

Simpson Thacher & Bartlett LLP

425 LEXINGTON AVENUE
NEW YORK, NY 10017-3954

TELEPHONE:
FACSIMILE: +1-212-455-2502

DIRECT DIAL NUMBER
+1-212-455-2512

E-MAIL ADDRESS
niyati.roy@stblaw.com

VIA E-MAIL

February 6, 2020

Re: SeaWorld Entertainment, Inc. – Omission of Shareholder
Proposal from Proxy Material Pursuant to Rule 14a-8

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

Ladies and Gentlemen:

This letter serves to inform you that, on behalf of our client, SeaWorld Entertainment, Inc. (the “Company”), we hereby withdraw our letter dated February 1, 2020 to the staff of the Division of Corporation Finance (the “Staff”) of the Securities and Exchange Commission (the “Commission”) requesting that the Staff not recommend to the Commission that any enforcement action be taken if the Company excludes a shareholder proposal (the “Proposal”) submitted by People for the Ethical Treatment of Animals (the “Proponent”) from its proxy materials for the Company’s 2020 Annual Meeting of Stockholders. The Proponent has indicated to the Company and the Staff that it is withdrawing the Proposal. Attached hereto as Exhibit A is a copy of the Proponent’s signed letter withdrawing the Proposal.

If you have any questions regarding this request, or need any additional information, please do not hesitate to contact the undersigned at (212) 455-2512 or niyati.roy@stblaw.com or Amanda Weiss at (212) 455-3937 or amanda.weiss@stblaw.com.

Very truly yours,


Niyati Roy

Enclosures

Office of Chief Counsel
Division of Corporation Finance
Securities and Exchange Commission -2-

cc: G. Anthony Taylor, SeaWorld Entertainment, Inc.
Harold Herman, SeaWorld Entertainment, Inc.
Igor Fert, Simpson Thacher & Bartlett LLP
Amanda Weiss, Simpson Thacher & Bartlett LLP
Jared S. Goodman, PETA Foundation

Exhibit A

Copy of the Proponent's Withdrawal Letter

February 5, 2020

Via e-mail

Niyati Roy
Simpson Thacher & Bartlett LLP
niyati.roy@stblaw.com

Re: Withdrawal of PETA's Shareholder Proposal

Dear Ms. Roy:

On behalf of People for the Ethical Treatment of Animals, Inc. ("PETA"), this letter serves to withdraw PETA's shareholder proposal submitted on December 10, 2019, for inclusion in the proxy materials for SeaWorld Entertainment, Inc.'s 2020 Annual Meeting of Shareholders, which urged the company's board "to stop allowing trainers to stand on dolphins' faces and ride on their backs in exploitative and potentially harmful circus-style shows" (the "Proposal").

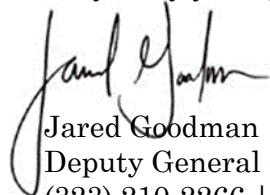
PETA is withdrawing the Proposal in light of the company's confirmation in its no-action request that it "has already made the decision to phase out the two behaviors referred to in the Proposal." Specifically, the company states, as of its submission on February 1:

1. "SeaWorld trainers currently do not engage in surfing (i.e., the trained behavior the Proponent refers to as 'riding on dolphins' backs') in any of the Company's presentations"; and
2. Only the San Diego facility "currently demonstrates the other trained behavior," which SeaWorld "plans to move away from ... entirely within the next few months and in any event before the time the Company plans to make available to its stockholders its proxy statement for its 2020 annual meeting of stockholders."

PETA hopes that the company will act further to protect animals by completely phasing out the use of live animals, and transferring those currently at its facilities to sanctuary.

Thank you.

Very truly yours,



Jared Goodman
Deputy General Counsel for Animal Law
(323) 210-2266 | JaredG@petaf.org

cc: G. Anthony Taylor, Tony.Taylor@SeaWorld.com

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.)

Simpson Thacher & Bartlett LLP

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VIA E-MAIL

February 1, 2020

Re: SeaWorld Entertainment, Inc. – Omission of Shareholder
Proposal from Proxy Material Pursuant to Rule 14a-8

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

Ladies and Gentlemen:

We are filing this letter on behalf of SeaWorld Entertainment, Inc. (“SeaWorld” or the “Company”) with respect to the shareholder proposal and supporting statement (collectively, the “Proposal”) submitted by People for the Ethical Treatment of Animals (the “Proponent”) for inclusion in the proxy statement and form of proxy to be distributed by the Company in connection with its 2020 Annual Meeting of Stockholders (collectively, the “Proxy Materials”). A copy of the Proposal and accompanying correspondence from the Proponent is attached as Exhibit A. For the reasons stated below, we respectfully request that the Staff (the “Staff”) of the Division of Corporation Finance of the Securities and Exchange Commission (the “Commission”) not recommend any enforcement action against SeaWorld if SeaWorld omits the Proposal in its entirety from the Proxy Materials.

Pursuant to Staff Legal Bulletin No. 14D (November 7, 2008) (“SLB 14D”), we are submitting this request for no-action relief to the Staff via e-mail at shareholderproposals@sec.gov in lieu of providing six additional copies of this letter pursuant to Rule 14a-8(j), and the undersigned has included her name and telephone number both in this letter and in the cover e-mail accompanying this letter. Pursuant to Rule 14a-8(j) under the Securities and Exchange Act of 1934, as amended (the “Exchange Act”), we are:

1. filing this letter with the Commission no later than 80 calendar days before the date on which the Company plans to file its definitive Proxy Materials with the Commission; and

2. simultaneously providing the Proponent with a copy of this submission.

Rule 14a-8(k) and SLB 14D provide that a shareholder proponent is required to send the Company a copy of any correspondence that the proponent elects to submit to the Commission or the Staff. Accordingly, we hereby inform the Proponent that if the Proponent elects to submit additional correspondence to the Commission or the Staff relating to the Proposal, the Proponent must concurrently furnish a copy of that correspondence to the Company. Similarly, the Company will promptly forward to the Proponent any response received from the Staff to this request that the Staff transmits by email or fax only to the Company.

I. The Proposal

The Proposal reads as follows:

“2020 Shareholder Resolution to Prohibit Trainers From Standing on Dolphins’ Faces and Riding on Their Backs at SeaWorld

RESOLVED that in order to address the most pressing issue that SeaWorld faces today—the public’s continued opposition to captive-animal displays—the shareholders urge the board to stop allowing trainers to stand on dolphins’ faces and ride on their backs in exploitative and potentially harmful circus-style shows.”

II. Bases for Exclusion

The Company respectfully requests the Staff’s concurrence that the Company may exclude the Proposal from its Proxy Materials in reliance on:

- Rule 14a-8(i)(7) because the Proposal deals with a matter relating to the Company’s ordinary business operations;
- Rule 14a-8(i)(3) because the Proposal is misleading in violation of Rule 14a-9;
- Rule 14a-8(i)(10) because the Company has already substantially implemented the Proposal; and
- Rule 14a-8(i)(4) because the Proposal relates to the redress of a personal claim or grievance against the Company.

