February 20, 2020

Via electronic mail

Office of Chief Counsel

Division of Corporation Finance

U.S. Securities and Exchange Commission

100 F Street, N.E.

Washington, D.C. 20549


Ladies and Gentlemen:

I am responding to the letter dated January 24, 2020 ("Company Letter") sent to the Division of Corporation Finance of the Securities and Exchange Commission by Ronald Mueller of Gibson Dunn. In that letter, the Company contends that the proposals may be excluded from the Company’s 2020 proxy statement. A copy of this letter is being emailed concurrently to Ronald Mueller of Gibson Dunn.

My response includes a Summary indexed with page references to the detailed Analysis and Response that follows. Based on these materials, I believe it is clear that the Company has provided no basis for the conclusion that the Proposals are excludable from the 2020 proxy statement pursuant to Rule 14a-8.

I respectfully request that the Staff inform the Company that it is denying the no action letter request. If you have any questions, please contact me at ***

Sincerely,

Dan Phung

cc: Ronald Mueller

*** FISMA & OMB Memorandum M-07-16
Amazon, Inc. Proxy Proposals regarding Disclosure of Oversight Process of AWS User Violations of Terms of Service

References in this Summary are to pages of attached ANALYSIS AND RESPONSE

Amazon, Inc. is at the center of at least one significant public policy controversy, regarding an ongoing customer relationship with an AWS user; Palantir, due to its contracts with the Department of Homeland Security (and agencies under the department including Immigration and Customs Enforcement and U.S. Customs and Border Protection) and the human and civil rights issues raised by the agencies’ use of this technology in immigrant profiling, policing, deportation and detention, especially concerns related to children, infants and vulnerable populations. This proposal (the AWS User Due-diligence Proposal, hereinafter “the Proposal”) regarding AWS User Violations of Terms of Service violations, cites this controversy as an example of at least one significant public policy issue that may pose lasting reputation, branding and other risks associated with illegal or harmful activities of AWS Customers, raised by employees.

The Proposal requests that the Board of Directors disclose the process of reviewing the risk to the company posed by Amazon Web Services User violations of the Company’s Terms of Service, particularly “[a]ny activities that are illegal, that violate the rights of others, or that may be harmful to others, our operations or reputation”, especially such violations raised by employees regarding highly public policy issues, (omitting disclosure of any proprietary information).

The full text of the proposal is included as Appendix A to this document.

The Company Letter claims that this proposal (hereafter, “the Proposal”) is excludable under Rule 14a-8(i)(7) as relating to the Company’s ordinary business.

**Rule 14a-8(i)(7)**

The Board of Directors did not provide an opinion or evidence pursuant to Staff Legal Bulletin 14I to support the claim that the issues raised by the Proposal are an insignificant public policy issue for the Company. While the submission of such an opinion is not obligatory, the grounds for exclusion rest entirely on the Proposal relating to ordinary business. Staff precedents demonstrate that when a management issue such as matters related to ordinary business such as customer relations rises to the
level of controversy present in the example of the Palantir AWS user, the subject matter transcends ordinary business and a proposal addressing it is not excludable under Rule 14a-8(i)(7). Pages 15-19

The Company’s relationship with AWS User, Palantir (hereinafter “the Customer”), has exposed the Company to the human and civil rights controversy surrounding the US’ treatment of immigrations, specifically as Palantir is a key target in the fight for immigrant and human rights and Palantir provides critical infrastructure to the agency at the center of this controversy, the Department of Homeland Security (DHS)/Immigration and Customs Enforcement (ICE)/U.S. Customs and Border Protection (CBP). This has led to an enormous public backlash – with extensive media coverage of protests and NGO activity, opposition to the Customer relationship by the Company’s employees, US congressional calls to defund ICE and an emerging regulatory and legal context with the formation of over a hundred Sanctuary States and Cities that seek to limiting sharing of data on immigrants and asylum seekers who are prosecuted criminals, in non-compliance with Federal, Congressionally-challenged executive orders and interpretation of DHS and ICE’s mandate. Further, what remains at stake is not only brand and reputation damage, but circumscribing the quality of the candidate pipeline seeking to work for Amazon and the morale and productivity of employees remaining in the company. Pages 4-12.

Beyond legal and regulatory uncertainty, a strong nexus between this issue and the Company exists, as determined by the public, press and employee sentiment regarding the Company’s involvement in the operations of DHS/ICE/CBP, as demonstrated by the ongoing controversy regarding the civil and human rights of migrants and mixed-status communities of color, growing opposition from the Company’s employees and an active divestment campaign. Pages 12-15.
ANALYSIS AND RESPONSE
TO EXCLUSION CLAIMS

Response to No Action Request
2020 Proxy Season

Amazon, Inc.
Proxy Proposal regarding AWS User Due-Diligence on Risk

BACKGROUND

Significant Public Policy Matter

The following discussion will demonstrate that the Proposal identifies at least one transcendent policy issue with a very clear nexus to the Company. The Board of Directors would be hard-pressed to demonstrate that this is an insignificant policy issue for the company.

This issue rises to the level of a public policy issue of material risk to the company as the issue of immigration treatment has the materialized in organized challenge in the courts, in Congress, in the streets in protests, in retail outlets as boycotts of Whole Foods and online of Amazon.com, as employees organizing within the Company and outside the Company in coalition with other tech employee groups, in investor coalitions that are explicitly directed at getting Palantir to end its contract and divesting Amazon unless it terminates hosting the AWS user, Palantir if it fails to do so.

This is an issue of greater concern than a small suite of human and civil rights concerns; the multiple human and civil rights violations targeting and persecuting of a population by the government is so extraordinary and ahistorical that it falls into the category of a crime against humanity or genocide, the distinction being intent. If intent can be proven, a historical analog exists in the genocide campaigns against Native Americans with greater similarity in beneficiary type to the involvement of corporations in government campaigns during the Holocaust in Nazi Germany, during slavery, or during Apartheid in South Africa, given the persecution, imprisonment, torture, kidnapping, absence of due-process of law, deaths and historical trauma involved. Although families of Japanese heritage were forcibly removed and incarcerated en mass, regardless of citizenship, during World War II by Executive Order 9066, the Supreme Court in Korematsu v. the United States found this only exceptionally allowed under circumstances of war. The context of martial law during a congressionally approved war is, however, absent in this case of the violation of human and civil rights of communities of color of mixed citizenship status by DHS/ICE/CBP today. The countries of origin of the communities targeted for deportation are those entering the country through our southern border as well as other communities of color targeted for ICE raids, which are largely from Latin America and importantly all allied countries with which we have peaceful relations. Even as prisoners of war, the Japanese families incarcerated during WWII in this country, were still covered by standards in the Geneva Convention for treatment of prisoners of war, which still involve humane treatment, protection from violence, intimidation and insults and standard of accommodation, food, clothing, hygiene and medical care and for civilian internees during
international armed conflicts, protection against, murder, torture, as well as cruel humiliating or degrading treatment. Asylum seekers, migrants and people of color in mixed national status communities being profiled, detained and dying due to the horrible conditions are not enemy combatants, they are refugees, migrant residents and their citizen children and family members, from allied countries. These campaigns, all under the direction of executive order, carried out by the DHS and administrated and carried out by government contractors including Palantir, raises this issue to the level of public policy concern on par with genocide and crimes against humanity; an extraordinary public policy issue, raised by employees, exceptional and non-ordinary. See Appendix B for the Definition of the Rome Statute of the International Criminal Court Article 7 on Crimes Against Humanity and Appendix C on the Definition of Genocide.

Public Opinion

As recently as the Superbowl 2020 half-time show starring two Latino artists, Jennifer Lopez and Shakira featuring children in cages, including Lopez’ daughter who opened her cage door and crawled out singing verses from her mom’s 2000 single “Let’s Get Loud”; to the performance of Logic at the MTV Video Music Awards (August 20, 2018) with 60 Latino children wearing “we are all human beings” shirts, of "One Day" featuring Ryan Tedder an artistic statement against the Trump administration’s family separation policy.

- A group of doctors, Doctors for Camp Closure, seeking to provide detained migrants with free flu vaccinations were arrested protesting outside the Border Patrol’s San Diego headquarters over the immigration agency’s refusal to allow doctors with flu vaccines into detention facilities to treat children, after another death of a minor in an immigrant detention facility due to flu and inhumane conditions.
- Jul 18, 2019 U.S. Capitol Police arrested 70 people Thursday who were part of a coalition of Catholic clergy members and supporters protesting the treatment of child migrants being held in detention facilities along the southern border in the rotunda of the Russell US Senate Office Building
- The American Academy of Pediatrics, the American Psychological Association and the American College of Physicians and the American Psychiatric Association condemned the Zero Tolerance policy, and the American Academy of Pediatrics stated the incarceration of young children

5 “Open Letter to President Donald Trump”. American Psychological Association (June 14, 2018),
7 https://www.acponline.org/acp-newsroom/acp-objects-to-separation-of-children-from-their-parents-at-border

CHANTAL DA SILVA ON 12/11/19
without parents or caregivers has caused "irreparable harm" to the children. The group, Physicians for Human Rights strongly warned against imprisonment of children with parents and families members, “No child belongs in immigration detention, even if they are detained alongside their parents. This administration should immediately adopt community-based alternatives to detention, which are humane and effective, and which lessen trauma experienced by children and families.

- Forty Democratic United States Senators sent a letter to President Trump urging him to "rescind this unethical, ineffective, and inhumane policy and instead prioritize approaches that align with our humanitarian and American values.” A number of Republicans have also registered their opposition to the Zero Tolerance Policies.

Polling on Immigration, Deportation, Detention, Criminalization of Immigration and Family Separation

Various polls confirm the unpopularity of deportation, family detention and separation, especially of children and asylum seekers.

- A steady 80% of respondents of an annual Public Religion Research Institute poll taken since 2013, support either a legal pathway to citizenship for those who are not citizens or decriminalization of their residency here, with those who support deportation remaining steady at only 20% of those polled.

