id.* However, **the Company's** arguments concerning the second prong of Rule 14a-8(i)(5) lack support.

First, the two cases upon which the Company relies in support of its assertion that the Staff has concurred with excluding proposals under Rule 14a-8(i)(5), even when these proposals raise a socially or ethically significant issue, are readily distinguishable from the case at hand. *See id.* at 3. In *Reliance Steel & Aluminum Co.* (avail. Apr. 2, 2019), the Staff concurred **with the company's decision under Rule 14a-8(i)(5) to exclude the proposal requesting a report on the company's political contributions** because the company did not actually make any direct or indirect political contributions. *Id.* at *1. Similarly, in *Dunkin' Brands Group, Inc.* (avail. Feb. 22, 2018), the Staff agreed the proposal requesting a report assessing the environmental impacts of "continuing to use K-Cup Pods brand packaging" was not otherwise significantly related to the **company's business where Dunkin' did not even use the packaging**. The company's revenue derived from the K-Cups products came exclusively from licensing fees and royalties. *See id.* at *3. These comparisons would be relevant only if Marriott did not

PEOPLE FOR
THE ETHICAL
TREATMENT
OF ANIMALS
FOUNDATION

Washington, D.C.
1536 16th St. N.W.
Washington, DC 20036
202-483-PETA

Los Angeles
2154 W. Sunset Blvd.
Los Angeles, CA 90026
323-644-PETA

Norfolk
501 Front St.
Norfolk, VA 23510
757-622-PETA

Berkeley
2855 Telegraph Ave.
Ste. 301
Berkeley, CA 94705
510-763-PETA

PETA FOUNDATION IS AN
OPERATING NAME OF FOUNDATION
TO SUPPORT ANIMAL PROTECTION.

AFFILIATES:

- PETA U.S.
- PETA Asia
- PETA India
- PETA France
- PETA Australia
- PETA Germany
- PETA Netherlands
- PETA Foundation (U.K.)

actually take part in the activity at issue in the proposal, i.e., hosting wild animal displays, which the Company admittedly does, and so these examples are inapposite.

Next, the reasons the Company puts forth regarding why the captive wildlife displays are not **otherwise significantly related to the Company's** business lack merit. The Company argues that its captive wildlife displays are not significantly related to its business because the millions of dollars the Company receives for these events are not economically significant, i.e., they constitute less than 5 percent of its assets, as well as its net earnings and gross sales. While Staff Legal Bulletin No. **14j** **advises the company's well-**developed discussion of whether the policy at issue is otherwise significantly related **to the company's business may include "[q]uantitative data,** including financial statement impact, related to the matter that illustrate whether or not a matter is significant to the company," **the way the Company interprets this point is unduly narrow** and consists of simply reiterating the first prong of Rule 14a-8(i)(5) which essentially collapses the **rule's** requirements. *See Supplemental Letter*, at 4-5. In fact, the Company confirms it received up to \$3 million in fees during fiscal year 2019 from captive wildlife displays on its own and its managed and franchised properties. *Id.* at 4.

The Company's assertion that most of the wild-animal displays are not Company-offered services **and so they cannot be significantly related to the Company's business is also flawed.** The **Company's claim that "the limited use of wild animals at the Company's hotels is initiated by** guests, in their discretion," **and "separate and apart" from a guest's contract,** is a disingenuously **narrow characterization that minimizes the company's role in and control over what** takes place on the properties it owns, manages, and franchises. *See id.* at 5. The Company certainly has the authority to approve or deny **guests' requests to feature wild-**animal displays; surely, it does not intend to imply, as it does, that guests may bring adult pumas and elephants to their rooms, or to banquet halls or other spaces at its hotels, without hotel approval. In fact, this argument confirms that captive wildlife displays do take place at its own **and its franchises' properties.**

Furthermore, as previously **explained, the Company's contention that** the Company already addresses animal welfare through its Animal Welfare Position Statement is misleading, as the only portion of its Animal Welfare Position Statement that pertains to the actual display of captive **wild animals is the company's "recogni[tion] and respect[]" of the Five Freedoms** of care, which **Marriott states it "expects" and "encourages," but does not require itself, its vendors, or its** business partners to adhere to. *See No-Action Request*, at 4. **The other portions of Marriott's** Position Statement address only the sourcing of wild animals and animal-derived products, as opposed to the captive display of such animals, and so they do not address the welfare concerns at issue in the Proposal.

Lastly, several aspects of these captive wildlife displays demonstrate they are in fact otherwise **significantly related to the Company's business.** First, the Company itself has provided evidence **of the issue's significance by confirming captive wildlife displays take place at its own and its** franchised properties, from which it obtains objectively significant revenue. Next, the animals used in these displays are inherently and unavoidably subjected to serious abuse in order to be brought to the **Company's** properties. For instance, elephants used for live private events are subdued for human interaction with the use of bullhooks—sharp steel-tipped weapons resembling fireplace pokers that can **leave painful wounds on elephants'** sensitive skin. While elephants in nature roam up to 30 miles per day, elephants in captivity spend much of their lives in chains or shackles and are carted from city to city in trains, boxcars, or trailers in all weather extremes. During travel, these highly intelligent, socially complex animals are deprived of everything that is natural and important to them, including opportunities to exercise, socialize, and forage. The Company contributes to this abuse by hosting animals who are being exhibited at its properties

under threat of harm. Finally, by allowing these captive wildlife displays to take place at its own and its franchised properties, the Company is repeatedly exposing its guests to the health and safety issues inherent to these events, such as exposure to zoonotic diseases and the safety threats that having wild animals in close proximity to humans pose. There have been documented at least 20 human deaths and more than 140 injuries from human contact with elephants,¹ and at least 25 deaths and more than 280 injuries from human contact with big cats.² Elephants who are used for public exhibition have also been documented to have carried and transmitted tuberculosis to humans on multiple occasions.³ Every time the Company allows its properties to host an event involving a captive wildlife display, the Company is actively participating in putting its guests at risk. See Staff Legal Bulletin No. 14I (explaining a proponent may demonstrate a proposal is **otherwise significantly related to a company's business by providing "information demonstrating that the proposal 'may . . . subject the issuer to significant contingent liabilities'").**

We respectfully request that the Staff decline to issue a no-action response to Marriott and inform the company that it may not omit the Proposal from its proxy materials in reliance on Rules 14a-8(i)(7) or 14a-8(i)(5).

Should you need any additional information in reaching your decision, please contact me at your earliest convenience. If you intend to issue a no-action response to Marriott, we would welcome the opportunity to discuss this matter further before that response is issued.

Thank you.

Sincerely,



Caitlin Zittkowski
Counsel
(216)408-3721
CaitlinZ@petaf.org

cc: Bancroft S. Gordon; Marriott International, Inc.
Elizabeth A. Ising; Gibson, Dunn & Crutcher
Jared Goodman; PETA Foundation

¹ PETA, *Elephant Incidents in North America*, <https://www.mediapeta.com/peta/pdf/Elephant-Incident-List-US-only.pdf>.

² PETA, *Big Cat Incidents in the United States*, <https://www.mediapeta.com/peta/pdf/Big-Cat-Incident-List-US-only.pdf>.

³ PETA, *Tuberculosis at the Circus*, <https://www.peta.org/issues/animals-in-entertainment/circuses/circus-inspection-information-law-enforcement-officials/contagious-tuberculosis/>.