III. Background and Assumptions

The Proponent has submitted a shareholder resolution urging the Company’s board of directors to “stop allowing trainers to stand on dolphins’ faces and ride on their backs in exploitative and potentially harmful circus-style shows.” As discussed in further detail

below, the Proposal is unclear and misleading on its face, and SeaWorld has had to make certain reasonable assumptions for purposes of this response. First, it is not clear which animal the Proposal refers to, as the term “dolphin” is broad and includes forty different species of aquatic mammals, including orcas. The pictures included in the Proponent’s supporting statement depict trained behaviors involving bottlenose dolphins. SeaWorld does not currently utilize these behaviors with other animals in its care (or, in fact, with respect to one of the behaviors, as discussed below, with its bottlenose dolphins). Accordingly, for purposes of this response, SeaWorld assumes that the Proponent is focused on SeaWorld’s use of the two behaviors highlighted in the Proposal with respect to bottlenose dolphins specifically.

Second, where the Proponent refers to a bottlenose dolphin’s “face,” SeaWorld assumes that it is referring to what animal care professionals refer to as a “rostrum.” Bottlenose dolphins use their rostrums for, among other things, digging, carrying conch shells and probing the ocean floor for fish.¹ As such, the rostrum serves a different function to a face, and there is no literature to suggest that standing on the rostrum is harmful in any way to the animal. The behaviors the Proponent characterizes as “standing on dolphins’ faces” and “riding on their backs” are technically referred to as “standing on the rostrum” and “surfing,” respectively, and are described as such herein.

Finally, the Proposal insinuates these two behaviors occur during “circus-style shows.” SeaWorld is not a circus and has never had “circus-style shows.” In addition, as previously announced, SeaWorld has transitioned away from “shows” involving animals towards more educational-based presentations. Accordingly, in this response, SeaWorld refers to these events as presentations.

IV. Analysis

A. The Proposal Is Excludable Under Rule 14a-8(i)(7) Because It Deals with Matters Relating to the Company’s Ordinary Business Operations

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 explained that the underlying policy of the ordinary business exclusion is “to confine the resolution of

¹ See Kaplan, J. D., Goodrich, S. Y., Melillo-Sweeting, K., & Reiss, D. (2019). Behavioural laterality in foraging bottlenose dolphins (*Tursiops truncatus*). *Royal Society Open Science*, 6(11), 190929; see also Rossbach KA, Herzing DL (1997). Underwater observations of benthic-feeding bottlenose dolphins (*Tursiops truncatus*) near Grand Bahama Island, Bahamas. *Mar. Mammal Sci.* 13, 498–504; see also Allen SJ, Bejder L, Krutzen M. (2011). Why do Indo-Pacific bottlenose dolphins (*Tursiops* sp.) carry conch shells (*Turbinella* sp.) in Shark Bay, Western Australia? *Mar Mamm Sci.* 27(2):449–54.

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. 40018 (May 21, 1998). As explained by the Commission, 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.*

According to the Commission, two central considerations underlie the ordinary business exclusion. First, “[c]ertain tasks are so fundamental to management’s ability to run a company on a day-to-day basis” that they are not proper subjects for shareholder proposals. *Id.* “The second consideration relates 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.*

As explained more fully directly below, a proposal seeking to dictate the content of the Company’s bottlenose dolphin presentations implicates both considerations underlying the ordinary business exclusion and is thus excludable as pertaining to the Company’s ordinary business operations.

1. The Proposal Seeks to Micro-Manage the Company.

SeaWorld is a leading theme park, entertainment and accredited zoological company providing its guests with experiences that matter and inspiring them to protect animals and the wild wonders of our world. The Company’s decisions regarding the attractions, rides, presentations and exhibits it will feature at its parks are, therefore, central to SeaWorld’s ability to run its business on a day-to-day basis. SeaWorld’s management and board invest a significant amount of time, energy and effort on a regular basis in determining which experiences to offer guests of the Company’s parks that will be meaningful and inspirational, while generating an attractive return to the Company’s shareholders. The Company has a dedicated team focused on assessing and planning new presentations, events, rides, animal habitats and other attractions that will execute the Company’s mission of “inspiring guests with experiences that matter.”

Each of SeaWorld’s decisions regarding its events, attractions and animal presentations requires deep knowledge of the Company’s business and operations – information to which the Company’s shareholders do not have access. Determining which presentations, events and attractions to feature requires analysis of numerous factors, including the degree to which the presentation, event or attraction will inspire guests and create enjoyable and memorable experiences, ability to drive increased attendance and revenue, and impact on operating efficiency, among others. Additionally, the specific content of each animal presentation is determined as part of a rigorous framework in which every animal in the Company’s care receives (i) a welfare assessment; and (ii) a behavioral

assessment to determine which behaviors are appropriate to utilize in training the animal while continuing to ensure its welfare.

Indeed, training animals is an integral part of caring for them, and the Company's list of approved trained behaviors, as well the content of its presentations, is constantly evolving. A Behavior Review Committee comprised of veterinarians and animal welfare professionals determines which trained behaviors are appropriate to use based on the training capabilities and physiology of each animal in the Company's care. Based on this rigorous evaluation program, the Company determined that standing on bottlenose dolphins' rostrums and "surfing" are two of many trained behaviors that are appropriate to utilize in bottlenose dolphin presentations, and not harmful to the animals in any way, although surfing is currently not demonstrated in bottlenose presentations and trainers currently only stand on rostrums in one of the Company's twelve parks. Given the myriad factors that the Company's board and management consider when assessing each decision regarding zoological management and the complexity involved in these decisions, the Company's shareholders are not in a position to make an informed judgment regarding such issues.

The ability of SeaWorld to make decisions regarding the care and display of its animals is fundamental to its operation of the business. Zoological training and display is, by definition, part of the Company's management function. The Company's management maintains a constant focus on a broad spectrum of animal care issues, including environment, training, display and husbandry practices. The Company takes a comprehensive approach to ensuring the health and welfare of the animals in its care that focuses on physical, behavioral and population health. The Company's animal care team includes board-certified veterinarians, technicians and animal care professionals and onsite animal hospitals at each SeaWorld park. The Company has an animal welfare assessment team comprising a veterinarian as well as other animal care professionals, which reports to the Company's Animal Welfare Committee. The Company ensures that each animal in its care receives (i) a health examination at least once every three months from a licensed veterinarian; and (ii) an animal welfare assessment at least once every 3-4 months based on specified inputs and outputs, including, among other factors, habitat features, habitat safety, exercise, diet, behavioral diversity, appetite and interaction with trainers. A separate committee at the corporate level also helps oversee the Company's animal welfare initiatives, and serves as a supervisory body to which any concerns may be reported by employees. Additionally, the Company requires that all trained behaviors utilized in the Company's presentations are approved by the Behavior Review Committee on an animal-by-animal basis, as described above. This structure creates a mosaic of complexity—and a multi-layered safety net—with respect to the Company's decisions regarding animal care and the content of its demonstrations, and each decision is made after thorough vetting by the relevant bodies within the reporting structure. By attempting to impose upon the Company a specific animal care decision, the Proposal seeks to micro-manage the Company's operations, interfering with complex animal well-being, business and operational decisions upon which the Company's shareholders are not in a position to make an informed judgment.