- A Gallup poll released February 4, 2019, found overwhelming support (81 percent) for a proposal to allow immigrants “currently in the country illegally” the chance to become citizens over time if they meet certain requirements . . . Opposition to a proposal to deport all undocumented immigrants was at 61 percent.

- The October 2018 PRRI survey mentioned above found strong public opposition to the administration’s policy of separating children from their parents and charging the parents as criminals when they enter the U.S. Overall, 72 percent were opposed to this policy.

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10 Amber Phillips, Phillips, Amber (June 19, 2018). "How Republicans are divided over Trump’s immigration policy: For it, against it and keeping their mouths shut”. The Washington Post'.
As a controversy, immigrant rights and particularly ICE’s mission of deportation is widely unpopular and the detention of families and children, separation of children from parents and the destabilization and inhumanity of deporting individuals from families of mixed status has been universally condemned. The Palantir user relationship controversy rises above ordinary business to that of material business reputational risk and operational risk, and share value market risk posed by association with such an incendiary issue and corporate target for all manner of backlash; legal, congressional, publicity, boycott and divestment, as well as the attendant moral and ethical issues raised rising to the level of public policy concern by mere virtue of the House of Representatives being shut down by clergy protesting the inhumane treatment of migrants and asylum seekers, and the well-publicized arrests of doctors seeking to provide voluntary medical care and basic access to flu shots after the deaths of children in immigrant detention facilities from preventable diseases due to horrific conditions and lack of care.

The issue of the inhumane treatment of migrants and mixed-status communities through the process of policing, immigrant deportation and detention was elevated to the highest levels of political discourse and visibility as the cornerstone of at least two Democratic Presidential Candidates’ policy platforms, Julian Castro ¹⁴ and Beto O’Rourke ¹⁵.

Civil and Human Rights Violations Entailed

As stated in the Proposal:

“AWS User, Palantir, has over $150 million in contracts with the Department of Homeland Security, Immigration and Customs Enforcement, which gathers data on undocumented immigrants’ employment information, phone records, immigration history, and similar information and provide critical infrastructure to ICE’s operations involving detention, family separation, detention of minors, and . . . the deaths of at least seven children in or immediately following U.S. immigration custody since last year.”

Palantir’s software captures, aggregates and analyzes data, many times gained from use of warrantless and unconstitutional strategies in communities of color comprised of US citizens and noncitizens which demonstrates unlawful bias. Further, Palantir’s analytics drive case managers to maximize data collection from the most effective sources including inappropriate targets. For example, several sources report Immigration and Customs Enforcement routinely apprehends children and holds them in custody without just cause, violating federal and state kidnapping laws and the agency’s authority (which belongs to the Office of Refugee Resettlement) and violates both the Trafficking Victims Protection Reauthorization Act and the Flores Agreement in detaining children and separating them from parents and caregivers against their best interests. In their handling of parents and caregivers they have been reported to repeatedly violate Fifth Amendment due process protections related to coercion and

¹⁴ https://www.julianforthefuture.com/about/
misrepresentation, failure to communicate rights including warnings against self-incrimination and to provide language translation.

Recent reporting documents Palantir’s aggregation and processing of data that is unlawfully collected and utilized.

“DHS has admitted to targeting hundreds of sponsors for enforcement, using unaccompanied immigrant children as bait to ensnare the parents and caregivers seeking to protect them.”

“A 2017 letter from a coalition of immigrant rights groups to oversight officials at the Department of Homeland Security detailed how ICE and Customs and Border Control “are using unaccompanied child asylum seekers as bait to prosecute and deport their parents.” In a statement provided to the Intercept last week, ICE said that in the course of the operation, 443 people without documentation were arrested. Only 35 of those arrests were due to criminal activity.” Violations are outlined in the letter:

“ICE claimed involvement in the family reunification process despite that process being solely under ORR’s authority. . . . ICE not only frustrates the purpose of the Trafficking Victims Protection Reauthorization Act (TVPRA), but also violates Fifth Amendment due process guarantees. Coercion often appears alongside misrepresentation and constitutes another Fifth Amendment due process violation. Failure to communicate rights illustrates ICE’s failure to comply with Fifth Amendment requirements related to language access and protection against self-incrimination. Finally, Discrimination denotes cases of ICE’s direct or implied unlawful bias in violation of Fifth Amendment due process guarantees. Frustration of TVPRA and Flores identifies actions running counter to the child welfare goals of those legal frameworks. . . . ICE and CBP’s enforcement actions against sponsors or potential sponsors of unaccompanied immigrant children have undermined a number of laws and norms dedicated to the protection of children and their families: first, the child welfare-based framework established in the Flores Settlement Agreement, the Homeland Security Act and the Trafficking Victims Protection Reauthorization Act; second, the due process guarantees of the Fifth Amendment of the U.S. Constitution, including rights to fair proceedings, protection from self-incrimination, and family unity; and finally, the right to seek refuge from persecution without undue penalty under U.S. and international refugee law.”

The human and civil rights violations associated with immigrant detention and processing of ICE and CBPs include conditions contributing to the deaths of at least seven children and over a hundred other reported deaths in US Immigration authorities’ custody; grave health and safety concerns especially

19 See: https://www.nytimes.com/2019/10/02/magazine/ice-surveillance-deportation.html
22 https://slate.com/technology/2019/05/documents-reveal-palantir-software-is-used-for-ice-deportations.html
for pregnant women, the infirm and children; incarceration of juveniles and families without due-process of law or adequate representation, counsel or translation services in high security prisons; overcrowding (one facility was holding 900 people, in a space designed for only 125), freezing temperatures (without sufficient clothing or cover); rampant unaddressed reports of sexual assault of women and children; strip searches; reports of assaults and physical abuse of children; administration of drugs to minors; co-mingling of detainees with different threat levels (mixed threat levels); constitutional violations of cruel and unusual punishment in separating nursing infants, toddlers and children from their parents, guardians and caregivers and disallowing affection between children including siblings hugging; reports by women of only being given toilet water to drink and girls and women denied sanitary napkins; insufficient medical care, lack of beds, bedding, comfort items (including reports of babies sleeping on cold floors); insufficient privacy and basic acceptable standards of accommodation in prisons, limited or no access to outside space; synthetic florescent lighting that is kept on all hours of the day and night inducing sleep deprivation; multiple psychologically traumatizing conditions for all persons detained without access to counseling; including the OIG report having found


25 In violation of the treatment and due process afforded juveniles under the 1967 U.S. Supreme Court decision In re Gault. In Gault https://jlc.org/youth-justice-system-overview

26 “Because we observed immediate risks or egregious violations of detention standards at facilities in Adelanto, CA, and Essex County, NJ, including nooses in detainee cells, overly restrictive segregation, inadequate medical care, unreported security incidents, and significant food safety issues, we issued individual reports to ICE after our visits to these two facilities. All four facilities had issues with expired food, which puts detainees at risk for food-borne illnesses. At three facilities, we found that segregation practices violated standards and infringed on detainee rights. Two facilities failed to provide recreation outside detainee housing units. Bathrooms in two facilities’ detainee housing units were dilapidated and moldy. At one facility, detainees were not provided appropriate clothing and hygiene items to ensure they could properly care for themselves. Lastly, one facility allowed only non-contact visits, despite being able to accommodate in-person visitation. Our observations confirmed concerns identified in detainee grievances, which indicated unsafe and unhealthy conditions to varying degrees at all of the facilities we visited.” OIG Memo (June 3, 2010) “Concerns about ICE Detainee Treatment and Care at Four Detention Facilities” https://www.oig.dhs.gov/sites/default/files/assets/2019-06/OIG-19-47-Jun19.pdf


28 Community Initiatives for Visiting Immigrants in Confinement (CIVIC), filed a federal civil rights complaint with data through the Freedom of Information Act about sexual and physical assault in detention. We found that in the last 6 years, the Office of the Inspector General (OIG) at the Department of Homeland Security (DHS) received over 33,000 complaints of sexual or physical assault against DHS component agencies. DHS’ Inspector General investigated less than 1 percent of these complaints. http://www.endisolation.org/sexual-assault-in-immigration-detention/


a loaded handgun found in a bathroom in a New Jersey detention facility and seven suicide attempts at the Adelante facility;  

**Legal and Legislative Uncertainty**

California, which holds the most immigrants after Texas, has passed a slate of laws delineating California’s authority over law enforcement, detention and data sharing vis-à-vis federal immigration authority, several of which have been upheld by court rulings including: SB54 which makes California law enforcement’s cooperation and data sharing with ICE illegal unless the individual has been convicted or charged with a crime under California law that has not been recategorized since as a misdemeanor and CA Assembly Bill 103, which restricts state and local agencies from entering into contracts with the federal government to detain immigrants and requires a review of those facilities due to deaths and inhumane conditions.

There are currently nine sanctuary states and 173 cities and counties prohibit law enforcement’s cooperation, including data sharing, with ICE unless the individual has been convicted or charged with a crime. This legal backdrop of increasing State and local push back against ICE’s inhumane operations in their jurisdictions, created a dearth of data and is the problem Palantir’s software and applications were developed to overcome. It is worth noting that ICE’s warrantless and broad-based searches of social media, personal data, and information solicited from children and families of children under duress of threats of detention and deportation using misrepresentation and false pretenses, gathered on the basis of racial profiling which Palantir facilitates, rests on the Executive Order 13768, which itself has faced numerous legal challenges. Legal challenges to Executive Order 13768, regarding sanctuary cities include: City and County of San Francisco v. Trump, County of Santa Clara v. Trump, and City of Richmond v. Trump and additionally in Massachusetts, City of Chelsea v. Trump.