February 21, 2020

VIA E-MAIL

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

Re: *Marriott International, Inc.*
Supplemental Letter Regarding Stockholder Proposal of People for the
Ethical Treatment of Animals
Securities Exchange Act of 1934—Rule 14a-8

Ladies and Gentlemen:

On January 17, 2020, we submitted a letter (the “No-Action Request”) on behalf of Marriott International, Inc. (the “Company”) notifying the staff of the Division of Corporation Finance (the “Staff”) of the Securities and Exchange Commission (the “Commission”) that the Company intends to omit from its proxy statement and form of proxy for its 2020 Annual Meeting of Stockholders (collectively, the “2020 Proxy Materials”) a stockholder proposal and statements in support thereof (the “Proposal”), received from People for the Ethical Treatment of Animals (the “Proponent”).

The Proposal states:

RESOLVED: The shareholders encourage Marriott International (“Marriott”) to prohibit wild-animal displays at all its hotels because such exhibits are cruel, promote an abusive industry, and pose a safety risk to the public.

BASIS FOR SUPPLEMENTAL LETTER

Consistent with the No-Action Request, we hereby respectfully request that the Staff concur in our view that the Proposal may properly be excluded from the 2020 Proxy Materials pursuant to Rule 14a-8(i)(5) because the Proposal relates to operations of the Company that account for less than 5% of the Company’s assets, earnings and sales, and is not otherwise significantly related to the Company’s business, as determined by the Nominating and Corporate Governance Committee (the “Committee”) of the Board of Directors (the “Board”).

Office of Chief Counsel
Division of Corporation Finance
February 21, 2020
Page 2

ANALYSIS

The Proposal May Be Excluded Under Rule 14a-8(i)(5) Because It Relates to Operations That Account For Less Than 5% Of The Company’s Total Assets, Earnings And Sales, And Is Not Otherwise Significantly Related To The Company’s Business

A. Background On Rule 14a-8(i)(5)

Rule 14a-8(i)(5) provides that a shareholder proposal may be excluded “[i]f the proposal relates to operations which account for less than 5 percent of the company’s total assets at the end of its most recent fiscal year, and for less than 5 percent of its net earnings and gross sales for its most recent fiscal year, and is not otherwise significantly related to the company’s business.” Prior to adoption of the current version of the exclusion in Rule 14a-8(i)(5), the rule permitted companies to omit any proposal that “deals with a matter that is not significantly related to the issuer’s business.” In proposing changes to that version of the rule in 1982, the Commission noted that the Staff’s practice had been to agree with exclusion of proposals that bore no economic relationship to a company’s business, but that “where the proposal has reflected social or ethical issues, rather than economic concerns, raised by the issuer’s business, and the issuer conducts any such business, no matter how small, the [S]taff has not issued a no-action letter with respect to the omission of the proposal” Exchange Act Release No. 19135 (Oct. 14, 1982). The Commission stated that this interpretation of the rule may have “unduly limit[ed] the exclusion,” and proposed adopting the economic tests that appear in the rule today. *Id.* In adopting the rule, the Commission characterized it as relating “to proposals concerning the functioning of the economic business of an issuer and not to such matters as shareholders’ rights, e.g., cumulative voting.” Exchange Act Release No. 20091 (Aug. 16, 1983).

While historically issues of broad social or ethical concern were often determined by the Staff to be “otherwise significantly related to the company’s business” regardless of the economic relevance of such matter to a company, the Staff recently updated guidance regarding application of Rule 14a-8(i)(5). In Staff Legal Bulletin No. 14I (Nov. 1, 2017) (“SLB 14I”), the Staff reexamined its historic approach to interpreting Rule 14a-8(i)(5), including its historic interpretation and application of the decision in *Lovenheim v. Iroquois*

Office of Chief Counsel
Division of Corporation Finance
February 21, 2020
Page 3

Brands, Ltd.,¹ and determined that the past “application of Rule 14a-8(i)(5) has unduly limited the exclusion’s availability because it has not fully considered the second prong of the rule as amended in 1982 – the question of whether the proposal ‘deals with a matter that is not significantly related to the issuer’s business’ and is therefore excludable.” *Id.* Accordingly, the Staff noted that, going forward, it “will focus, as the rule directs, on a proposal’s significance to the company’s business when it otherwise relates to operations that account for less than 5% of total assets, net earnings and gross sales.” *Id.* Under this framework, the analysis is “dependent upon the particular circumstances of the company to which the proposal is submitted.” *Id.* “Where a proposal’s significance to a company’s business is not apparent on its face, [it] may be excludable unless the proponent demonstrates that it is ‘otherwise significantly related to the company’s business.’” *Id.* Although a proposal could raise social or ethical issues, those must tie to a significant effect on the company’s business, and the “*mere possibility of reputational or economic harm will not preclude no-action relief.*” *Id.* (emphasis added).

Following SLB 14I, the Staff has concurred with the exclusion of proposals consistent with the underlying purpose of Rule 14a-8(i)(5), even where such proposals raise an issue of social or ethical significance. *See, e.g., Reliance Steel & Aluminum Co.* (avail. Apr. 2, 2019) (concurring with the exclusion of a proposal requesting a report on political contributions and expenditures that contains information specified in the proposal), and *Dunkin’ Brands Group, Inc.* (avail. Feb. 22, 2018) (concurring with the exclusion of proposal seeking a report assessing the environmental impacts of continuing to use K-Cup Pods brand packaging). In concurring with the exclusion in *Dunkin’*, the Staff specifically noted “that the [p]roposal’s significance to the [c]ompany’s business is not apparent on its face, and that the [p]roponent has not demonstrated that it is otherwise significantly related to the [c]ompany’s business.”

B. The Proposal Relates To Operations That Account For Less Than 5% Of The Company’s Total Assets, Net Earnings And Gross Sales

In this instance, the Proposal relates to operations that account for less than 5 percent of the Company’s total assets, net earnings and gross sales. In particular, the Proposal seeks to prohibit the Company from permitting “wild-animal displays at all its hotels.” Wild animal displays at the Company’s managed and franchised hotels occur in very limited situations.

¹ 618 F. Supp. 554 (D.D.C 1985). In *Lovenheim*, the District Court preliminarily enjoined a company from excluding a proposal regarding sales of a product line that represented revenue, sales and assets that were economically insignificant to the company. As described in SLB 14I, “[t]he court based its decision to grant the injunction ‘in light of the ethical and social significance’ of the proposal and on ‘the fact that it implicates significant levels of sales.’” The Staff noted that its interpretation of *Lovenheim* “has significantly narrowed the scope of Rule 14a-8(i)(5)” — an interpretation the Staff then reexamined in SLB 14I.

Office of Chief Counsel
Division of Corporation Finance
February 21, 2020
Page 4

Specifically, occasionally guests will add wild animal displays at weddings, events (including conventions and educational meetings) and other activities held at the Company's managed and franchised hotels. Additionally, one property in South Africa offers game drives and animal interactions as part of its conservation efforts to house protected animals (blind cheetahs). These limited situations and events are referred to, collectively, as the "Wild Animal Related Events." After conducting extensive internal diligence, the Company determined that the fees paid to the Company and its franchisees for these Wild Animal Related Events was less than \$3 million in fiscal year 2019, which represents significantly less than 5 percent of the Company's total assets at the end of fiscal year 2018 and significantly less than 5 percent of the Company's net earnings and gross sales for fiscal year 2018.² Moreover, the Company expects these fees for Wild Animal Related Events to represent a similarly insignificant percentage based on the Company's total assets, net earnings and gross sales for fiscal year 2019. Accordingly, it is clear that the Proposal does not relate to Company operations that are economically significant to the Company and therefore may be excludable under the first prong of the Rule 14a-8(i)(5) test.