The Staff has consistently concurred that shareholder proposals attempting to micro-manage a company by substituting the judgment of shareholders for that of management with respect to complex day-to-day business operations are excludable under Rule 14a-8(i)(7). In 2018, the Staff concurred in the Company's exclusion of a proposal seeking to ban all captive breeding in SeaWorld parks as micromanaging the Company "by seeking to impose specific methods for implementing complex policies." *SeaWorld Entertainment, Inc.* (avail. April 30, 2018). Moreover, this Proposal is similar in nature to a proposal the Company received from the Proponent in connection with the Company's 2017 annual meeting of stockholders (the "2017 Proposal") which urged the Company's board to retire the resident orcas to seaside sanctuaries and replace the captive-orca exhibits with innovative virtual and augmented reality or other types of non-animal experiences. Both the 2017 Proposal and this Proposal purport to dictate the offerings in the Company's parks. The Staff concurred in the Company's exclusion of the 2017 Proposal, noting that in the Staff's view, "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 judgment." *SeaWorld Entertainment, Inc.* (avail. March 30, 2017, recon. denied April 17, 2017).

Recently, in Staff Legal Bulletin No. 14K (Oct. 16, 2019), the Staff stated that micromanagement depends on the level of prescriptiveness of a proposal. When a proposal describes specific actions that a company's management or the board must undertake without affording them sufficient flexibility or discretion, the proposal may micromanage the company to such a degree that exclusion of the proposal would be warranted. This Proposal is not only more prescriptive than the 2017 Proposal, but it focuses on an even narrower aspect of the Company's offerings. Of the approximately 140 dolphins—and thousands of animals—in the Company's care, fewer than ten currently participate in the presentation in which trainers stand on the animals' rostrums. Additionally, bottlenose dolphins comprise only one of over 1300 species of animals in the Company's care, further demonstrating the Proposal's narrow focus.

The Proposal seeks to impose a highly specific action – mandating that SeaWorld stop allowing trainers to demonstrate specified trained behaviors involving bottlenose dolphins – that affords management no flexibility or discretion, thereby completely supplanting the judgment of management. As a regulated, licensed and professionally accredited zoological organization, the ability of SeaWorld to make decisions regarding the care and display of its animals is fundamental to the operation of its business, as well as to the well-being of the animals in its care. By attempting to impose upon the Company a specific decision with respect to the display of bottlenose dolphins in its care, the Proposal, like the Proponent's past proposals, again seeks to micro-manage the Company's operations, interfering with complex decisions upon which the Company's shareholders are not in a position to make an informed judgment. The scope of the Company's animal care and display practices may not be properly delegated to, and should not be micro-managed by, the Company's shareholders. Accordingly, the Proposal may be excluded under Rule 14a-8(i)(7) as relating to the Company's ordinary business operations.

2. *The Subject Matter of the Proposal is Fundamental to Management's Ability to Run the Company's Day-to-Day Business, as it Relates to the Company's Decision to Sell a Product or Service.*

At the core of SeaWorld's business is its delivery of personal, interactive and educational experiences that allow guests to experience and connect with marine and terrestrial animals. An integral part of SeaWorld's business, therefore, is selecting and designing rides, exhibits, presentations and attractions for its theme parks that achieve this mission. Indeed, one of the hallmark services SeaWorld provides its customers is the ability to encounter and engage with various animals in its one-of-a-kind zoological displays, inspiring guests to protect animals and conserve their habitats.

Decisions regarding whether and how to feature the animals in its care are fundamental to the Company's day-to-day operations. These decisions inherently involve complex issues that require deep knowledge of the Company's business and operations. The Proposal's request that the Company eliminate specific behaviors is, in essence, an attempt to direct the Company to eliminate or prohibit a particular service – i.e., the opportunity to view and experience its carefully developed bottlenose dolphin presentations. Indeed, it is well known that PETA's goal is for SeaWorld to cease featuring animals in its parks.² Allowing shareholders to dictate which services the Company provides its customers, however, would inappropriately delegate to shareholders management's role in directing the day-to-day business of the Company.

The Staff has consistently taken the position that proposals seeking to dictate management's decisions regarding the selection of products or services a company offers for sale implicate the company's ordinary business operations and are thus excludable under Rule 14a-8(i)(7). See, e.g., *The TJX Companies, Inc.* (avail. April 16, 2018) (concurring in the exclusion of a shareholder proposal requesting that the board develop and disclose a new universal and comprehensive animal welfare policy applying to all the company's stores, merchandise and suppliers, noting that the proposal relates to products and services offered by the company), *The Home Depot, Inc.* (avail. Mar. 21, 2018) (permitting the exclusion of a shareholder proposal requesting that the company end its sale of glue traps and noting that "the proposal relates to the products and services offered for sale by the company"); *Amazon.com, Inc.* (avail. Mar. 11, 2016) (concurring in the exclusion of a shareholder proposal requesting that the company "issue a report addressing animal cruelty in the supply chain," since "the proposal relates to the products and services offered for sale by the company" and noting that "[p]roposals concerning the sale of particular products and services are generally excludable under rule 14a-8(i)(7)"); *Amazon.com, Inc.* (avail. Mar. 27, 2015) (permitting the exclusion of a shareholder proposal requesting the disclosure of any

² See, e.g., PETA website, <https://www.seaworldofhurt.com/about/> (urging SeaWorld to end all captive animal displays, including those involving bottlenose dolphins).

reputational and financial risks the company may face as a result of negative public opinion pertaining to the treatment of animals used to produce products it sells and noting that “[p]roposals concerning the sale of particular products and services are generally excludable under rule 14a-8(i)(7)”; *Papa John’s International, Inc.* (avail. Feb. 13, 2015) (granting no-action relief under Rule 14a-8(i)(7) because the proposal related to the choice of products offered for sale); *Lowe’s Companies, Inc.* (avail. Mar. 18, 2010) (granting no-action relief under Rule 14a-8(i)(7) with regard to a proposal encouraging the company to place warning labels on the glue traps sold in its stores, explicitly noting that “the proposal relates to the manner in which [the company] sells particular products” and that “[p]roposals concerning the sale of particular products are generally excludable under rule 14a-8(i)(7)”; *PetSmart, Inc.* (avail. Apr. 8, 2009) (concurring that a proposal requesting that the board of directors “produce a report on the feasibility of [the company] phasing out its sale of live animals by 2014” may be excluded under Rule 14a-8(i)(7), as it relates to the “sale of particular goods”); *Lowe’s Companies, Inc.* (avail. Feb. 1, 2008) (permitting the exclusion of a proposal encouraging the company end its sale of glue traps, as it relates to “the sale of a particular product”); *The Home Depot, Inc.* (avail. Jan. 24, 2008) (same).