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33 [Center for Immigration Studies, Map: Sanctuary Cities, Counties, and States](https://www.nytimes.com/2019/10/02/magazine/ice-surveillance-deportation.html) “ICE said that in the course of the operation, 443 people without documentation were arrested. Only 35 of those arrests were due to criminal activity.” [https://slate.com/technology/2019/05/documents-reveal-palantir-software-is-used-for-ice-deportations.html](https://slate.com/technology/2019/05/documents-reveal-palantir-software-is-used-for-ice-deportations.html) Palantir houses data collected through ICE’s operations which have been documented to violate the Fifth Amendment of the Constitution due process guarantees related to use of coercion, misrepresentation, failure to communicate rights including against self-incrimination, limiting language access, demonstrating unlawful bias, violating the rights to fair proceedings and family unity; and the child welfare-based frameworks of the Flores Settlement Agreement, the Homeland Security Act and the Trafficking Victims Protection Reauthorization Act; and the right to seek refuge from persecution without undue penalty under U.S. and international refugee law. [https://www.immigrantjustice.org/sites/default/files/content-type/press-release/documents/2017-12/Sponsor%20Enforcement-OIG_CRCL_Complaint_Cover_Letter-FINAL_PUBLIC.pdf](https://www.immigrantjustice.org/sites/default/files/content-type/press-release/documents/2017-12/Sponsor%20Enforcement-OIG_CRCL_Complaint_Cover_Letter-FINAL_PUBLIC.pdf)
Federal judge, Judge Dolly Gee of Federal District Court for the Central District of California on September 27, 2019 rejected new regulations that would allow the government to hold children and their parents in detention for indefinite periods. . . and said it was up to Congress, not the federal executive administration, to supplant a 20-year-old consent decree (the Flores agreement) that requires children to be held in state-licensed facilities and released in most cases within 20 days and in a “least restrictive” setting appropriate to the minor’s age and special needs after attorneys for migrant children submitted multiple court filings in a federal court in Los Angeles in June documenting the “deplorable” conditions children are being subjected to in detention facilities in South Texas, as reported by attorneys and doctors in contact with these children;  

On May 2, 2019, Congressman Elijah E. Cummings (MD-07) and Congressman Jamie Raskin (MD-08) introduced the Waiver Accountability and Transparency Act to rein in U.S. Immigration and Customs Enforcement’s (ICE) excessive use of waivers to allow immigration detention facilities to circumvent federal laws including the use of CB gas, pepper spray and standards regarding solidarity confinement;  

The US Congressional House of Representatives Committee on Oversight hearing registered the concern of many Representatives regarding the conditions in detention facilities and the many inadequacies and conflicts of interest involved in the private contracting relationship between ICE and ICE’s detention facility inspector, The Nakamoto Group, Inc. and whereas this relationship has resulted in ICE not addressing many of the grave concerns raised by federal governmental monitoring authorities

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38 “In January, the Department of Homeland Security’s Office of the Inspector General released a report finding that “ICE has no formal policies and procedures to govern the waiver process, has allowed officials without clear authority to grant waivers, and does not ensure key stakeholders have access to approved waivers.” The report found that ICE had granted waivers that put the health and safety of detained immigrants at risk, including one waiver allowing a detention facility to use toxic CS gas instead of pepper spray.”

39 US Congressional House of Representatives Committee on Oversight Subcommittee: Oversight, Management, & Accountability (116th Congress) held a hearing on September 26, 2019 entitled, “OVERSIGHT OF ICE DETENTION FACILITIES: IS DHS DOING ENOUGH?”
and the press and even United States senators have been routinely denied access to detention facilities;

By way of legal precedents, government contractors are liability for large-scale harm as in the US Agent Orange class-action lawsuit against chemical companies including Dow Chemical and Monsanto which resulted in the largest settlement of its kind at that time and internet companies are liable for crimes facilitated by their sites. In Ulbricht v. United States, Silk Road’s founder was convicted of aiding and abetting crimes by means of the internet, wherein the prosecution focused on the well-established nature of the illegal activities operating on Silk Road’s site.

Nexus

In the event that the proposal relates to a significant policy issue, the proposal generally will not be excludable under Rule 14a-8(i)(7) as long as a sufficient nexus exists between the subject of the proposal and the company. Does the subject matter relate significantly to the company’s business or strategy? The Staff has extended an invitation to the board of directors of each company, under Staff Legal Bulletins 14I and 14J, to provide evidence and findings to assert and demonstrate that an issue is insignificant for the company. Proponents are also expected to continue to provide their own evidence regarding these questions of significance to the company. If there is a reasonable basis for concluding that a proposal’s subject matter represents a significant policy issue with a connection to the company, it transcends ordinary business and is not excludable.

The clear Nexus between the policy issue—here for the sake of example, egregious human rights violations associated with the treatment of communities containing immigrants and family and child detention—and the Company need not entail legal liability or even be substantially material to the company’s bottom line. The Nexus of risk is the association of the public with activities that are

Letter to the Acting Director of U.S. Immigration and Customs Enforcement (April 15, 2019) from Eleven Senate Members.  

41 Paul Farhi. (June 25, 2019) “Migrant children are suffering at the border. But reporters are kept away from the story”. The Washington Post.

42 The Public Oversight of Detention Centers (POD) Act is a U.S. House Bill which would provide members of Congress access to immigration detention centers within 48 hours of request given their current systemic denial of entry  
https://crow.house.gov/media/press-releases/crow-introduces-bill-require-congressional-access-ice-detention-facilities. For more see: Denver Post: Jason Crow denied entry in surprise visit to Aurora’s ICE detention site amid another rash of illnesses [February 2019]; Miami Herald: Trump blocks three Florida congresswomen from visiting Homestead child detention center [April 2019]; and USA Today: Senator blocked from entering detention center housing migrants’ kids [June 2018]  
condemnable, in which the company is receiving negative press and risk to branding, its hiring pipeline and long-term reputation.

Longer form reporting and interviews have highlighted Amazon’s role in immigrant policing and deportation. Forbes recently published an interview about the companies benefiting from immigration and detention abuses:

“Amazon is one of the largest profiteers through its data hosting division, Amazon Web Services (AWS). It has the most security authorizations to handle confidential data of any tech company, allowing it to host the data of different agencies in the Department of Homeland Security and the companies that those agencies work with, like Palantir. So Amazon is effectively the cloud host for the immigration enforcement we’ve seen under the Trump administration, because without their data hosting services, it’d be difficult if not impossible for agencies like ICE to use many of the tools they use to track down immigrants and store all the personal data they keep on everyone.”

An MIT Technology Review article “Amazon is the invisible backbone of ICE’s immigration crackdown” as early as October 2018, made this incendiary association explicit.

While it is notable that the material or legal nexus between and the Company may be tenuous, Jeff Bezos and the Company’s website and marketing materials making explicit the Company’s commitment to Law Enforcement and products and services provided on issues of National Security, make this nexus, however tenuous or relatively immaterial, an explicit one. In point of fact, the ask in this resolution is for Board clarity on the process by which they discern the risk (presumably versus the material benefit) of User Violations of AWS Terms of Service standards on issues that are highly public, policy issues, raised by employees. Without study and without a process is it logical that there will be missed opportunities for pivoting and correction on activities in which risks outweigh the material benefit, a due-diligence failure that would put the Board in violation of its fiduciary duty.

The Company has a large team working on issues related to Sustainability and Corporate Responsibility. The Company has also produced and publicized its policies and practices on Sustainability which while commendable are not clarified with respect to AWS User activities in direct violation of principles of human rights, but are outlined in great detail with respect to practices and due-diligence in the Company’s other divisions and operations, (e.g. human rights and migrant rights issues as related to suppliers and products; AWS’ use of renewable energy; and products and services that have positive social and environmental impacts, etc.)

Investors of Palantir have made this case for their Company clear. The Investor Alliance for Human Rights, members currently represent a total of nearly US$4 trillion in assets under management and 18

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46 https://www.aboutamazon.com/sustainability
countries, outline in their report[^47] The Report states that ICE would not be able to properly function without Palantir and the human and civil rights abuses the operations raise.

Palantir’s ICM system allows ICE agents to access a vast amount of invasive and unauthorized personal data to facilitate discovering targets and creating and administering cases against them. Palantir’s FALCON mobile app is used by ICE agents during workplace and other mass raids, for which Palantir provides real-time technical support at ICE facilities in Northern Virginia. For example:

- “Palantir’s 2011 test run with ICE was meant to target “transnational criminal networks and terrorist organizations”, but of the 1,416 resulting arrests, 634 were for non-criminal immigration violations.”
- In 2017, the ICM system was used to track down and arrest 443 family members of migrant children who crossed the border alone, a precursor to the current family separation policy.
- In 2017, ICE agents used FALCON software[^9] in mass raids, including Operation Cross Check VII - MEGA, which targeted “all aliens who are present in the United States in violation of the Immigration and Nationality Act”, often resulting in the detention of as many ‘collaterals’ as ‘targets’.
- In 2018, ICE arrested 1,525 people for administrative worksite-related civil immigration violations in workplace raids (including almost 800 criminal arrests of majority undocumented workers), up from just 172 the previous year.
- In August of 2019, a workplace raid in Mississippi that similarly relied on Palantir systems resulted in the arrest of 680 migrant workers. In these and other cases, Palantir’s products and services significantly enhance the capacity of ICE to identify, detain and deport individuals and families, which, in turn, increases the number of people who have been subject to human rights harms perpetrated by ICE.