C. The Proposal Is Not Otherwise Significantly Related To The Company's Business

Even if a proposal relates to operations that are not economically significant to a company, Rule 14a-8(i)(5) provides that a proposal may not be excluded if it is "otherwise significantly related to the company's business." The Staff indicated in SLB 14I that "determining whether a proposal is 'otherwise significantly related to the company's business' can raise difficult judgement calls" and that "[a] board acting with the knowledge of the company's business and the implications for a particular proposal on that company's business is better situated than the staff to determine whether a particular proposal is 'otherwise significantly related to the company's business.'"

Accordingly, consistent with SLB 14I, the Committee recently met and considered the significance of the Proposal to the Company, including both the fees received for Wild Animal Related Events and whether the Proposal is otherwise significantly related to the Company's business. The Committee determined that the Proposal is not significantly related to the Company's business after considering various factors, including that:

- **The fees received by the Company and its franchisees for Wild Animal Related Events are economically insignificant to the Company.** As discussed above, fees

² Note that these fees paid to the Company's franchisees are not reflected as revenue in the Company's financial statements. Thus, in calculating these percentages, the Company's calculations are over-inclusive.

Office of Chief Counsel
Division of Corporation Finance
February 21, 2020
Page 5

for Wild Animal Related Events represent significantly less than 5 percent of the Company's total assets and significantly less than 5 percent of the Company's net earnings and gross sales.

- **Wild Animal Related Events at the Company's managed and franchised hotels occur in very limited situations, and hosting such functions is not the Company's primary business.** The Proposal's significance to the Company's business is not apparent on its face. The Company is a worldwide operator, franchisor and licensor of hotel, residential, and timeshare properties under numerous brand names. Consistent with its focus on management, franchising and licensing, it owns very few of its lodging properties. The Proposal takes issue with the Company's practice of "permit[ing] the exhibition of wild animals on its properties for weddings and other events" and desires "banning wild-animal displays at [Company] properties." Thus, the Proposal is limited to instances where wild animals are permitted at Company properties. As noted above, these Wild Animal Related Events are limited. Further, hosting functions such as weddings, events, and other activities is not the Company's primary business as a manager, franchisor and licensor of hotels, residential, and timeshare properties. The Proposal does not address the Company's primary business operations, but instead focuses on the kind of tangential displays that certain guests of Company hotels elect to include, at their own discretion, separate and apart from the contractual agreement that the Company has with each such guest as part of its event services.
- **Wild animal displays are not Company-offered services and thus the policy concerns raised by the Proposal are not significantly related to the Company's business.** The Committee considered the very limited circumstances in which wild animals are used at Company hotels by guests. Except for one property in South Africa that offers game drives and animal interactions, the limited use of wild animals at the Company's hotels is initiated by guests, in their discretion. These are not Company-offered services (*i.e.*, the Company does not provide a menu of wild animals for guests to select from as part of its wedding, event, or similar services). The Committee further considered that the Company already addresses animal welfare through its Animal Welfare Position Statement (the "Position Statement"),³ which expresses the Company's commitment to the ethical, humane and legal treatment of animals across its operations.

³ Available at <http://serve360.marriott.com/wp-content/uploads/2019/05/Animal-Welfare-Position-Statement2.pdf>.

Office of Chief Counsel
Division of Corporation Finance
February 21, 2020
Page 6

- **The Proponent has not provided any factual or other support in the Proposal to meet its burden of demonstrating that the Proposal is otherwise significantly related to the Company's business.** Nothing in the Proposal indicates that the Proposal relates to matters of significance to the Company's business within the meaning of Rule 14a-8(i)(5). Additionally, the Proposal fails to establish a correlation between the concerns addressed in the Proposal and the Company's business. Rather, the Proposal focuses on ethical issues relating to captive animals, generally, and no specific examples involving the Company or any of its properties are provided. Thus the Proponent has not satisfied its burden under Rule 14a-8(i)(5).
- **Other stockholders have not raised this issue, requested the type of action sought by the Proposal, or submitted a stockholder proposal to the Company on the same topic.** The Company engages in robust stockholder engagement, including through quarterly earnings calls, investor meetings and conferences, analyst days, and investor surveys, and it is a key focus for the Company. In 2018, the Company met with nearly 250 institutional investors, constituting approximately 50% of shares held by institutions.⁴ During the course of the Company's engagement with its stockholders, no other investor aside from the Proponent raised the issue of the Company's policy permitting wild animal displays at its hotels. Moreover, no similar proposal has been submitted for inclusion in the Company's proxy materials, and the Company's stockholders have not previously voted on the matter that the Proposal relates to. Accordingly, the Committee considered that the Proposal does not raise a topic of shared interest among Company stockholders.

Based on the foregoing information, in light of the fact that the Proposal relates to operations that account for less than 5 percent of the Company's total assets, net earnings and gross sales, and the Committee's determination that the Proposal is not significantly related to the Company's business, the Proposal may be properly excluded under Rule 14a-8(i)(5).

CONCLUSION

Based upon the foregoing analysis, the Company intends to exclude the Proposal from its 2020 Proxy Materials, and we respectfully request that the Staff concur that the Proposal may be excluded under Rule 14a-8. In accordance with Rule 14a-(j), a copy of this supplemental letter and its attachments is being sent on this date to the Proponent.

⁴ See the Company's "Letter From Our Chairman And Our Chief Executive Officer" in the 2019 Proxy Statement, available at <https://marriott.ges-web.com/static-files/7153645d-ac89-492f-b490-355854a3ae3c>.

GIBSON DUNN

Office of Chief Counsel
Division of Corporation Finance
February 21, 2020
Page 7

We would be happy to provide you with any additional information and answer any questions that you may have regarding this subject. Correspondence regarding this letter should be sent to shareholderproposals@gibsondunn.com. If we can be of any further assistance in this matter, please do not hesitate to call me at (202) 955-8287 or Bancroft S. Gordon, the Company's Vice President, Assistant General Counsel and Corporate Secretary, at (301) 380-6601.

Sincerely,



Elizabeth A. Ising

cc: Bancroft S. Gordon, Marriott International, Inc.
Jared S. Goodman, PETA

February 3, 2020

Via e-mail

Office of Chief Counsel
Division of Corporation Finance
Securities and Exchange Commission
shareholderproposals@sec.gov

Re: Marriott International, Inc. Annual Meeting Shareholder Proposal
Submitted by PETA

Dear Sir or Madam:

I am writing on behalf of People for the Ethical Treatment of Animals (PETA) and pursuant to Rule 14a-8(k) in response to Marriott International, Inc.'s ("Marriott" or "Company") request that the Staff of the Division of Corporation Finance ("Staff") of the Securities and Exchange Commission ("Commission") concur with its view that it may properly exclude PETA's shareholder resolution and supporting statement ("Proposal") from the proxy materials to be distributed by Marriott in connection with its 2020 annual meeting of shareholders ("No-Action Request").

The Company seeks to exclude the Proposal on the basis of Rules 14a-8(i)(7) and 14a-8(i)(5). As the Proposal does not seek to micromanage the Company, and **significantly relates to Marriott's business, PETA urges the Staff to deny Marriott's request for a no-action letter.**

I. The Proposal

PETA's resolution, titled "2020 Shareholder Resolution Regarding Wild-Animal Displays at Marriott International Properties," provides:

RESOLVED: The shareholders encourage Marriott International ("Marriott") to **prohibit wild-animal displays** at all its hotels because such exhibits are cruel, promote an abusive industry, and pose a safety risk to the public.