The Staff has made clear that proposals relating to the sale of services are equally excludable under Rule 14a-8(i)(7) as those relating to the sale of goods. *See, e.g., JPMorgan Chase & Co.* (avail. Mar. 7, 2013) (concurring in the exclusion of a proposal requesting that the board “adopt public policy principles for national and international reforms to prevent illicit financial flows. . .” based upon principles specified in the proposal, expressly noting that “the proposal relates to principles regarding the products and services that the company offers”); *Wells Fargo & Co.* (avail. Jan. 28, 2013, *recon. denied* Mar. 4, 2013) (granting no-action relief under Rule 14a-8(i)(7) where the proposal requested that the company prepare a report discussing the adequacy of the company’s policies in addressing the social and financial impacts of the company’s direct deposit advance lending service, noting in particular that “the proposal relates to the products and services offered for sale by the company” and that “[p]roposals concerning the sale of particular products and services are generally excludable under rule 14a-8(i)(7)”; *General Electric Co.* (avail. Jan. 7, 2011) (permitting the exclusion of a proposal focused on the scope of the financial services offered by the company, explicitly stating that “the proposal appears to relate to the emphasis that the company places on the various products and services it offers for sale” and that “[p]roposals concerning the sale of particular products and services are generally excludable under rule 14a-8(i)(7)”).

Because the Proposal constrains the ability of SeaWorld’s management to determine which services to provide its customers, the Proposal is similarly excludable under Rule 14a-8(i)(7).

3. *The Proposal Does Not Raise a Significant Social Policy Issue That Transcends the Company's Ordinary Business Operations.*

The Commission has indicated that proposals that relate to ordinary business matters but that focus on “sufficiently significant social policy issues . . . generally would not be considered to be excludable [under Rule 14a-8(i)(7)] because the proposals would transcend the day-to-day business matters.” Exchange Act Release No. 40018. Similar to the Proponent’s shareholder proposal from 2018 requesting that the Company ban all captive breeding in SeaWorld parks and the Proponent’s shareholder proposal from 2017 requesting that the Company retire its orcas to “seaside sanctuaries,” each of which the Staff determined was excludable under Rule 14a-8(i)(7), the Proposal purports to relate to the humane treatment of animals but does not actually raise any significant social policy issue that transcends the Company’s ordinary business operations.

The Company is aware that the Staff has previously declined to grant no-action relief under Rule 14a-8(i)(7) in specific circumstances in which the proposal raised the issue of alleged inhumane treatment of animals. The Staff has found, for example, that a “significant social policy issue” is raised by: (i) animal testing (*see Revlon, Inc. (avail. Mar. 18, 2014)*); (ii) killing animals for their fur (*see Coach, Inc. (avail. Aug. 19, 2010)*); (iii) performing medically unnecessary surgeries on animals (*see DeVry Inc. (avail. Sept. 25, 2009)*); and (iv) the inhumane killing of animals (*see Wendy’s International, Inc. (avail. Feb. 8, 2005)*; *Hormel Foods Corp. (avail. Nov. 10, 2005)*). The Proposal, however, is clearly distinguishable from these cases; not only does SeaWorld not harm any animals – through testing, abuse, or otherwise – but its mission is to inspire guests through education and up-close experiences with animals and to care for and protect animals. The Company employs veterinarians and zoological staff members, including marine animal trainers, that have been caring for animals for more than five decades, and its experience in animal care, research, rescue and rehabilitation is a resource for zoos, aquariums, government agencies and conservation organizations worldwide. Additionally, by allowing its guests to experience the animals in its care, SeaWorld aims to inspire its guests to get involved in conservation efforts. In essence, SeaWorld is an accredited and Humane Certified zoological and conservation organization whose “product” is the interactive experience with the animals themselves for the primary purpose of advancing conservation, which distinguishes SeaWorld from a company whose products are derived from animals or necessitate animal experimentation.

Animal care, welfare and display at SeaWorld, including with respect to public animal presentations, are highly regulated by the federal government, through a complex set of laws and regulations, frequent inspections by federal Animal and Plant Health Inspection Service (APHIS) veterinary and other officials, as well as strict licensing requirements which SeaWorld maintains every year. The National Oceanic and Atmospheric Administration (NOAA) and APHIS each exercise some degree of jurisdiction over dolphins. The public display of dolphins is regulated by APHIS, which conducts frequent inspections of the Company’s parks. The Company works closely with APHIS and has

never had any unresolved issues with respect to the animals its care. Further, key statutes and treaties relating to the display, possession and care of the Company's animals include, among others, the Marine Mammal Protection Act, Animal Welfare Act, Convention on International Trade in Endangered Species and Fauna Protection Act and the Lacey Act, and the Company believes it is in substantial compliance with all applicable laws, regulations and ordinances. In order to comply with federal regulations, licensing requirements and accreditation standards, SeaWorld has detailed animal care policies and procedures and follows all applicable government regulations regarding the animals in its care. The states in which the Company operates also regulate zoological activity involving the import and export of exotic and native wildlife, endangered and/or otherwise protected species, zoological display and anti-cruelty statutes.

Additionally, SeaWorld is accredited by the Association of Zoos and Aquariums (the "AZA"), an independent accrediting organization that evaluates zoos and aquariums to make sure they meet the AZA's high standards for animal management and care, including with respect to living environments, social groupings, health, and nutrition.³ The Company's three SeaWorld parks and Discovery Cove are also accredited by the Alliance of Marine Mammal Parks and Aquariums ("AMMPA"), an association specifically focused on the care of marine mammals. SeaWorld's facilities have also received accreditation from the International Marine Animal Trainers' Association ("IMATA"), whose Animal Trainer Development Program was developed to recognize those facilities that have exceptional systems for training animal care givers in the science and art of animal training, while utilizing positive reinforcement. Lastly, the Company's parks are Humane Certified as part of Humane Conservation, an animal welfare certification standard developed by the independent third party organization American Humane ("AHA").⁴

The Company would not be able to maintain its AZA, AMMPA and AHA certifications if it did not apply the highest standards of care and utilize humane methods during demonstrations involving the marine animals in the Company's care, including its bottlenose dolphin presentations. The welfare of the animals in the Company's care is critical to its business operations, and its policies with respect to zoological displays are a fundamental management function and evolve constantly based on a complex set of factors involving animal well-being and safety, among other factors. The Proposal therefore does not raise a policy issue that transcends the Company's ordinary business operations.

³ See website of AZA, Becoming Accredited, available at <https://www.aza.org/becoming-accredited> (last visited January 31, 2020).

⁴ See website of AHA, Humane Conservation, available at <http://humaneconservation.org/about/> (last visited January 31, 2020) for additional detail regarding the certification standards.