Palantir’s own employees have also started raising concerns over what they consider to be violations of the civil liberties of undocumented immigrants. Palantir is currently facing public pressure to break off its contracts with ICE, which has contracted approximately $200 million for the company’s ICM and FALCON applications[^48]:

- Palantir was dropped as a sponsor of the University of California at Berkeley’s Privacy Law Scholars Conference in June 2019 in response to a letter signed by over 140 academics citing the company’s “technologies that support federal immigration enforcement policies to profile and deport immigrants, detain children, prosecute families, and conduct surveillance on low-income communities that suffer disparate impacts of policing”.
- The Grace Hopper Celebration, the world’s largest conference for women in tech, dropped Palantir as a sponsor in August 2019 over its work with ICE. Lesbians Who Tech, a major LGBTQ tech group, also dropped the company as a sponsor of its 2019 job fair over its work with ICE.
- Protests have taken place at Palantir’s Palo Alto, New York, and Washington offices in 2018 and 2019, and coordinated actions by tech workers online have denounced its ICE contracts.
- In August 2019, Palantir employees said they want the company’s contracts with ICE to end, expressing distrust and frustration with Palantir’s leadership over increasing news about families being separated at the border. Over 60 employees signed a petition asking management to redirect profits from ICE contracts to a nonprofit charity.
- Sharespost identified criticism of the company’s relationship with ICE as a risk factor in its 2019 company report.
- In September 2019, over 1200 university students from 17 schools pledged not to work at Palantir until the company terminates its relationship with ICE. An overview of other material risks is outlined below. IPO cancellation: In 2019, Palantir shareholders and the business press speculated that the company is planning an initial public offering of its shares by 2020.15 However, in June 2019, Palantir co-founder Joe Lonsdale questioned the timing of the IPO, saying that it may be “years away”. In September 2019, Bloomberg reported that Palantir will delay its IPO at least three years. Palantir’s institutional capacity for an IPO has been one of the biggest concerns surrounding its IPO plans.

[^47]: November 2019, HUMAN RIGHTS RISKS BRIEFING: PALANTIR TECHNOLOGIES
[^48]: Federal contracting documents available at USASpending.gov and fbo.gov.
Even without a legal nexus tying Amazon to Palantir’s legal liability or even a legal nexus tying Palantir to legal liability for human and civil rights abuses involved in a government contract, with every legal challenge, with every article in the press that is bad press for Palantir will come brand and reputation risk for the Company.

Outcry focused on Amazon

- the protest and action during an Amazon AWS conference in New York City in which protestors blocked and shut down the West Side Highway in New York to protest Amazon’s customer relationship with Palantir due to their contract with DHS/ICE
- the No Tech for ICE campaign which is part and parcel of the Families Belong Together Coalition of 250 organizations seeking justice on the issue of immigrant rights, specifically the detention of children and separation of families through deportation and incarceration, seeking companies to divest their business ties to private prisons and government contracts with DHS and ICE, with the long-term goal of abolishing ICE. Employee letters, coordinated strikes, and disrupting recruitment efforts and corporate events and even protests at the homes of the CEOs of targeted companies are tactics used by these groups to protest these corporate relationships with DHS and ICE.
- Companies, like the major banks who have all largely been quick to pivot on this issue are wisely avoiding the costs of the branding and reputation risks caused to their companies by these contracts and business relationships.

I. Rule 14a-8(i)(7)


Mattel, Inc (avail. Feb. 10, 2012) related to a report related to the International Council of Toy Industries Code of Business Practices; and PetSmart, Inc. (avail. March. 24, 2011) related to legal compliance with the Animal Welfare Act, the Lacey Act, or any state law equivalents, which noted, “that the scope of the

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49 Thomson Reuters CLEAR services for ICE are required to be compatible with the analytics program that Palantir developed for ICE: “The Government’s requirement is that the database must be able to interface with FALCON Palantir systems. [Thomson Reuters subsidiary] West Publishing Corporation’s CLEAR program offers a system to system (S2S) connection that merges CLEAR public and proprietary data with Palantir analytical information to narrow in and locate persons and assets of interest.” Source: Limited Source Justification for General Services Administration Contract Award ID GS-02F-0405D, awarded to West Publishing Corporation and active from 10/1/2015 to 9/30/2020.
laws covered by the proposal is ‘fairly broad in nature from serious violations such as animal abuse to violations of administrative matters such as record keeping.”

Drawing a contrast to these decisions and the subject and ask in this Proposal, the Amazon.com (Domini) study was broad and did not raise a significant policy issue. The Walmart (2019) exclusion decision was also of possible risks of discrimination related to the company’s management of its workforce, which involves potential not proven risk and administrative matters that relate to a public policy issue but not of the magnitude of Crimes Against Humanity, Genocide, and numerous human and civil rights violations associated with a known business activity, currently in the public spotlight on the Company. The Bank of America Corp. decision was excluded by the Staff due to ordinary business on the grounds, including involving non-incentive-based compensation arrangements. The involvement of employment related policies and practices alone was not sufficient grounds for exclusion, but determination by the Staff on a case-by-case basis of the “social policy” issues and changing societal views.


“In applying the “ordinary business” exclusion to proposals that raise social policy issues, the Division seeks to use the most well-reasoned and consistent standards possible, given the inherent complexity of the task. From time to time, in light of experience dealing with proposals in specific subject areas, and reflecting changing societal views, the Division adjusts its view with respect to “social policy” proposals involving ordinary business. Over the years, the Division has reversed its position on the excludability of a number of types of proposals”.

The Mattel decision as well did involve administrative matters such as record keeping, while this Proposal seeks clarity on the process of assessing risk on matters related to violations of the AWS Terms of Service agreement, specifically "[a]ny activities that are illegal, that violate the rights of others, or that may be harmful to others, our operations or reputation" and further are raised by employees regarding highly public policy issues. It does not pertain to:

“a wide range of ordinary business matters covered under the Customer Agreement, such as compliance with content, assignment, and pricing provisions, license restrictions, procedures for termination of the Customer Agreement and the customer’s obligations upon termination, indemnification terms, and other provisions”.

These administrative concerns are not discussed in the proposal.

Precedent for inclusion of resolutions on risk due-diligence asks related to larger public policy issues even in matters of ordinary business

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

50 [https://www.sec.gov/rules/final/34-40018.htm](https://www.sec.gov/rules/final/34-40018.htm)
napalm during the Vietnam War. The proposal requested the Board of Directors adopt a resolution setting forth an amendment to the Composite Certificate of Incorporation of the Dow Chemical Company that napalm shall not be sold to any buyer unless that buyer gives reasonable assurance that the substance will not be used on or against human beings. In deciding Medical Committee, the court noted that it would be appropriate for shareholders to use the mechanism of shareholder democracy to pose “to their co-owners, in accord with applicable state law, the question of whether they wish to have their assets used in a manner which they believe to be more socially responsible.” The court further noted such a choice was not appropriately reserved to the board or management.

As stated in Medical Committee: [T]he clear import of the language, legislative history, and record of administration of section 14(a) is that its overriding purpose is to assure to corporate shareholders the ability to exercise their right — some would say their duty — to control the important decisions which affect them in their capacity as stockholders and owners of the corporation. (SEC v. Transamerica Corp., 163 F.2d 511, 517 (3d Cir. 1947), cert. denied, 332 U.S. 847, 68 S. Ct. 351, 92 L. Ed. 418 (1948)). * * * What is of immediate concern...is the question of whether the corporate proxy rules can be employed as a shield to isolate such managerial decisions from shareholder control. After all, it must be remembered that “[t]he control of great corporations by a very few persons was the abuse at which Congress struck in enacting Section 14(a).” SEC v. Transamerica Corp., supra, 163 F.2d at 518.

Strategic business choices regarding whether to operate in relationship with other companies, (in this case with customers) with large impacts on society have been baked into the shareholder proposal process since the Medical Committee decision, with the right of shareholders to file proposals on an array of strategic choices regarding issues such as human rights, discrimination, environmental impact, and climate change.

The SEC initially found the proposal was excludable. The appellate court in Medical Committee remanded the noaction decision to the SEC for further deliberation by the SEC consistent with the court’s conclusion that the SEC should defend the rights of shareholders to file proposals directed toward significant social issues facing a company.

Here, the Proposal would have shareholders vote on whether the Company should disclose the process of determining the material risks raised by violations of the AWS suite of Terms of Service contracts involving highly public policy issues brought to the board’s attention by employees. The fact that this Proposal involves matters concerning the customer relationship is not sufficient grounds for exclusion if the matter at hand is a matter of public policy.

While the Company Letter cites a series of Staff rulings in which exclusion was allowed in relation to discretion over customer relations and other ordinary business matters, the common thread in those cases is the lack of an overriding, significant policy issue. Viewing the larger body of Staff rulings, however, it is apparent that when the magnitude of a controversy relating to a company rises to the level of the one raised in this Proposal, it will lead the Staff to find a significant policy issue transcends ordinary business.

Proposals that involve matters of ordinary business, including product sales, corporate policy changes, and advertising practices, that the Staff denied exclusion in reliance on Rule 14a-8(i)(7), due to the presence of significant policy issues, are numerous.
For example Quaker Oats Company, (March 28, 2000), in which the proposal requested that the board (1) adopt a policy of removing genetically engineered crops, organisms, or products thereof from all products sold or manufactured by Quaker, where feasible, until long-term testing has shown that they are not harmful to humans, animals, and the environment, with the interim step of labeling and identifying these products, and (2) report to shareholders by August 2000. The Staff was unable to concur that the company was entitled to exclude the

Additionally in the proposal of Exxon Mobil Corporation (March 23, 2000) requesting the company adopt a policy to promote renewable energy sources, develop plans to help bring bioenergy and other renewable energy sources into Exxon’s energy mix and advise shareholders regularly on these efforts. The company argued that this was directing the company to undertake the sale of a specific product – renewable energy. The proponent argued that the proposal was focused on the transcendent policy issue of climate change, and the Staff declined to allow exclusion under Rule 14a-8(i)(7).

In UST Inc. (February 22, 1999), the Staff declined to allow exclusion of a proposal requesting that the board of a tobacco company implement a policy of submitting advertising campaigns to independent testing to ensure that they are not more appealing to children than to adults. The evidence presented by the proponents principally focused on a single New York Times article that described certain tobacco documents demonstrating that at least one of the nation’s largest cigarette companies had been, for decades, courting young smokers as young as 14, and regarding them as the future of their business. They described concrete strategies being deployed, such as the placement of advertising, and internal memoranda discussing that the “brand must increase its share penetration among the 14-24 age group.” In light of the degree to which the tobacco companies were directly in the crosshairs of public attention over these revelations, the content of advertising, so frequently treated as excludable, was in this instance found to transcend ordinary business.20

Resolutions that were denied exclusion by the Staff last year (2019) that were similar in both nature and subject matter (related to human rights issues and material risks to the company seeking disclosure or further study) include the following:

- Facebook Inc., filed by As You Sow Foundation which requested: “The Company publish a report (at reasonable cost, omitting proprietary or legally privileged information) evaluating its strategies and policies on content governance, including the extent to which they address human rights abuses and threats to democracy and freedom of expression, and the reputational, regulatory, and financial risks posed by content governance controversies.”