The supporting statement then describes the **insufficiencies of Marriott's current "Animal Welfare Position Statement" and the dangers of wild-animal displays** to both human and non-human animals.

II. The Proposal Focuses on a Significant Social Policy Issue and May Not Be Excluded Pursuant to Rule 14a-8(i)(7).

Rule 14a-8(i)(7) provides that a company may exclude a proposal "[i]f the proposal deals with a matter relating to the company's ordinary business operations." Only "business matters that are mundane in nature and do not involve any substantial policy" considerations may be omitted under this exemption. Adoption of Amendments Relating to Proposals by Security Holders, 41 Fed. Reg. 52,994, 52,998 (1976). At issue here is only one of the policies underlying this rule: "[T]he degree to which the proposal seeks to 'micro-manage' the company by probing too deeply into matters of a complex nature upon which stockholders, as a group, would not be in a

PEOPLE FOR
THE ETHICAL
TREATMENT
OF ANIMALS
FOUNDATION

Washington, D.C.
1536 16th St. N.W.
Washington, DC 20036
202-483-PETA

Los Angeles
2154 W. Sunset Blvd.
Los Angeles, CA 90026
323-644-PETA

Norfolk
501 Front St.
Norfolk, VA 23510
757-622-PETA

Berkeley
2855 Telegraph Ave.
Ste. 301
Berkeley, CA 94705
510-763-PETA

PETA FOUNDATION IS AN
OPERATING NAME OF FOUNDATION
TO SUPPORT ANIMAL PROTECTION.

AFFILIATES:

- PETA U.S.
- PETA Asia
- PETA India
- PETA France
- PETA Australia
- PETA Germany
- PETA Netherlands
- PETA Foundation (U.K.)

position to make an informed judgment.” Amendments to Rules on Shareholder Proposals, Exchange Act Release No. 40018 (May 21, 1998) (“Rule 14a-8 Release”).¹

PETA’s Proposal does not seek to micromanage the company by “unduly limiting the ability of management to manage its existing animal welfare policies and practices with the level of necessary flexibility.” Marriott argues that it may exclude the Proposal pursuant to Rule 14a-8(i)(7) because it “prescribes the method for addressing animal displays notwithstanding that the Company already has a policy for addressing animal welfare as implemented through its Position Statement.” *No-Action Request*, at 5. However, this argument misrepresents the scope of **Marriott’s Position Statement. As summarized in Marriott’s no-action request, the only portion of its Animal Welfare Position Statement that pertains to the actual display of captive wild animals is the company’s “recogni[tion] and respect[.]” of the Five Freedoms of care, which Marriott states it “expects” and “encourages,” but does not require itself, its vendors, or its business partners to adhere to. See *No-Action Request*, at 4.² The other portions of Marriott’s Position Statement address only the sourcing of wild animals and animal-derived products, rather than the captive display of such animals, and have no bearing on the welfare concerns at issue in the Proposal. Because Marriott’s Position Statement does not directly speak to any specific standards concerning the display of wild animals, and is solely aspirational, the Proposal does not attempt to micromanage the company’s implementation of its existing policy because the policy does not directly address wild-animal displays.**

Indeed, the Staff has repeatedly declined to issue no-action letters on the basis of Rule 14a-8(i)(7) as micromanaging the company where the proposal included a ban or a specific numerical target concerning particular practices impacting the humane treatment of animals. For instance, in *Coach, Inc.*, (Aug. 19, 2010), **PETA’s resolution encouraged the company “to enact a policy that will ensure that no fur products are acquired or sold by [Coach].” In seeking to exclude the proposal, the company argued that “[t]he use of fur or other materials is an aesthetic choice that is the essence of the business of a design and fashion house such as Coach,” “luxury companies must be able to make free and independent judgments of how best to meet the desires and preferences of their customers,” and that the proposal “does not seek to improve the treatment of animals[, but] to use animal treatment as a pretext for ending the sale of fur products at Coach entirely.”** *Id.* The Staff disagreed, writing:

In arriving at this position, we note that although the proposal relates to the acquisition and sale of fur products, it focuses on the significant policy issue of the humane treatment of animals, *and it does not seek to micromanage the company to such a degree that we believe exclusion of the proposal would be appropriate.* Accordingly, we do not believe that Coach may omit the proposal from its proxy materials in reliance on rule 14a-8(i)(7).

¹Marriott is not seeking no-action relief on the basis of the second policy underlying this rule, i.e., that **“certain tasks are so fundamental to management’s ability to run a company on a day-to-day basis that they could not, as a practical matter, be subject to direct shareholder oversight.”** Rule 14a-8 Release. Therefore, Marriott essentially concedes the humane treatment of animals is a significant policy issue, and PETA does not address that argument here. See *No-Action Request*, at 3 (**“Moreover, as is relevant here, under Rule 14a-8(i)(7) a stockholder proposal that seeks to micromanage a company’s business operations is excludable even if it involves a significant policy issue.” (emphasis added)**).

² See also Animal Welfare Position Statement, Marriott International, <http://serve360.marriott.com/wp-content/uploads/2019/05/Animal-Welfare-Position-Statement2.pdf>.

Id. (emphasis added); *see also, e.g., Bob Evans Farms, Inc.* (June 6, 2011) (finding that a proposal to encourage the board to phase-in the use of “cage-free” eggs so that they represent at least five percent of the company’s total egg usage “focuses on the significant policy issue of the humane treatment of animals and does not seek to micromanage the company to such a degree that exclusion of the proposal would be appropriate”); *Denny’s* (Mar. 17, 2009) (finding that a proposal requesting the board to commit to selling at least ten percent cage-free eggs by volume could not be excluded in reliance on Rule 14a-8(i)(7)).

The Staff has further refused to issue no-action letters where a proposal requested the end of particular animal experiments. In a series of proposals, PETA requested that the boards of various companies:

1. Commit specifically to using only non-animal methods for assessing skin corrosion, irritation, absorption, phototoxicity and pyrogenicity.
2. Confirm that it is in the Company’s best interest to commit to replacing animal-based tests with non-animal methods.
3. Petition the relevant regulatory agencies requiring safety testing for the Company’s products to accept as total replacements for animal-based methods, those approved non-animal methods described above, along with any others currently used and accepted by the Organization for Economic Cooperation and Development (OECD) and other developed countries.

In every instance, the Staff was “unable to concur in [the company’s] view that [it] may exclude the proposal under rule 14a-8(i)(7).” *3M Co.*, (Feb. 22, 2005); *Schering-Plough Corp.*, (Feb. 10, 2005); *The Dow Chemical Co.*, (Jan. 21, 2005); *Johnson & Johnson*, (Jan. 13, 2005); *General Electric Co.*, (Jan. 11, 2005). *See also Wyeth* (Feb. 4, 2004) (finding that a proposal requesting that the board issue a policy statement publicly committing to use *in vitro* tests and generally committing to the elimination of product testing on animals could not be excluded in reliance on Rule 14a-8(i)(7)); *American Home Products Corp.* (Feb. 25, 1993) (finding that a proposal requesting that the board take all necessary steps to eliminate all animal testing could not be excluded in reliance on Rule 14a-8(i)(7)).

In addition, Marriott’s attempt to distinguish the proposal for *The TJX Companies, Inc.* (Mar. 13, 2017), requesting the company evaluate the potential for achieving net-zero greenhouse gas emissions, and the Staff’s decision that the proposal did not attempt to micromanage the company, is unavailing, because in certain respects, that proposal was more restrictive than the proposal at issue here. In *TJX Companies*, the proposal “requested” the board prepare a report including specific criteria and defined measures to reach by a particular date. Here, the proposal includes similar precatory language “encouraging” the company to prohibit wild-animal displays and does not restrict the timeline for implementation. As a result, contrary to Marriott’s assertion, the company does retain discretion and flexibility implementing its other animal welfare policies.