The supporting statement relating to the Proposal purports to connect bottlenose dolphin displays to inhumane treatment of animals – it characterizes the display of bottlenose dolphins as “demeaning and potentially harmful”. However, the Company’s bottlenose dolphin display and educational demonstrations—which are focused on conservation—celebrate these animals. The training and behaviors demonstrated in the bottlenose dolphin presentations are an integral part of caring for these animals. In fact, in response to accusations of abuse of bottlenose dolphins by the Proponent in a July 30, 2019 letter to the U.S. Department of Agricultural (USDA), including with respect to the behaviors highlighted in the Proposal, APHIS conducted a focused inspection of the Company’s two parks in Orlando, Florida in September 2019, during which it observed a representative sample of its bottlenose dolphins and conducted interviews with Vice Presidents of Zoological Operations for both parks. APHIS identified no non-compliant issues during its inspection. Additionally, in response to the Proponent’s letter, SeaWorld initiated an independent, third-party audit by AHA at its Florida facilities. On August 8, 2019, AHA appointed an expert auditor—an esteemed marine mammal scientist with decades of experience studying dolphins—to observe the physical well-being and overall welfare of all bottlenose dolphins at the Company’s SeaWorld and Discovery Cove facilities in Orlando, FL. All bottlenose dolphins were assessed with a focus on observations of any abrasions, scarring or rake (social) marks. After thorough observation, AHA’s auditor confirmed that all the bottlenose dolphins observed were “in receipt of excellent welfare with no signs of abuse,” including safe training practices and veterinary care, and that “any abrasions or rake marks [were] as expected for the animals based on their age and [were] indicative of positive social interactions.” Furthermore, the auditor reported that the physical appearance of all bottlenose dolphins observed was consistent with what the auditor had observed among wild bottlenose dolphin populations during field research projects in various geographical regions around the world. As such, the Proposal is inflammatory in nature, and does not relate to the inhumane treatment of animals.

In any case, the Staff has maintained that a proposal’s relation to a social policy issue does not necessarily permit shareholders to interfere with the ordinary business matters of the company; rather, the significance of the social policy issue and the extent of the potential interference are considered together. *See* Staff Legal Bulletin No. 14H (Oct. 22, 2015) (concurring that that “the Commission ‘treats the significance and transcendence concepts as interrelated, rather than independent’”). Accordingly, the Staff has determined in several instances that shareholder proposals raising the issue of alleged inhumane treatment of animals in connection with the sale of products are nonetheless excludable under Rule 14a-8(i)(7). *See, e.g., Amazon.com, Inc.* (avail. Mar. 11, 2016) (granting no-action relief under Rule 14a-8(i)(7) with regard to a shareholder proposal requesting that the company “issue a report addressing animal cruelty in the supply chain”); *Amazon.com, Inc.* (avail. Mar. 27, 2015) (permitting the exclusion of a proposal requesting that the company disclose any reputational and financial risks it may face as a result of negative public opinion pertaining to the treatment of animals used to produce products it sells); *Lowe’s Companies, Inc.* (avail. Mar. 18, 2010) (permitting the exclusion of a proposal encouraging the company to place warning labels on the glue traps sold in its stores); *The Home Depot, Inc.* (avail. Mar. 12,

2010) (same); *PetSmart, Inc.* (avail. Apr. 8, 2009) (permitting the exclusion of a proposal requesting a feasibility report on phasing out the sale of live animals); *Wal-Mart Stores, Inc.* (avail. Mar. 24, 2008) (permitting the exclusion of a proposal requesting a report on the “viability of the UK cage-free egg policy, discussing any issues raised that would affect a similar move forward in the US; what the company is doing in the domestic market and what further steps can be taken to forward its position on this important animal welfare issue”); *Lowe’s Companies, Inc.* (avail. Feb. 1, 2008) (permitting the exclusion of a proposal requesting that the company end the sale of glue traps in its stores); *The Home Depot, Inc.* (avail. Jan. 24, 2008) (same); *PetSmart, Inc.* (avail. Apr. 14, 2006) (permitting the exclusion of a proposal requesting that the board issue a report on whether the company will end all bird sales). As in each of the letters cited above, the Proposal directly relates to the products or services offered by the Company, as discussed in Section III.A.2 above, and is therefore excludable, even assuming that it relates to animal welfare.

4. Board Analysis.

In Staff Legal Bulletins No. 14I (Nov. 1, 2017) and No. 14J (Oct. 23, 2018), the Staff explained that the evaluation of whether a policy issue was sufficiently significant in the context of a particular company involved “difficult judgment calls” which, in the first instance, a company's board of directors was “generally in a better position to determine.” The Staff further noted that a well-informed board, in terms of knowledge of the company's business and the implications of a particular proposal on that business, acting consistent with its fiduciary duties, is “well situated to analyze, determine and explain whether a particular issue is sufficiently significant because the matter transcends ordinary business and would be appropriate for a shareholder vote.” *Id.* In Staff Legal Bulletin No. 14K (Oct. 16, 2019), the Staff reiterated that it “continue[s] to believe that a well-developed discussion of the board’s analysis of whether the particular policy issue raised by the proposal is sufficiently significant in relation to the company can assist the staff in evaluating a company’s no-action request and, in turn, assist the company in demonstrating that it may exclude the proposal.”

Here, the Proposal was referred to the board for its consideration. The discussions of the board focused on, but were not limited to, the following substantive factors:

- ***The display of bottlenose dolphins is conducted in compliance with the applicable laws and regulations.*** As discussed above, SeaWorld is a highly regulated, licensed and professionally accredited zoological organization. In order to comply with federal regulations, licensing requirements and accreditation standards, SeaWorld follows detailed animal care policies and procedures and follows all applicable government regulations regarding the animals in its care. The Company would not be able to maintain its compliance with such regulations, or its accreditations with AZA, AMMPA and AHA, if it did not adhere to the highest standards of care with respect to *all* of its marine animals, including bottlenose dolphins. SeaWorld has a complex internal reporting structure in place to make assessments regarding animal

welfare, including (i) frequent health checkups for each animal; (ii) an animal welfare assessment team that reviews the welfare of all the animals in the Company's care at least once every 3-4 months and reports to an Animal Welfare Committee; and (iii) a corporate-level committee tasked with overseeing animal welfare issues and to which any concerns may be reported by employees at any time. Further, a Behavior Review Committee determines which trained behaviors are appropriate to utilize on an animal-by-animal basis, adding a layer of complexity to the Company's decisions with respect to the content of its animal presentations.