- Verizon Communications Inc., filed by Benedictine Sisters of Virginia; Christian Brothers Investment Services; Maryknoll Sisters; Proxy Impact; and Sisters of St. Dominic of Caldwell, NJ, in which shareholders requested, “that the Board of Directors issue a report on the potential sexual exploitation of children through the company’s products and services, including a risk evaluation, at reasonable expense and excluding proprietary or confidential information, by March 2020, assessing whether the company’s oversight, policies and practices are sufficient to prevent material impacts to the company’s brand reputation, product demand or social license.”
A similar resolution was not excluded from the ballot of Sprint Corporation, filed by Christian Brothers Investment Services

Wells Fargo & Company, filed by Service Employees International Union (SEIU) which requested a, “Report on Human Rights Risks Related to Immigrant Detention Wells Fargo & Company,: “RESOLVED, that shareholders of Wells Fargo & Company (“WFC”) urge the Board of Directors (the “Board”) to report to shareholders by December 31, 2019 on how WFC is identifying and addressing human rights risks to WFC related to the Trump Administration’s aggressive immigration enforcement policy, which aims to prosecute all persons who enter or attempt to enter the United States (U.S.), including the detention without parole of asylum seekers and the separation of minor children from parents accused of entering the U.S. illegally.”

Relatedly, in their resolution they state: “Banks recognize the reputational consequences of relationships with companies whose conduct is widely condemned in society. In 2018, Bank of America announced that it would no longer lend to companies that make military-style firearms for use by civilians.” 8


Importantly Wells Fargo did make a commitment to end lending relationships with private prison companies, due to this same issue of financing a maligned industry and companies targeted for divestment due to involvement in immigrant detention, the same divestment movement that is now targeting Palantir, the AWS User and other technology companies.

A similar resolution was submitted to Bank of America Corp. by SEIU but withdrawn. Bank of America also followed suit and severed its business relationship with lending to private prison companies.

These examples are not only similar in scope and subject matter, there is a historical precedent to be understood in their response to these reputational and other material risks to their companies posed by exposure to this incendiary issue. The banking sector has been keen assessing the material risks to their companies raised by shareholders related to the issue of immigrant detention and having business ties to entire industries that are being divested, boycotted and involved in litigation, large scale public outcry and existential regulatory scrutiny at the federal level.

In October 2017 JPMorgan Chase received an investor letter and began shareholder engagement on human rights issues associated with financing companies that detain immigrants. After engagement with shareholder advocates, JPMorgan Chase in March of 2019 was the first bank to publicly commit to ending new financing to private prison companies and avoided the filing of a shareholder resolution on this topic by adopting and demonstrating some implementation of a human rights policy on this issue. Wells Fargo and SunTrust were not able to exclude similar resolutions from their 2019 ballots but were quick to take the insight and leadership from their shareholders and JPMorgan’s example and also pivot early, making their own public divestment commitments. What followed was instructive. After public outcry, demonstrations, retail banking boycotts, and a national divestment movement of public pension funds and university endowments, Bank of America, BNP Paribas, Fifth Third Bancorp, and PNC all made their own divestment commitments by the close of the year. These companies followed suit seeing the writing on the wall for them with the risk of snowballing institutional divestment, regulatory risk, in addition to on-going public relations problems affecting their bottom-lines and share prices. Having begun the process of selling and/or retiring these loans and diversifying away from them, these companies were seen as corporate leaders on this issue and received several waves of positive press as

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each bank’s public commitments followed. Further, they were well-poised to weather the business solvency risk of loans to private prison companies as legislation like the California law (AB 32) came down in October 2019, phasing out private prisons in the state, followed by announcements from CalPERS and CalSTRS that they would be divesting holdings in private prison companies (following AB 33’s passage in the California Assembly requiring this of California’s public pensions). These moves followed Canada’s largest pension fund (July 2019), the New York State Pension plan (2018) and the Philadelphia Board of Pensions (2017), institutions that all divested private prisons as public outrage on this issue of human rights issues related to immigrant detention grew. Significantly, warnings of these loans being essentially toxic investment products came to these banks’ boards’ attention before all these material changes, through shareholder engagement and resolutions. Shareholders were able to offer the companies guidance on public sentiment and political trend analysis and companies first to receive and integrate this information benefited from business strategies that avoided these write-downs and material costs.

The Company’s Reputation is at Stake

In fact, importantly, Jeff Bezos has been vocal in support of immigrants and immigration writ large, particularly after the Muslim Ban was issued in 2017. In a widely publicized internal email he stated, “We’re a nation of immigrants whose diverse backgrounds, ideas, and points of view have helped us build and invent as a nation for over 240 years . . . No nation is better at harnessing the energies and talents of immigrants. It’s a distinctive competitive advantage for our country—one we should not weaken.”

It is this kind of principled corporate stance that has earned Amazon’s stock a top holding position in ESG fund manager portfolios internationally. Morningstar found, in the first six months of 2019 flows into funds that were identified as selected using ESG (environmental, social and governance) criteria, were over $8.9 billion. Gathering and analyzing the top holdings of the 29 funds that hold more than 80% of the ESG equity assets, the report found, Amazon, was the 14th most-held (by stock value) in the top holdings of 10 funds.

However, since the time that Bezos came out strongly in support of immigrants, President Trump enacted a Zero Tolerance policy on immigration in early 2018, involving separating minor children from parents and relatives, including those applying for asylum. This has prompted an escalating public outcry on the issue of immigrant rights and detention with the Department of Homeland Security and Immigration and Customs Enforcement. Corporations involved in contracts with the Department of

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53 gers/#7f6fd944a2dd. There is an increasingly wide range of research documenting the correlation between corporate attention to ESG and corporate financial performance. A good understanding of ESG risks facing portfolio companies helps manage potential financial impact on investment portfolios and avoid potential contribution to unlawful or unsustainable activities. Ruggie, John G. and Middleton, Emily K. Money, Millennials and Human Rights — Sustaining “Sustainable Investing. 2018; Cracking the ESG Code, Nordea Equity Research 2017.
Homeland Security as well as banking and financial entities extending lending to private prison companies have been subject to name and shame and divestment campaigns. Banks and technology companies have been among the first round of targets, as well as the private prison companies themselves.

Clarification Regarding the Nature of the Proposal’s Ask

The no action request also misinterpreted language in the Proposal. The Request states, “the Supporting Statement falsely claims that a boycott disrupted the Company’s operations during Prime Day 2019, when in fact Prime Day 2019 was the Company’s most successful Prime Day ever.” The Proposal stated, “Whereas, five hundred Amazon Web Services employees submitted a letter of opposition to this contract and civil society organizations staged protests outside an AWS meeting, shutting down the West Side Highway in New York City and prompting walk outs, strikes and boycotts at Whole Foods across the country, disrupting productivity, and affecting Amazon’s brand and hiring pipelines.” The Proposal notes all these actions and factors disrupted the productivity Amazon’s operations in physical locations where protests were taking place and affected Amazon’s brand and hiring pipelines reputation as these images and press circulated. See Appendix D for some examples.

The actual material risk of branding and reputational damage caused by the Company’s business relationships with Palantir or any companies providing mission critical infrastructure for immigrant deportation and detention operations is the Board’s responsibility to assess, as any other incendiary public policy issue raised by employees. The process of due-diligence to determine the net expected impact of this branding and reputational risk relative to any potential material upside, is precisely what this proposal seeks to be elucidated. Now being at the frontier of the private prison and detention divestment movement currently targeting tech companies, particularly Palantir and Amazon by proxy, is the stock at risk of no longer meeting ESG criteria to be held in some socially responsible portfolios? Has the company performed the due-diligence required to support this customer relationship decision sufficiently identifying the material gain outweighs the risks involved? If so, what is the process specific to such controversies of this scale? This is the Proposal’s ask.

See images in Appendix D of these actions and the association of Amazon with immigrant detention and human rights abuses, which were irrefutably disruptive for business.

Conclusion

This customer relationship with Palantir has led to an enormous public backlash – with extensive media coverage, opposition by the Company’s own employees, US congressional calls for oversight and movement of investors seeking divestment from any ownership of companies associated with

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https://techcrunch.com/2019/07/15/amazon-prime-day-protest/
deportation or detention of migrants. The current proposal, because it is focused on a set of high visibility controversies and concerns, is not excludable on the grounds of ordinary business.
APPENDIX A

AMAZON - 2020

Disclosure of Oversight Process of AWS User Violations of Terms of Service

Whereas, Amazon Web Services’ User Terms of Service state that, "[a]ny activities that are illegal, that violate the rights of others, or that may be harmful to others, our operations or reputation" may be grounds to "suspend or terminate" use of our services;

Whereas, Amazon Web Services user, Palantir, has a contract with the Department of Homeland Security, Immigration and Customs Enforcement, running custom software solutions to circumvent laws standing law in nine states and 173 cities and counties prohibiting law enforcement sharing data with that specific agency on individuals not charged or convicted of crimes;

Whereas, Palantir’s software captures, aggregates and analyzes data, many times gained from use of warrantless and unconstitutional strategies in communities of color comprised of US citizens and noncitizens which demonstrates unlawful bias. Further, Palantir’s analytics drive case managers to maximize data collection from the most effective sources including inappropriate targets. For example, several sources report Immigration and Customs Enforcement routinely apprehends children and holds them in custody without just cause, violating federal and state kidnapping laws and the agency’s authority (which belongs to the Office of Refugee Resettlement) and violates both the Trafficking Victims Protection Reauthorization Act and the Flores Agreement in detaining children and separating them from parents and caregivers against their best interests. In their handling of parents and caregivers they have been reported to repeatedly violate Fifth Amendment due process protections related to coercion and misrepresentation, failure to communicate rights including warnings against self-incrimination and to provide language translation;

Whereas, the Project on Government Oversight is suing Immigration and Customs Enforcement over the agency’s lack of compliance with Freedom of Information Act requests related to its data collection practices and technologies used;

Whereas, 500 Amazon Web Services employees submitted a letter of opposition to this contract and civil society organizations staged protests outside an AWS meeting, shutting down the West Side Highway in New York City and prompting walk outs, strikes and boycotts at Whole Foods across the country, disrupting productivity, and affecting Amazon’s brand and hiring pipelines;

Be it Resolved that Amazon disclose the process of reviewing the material risk to the company of Amazon Web Services Users’ violations of the Company’s Terms of Service, particularly concerns raised by employees regarding highly public policy issues, (omitting disclosure of any proprietary information).