III. The Proposal Is Significantly Related to the Company’s Business and May Not Be Excluded Pursuant to Rule 14a-8(i)(5).

Rule 14a-8(i)(5) allows a company to exclude a proposal “[i]f the proposal relates to operations which account for less than 5 percent of the company’s total assets at the end of its most recent fiscal year, and for less than 5 percent of its net earnings and gross sales for its most recent fiscal year, and is not otherwise significantly related to the company’s business.”

Marriott states it is in the process of reviewing the economic significance of the Proposal and “anticipates” such review will indicate the Proposal is not economically significant to Marriott.

No-Action Request, at 8. This is an insufficient placeholder for a substantive argument. Such conjecture subverts the purpose of Rule 14a-8(j) requiring the company to file its reasons for excluding a proposal at least 80 days before filing its definitive proxy statement. Speculation concerning whether the proposal is economically relevant does not provide the Staff with the **necessary information or analysis to make a reasoned decision concerning Marriott’s no-action request, and Marriott should not be permitted to skirt the Staff’s procedural requirements.** For these reasons alone, the Staff should decline to issue no-action relief on the basis of Rule 14a-8(i)(5).

However, even if such an analysis showed the proposal did not meet the requirements to qualify as economically significant, the use of wild-animal displays is significantly related to the **company’s business within the meaning of Rule 14a-8(i)(5).**

In *Lovenheim v. Iroquois Brands, Ltd.*, 618 F. Supp. 554 (D.D.C. 1985), the plaintiff submitted a **resolution regarding “the procedure used to force-feed geese for production of paté de foie gras in France, a type of paté imported by Iroquois/Delaware.” Specifically, the resolution called on the company to:**

form a committee to study the methods by which its French supplier produces paté de foie gras, and report to the shareholders its findings and opinions, based on expert consultation, on whether this production method causes undue distress, pain or suffering to the animals involved and, if so, whether further distribution of this product should be discontinued until a more humane production method is developed.

Id. at 556. The defendant sought to exclude the proposal on the basis of Rule 14a-8(i)(5), as its foie gras business—and thus, the operations implicated by the proposal—**represented “none of the company’s net earnings and less than .05 percent of its assets,”** *id.* at 558-59 (emphasis added), and the plaintiff sought a preliminary injunction. After reviewing the history of the rule, the court **rejected the defendant’s solely economic argument** and held that **“in light of the ethical and social significance of plaintiff’s proposal and the fact that it implicates significant levels of sales [even though at a net loss], plaintiff has shown a likelihood of prevailing on the merits with regard to the issue of whether his proposal is ‘otherwise significantly related’ to [the defendant’s] business.”** *Id.* at 561.

The court’s finding of an “ethical and social significance” relied on the plaintiff’s argument that **“the very availability of a market for products that may be obtained through the inhumane force-feeding of geese cannot help but contribute to the continuation of such treatment,”** citing the various federal and state animal protection statutes in the country, and **“the support of ... leading organizations in the field of animal care ... for measures aimed at discontinuing use of force-feeding.”** *Id.* at 559 n.8.

The Staff has declined to permit exclusion under Rule 14a-8(i)(5) of proposals related to the humane treatment or welfare of animals on the basis that the shareholder proposal was significantly related to **the company’s business.** See *Revlon, Inc.* (Mar. 18, 2014) (rejecting **Revlon’s argument that the proposal requiring the creation of an annual report regarding the company’s animal testing was excludable** under Rule 14a-8(i)(5) as relating to “operations which account for less than 5 percent of the company’s total assets at the end of its most recent fiscal year, and for less than 5 percent of its net earnings and gross sales for its most recent fiscal year, and is not otherwise significantly related to the company’s business”); *Coach, Inc.* (Aug. 19, 2010) (stating the Staff was “unable to conclude that the proposal [to ensure no fur products are

acquired or sold by Coach] is not ‘otherwise significantly related’ to Coach's business”); *Wal-Mart Stores, Inc.* (Mar. 31, 2010) (stating the Staff was “unable to concur in [the company’s] view” that the proposal encouraging the board to require its poultry suppliers to switch to controlled-atmosphere killing within five years was not “otherwise significantly related” to Wal-Mart's business); *Coach, Inc.* (Aug. 7, 2009) (declining to exclude the proposal requesting that the board produce a report on the feasibility of ending the use of animal fur in company products on the basis of Rule 14a-8(i)(5)).

The ethical and social implications of wild animal displays render them “otherwise significantly related” to Marriott’s business in the same manner. The use and welfare of wild animals in captive displays is subject to widespread debate, exemplified by the very existence of Marriott’s Animal Welfare Position Statement. See *No-Action Request*, at 4. The public has begun to turn away from **captive animal exhibitions entirely. “The very concept of a place where families can visit and observe animals is being questioned like never before,”** because “[s]tudy after study has shown that many animal species are far smarter and more feeling than previously understood, giving new insights into how they may suffer from anxiety and depression when they are removed from nature.” **Justin Worland, *The Future of Zoos: Challenges Force Zoos to Change in Big Ways*, Time** (Feb. 15, 2017), <http://time.com/4672990/the-future-ofzoos/>. As one celebrated zoo designer recognized, **“Even the best zoos today are based on captivity and coercion,”** which he described as **“the fundamental flaw.”** *Id.* (also quoting a long-time zoo exhibit designer and zoo director that **“this conservation quilt that zoos are wearing is quite dubious attire”** and **“they are doing a disservice to conservation”**). Respected scientific news sources, such as *National Geographic*, have begun to shine a light on the hidden cruelty of captive wildlife displays, revealing how, for instance, captive tigers are often declawed or drugged to protect people in close proximity, and elephants are jabbed with bullhooks on sensitive parts of their bodies to train them **to submit to carrying humans on their backs, further fueling the public’s changing views.** See Natasha Daly, *Suffering Unseen: The Dark Truth Behind Wildlife Tourism*, **Nat’l Geographic** (June 2019), <https://www.nationalgeographic.com/magazine/2019/06/global-wildlife-tourism-social-media-causes-animal-suffering/>. Continuing to invite and allow such displays perpetuates the inherently inhumane treatment of these animals—violence to coerce submission and obedience. See *Lovenheim*, 618 F. Supp. at 556, 559 n.8. Thus, the Proposal is significantly related to Marriott’s **business**, and it may not be excluded in reliance on Rule 14a-8(i)(5).

IV. Conclusion

We respectfully request that the Staff decline to issue a no-action response to Marriott and inform the company that it may not omit the Proposal from its proxy materials in reliance on Rules 14a-8(i)(7) or 14a-8(i)(5).

Should you need any additional information in reaching your decision, please contact me at your earliest convenience. If you intend to issue a no-action response to Marriott, we would welcome the opportunity to discuss this matter further before that response is issued.

Thank you.