- ***The Proposal addresses only one narrow aspect of one of the Company's attractions.*** The Company's core business activities are providing experiences that matter and inspiring guests to protect animals and become involved with wildlife conservation, through the provision of a diverse array of rides, presentations, educational demonstrations and other attractions. The board considered the fact that the Proposal addresses only one narrow aspect of one of the Company's attractions, specifically the content of its bottlenose dolphin presentations, which are available at only two of the Company's twelve parks, its SeaWorld parks in San Diego, CA and Orlando, FL. Moreover, of the two behaviors highlighted by the Proponent, neither of these locations demonstrates "surfing," and only the San Diego, CA location demonstrates standing on rostrums. Further, of the approximately 140 dolphins—which make up a small number of the thousands of animals comprising over 1300 species—in the Company's care, fewer than ten currently participate in the presentation in which trainers stand on the animals' rostrums. As is the case with each of the Company's animal presentations and educational demonstrations, the content for the bottlenose dolphin presentations is created and modified from time-to-time by a team of experts based on a myriad of decisions, including extensive research into animal wellbeing, behavior and safety. Therefore, the Proposal does not raise any unique issues that are central to the Company's business operations, but rather implicates day-to-day considerations.
- ***The Proposal seeks to micro-manage the Company.*** As discussed above, the ability of SeaWorld to make decisions regarding the display of its animals is fundamental to the operation of its business and to the well-being of the animals in its care. By attempting to impose upon the Company a highly specific decision with respect to the display of bottlenose dolphins, the Proposal seeks to micro-manage the Company's operations, interfering with complex business, regulatory and animal well-being decisions that the Company's team of animal care professionals, trainers and veterinarians—under the supervision of the Company's management—are best suited to make.
- ***The Proposal is not quantitatively significant to the Company.*** The board considered the fact that the Proposal relates to just one of many attractions, rides and animal presentations offered by the Company—a waterwork bottlenose dolphin presentation—which as discussed above is only available at two of the Company's twelve parks. Further, the Proposal involves fewer than ten of the thousands of animals, comprising over 1300 species, in the Company's care. As such, the

Proposal relates to operations which account for well below 5% of the Company's total assets at the end of its most recent fiscal year, and the value attributable to the bottlenose dolphin presentations represents less than 1% of the Company's revenue for the most recent fiscal year. The Company was not able to identify any other aspects of the Proposal that are significant to the Company's business operations within the meaning of Rule 14a-8(i)(5).

- ***The Company is already addressing the issue raised by the Proposal.*** The Company believes that the practices identified by the Proposal as being “demeaning and potentially harmful” to bottlenose dolphins are not in fact harmful and do not endanger these animals in any way. As discussed briefly above, the Company no longer demonstrates “surfing” at any of its locations, and plans to phase out the demonstration of standing on rostrums within the next few months, despite its belief that neither of these behaviors are harmful to the animals in any way. If the Proponent's concern is the wellbeing of bottlenose dolphins more broadly, the Company is already taking steps to ensure that they are protected. The safety and wellbeing of *all* animals in its care, including bottlenose dolphins, is central to the Company's mission, and the Company is continually assessing its practices with respect to zoological training, display and care. The difference between the Proposal's specific request and the actions that the Company has already taken is not a significant policy issue for the Company.
- ***SeaWorld has not received any citations from regulators in response to previous unfounded allegations by the Proponent regarding the Company's treatment of bottlenose dolphins.*** As discussed above, in response to a letter from the Proponent to the USDA alleging abuse of the Company's bottlenose dolphins, including with respect to the allegedly harmful behaviors highlighted in the Proposal, APHIS conducted a focused inspection of the Company's two parks in Orlando, Florida in September 2019, during which it observed a representative sample of its bottlenose dolphins and conducted interviews with Vice Presidents of Zoological Operations for both parks. APHIS identified no non-compliant issues during its inspection. Indeed the Company has never had any unresolved issues with APHIS with respect to the animals in its care. Additionally, AHA conducted an audit at the Company's behest, and concluded that they “found no support for PETA's disparaging accusations of abuse.” They specifically found the bottlenose dolphins in the Company's Florida facilities to be “in receipt of excellent welfare including safe training practices and first-rate veterinary care.”
- ***The vast majority of the Company's shareholders have not expressed concern with bottlenose dolphin care issues and the Company is not aware of any significant shareholders or stakeholders who have requested the type of action sought by the Proposal.*** The Company maintains proactive and ongoing engagement with its institutional investors, regularly meeting in person or telephonically with larger unaffiliated shareholders. In this regard, the board notes that display practices

relating to the Company's bottlenose dolphin presentations have not been a topic raised in the Company's engagement with its larger shareholders. The Company believes that the vast majority of its shareholders recognize that the Company is mindful of the issues surrounding zoological training and display, and that the Company has invested substantial time, resources and effort to develop and promote the highest possible standards of care. Shareholders and other stakeholders regularly submit comments and questions to the Company, but other than in the context of the 2017 Proposal (also submitted by Proponent), none has sought the type of action similar to that contemplated by the Proposal. Consequently, the Company's shareholders have not previously voted on a proposal addressing the Company's display practices with respect to its bottlenose dolphin presentations or other attractions more broadly. As discussed above, the vast majority of the Company's shareholders have not raised any concerns regarding the Company's bottlenose dolphin care practices in the course of the Company's engagement, and the Company expects that support for the Proposal would be low.

B. The Proposal is Excludable Under Rule 14a-8(i)(3) Because it is Misleading in Violation of Rule 14a-9.

Rule 14a-8(i)(3) provides that a shareholder proposal may be excluded from a company's proxy materials "[i]f the proposal or supporting statement is contrary to any of the Commission's proxy rules, including Rule 14a-9, which prohibits materially false or misleading statements in proxy soliciting materials." In Staff Legal Bulletin No. 14B (Sept. 15, 2004), the Staff confirmed that Rule 14a-8(i)(3) allows for the modification or exclusion of a proposal or supporting statement if the company "demonstrates objectively that a factual statement is materially false or misleading." The Staff has consistently concurred in the exclusion of excerpts from shareholder proposals that are materially false or misleading. See, e.g., *Rite Aid Corp.* (avail. Mar. 13, 2015) (permitted exclusion under Rule 14a-8(i)(3) of a sentence included in the supporting statement falsely claiming, among other things, that the Commission supported the proposal); *Bob Evans Farms, Inc.* (avail. June 26, 2006) (permitting exclusion under Rule 14a-8(i)(3) of a paragraph included in the supporting statement falsely claiming that the proposal has received "tremendous shareholder support"); *Piper Jaffray Cos.* (avail. Feb. 24, 2006) (permitting exclusion under Rule 14a-8(i)(3) of a paragraph included in the supporting statement falsely claiming that management had demonstrated a disregard for shareholders' interests).

Here, the Proposal and supporting statement make several allegations that, although phrased in the form of factual assertions, are actually the Proponent's unsubstantiated opinions and lack any citation or support of any kind. Such statements render the Proposal materially misleading. For example:

- It is unclear which animal the Proposal refers to, as the term "dolphin" is broad and includes forty different species of aquatic mammals, including orcas. The pictures provided by the Proponent as part of the Proponent's supporting statement depict

trained behaviors involving bottlenose dolphins, suggesting that the Proponent is focused specifically on these animals. The text of the Proposal, however, refers to “dolphins” more broadly, making it misleading. Further, the Proponent refers to “[dolphins’] faces.” Bottlenose dolphins do not have faces, and the Company assumes the Proponent is actually referring to what animal care professionals refer to as a “rostrum.” Bottlenose dolphins use their rostrums for, among other things, digging, carrying conch shells and probing the ocean floor for fish. As such, the rostrum serves a different function to a face, and there is no literature to suggest that standing on the rostrum is harmful in any way to the animal as the Proponent falsely alleges.