\^ Center for Immigration Studies, Map: Sanctuary Cities, Counties, and States.


https://techcrunch.com/2019/07/15/amazonprime-day-protest/
Appendix B

Crimes Against Humanity – Legal Definition


The 1998 Rome Statute establishing the International Criminal Court (Rome Statute) is the document that reflects the latest consensus among the international community on this matter. It is also the treaty that offers the most extensive list of specific acts that may constitute the crime.

Definition

Rome Statute of the International Criminal Court

Article 7
Crimes Against Humanity

1. For the purpose of this Statute, ‘crime against humanity’ means any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack:
   a. Murder;
   b. Extermination;
   c. Enslavement;
   d. Deportation or forcible transfer of population;
   e. Imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law;
   f. Torture;
   g. Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity;
   h. Persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender as defined in paragraph 3, or other grounds that are universally recognized as impermissible under international law, in connection with any act referred to in this paragraph or any crime within the jurisdiction of the Court;
   i. Enforced disappearance of persons;
   j. The crime of apartheid;
   k. Other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health.

2. For the purpose of paragraph 1:
   a. ‘Attack directed against any civilian population’ means a course of conduct involving the multiple commission of acts referred to in paragraph 1 against any civilian population, pursuant to or in furtherance of a State or organizational policy to commit such attack;
Elements of the crime

According to Article 7 (1) of the Rome Statute, crimes against humanity do not need to be linked to an armed conflict and can also occur in peacetime, similar to the crime of genocide. That same Article provides a definition of the crime that contains the following main elements:

1. A physical element, which includes the commission of “any of the following acts”:
   a. Murder;
   b. Extermination;
   c. Enslavement;
   d. Deportation or forcible transfer of population;
   e. Imprisonment;
   f. Torture;
   g. Grave forms of sexual violence;
   h. Persecution;
   i. Enforced disappearance of persons;
   j. The crime of apartheid;
   k. Other inhumane acts.

2. A contextual element: “when committed as part of a widespread or systematic attack directed against any civilian population”; and

3. A mental element: “with knowledge of the attack”

The contextual element determines that crimes against humanity involve either large-scale violence in relation to the number of victims or its extension over a broad geographic area (widespread), or a methodical type of violence (systematic). This excludes random, accidental or isolated acts of violence. In addition, Article 7(2)(a) of the Rome Statute determines that crimes against humanity must be committed in furtherance of a State or organizational policy to commit an attack. The plan or policy does not need to be explicitly stipulated or formally adopted and can, therefore, be inferred from the totality of the circumstances.

In contrast with genocide, crimes against humanity do not need to target a specific group. Instead, the victim of the attack can be any civilian population, regardless of its affiliation or identity. Another important distinction is that in the case of crimes against humanity, it is not necessary to prove that there is an overall specific intent. It suffices for there to be a simple intent to commit any of the acts listed, with the exception of the act of persecution, which requires additional discriminatory intent. The perpetrator must also act with knowledge of the attack against the civilian population and that his/her action is part of that attack.
The definition of the crime of genocide as contained in Article II of the Genocide Convention was the result of a negotiating process and reflects the compromise reached among United Nations Member States in 1948 at the time of drafting the Convention. Genocide is defined in the same terms as in the Genocide Convention in the Rome Statute of the International Criminal Court (Article 6), as well as in the statutes of other international and hybrid jurisdictions. Many States have also criminalized genocide in their domestic law; others have yet to do so.

**Definition**

**Convention on the Prevention and Punishment of the Crime of Genocide**

**Article II**

*In the present Convention, genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:*

a. Killing members of the group;

b. Causing serious bodily or mental harm to members of the group;

c. Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;

d. Imposing measures intended to prevent births within the group;

e. Forcibly transferring children of the group to another group.

**Elements of the crime**

The Genocide Convention establishes in Article I that the crime of genocide may take place in the context of an armed conflict, international or non-international, but also in the context of a peaceful situation. The latter is less common but still possible. The same article establishes the obligation of the contracting parties to prevent and to punish the crime of genocide.

The popular understanding of what constitutes genocide tends to be broader than the content of the norm under international law. Article II of the Genocide Convention contains a narrow definition of the crime of genocide, which includes two main elements:

1. A *mental element*: the “intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such”; and

2. A *physical element*, which includes the following five acts, enumerated exhaustively:
- Killing members of the group
- Causing serious bodily or mental harm to members of the group
- Deliberately inflicting on the group conditions of life calculated to bring about its physical
destruction in whole or in part
- Imposing measures intended to prevent births within the group
- Forcibly transferring children of the group to another group

The intent is the most difficult element to determine. To constitute genocide, there must be a proven
intent on the part of perpetrators to physically destroy a national, ethnical, racial or religious group.
Cultural destruction does not suffice, nor does an intention to simply disperse a group. It is this special
intent, or *dolus specialis*, that makes the crime of genocide so unique. In addition, case law has
associated intent with the existence of a State or organizational plan or policy, even if the definition of
genocide in international law does not include that element.

Importantly, the victims of genocide are deliberately targeted - not randomly – because of their real or
perceived membership of one of the four groups protected under the Convention (which excludes
political groups, for example). This means that the target of destruction must be the group, as such, and
not its members as individuals. Genocide can also be committed against only a part of the group, as long
as that part is identifiable (including within a geographically limited area) and “substantial.”
Appendix D

Amazon Recruitment Efforts Protested

July 11, 2019 AWS Summit in NYC, mass actions, high profile arrests and shutting down of the West Side Highway
Headed to court this am on our #JewsAgainstICE civil disobedience arrest w/ @JFREJNYC @NeverAgainActn @truehrabbis.

I've got lots to atone for during these 10 days ... but occupying the Amazon store to protest their complicity in the deportation machine is not on that list.
ICYMI: We took over @amazon’s flagship store in NYC on Sunday for #TishaBAv to mourn the lives destroyed by ICE and to demand Amazon stop collaborating with the agency roundig people up and putting them in concentration camps. #JewsWontBeSilenced #NoTech4ICE

Approx 1,000 protesters rallied at an Amazon store in NYC

From NowThis ⚡

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Action at the Residence of Jeff Bezos
Amazon Prime Day Actions Across the Country, coordinated with Whole Foods Workers Strikes and Boycott Protests
January 24, 2020

VIA E-MAIL

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

Re: Amazon.com, Inc.
Shareholder Proposal of Dan Phung
Securities Exchange Act of 1934—Rule 14a-8

Ladies and Gentlemen:

This letter is to inform you that our client, Amazon.com, Inc. (the “Company”), intends to omit from its proxy statement and form of proxy for its 2020 Annual Meeting of Shareholders (collectively, the “2020 Proxy Materials”) a shareholder proposal (the “Proposal”) and statements in support (the “Supporting Statement”) thereof received from Dan Phung (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 a copy of this correspondence to the Proponent.

Rule 14a-8(k) and Staff Legal Bulletin No. 14D (Nov. 7, 2008) (“SLB 14D”) provide that shareholder proponents are required to send companies a copy of any correspondence that the proponents elect to submit to the Commission or the staff of the Division of Corporation Finance (the “Staff”). Accordingly, we are taking this opportunity to inform the Proponent that if he 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.
The Proposal states:

**Be it Resolved** that Amazon disclose the process of reviewing the material risk to
the company of Amazon Web Services Users’ violations of the Company’s Terms
of Service, particularly concerns raised by employees regarding highly public
policy issues, (omitting disclosure of any proprietary information).

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

**BASIS FOR EXCLUSION**

The Proposal properly may be excluded from the 2020 Proxy Materials pursuant to
Rule 14a-8(i)(7) because the Proposal relates to the Company’s ordinary business operations.

**BACKGROUND**

Amazon Web Services (“AWS”) is the world’s most comprehensive and broadly adopted cloud
service, offering customers a broad set of global cloud-based products and services that they can
use individually or together to create and support scalable applications for virtually any
workload. These service offerings include global compute, storage, database, and other service
offerings. With more than 175 services, AWS seeks to provide its millions of customers—from
start-ups to large enterprises—with the building blocks they need to support their work, be it
robotics or blockchain, business applications or analytics.

In order to access AWS and its extensive service offerings, customers must first create an AWS
account. To do so, customers must agree to the terms of a customer contract with AWS (the
“Customer Agreement”),¹ which incorporates by reference the AWS Service Terms (“Service
Terms”)² and the AWS Acceptable Use Policy (the “Acceptable Use Policy”).³ The Customer
Agreement establishes the framework for the contractual relationship between AWS and its
customers, addressing terms such as (i) access to AWS services, (ii) the customer’s

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between you and us regarding the subject matter of this Agreement”) and Section 14 (defining “Policies” to
include the Acceptable Use Policy, Privacy Policy, the Site Terms, the Service Terms, the Trademark Use
Guidelines, among others). Some customers enter into forms of customer agreements that contain differing
terms.


responsibilities including with respect to ownership of content, compliance with law, and backing up content, (iii) billing frequency, payment terms, and interest that may be charged after 30 days, (iv) customer representations regarding rights to content, licensing terms, and license restrictions, (v) representations as to trade compliance, and (vi) limitations on the ability to issue press releases or make other public communications regarding use of AWS. Under the Acceptable Use Policy, customers agree not to use to engage in prohibited uses of the web services offered by AWS, including (i) no illegal, harmful, or offensive use or content, (ii) no security violations, (iii) no network abuse, and (iv) no e-mail or other message abuse. The Service Terms set forth hundreds of provisions, conditions, and customer representations applicable to specific services provided by AWS.