Sincerely,



Caitlin Zittkowski
Counsel
(216) 408-3721

CaitlinZ@petaf.org

cc: Bancroft S. Gordon; Marriott International, Inc.
Elizabeth A. Ising; Gibson, Dunn & Crutcher
Jared Goodman; PETA Foundation

January 17, 2020

VIA E-MAIL

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

Re: *Marriott International, Inc.*
Stockholder Proposal of People for the Ethical Treatment of Animals
Securities Exchange Act of 1934—Rule 14a-8

Ladies and Gentlemen:

This letter is to inform you that our client, Marriott International, Inc. (the “Company”), intends to omit from its proxy statement and form of proxy for its 2020 Annual Meeting of Stockholders (collectively, the “2020 Proxy Materials”) a stockholder proposal and statements in support thereof (the “Proposal”), received from People for the Ethical Treatment of Animals (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 2020 Proxy Materials with the Commission; and
- concurrently sent copies of this correspondence to the Proponent.

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

Office of Chief Counsel
Division of Corporation Finance
January 17, 2020
Page 2

THE PROPOSAL

The Proposal states:

RESOLVED: The shareholders encourage Marriott International (“Marriott”) to prohibit wild-animal displays at all its hotels because such exhibits are cruel, promote an abusive industry, and pose a safety risk to the public.

A copy of the Proposal, as well as related correspondence with the Proponent, is attached to this letter as Exhibit A.

BASES FOR EXCLUSION

For the reasons discussed below, we believe that the Proposal may properly be excluded from the 2020 Proxy Materials pursuant to:

- Rule 14a-8(i)(7) because the Proposal seeks to micromanage the Company by seeking to impose specific methods for implementing complex policies related to the Company’s operations; and
- Rule 14a-8(i)(5) because the Proposal relates to operations of the Company that account for less than 5% of the Company’s assets, earnings and sales, and the Proposal is not otherwise significantly related to the Company’s business, as determined by the Governance and Nominating Committee (the “Committee”) of the Board of Directors (the “Board”).

ANALYSIS

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

A. Background on Rule 14a-8(i)(7)

Rule 14a-8(i)(7) permits a company to omit from its proxy materials a stockholder 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 providing management with flexibility in directing certain core matters involving the company’s

Office of Chief Counsel
Division of Corporation Finance
January 17, 2020
Page 3

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. 1998 Release. The first is that “[c]ertain tasks are so fundamental to management’s ability to run a company on a day-to-day basis that they could not, as a practical matter, be subject to direct shareholder oversight.” *Id.* The second consideration is related to “the degree to which the proposal seeks to ‘micro-manage’ the company by probing too deeply into matters of a complex nature upon which shareholders, as a group, would not be in a position to make an informed judgment.” *Id.* (citing Exchange Act Release No. 12999 (Nov. 22, 1976)). The 1998 Release further states that “[t]his consideration may come into play in a number of circumstances, such as where the proposal involves intricate detail, or seeks to impose specific time-frames or methods for implementing complex policies.” *Id.* Moreover, as is relevant here, under Rule 14a-8(i)(7) a stockholder proposal that seeks to micromanage a company’s business operations is excludable even if it involves a significant policy issue.

In Staff Legal Bulletin No. 14J (Oct. 23, 2018) (“SLB 14J”), the Staff explained that “[u]nlike the first consideration [of the ordinary business exclusion], which looks to a proposal’s subject matter, the second consideration looks only to the degree to which a proposal seeks to micromanage. Thus, a proposal that may not be excludable under the first consideration may be excludable under the second if it micromanages the company.” Additionally, consistent with the Commission’s views, the Staff will “look to whether the proposal seeks intricate detail or imposes a specific strategy, method, action, outcome or timeline for addressing an issue, thereby supplanting the judgement of management and the board.” Staff Legal Bulletin No. 14K (Oct. 16, 2019) (“SLB 14K”).

In SLB 14K, the Staff further clarified that “a proposal, regardless of its precatory nature, that prescribes specific timeframes or methods for implementing complex policies . . . may be viewed as micromanaging the company.” SLB 14K. Moreover, “the precatory nature of a proposal does not bear on the degree to which a proposal micromanages.” *Id.* Instead, the Staff assesses the “level of prescriptiveness of the proposal,” and “if the method or strategy for implementing the action requested by the proposal is overly prescriptive, thereby potentially limiting the judgment and discretion of the board and management, the proposal may be viewed as micromanaging the company.” *Id.*

Office of Chief Counsel
Division of Corporation Finance
January 17, 2020
Page 4

B. Company Background

The Company discloses in its Animal Welfare Position Statement (the “Position Statement”) that it is committed to responsible business practices and recognizes that animal welfare is an important part of conducting business operations with integrity and endeavors to work toward the ethical, humane, and legal treatment of animals across its global operations.¹ Moreover, as articulated in the Position Statement, the Company recognizes and respects the requirements set forth by local, regional and national laws and regulations, binding international agreements, and/or internationally recognized government or scientific bodies, including but not limited to the International Union for Conservation of Nature and the Convention on International Trade in Endangered Species. The Position Statement further summarizes the Company’s responsible business expectations of its suppliers, vendors, and business partners, including with respect to the ethical and legal treatment of animals. In partnership with its suppliers and business partners, the Company is committed to raising the standard of animal welfare across its global operations and supply chain.

The Position Statement also explains that, as a signatory of the World Travel and Tourism Council Declaration on Illegal Trade in Wildlife, the Company does not knowingly purchase, utilize or facilitate the sale of wildlife products made with illegally harvested, produced and/or traded materials. Further, the Position Statement articulates that the Company “recognizes and respects the internationally recognized ‘Five Freedoms’ of care, animal welfare standards endorsed by the World Organisation for Animal Health, which include: (i) freedom from thirst, hunger and malnutrition; (ii) freedom from discomfort; (iii) freedom from pain, injury and disease; (iv) freedom to express normal behavior; and (v) freedom from fear and distress.”

C. The Proposal May Be Excluded Under Rule 14a-8(i)(7) Because It Seeks To Micromanage The Company

The Staff has consistently permitted exclusion of stockholder proposals that attempt to micromanage a company by substituting stockholder judgement for that of management with respect to complex day-to-day business operations. For example, in *Apple Inc.* (avail. Dec. 5, 2016), the proposal requested that the board “generate a feasible plan for the [c]ompany to reach a net-zero GHG emission status by the year 2030 for all aspects of the business which are directly owned by the [c]ompany and major suppliers” The

¹ See the Position Statement, available at <http://serve360.marriott.com/wp-content/uploads/2019/05/Animal-Welfare-Position-Statement2.pdf>.

Office of Chief Counsel
Division of Corporation Finance
January 17, 2020
Page 5

company's no-action request demonstrated that it already had a plan to reduce its carbon footprint and that the proposal micromanaged by effectively dictating the specific GHG emission reduction targets to be achieved as well as the timeframe. In concurring with the company's request for exclusion, the Staff noted that the proposal "seeks to micromanage the company by probing too deeply into matters of a complex nature upon which shareholders, as a group, would not be in a position to make an informed judgement." *See also Johnson & Johnson* (avail. Feb. 14, 2019) (concurring with the exclusion of a proposal requesting the adoption of a policy prohibiting adjustments of financial performance metrics that would exclude legal or compliance costs when determining the amount or vesting of any senior executive incentive compensation award as "micromanag[ing] the [c]ompany by seeking to impose specific methods for implementing complex policies"); *SeaWorld Entertainment, Inc.* (avail. Apr. 23, 2018) ("*SeaWorld II*") (concurring with the exclusion of a proposal requesting a ban on all captive breeding at its facilities as "micromanag[ing] the [c]ompany by seeking to impose specific methods for implementing complex policies"); *SeaWorld Entertainment, Inc.* (avail. Mar. 30, 2017, *recon. denied* Apr. 17, 2017) (concurring with the exclusion of a proposal requesting the replacement of live orca exhibits with virtual reality experiences as "seek[ing] to micromanage the company by probing too deeply into matters of a complex nature upon which shareholders, as a group, would not be in a position to make an informed judgment"); and *Marriott International, Inc.* (avail. Mar. 17, 2010, *recon. denied* Apr. 19, 2010) (concurring with the exclusion of a proposal requiring the use of "specific technologies," namely the installation of low-flow showerheads, at certain of the Company's hotels because "although the proposal raises concerns with global warming, the proposal seeks to micromanage the Company to such a degree that exclusion of the proposal is appropriate").