- The Proposal references “the most pressing issue that SeaWorld faces today—the public’s continued opposition to captive-animal displays,” without offering any proof of this assertion or of the impact on the Company’s business operations of said public opposition. In fact, the Company’s board and management do not view opposition to captive-animal displays as the most pressing issue the Company faces.
- The Proposal’s assertion that “[t]he public’s condemnation of the practice of confining complex, intelligent, far-ranging animals to cramped concrete tanks for human entertainment continues to grow and hundreds of thousands of people have written to SeaWorld to express their concerns,” is an uncorroborated opinion and runs contrary to SeaWorld’s mission of conservation and its ability to maintain its permits and accreditations. The Proponent does not have access to any correspondence received by the Company from the public or other shareholders, and thus is not in a position to make such an assertion. The Company’s guests enjoy and support the Company’s presentations and mission.
- Further, the Proponent claims that “[e]ven more outrage has erupted following the release of a shocking report regarding dolphins with open wounds and extensive scars of their faces and bodies.” These characterizations are false, inflammatory and represent the Proponent’s biased opinion. SeaWorld adheres to the highest standards of animal care, which are developed with the well-being and safety of the animals in mind, and without complying with which SeaWorld would not be able to maintain its various accreditations. Further, as discussed above, an independent, third-party audit by AHA revealed no signs of abuse of a representative sample of bottlenose dolphins in the Company’s care, and specifically noted that “any abrasions or rake marks are as expected for the animals based on their age and are indicative of positive social interactions,” in addition to observing that their physical appearance is consistent with that of wild bottlenose dolphin populations in various geographical regions around the world.
- The Proposal’s assertion that “SeaWorld has eliminated 1,200 positions and three CEOs have left the company since the release of *Blackfish*” is misleading because it

implies a connection between the release of Blackfish and (i) the elimination of certain positions within the Company; and (ii) certain senior management transitions, when this is patently false and again, based entirely on the Proponent's opinion and conjecture.

- The Proponent's statement that "the National Aquarium in Baltimore is building a dolphin sanctuary, a Chinese marine park is moving beluga whales from its facility to a sanctuary in Iceland, and the Parliament of Canada has voted to ban dolphin and whale captivity" has little to do with the Proposal—which asks SeaWorld to stop allowing its trainers to demonstrate specific behaviors involving bottlenose dolphins. Accordingly, they render the supporting statement misleading.
- The Proposal suggests that bottlenose dolphin presentations are "exploitative" and that "forcing dolphins to engage in this highly unnatural behavior can cause them stress and may exacerbate injuries that they have sustained as a result of being confined to tiny tanks," but offers no evidence that this is the case. As discussed above, SeaWorld takes a comprehensive approach to ensuring the health and welfare of the animals in its care that focuses on physical, behavioral and population health. Allowing any harm to animals is contrary to the Company's extensive focus on animal well-being and protection. Moreover, the Proponent offers no evidence that any of SeaWorld's bottlenose dolphins have suffered injuries as a result of being confined to "tiny tanks."

C. The Proposal is Excludable Under Rule 14a-8(i)(10) because the Company has substantially implemented the Proposal.

Rule 14a-8(i)(10) permits a company to exclude a shareholder proposal from its proxy materials if the company has already "substantially implemented" the proposal. The Staff has stated that the purpose of the predecessor provision to Rule 14a-8(i)(10) was "to avoid the possibility of shareholders having to consider matters which already have been favorably acted upon by the management." See Exchange Act Release No. 12598 (Jul. 7, 1976). The Commission later stated that a formalistic application of the rule requiring full implementation "defeated [the rule's] purpose," and then adopted a revised interpretation of the rule to permit the omission of proposals that had been "substantially implemented." See Exchange Act Release No. 20091 (Aug. 16, 1983) and Exchange Act Release No. 40018 (May 21, 1998) (emphasis added).

A "determination that the company has substantially implemented the proposal depends upon whether [the company's] particular policies, practices and procedures compare favorably with the guidelines of the proposal." *Texaco, Inc.* (avail. Mar. 28, 1991). When a company has satisfied the proposal's underlying concerns and essential objectives, the proposal has been "substantially implemented" and may be excluded under Rule 14a-8(i)(10). *Pfizer Inc.* (avail. Jan. 11, 2013, recon. denied Mar. 1, 2013) (where the company's

prior public disclosures compared favorably with the guidelines of a proposal requesting a report to shareholders detailing all measures implemented to reduce the use of animals, the proposal was excludable as having been substantially implemented); *Exelon Corporation* (avail. Feb. 26, 2010) (the company was permitted to exclude a proposal requesting a semi-annual report regarding policies and procedures for political contributions and detailing actual contributions when it had taken actions to make such disclosures in a substantially similar manner); *PPG Industries, Inc.* (avail. January 19, 2004) (where the company had publicly issued an animal welfare policy committing the company to use alternatives to animal testing, proposal requesting that the board issue statement regarding similar issues was held excludable on basis of having been substantially implemented); *Nordstrom, Inc.* (avail. February 8, 1995) (where company had previously provided information to general public via press release, request by proponent to prepare a report to its shareholders describing similar information was excludable as moot). A company need not implement a proposal in exactly the manner set forth by the proponent in order to exclude the proposal under Rule 14a-8(i)(10). See Exchange Act Release No. 34-40018 (May 21, 1998).

Here, SeaWorld has substantially implemented the Proposal. As part of its transition to more education-focused animal presentations, the Company has already made the decision to phase out the two behaviors referred to in the Proposal. As discussed above, of the two trained behaviors that the Proponent takes issue with, SeaWorld trainers currently do not engage in surfing (i.e., the trained behavior the Proponent refers to as “riding on dolphins’ backs”) in any of the Company’s presentations. Additionally, only one of SeaWorld’s twelve parks currently demonstrates the other trained behavior the Company believes Proponent is referring to in the Proposal, with trainers sometimes standing on the bottlenose dolphins’ rostrums. Moreover, the Company plans to move away from standing on rostrums entirely within the next few months and in any event before the time the Company plans to make available to its stockholders its proxy statement for its 2020 annual meeting of stockholders. Regardless of whether the Company implements the Proposal in exactly the same manner set forth by the Proponent, however, these actions should serve to substantially address Proponent’s underlying concerns and objectives. Given that the Proposal relates to only one behavior that is currently being utilized in the Company’s bottlenose dolphin presentations—and moreover, only in one of the Company’s many parks—the Company reiterates that the Proposal has been substantially implemented and that it should be excludable under Rule 14a-8(i)(10).

D. The Proposal is Excludable Under Rule 14a-8(i)(4) because it relates to the redress of a personal claim or grievance against the Company.

Under Rule 14a-8(i)(4), a company may exclude a shareholder proposal from its proxy materials if the proposal relates to the redress of a personal claim or grievance against the company or any other person, or if it is designed to result in a benefit to the proponent, or to further a personal interest, which is not shared by other shareholders at large. As the Commission has repeatedly advised, an issuer’s proxy materials are not the proper forum for airing personal claims or grievances. See Exchange Act Release No. 34-12999 (Nov. 22,

1976); see also Exchange Act Release No. 34-20091 (Aug. 16, 1983); Exchange Act Release No. 34-19135 (Oct. 14, 1982). Even where the proposal is presented in general terms that “might relate to matters which may be of general interest to all security holders,” a company may omit the proposal where “it is clear from the facts presented by the issuer that the proponent is using the proposal as a tactic designed to redress a personal grievance or further a personal interest.” Release No. 34-19135.