Under Sections 6 and 7 of the Customer Agreement, AWS may suspend or terminate the right to access or use any portion or all of its service offerings immediately upon notice under various circumstances, including in the event AWS determines the customer or any of its end users are breaching the Customer Agreement (which as noted above, incorporates the terms of the Service Terms and the Acceptable Use Policy), if the customer has breached its payment obligations, or if a customer’s or end user’s use of a service “poses a security risk to the Service Offerings or any third party” or “could subject [AWS], [its] affiliates, or any third party to liability,” among other bases. 4 And under the Acceptable Use Policy, AWS prohibits certain uses of the web services offered by AWS and its affiliates. For example, the Acceptable Use Policy states that customers may not use AWS’ services “for any illegal, harmful, fraudulent, infringing or offensive use,” including “[a]ny activities that are illegal, that violate the rights of others, or that may be harmful to others, our operations or reputation.” This includes the violation of any laws related to privacy, discrimination, and civil rights. The Customer Agreement and Acceptable Use Policy also address matters related to changes to AWS services, service fees, indemnification, and network abuse, among others.

The Company has, and will continue to develop and implement, processes to enforce compliance with the Company’s policies related to AWS. AWS reserves the right to investigate any violation of the Acceptable Use Policy or misuse of the AWS site or its services, including removing, disabling access to, or modifying any violative content or resources. AWS may also report potentially illegal activities to law enforcement, regulators, and other appropriate third parties. Users are also able to directly report suspected abuse of AWS and violations of the Acceptable Use Policy directly to the Company.5

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4 See AWS Customer Agreement, Sections 6.1, 7.2. We note that the Proposal refers to the AWS “User Terms of Service”; however, the language quoted in the Proposal is actually from the Customer Agreement. For the purposes of this no-action request, “Terms of Service” shall refer to the Customer Agreement and the relevant integrated policies.

Office of Chief Counsel  
Division of Corporation Finance  
January 24, 2020  
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ANALYSIS

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

The Company may exclude the Proposal pursuant to Rule 14a-8(i)(7) because it broadly addresses the Company’s customer relations in the context of monitoring customers’ adherence and compliance with contracts. As discussed in more detail below, the Staff repeatedly has acknowledged that proposals addressing a company’s management of its relationship with customers implicate ordinary business concerns and has concurred with the exclusion of similar shareholder proposals under Rule 14a-8(i)(7).

A. The Ordinary Business Standard.

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

In the 1998 Release, the Commission stated that the underlying policy of the ordinary business exclusion is “to confine the resolution of ordinary business problems to management and the board of directors, since it is impracticable for shareholders to decide how to solve such problems at an annual shareholders meeting,” and identified two central considerations that underlie this policy. One of these is that “[c]ertain tasks are so fundamental to management’s ability to run a company on a day-to-day basis that they could not, as a practical matter, be subject to direct shareholder oversight.”

The Proposal requests the Company to disclose “the process of reviewing the material risk to the [C]ompany of Users’ violations of [AWS]’s Terms of Service, particularly concerns raised by employees regarding highly public policy issues.” The Proposal’s request for an explanation of the Company’s oversight of certain risks does not preclude exclusion if the underlying subject matter of the Proposal is ordinary business. The Staff explained in Staff Legal Bulletin No. 14E (Oct. 27, 2009) (“SLB 14E”) how it evaluates shareholder proposals that request a risk assessment:

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

Accordingly, the Staff has concurred with the exclusion of shareholder proposals seeking disclosures of a company’s risk assessments when the subject matter concerns ordinary business operations. See, e.g., Foot Locker, Inc. (avail. Mar. 3, 2017) (concurring in the exclusion of a proposal requesting management prepare a report outlining steps that the company is taking, or can take, to monitor the use of subcontractors by the company overseas because it related to the Company’s ordinary business operations, i.e., the manner in which the company monitored the conduct of its suppliers and subcontractors); Allstate Corp. (avail. Mar. 20, 2015) (concurring in the exclusion of a proposal requesting that the board prepare a report describing how the board identifies, oversees and analyzes civil rights risks as relating to the company’s ordinary business operations regarding the manner in which the company makes pricing determinations).

B. The Proposal May Be Excluded Under Rule 14a-8(i)(7) Because It Addresses Decisions Concerning The Company’s Customer Relations.

The Proposal is excludable pursuant to Rule 14a-8(i)(7) because it broadly addresses how the Company administers contractual relationships with its customers. The Proposal addresses “violations of the Company’s Terms of Service.” As reflected in the discussion above, AWS does not have a customer contract entitled “Terms of Service.” Instead, it has customer agreements, which incorporate many other provisions including its “Service Terms” and its “Acceptable Use Policy.” While the first paragraph of the Supporting Statement quotes a specific provision from the Acceptable Use Policy, AWS’s “Terms of Service” encompass all of the terms discussed the Background section of this letter. As discussed below, the Staff consistently has concurred that a company’s management of its customer relations are a part of a company’s ordinary business operations, and thus proposals relating to administration and enforcement of contractual terms with customers may be excluded under Rule 14a-8(i)(7).

The Staff consistently has concurred in the exclusion of proposals relating to how a company interacts with its customers and administers its customers’ accounts. For example, in Zions Bancorporation (avail. Feb. 11, 2008) the Staff concurred that a proposal requesting that a company implement a mandatory adjudication process prior to the termination of certain customer accounts related to “ordinary business operations (i.e., procedures for handling customers’ accounts).” See also Wells Fargo & Co. (Harrington Investments) (avail. Feb. 27, 2019) (concurring in exclusion of a proposal requesting an independent study for amendments to the company’s governance documents to enhance oversight of customer service and satisfaction,
finding that the proposal related to ordinary business operations regarding “decisions concerning the [c]ompany’s customer relations.”); TD Ameritrade Holding Corporation (avail. Nov. 20, 2017) (concurring in the exclusion of a proposal requesting that the company’s shareholders have the right to be clients of the company because it related to the company’s ordinary business operations (i.e. “policies and procedures for opening and maintaining customer accounts”)).

More specifically relevant to the Proposal, the Staff also has consistently concurred in exclusion of proposals addressing how a company monitors whether its relationship with its customers is facilitating illegal or inappropriate conduct. For example, in JPMorgan Chase & Co. (avail. Mar. 7, 2013) (“JPMorgan Chase 2013”), the proposal requested adoption of a policy to prevent customers from engaging in alleged illicit funds flows to terrorists or national entities operating against U.S. national security interests. The company argued that monitoring the way that customers used the company’s products, i.e., bank accounts, was a matter of ordinary business, and the Staff concurred with exclusion of the proposal on ordinary business grounds. See also JPMorgan Chase & Co. (Harrington) (avail. Feb. 17, 2011) (same); Bank of America Corp. (avail. Feb. 17, 2011) (same); Bank of America Corp. (avail. Jan. 6, 2010) (concurring in the exclusion under Rule 14a-8(i)(7) of a proposal requiring the company “to limit the banking services the [company could] provide to individuals the [p]roponent believe[d] [we]re illegal immigrants,” because the proposal sought to control the company’s “customer relations or the sale of particular services”); Citicorp (avail. Jan. 8, 1997) (concurring in the exclusion of a proposal seeking a report on internal company policies regarding the monitoring of illegal transfers through customer accounts because it relates to ordinary business matters).

Here, applying the standard set forth in SLB 14E, the subject matter of the risk report requested by the Proposal relates to how the Company is reviewing its customers’ compliance with contractual terms. The Proposal asks the Company to “disclose the process of reviewing the material risk to the [C]ompany of Users’ violations of [AWS]’s Terms of Service, particularly concerns raised by employees regarding highly public policy issues.” As noted above, AWS is the world’s most broadly adopted cloud service, with millions of customers, and it is a fundamental responsibility of management to decide how best to monitor customer compliance with contractual obligations under its customer agreements. Moreover, the “Terms of Service” encompass dozens or hundreds of contractual provisions addressing ordinary aspects of customer relations. For example, the Customer Agreement includes a range of provisions requiring customers to, among other requirements:

- ensure that their content and service offerings, and end users’ use of their content and service offerings, will not violate the Acceptable Use Policy or applicable law;

- not sell, transfer, or sublicense AWS log-in credentials and private keys; and

- own all right, title, and interest in and to their content and suggestions.
The Customer Agreement also addresses matters such as service fees, taxes, indemnification obligations, and trade compliance provisions, among others. All of these matters are implicated by the Proposal’s broad request for disclosure regarding the review of risks from “Users’ violations of [AWS]’s Terms of Service.” Thus, like the precedent discussed above, the Proposal addresses the Company’s relationships and interactions with existing customers, including management of existing customer contractual relationships and monitoring of customer compliance.

Decisions regarding how the Company oversees and enforces its polices related to AWS are a part of the daily operations of the Company that do not raise significant policy issues, and it is a fundamental responsibility of management to make decisions relating to the administration of the Company’s customer relationships. In making these decisions, the Company’s management must consider myriad factors, and balancing such interests is a complex task that is “so fundamental to management’s ability to run [the C]ompany on a day-to-day basis that [it] could not, as a practical matter, be subject to direct shareholder oversight.” See 1998 Release. Thus, the Proposal is comparable to those addressed in the precedent cited above where the Staff concurred that proposals addressing how the companies handled contractual disputes with their customers implicated the companies’ ordinary business matters.

In particular, the Proposal is comparable to the one considered in *JPMorgan Chase 2013*, where the proposal requested, among other things, monitoring customer compliance with the company’s banking policies and U.S. laws. Here as well, the Proposal at issue seeks to subject to shareholder oversight the Company’s decisions on how best to maintain customer relationships by calling for disclosure regarding the Company’s monitoring of risk from customers’ adherence to contractual obligations. As with the precedents cited above, because the Proposal relates to decisions concerning the Company’s customers, the Proposal may be excluded pursuant to Rule 14a-8(i)(7) as relating to the Company’s ordinary business operations.