Here, the Proposal micromanages the Company because it attempts to dictate a specific outcome (*i.e.*, a complete ban on all wild animal displays at Company hotels). Like in *Apple*, where the proposal appeared to micromanage the company in multiple ways, here the Proposal (i) prescribes the method for addressing animal displays notwithstanding that the Company already has a policy for addressing animal welfare as implemented through its Position Statement, and (ii) also dictates the specific actions to be taken (*i.e.*, an outright prohibition on wild animals at its properties). Similar to the proposal in *SeaWorld II*, which prescribed a ban on all captive breeding, the Proposal prescribes the specific method for how the Company should address how it handles wild animal displays. The Proposal does not ask the Company to reconsider or alter its existing animal welfare policies or practices. Further, the Proposal's blanket prohibition on wild animal displays applies without regard to the kind of wild animal at issue, the cultural origins of the displays, the nature of display, the animal's role, or any other extenuating circumstances. Instead, it prescribes a single path for the Company, thereby unduly limiting the ability of management to manage its

Office of Chief Counsel
Division of Corporation Finance
January 17, 2020
Page 6

existing animal welfare policies and practices with the level of necessary flexibility. Accordingly, consistent with the proposals in *Apple* and *SeaWorld II*, the Proposal micromanages the Company and is properly excludable under Rule 14a-8(i)(7).

Notably, the Staff recently concurred with the exclusion of proposals submitted by the Proponent to three different companies in the prior proxy season where such proposals specifically prescribed the action to be taken by the company. For example, in *Pfizer Inc.* (avail. Mar. 1, 2019), the proposal stated: “given the animal suffering inherent in the ‘Forced Swim Test’ (FST), its questionable scientific validity, and the fact that a majority of Americans object to the use of animals in experiments, our [b]oard should implement a policy that it will not fund, conduct or commission use of this test.” In concurring with the company’s request for exclusion, the Staff noted that “the [p]roposal micromanages the [c]ompany by seeking to impose specific methods for implementing complex policies.” See also *Bristol-Myers Squibb Co.* (avail. Mar. 1, 2019) (same); and *Eli Lilly and Co.* (avail. Mar. 1, 2019) (same). Just as the *Pfizer* proposal micromanaged the company by requesting that it adopt a policy to stop using the FST, the instant Proposal requests that the Company stop permitting wild animal displays at its hotels. While the Company is sympathetic to the animal welfare concerns that motivate this Proposal and has taken active steps toward the ethical, humane and legal treatment of animals across its operations, as described in its Position Statement, the Proposal’s prescriptive nature subjects it to exclusion under Rule 14a-8(i)(7), consistent with the proposals in *Apple*, *SeaWorld II*, *Pfizer*, *Eli Lilly*, and *Bristol-Myers*.

As the Staff explained in SLB 14K, “[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 be excludable based on micromanagement. SLB 14K. The phrasing of the Proposal, which plainly requests that the Company “prohibit wild-animal displays,” affords the Company no discretion to determine how best to address the concerns raised by the Proposal. The language used in the Proposal is distinguishable from *The TJX Companies, Inc.* (avail. Mar. 13, 2017), where the proposal requested that the board “evaluate the potential for the [c]ompany to achieve by a fixed-date net-zero emissions of greenhouse gases” (emphasis added) and the Staff did not agree that the proposal micromanaged the company in contravention of Rule 14a-8(i)(7). In that instance, unlike here, the company was asked to evaluate and consider an action, but the outcome was not prescribed.

As in the precedent cited above, the Proposal prescribes the action to be taken as a substitute for the judgment of management. The Proposal does not request that the Company consider whether and how to amend its policies to address animal welfare

Office of Chief Counsel
Division of Corporation Finance
January 17, 2020
Page 7

differently. Instead, it seeks to dictate what actions the Company must take in order to satisfy the Proponent. The stockholder proposal process is not intended to provide an avenue for stockholders to impose requirements of this sort in areas that are more appropriately addressed through management's informed processes. Decisions about how to address animal welfare concerns on its properties are appropriately left to the Company, as they involve details and complex considerations that are beyond the appropriate purview of stockholders.

II. The Proposal May Be Excluded Under Rule 14a-8(i)(5) Because It Relates to Operations That Account For Less Than 5% Of The Company's Total Assets, Earnings And Sales, And Is Not Otherwise Significantly Related To The Company's Business

A. Background On Rule 14a-8(i)(5)

Rule 14a-8(i)(5) provides that a stockholder proposal may be excluded “[i]f the proposal relates to operations which account for less than 5 percent of the company’s total assets at the end of its most recent fiscal year, and for less than 5 percent of its net earnings and gross sales for its most recent fiscal year, and is not otherwise significantly related to the company’s business.” Historically, issues of broad social or ethical concern were often determined by the Staff to be “otherwise significantly related to the company’s business” regardless of the economic relevance of such matter to a company. In Staff Legal Bulletin No. 14I (Nov. 1, 2017) (“SLB 14I”), however, the Staff reexamined its historic approach to interpreting Rule 14a-8(i)(5) and determined that the “application of Rule 14a-8(i)(5) has unduly limited the exclusion’s availability because it has not fully considered the second prong of the rule as amended in 1982 – the question of whether the proposal ‘deals with a matter that is not significantly related to the issuer’s business’ and is therefore excludable.” *Id.* Accordingly, the Staff noted that, going forward, it “will focus, as the rule directs, on a proposal’s significance to the company’s business when it otherwise relates to operations that account for less than 5% of total assets, net earnings and gross sales.” *Id.* “Where a proposal’s significance to a company’s business is not apparent on its face, [it] may be excludable unless the proponent demonstrates that it is ‘otherwise significantly related to the company’s business.’” *Id.*

Office of Chief Counsel
Division of Corporation Finance
January 17, 2020
Page 8

B. Anticipated Company Action By The Committee To Corroborate That The Proposal Is Neither Economically Relevant Nor Otherwise Significantly Related To The Company's Business

The Proposal seeks to prohibit the Company from permitting “wild-animal displays at all its hotels.” The Company is in the process of reviewing the economic significance of the Proposal, which is a complex and time-intensive process. It is anticipated that such review, when completed, will demonstrate that the Proposal is not economically significant to the Company per the first prong of the Rule 14a-8(i)(5) relevance test.

Additionally, even if a proposal is not economically significant to a company, Rule 14a-8(i)(5) provides that a proposal may not be excluded if it is “otherwise significantly related to the company’s business.” The Staff further indicated in SLB 14I that “determining whether a proposal is ‘otherwise significantly related to the company’s business’ can raise difficult judgement calls” and that “a board acting with the knowledge of the company’s business and the implications for a particular proposal on that company’s business is better situated than the staff to determine [significance].” SLB 14I. To this end, the Committee is scheduled to review and consider the Proposal’s economic significance to the Company, as well as whether the Proposal is otherwise significantly related to the Company’s business. Based on the Committee’s determinations, the Company expects to thereafter promptly supplement this letter by February 14, 2020.