Following these principles, the Staff has permitted exclusion of proposals like the one here, even when those proposals were facially neutral and nominally related to matters of general interest. See, e.g., *General Electric Co.* (avail. Jan. 12, 2017, *recon. denied* Jan. 31, 2017) (concurring in exclusion of proposal to permit shareholders to act by written consent where the underlying facts showed the proponents were using the shareholder proposal process to press a former employee’s personal, employment-related grievances with the company); *State Street Corp.* (avail. Jan. 5, 2007) (concurring in exclusion of a proposal requesting an independent chairman where the proponent was a former employee with a history of litigation and harassment of the company and its CEO); *American Express Co.* (avail. Jan. 6, 2017) (concurring in exclusion of proposal to include mandatory non-compliance penalties in the company’s code of conduct where the proponent was a former employee with a personal dispute over the company’s enforcement of its disciplinary codes).

Here, the Proponent has a long history of litigation and harassment of the Company. The Proponent manages a website entitled “SeaWorld of Hurt: Where Happiness Tanks” featuring a logo of a bottlenose dolphin in chains and containing pages of inflammatory, biased articles and false and misleading statements regarding SeaWorld’s treatment of the animals in its care.⁵ On the website, the Proponent asserts that it employs a variety of tactics to “help” the animals at SeaWorld’s parks, “including public education and demonstrations, complaints to law-enforcement officials, corporate negotiations, shareholder activism, litigation, celebrity engagement, and more.” The Proponent thus has a significant personal interest in negative publicity or changes in public perception of the Company, which could negatively impact its business operations and thus hurt other shareholders, rather than benefitting them. On its website, the Proponent also repeats several of the false and misleading statements described above under “*The Proposal is Excludable Under Rule 14a-8(i)(3) Because it is Misleading in Violation of Rule 14a-9*” and urges readers to “please never buy a ticket to the parks or support the business in any other way,” which again, cuts against the interests of other shareholders. In one interview, the Proponent’s founder, Ingrid Newkirk, went so far as to say “We are outside SeaWorld [parks] every day of the week . . . we’ve bought stock and we are harassing them in that way until they let the orcas and the dolphins and all the marine animals go, and they *will* close down. There’s no question in my

⁵ See PETA website, <https://www.seaworldofhurt.com/> (last visited January 31, 2020)

mind.”⁶ These types of statements make it clear that the Proponent has a vendetta against the Company, and that its goal is to see the Company shut down its operations, which cannot logically be a goal supported by other shareholders.

Thus, the Company believes that the Proposal is excludable under Rule 14a-8(i)(4).

Conclusion

On behalf of the Company, we hereby respectfully request that the Staff express its intention not to recommend enforcement action if the Proposal is excluded from the Company's Proxy Materials for the reasons set forth above.

If the Staff disagrees with the Company's conclusions regarding omission of the Proposal, or if any additional submissions are desired in support of the Company's position, we would appreciate an opportunity to speak with you by telephone prior to the issuance of the Staff's Rule 14a-8(j) response.

If you have any questions regarding this request, or need any additional information, please do not hesitate to contact the undersigned at (212) 455-2512 or niyati.roy@stblaw.com or Amanda Weiss at (212) 455-3937 or amanda.weiss@stblaw.com.

Very truly yours,


Niyati Roy

Enclosures

cc: G. Anthony Taylor, SeaWorld Entertainment, Inc.
Harold Herman, SeaWorld Entertainment, Inc.
Igor Fert, Simpson Thacher & Bartlett LLP
Amanda Weiss, Simpson Thacher & Bartlett LLP
Jared S. Goodman, PETA Foundation

⁶ See Plant Based News website, <https://www.plantbasednews.org/lifestyle/peta-founder-ingrid-newkirk-euthanasia-seaworld-vegan-activism> (last visited January 31, 2020)

Exhibit A

Copy of the Proposal and Accompanying Correspondence



PEOPLE FOR
THE ETHICAL
TREATMENT
OF ANIMALS

December 10, 2019

G. Anthony (Tony) Taylor
Corporate Secretary
Seaworld Entertainment, Inc.
6240 Sea Harbor Drive
Orlando, FL 32821

Via UPS Next Day Air Saver

Dear Mr. Taylor:

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 163 shares of Seaworld Entertainment, 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

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

Affiliates

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

**2020 Shareholder Resolution to Prohibit Trainers
From Standing on Dolphins' Faces and Riding on Their Backs
at SeaWorld**

RESOLVED:

In order to address the most pressing issue that SeaWorld faces today—the public's continued opposition to captive-animal displays—the shareholders urge the board to stop allowing trainers to stand on dolphins' faces and ride on their backs in exploitative and potentially harmful circus-style shows.

SUPPORTING STATEMENT:

The public's condemnation of the practice of confining complex, intelligent, far-ranging animals to cramped concrete tanks for human entertainment continues to grow and hundreds of thousands of people have written to SeaWorld to express their concerns. Even more outrage has erupted following the release of a shocking report regarding dolphins with open wounds and extensive scars on their faces and bodies, and dozens of companies have severed ties with the company, including, most recently, Booking.com, TripAdvisor, and Virgin Holidays.

Additionally, SeaWorld has eliminated 1,200 positions and three CEOs have left the company since the release of *Blackfish*, which *The New York Times* just named one of the top 10 most influential films of the decade. Meanwhile, the National Aquarium in Baltimore is building a dolphin sanctuary, a Chinese marine park is moving beluga whales from its facility to a sanctuary in Iceland, and the Parliament of Canada has voted to ban dolphin and whale captivity.

SeaWorld's decision to stop breeding orcas after facing mounting criticism—along with its recent focus on non-animal rides and entertainment—shows that it knows the public doesn't support this cruelty, yet it continues to offer demeaning and potentially harmful circus-style shows during which trainers stand on dolphins' faces and ride on their backs (please see the images below).

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The dolphin's lower jaw, which is highly sensitive and crucial for hearing, bears nearly the full force of the trainer's bodyweight during these stunts. Forcing dolphins to engage in this highly unnatural behavior can cause them stress and may exacerbate injuries that they have sustained as a result of being confined to tiny tanks. These stunts are devoid of any biological significance to the dolphins or educational value to the public.

Accordingly, we urge the shareholders to support this ethically responsible resolution to prohibit trainers from riding on dolphins' backs and standing on their faces.



**Wealth
Management**

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

Office: 408.292.2442
Fax: 408.298.8295

December 10, 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 Seaworld Entertainment, Inc.

Dear Ms. Reiman,

This letter verifies that People for the Ethical Treatment of Animals (PETA) is the beneficial owner of 163 shares of Seaworld Entertainment, 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