CONCLUSION

Based upon the foregoing analysis, the Company intends to exclude the Proposal from its 2020 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. If we can be of any further

GIBSON DUNN

Office of Chief Counsel
Division of Corporation Finance
January 17, 2020
Page 9

assistance in this matter, please do not hesitate to call me at (202) 955-8287 or Bancroft S. Gordon, the Company's Vice President, Assistant General Counsel and Corporate Secretary, at (301) 380-6601.

Sincerely,



Elizabeth A. Ising

Enclosures

cc: Bancroft S. Gordon, Marriott International, Inc.
Jared S. Goodman, PETA

EXHIBIT A

From: Carrie Edwards <CarrieE@peta.org>
Date: December 4, 2019 at 1:47:24 PM EST
To: "Gordon, Bancroft" <Bancroft.Gordon@marriott.com>
Cc: Jared Goodman <JaredG@PetaF.org>
Subject: PETA shareholder resolution for Marriott International, Inc.

December 4, 2019

Bancroft S. Gordon
Corporate Secretary
Marriott International, Inc.

Via e-mail: bancroft.gordon@marriott.com

Dear Mr. Gordon,

Attached is a Shareholder Proposal submitted for inclusion in the proxy materials for the 2020 annual meeting. Also enclosed in the attached is a cover letter from myself designating People for the Ethical Treatment of Animals (PETA) Foundation counsel Jared Goodman as an authorized representative and a broker letter certifying requisite ownership of the company's stock.

These materials are being delivered via UPS Next Day Air Saver.

Please confirm receipt of this e-mail. Thank you.

Sincerely,
Carrie Edwards

Carrie Edwards

Executive Assistant | Corporate Responsibility
People for the Ethical Treatment of Animals (PETA)
Ph: (904) 699.7097 | CarrieE@peta.org



PEOPLE FOR
THE ETHICAL
TREATMENT
OF ANIMALS

Washington, D.C.
1536 16th St. N.W.
Washington, DC 20036
202-483-PETA

Los Angeles
2154 W. Sunset Blvd.
Los Angeles, CA 90026
323-644-PETA

Norfolk
501 Front St.
Norfolk, VA 23510
757-622-PETA

Oakland
554 Grand Ave.
Oakland, CA 94610
510-763-PETA

Info@peta.org
PETA.org

December 4, 2019

Bancroft S. Gordon
Corporate Secretary
Marriott International, Inc.
Department 52/862
10400 Fernwood Road
Bethesda, MD 20817

Via UPS Next Day Air Saver

Dear Mr. Gordon:

Attached to this letter is a shareholder proposal (also known as a “resolution”) submitted for inclusion in the proxy statement for the 2020 annual meeting. Also enclosed is a letter from People for the Ethical Treatment of Animals’ (PETA) brokerage firm, RBC Wealth Management, confirming ownership of 35 shares of Marriott International, Inc. common stock, which were acquired at least one year ago. PETA has held at least \$2,000 worth of common stock continuously and intends to hold at least this amount through and including the date of the 2020 shareholders meeting.

If there are any issues with this proposal being included in the proxy statement or if you need any further information, please contact PETA's authorized representative Jared S. Goodman at 2154 W. Sunset Blvd., Los Angeles, CA 90026, (323) 210-2266, or JaredG@PetaF.org.

Sincerely,

Carrie Edwards, Executive Assistant
PETA Corporate Responsibility

Enclosures: RBC Wealth Management letter
2020 Shareholder Resolution

Affiliates

- PETA India
- PETA Australia
- PETA Germany
- PETA Asia-Pacific
- PETA Netherlands
- PETA Foundation (U.K.)



**Wealth
Management**

99 Almaden Boulevard
Suite 300
San Jose, CA 95113-1603

Office: 408.292.2442
Fax: 408.298.8295

December 4, 2019

Tracy Reiman
Executive Vice President
People for the Ethical Treatment of Animals
501 Front Street
Norfolk, VA 23510

Re: Verification of Shareholder Ownership in Marriott International, Inc.

Dear Ms. Reiman,

This letter verifies that People for the Ethical Treatment of Animals (PETA) is the beneficial owner of 35 shares of Marriott International, Inc. common stock and that PETA has continuously held at least \$2,000.00 in market value for at least one year prior to and including the date of this letter.

Should you have any questions or require additional information, please contact me at (408) 947-3322.

Sincerely,

Thach Nguyen
Registered Client Associate to Joshua Levine
Senior Vice President – Financial Advisor
RBC Wealth Management

Investment and insurance products: • Not insured by the FDIC or any other federal government agency
• Not a deposit of, or guaranteed by, the bank or an affiliate of the bank • May lose value

2020 Shareholder Resolution Regarding Wild-Animal Displays at Marriott International Properties

RESOLVED:

The shareholders encourage Marriott International ("Marriott") to prohibit wild-animal displays at all its hotels because such exhibits are cruel, promote an abusive industry, and pose a safety risk to the public.

SUPPORTING STATEMENT:

Marriott's "[Animal Welfare Position Statement](#)" is grossly insufficient. The company claims that it is "committed to raising the standard of animal welfare across [its] global operations," yet it permits the exhibition of wild animals on its properties for weddings and other events.

Marriott claims that it encourages its suppliers to comply with industry best practices for the protection and welfare of animals and to recognize the Five Freedoms, which include freedom from discomfort, pain, fear, and distress and the freedom to express normal behavior. However, it is impossible to take wild animals onto Marriott properties without violating one or more of the Five Freedoms. Many wild animals used for exhibits and events are trained through the use of violence, coercion, and deprivation. Training typically begins before the natural weaning age when animals are forcibly separated from their mothers. They're carted around in trailers and chained or caged for hours and even days on end—unable to take more than a single step in any direction and often forced to eat, sleep, and defecate all in the same place. Chronic boredom causes many captive animals to develop a neurotic condition called "zoochosis," in which they rock, sway, or pace endlessly. Some develop self-injurious behavior such as chewing on their own paws or pulling out their own fur or feathers.

Marriott purports to recognize and respect applicable wildlife laws and regulations and claims that it expects its suppliers and business partners to comply with them. However, history has shown that we can't rely on laws to protect animals. The U.S. Department of Agriculture is notorious for under-enforcing the law and rubberstamping federal Animal Welfare Act (AWA) licenses even for facilities at which its own inspectors document filth, neglect, and chronic abuse. And when animal exhibitors are cited for blatant and egregious violations of the AWA, they are still allowed to operate their businesses as usual. Additionally, no government agency monitors animal training. And finally, the AWA doesn't prohibit chaining, prolonged confinement, social isolation, or other abusive practices that cause animals physical and psychological suffering.

Marriott claims to understand that taking animal welfare into consideration is crucial to safe and responsible operations, yet it allows wild-animal exhibits, which pose a safety risk to the public. On many occasions, captive animals used in displays have lashed out at and even killed people.

Over 650 businesses in the U.S. prohibit the use of wild animals at their facilities, including CBL & Associates, Macerich, and Simon Property Group. And dozens of travel companies, such as TripAdvisor, Airbnb, and Booking.com, have taken steps to remove wild-animal attractions from their offerings. We urge Marriott to join them and become the responsible corporate citizen it purports to be by banning wild-animal displays at its properties.

From: Gordon, Bancroft

Sent: Thursday, December 5, 2019 7:34 AM

To: Carrie Edwards <CarrieE@peta.org>

Cc: Jared Goodman <JaredG@petaf.org>

Subject: Re: PETA shareholder resolution for Marriott International, Inc.

Ms. Edwards: Receipt acknowledged.

Best regards.

Sent from my iPhone