Moreover, even if the Proposal is viewed as implicating possible use of AWS’s services in the conduct of illegal activity (which as discussed below, is not the case), it is not sufficient to make the Proposal transcend the ordinary business issue of enforcing contractual terms. For example, in *JP Morgan Chase 2013* and the other precedent cited above, the Staff concurred that monitoring customer conduct for possibly unlawful activity relates to a company’s ordinary business operations and does not raise an issue that otherwise transcends ordinary business. Moreover, the proposals in *JP Morgan Chase 2013* and the other precedent cited above were even more specifically addressed to possible unlawful conduct by a company’s customers than the Proposal. The Proposal, in contrast, requests a report generally on potential violations of AWS’s “Terms of Service.” Although the Supporting Statement contains several paragraphs alleging that an AWS customer and a U.S. government end user are engaged in unlawful or inappropriate conduct, much of the alleged conduct discussed in the Supporting Statement has no
connection to the use of AWS services.\(^6\) Because the connection between the subject addressed in the Proposal and allegedly unlawful conduct of a single AWS customer and end user is even more remote than that addressed in the *JP Morgan Chase 2013* and related precedent cited above, the Proposal more clearly implicates the Company’s ordinary business operations.


SLB 14E states that “[i]n those cases in which a proposal’s underlying subject matter transcends the day-to-day business matters of the company and raises policy issues so significant that it would be appropriate for a shareholder vote, the proposal generally will not be excludable under Rule 14a-8(i)(7) as long as a sufficient nexus exists between the nature of the proposal and the company.” The Staff reaffirmed this position in Note 32 of Staff Legal Bulletin No. 14H (Oct. 22, 2015), explaining “[w]hether the significant policy exception applies depends, in part, on the connection between the significant policy issue and the company’s business operations” and later adding in Staff Legal Bulletin No. 14K (Oct. 16, 2019) that “a policy issue that is significant to one company may not be significant to another.”

The Proposal does not transcend the Company’s ordinary business operations. References in the Supporting Statement to the potential implications of one customer’s and one end user’s conduct does not make the proposal rise above the Company’s ordinary business. For example, the Supporting Statement asserts that five hundred employees submitted a letter of opposition to the one contract cited in the Supporting Statement. However, the Company is one of the largest non-government employers in the world, with approximately 750,000 employees, so a petition signed by less than one one-thousandth of the Company’s employees does not result in an issue that transcends the Company’s ordinary business. Similarly, the Supporting Statement falsely claims that a boycott disrupted the Company’s operations during Prime Day 2019, when in fact Prime Day 2019 was the Company’s most successful Prime Day ever.\(^7\)

Even if a portion of the Supporting Statement or Proposal were viewed as potentially implicating significant policy issues, the Proposal is excludable because of its broad request for disclosure as to the Company’s oversight of customers’ compliance with all of AWS’s terms of service.

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\(^6\) For example, the Supporting Statement’s assertions that the Immigration and Customs Enforcement agency “routinely apprehends children and holds them in custody without just cause,” mishandles adults by failing to advise them of their rights, and is failing to comply with the Freedom of Information Act, have no relationship to the use of AWS cloud computing services.

Despite the Proposal’s attempt to potentially implicate a significant policy issue by referring to “concerns raised by employees regarding highly public policy issues,” the Staff has concurred with exclusion where a proposal encompasses topics that relate to ordinary business operations, as is the case here.  For example, in Amazon.com, Inc. (Domini Impact Equity Fund) (avail. Mar. 28, 2019) ("Amazon 2019"), the proposal requested that the board annually report to shareholders “its analysis of the community impacts of [the Company’s] operations, considering near- and long-term local economic and social outcomes, including risks, and the mitigation of those risks, and opportunities arising from its presence in communities.” In its no-action request, the Company successfully argued that “[e]ven if some of [the] issues that would be addressed in the report requested by the [p]roposal could touch upon significant policy issues within the meaning of the Staff’s interpretation, the [p]roposal is not focused on those issues, but instead encompasses a wide range of issues implicating the Company’s ordinary business operations within the meaning of Rule 14a-8(i)(7), and therefore may properly be excluded under Rule 14a-8(i)(7).” The Staff concurred and granted no-action relief under Rule 14a-8(i)(7) noting that “the [p]roposal relates generally to ‘the community impacts’ of the Company’s operations and does not appear to focus on an issue that transcends ordinary business matters.” See also Walmart Inc. (avail. Apr. 8, 2019) (concurring in the exclusion of a proposal requesting that the board prepare a report evaluating the risk of discrimination that may result from the company’s policies and practices for hourly workers taking absences from work for personal or family illness because it related to the company’s ordinary business operations, i.e., the company’s management of its workforce, and “[d]id not focus on an issue that transcends ordinary business matters”); Bank of America Corp. (avail. Feb. 19, 2014, recon. denied Mar. 10, 2014, Comm. review denied May 22, 2014) (concurring in the exclusion of a proposal that addressed compensation arrangements raising a significant policy issue because the proposal also encompassed non-incentive-based compensation arrangements that implicated the company’s ordinary business operations); Mattel, Inc. (avail. Feb. 10, 2012) (concurring in exclusion of a proposal that requested that the company require its suppliers to publish a report detailing their compliance with the International Council of Toy Industries Code of Business Practices, noting that the code encompasses “several topics that relate to . . . ordinary business operations and are not significant policy issues”); PetSmart, Inc. (avail. Mar. 24, 2011) (concurring in exclusion of a proposal requesting the board to require its suppliers to certify that they had not violated “the Animal Welfare Act, the Lacey Act, or any state law equivalents” noting that “[a]lthough the humane treatment of animals is a significant policy issue, we note your view that the scope of the laws covered by the proposal is ‘fairly broad in nature from serious violations such as animal abuse to violations of administrative matters such as record keeping’”).

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8 This standard prevents proponents from circumventing Rule 14a-8(i)(7) by combining ordinary business matters with a significant policy issue.
Here, the Proposal relates to “[u]sers’ violations of [AWS]’s Terms of Service, particularly concerns raised by employees regarding highly public policy issues.” Just as with the proposal in Amazon 2019, which encompassed “near- and long-term local economic and social outcomes,” even if a portion of the Proposal touches upon a significant policy issue, the Proposal may be excluded because it also encompasses aspects of the Company’s customer relations that implicate the Company’s ordinary business operations and does not focus on a significant policy issue. As discussed above, the broad language of the Proposal would require the Company to report on a wide range of ordinary business matters covered under the Customer Agreement, such as compliance with content, assignment, and pricing provisions, license restrictions, procedures for termination of the Customer Agreement and the customer’s obligations upon termination, indemnification terms, and other provisions, all of which are unrelated to the Proposal’s reference to “highly public policy issues.” Thus, like the proposals in Amazon 2019, Mattel, and PetSmart where companies were permitted to exclude proposals that attempted to address a significant policy issue but had broader ordinary business implications, the Proposal here addresses a broad range of ordinary business practices and thus may be excluded under Rule 14a-8(i)(7).

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 assistance in this matter, please do not hesitate to call me at (202) 955-8671, or Mark Hoffman, the Company’s Vice President & Associate General Counsel, Corporate and Securities, and Legal Operations, and Assistant Secretary, at (206) 266-2132.

Sincerely,

Ronald O. Mueller

Enclosures

cc: Mark Hoffman, Amazon.com, Inc.
   Dan Phung
November 21, 2019

Amazon, Inc.
Corporate Secretary
410 Terry Avenue North,
Seattle, Washington 98109

RE: Shareholder Proposal

Dear Corporate Secretary,

As a shareholder in Amazon, Inc. (AMZN), Dan Phung is filing the enclosed shareholder resolution with Amazon, Inc. for inclusion in Amazon, Inc.'s Proxy Statement and Shareholder Ballot for the 2020 annual meeting of shareholders.

Dan Phung is the beneficial owner of at least $2,000 worth of Amazon, Inc. stock. Dan Phung has held the requisite number of shares for over one year and plans to hold sufficient shares in Amazon, Inc. through the date of the annual shareholders' meeting. Verification of ownership will be included with this letter. I or a representative will attend the stockholders' meeting to move the resolution.

If you have any questions or would like to discuss the resolution, I can be contacted at ***

Sincerely,

Dan Phung

***
Disclosure of Oversight of Amazon Web Services User Violations of Terms of Service

Whereas, Amazon Web Services’ User Terms of Service state that, "[a]ny activities that are illegal, that violate the rights of others, or that may be harmful to others, our operations or reputation" may be grounds to "suspend or terminate" use of our services;

Whereas, Amazon Web Services user, Palantir, has a contract with the Department of Homeland Security, Immigration and Customs Enforcement, running custom software solutions to circumvent laws prohibiting law enforcement sharing data with that specific agency on individuals not charged or convicted of crimes which is standing law in nine states and one hundred and seventy three cities and counties;

Whereas, Palantir’s software captures, aggregates and analyzes data, many times gained from use of warrantless and unconstitutional strategies in communities of color comprised of US citizens and non-citizens which demonstrates unlawful bias. Further, Palantir’s analytics drive case managers to maximize data collection from the most effective sources including inappropriate targets, (for example, several sources report Immigration and Customs Enforcement routinely apprehends children and holds them in custody without just cause, violating federal and state kidnapping laws and the agency’s authority (which belongs to the Office of Refugee Resettlement) and violates both the Trafficking Victims Protection Reauthorization Act and the Flores Agreement in detaining children and separating them from parents and caregivers against their best interests). In their handling of parents and caregivers they have been reported to repeatedly violate Fifth Amendment due process protections related to coercion and misrepresentation, failure to communicate rights including warnings against self-incrimination and to provide language translation;

Whereas, the Project on Government Oversight is suing Immigration and Customs Enforcement over the agency’s lack of compliance with Freedom of Information Act requests related to its data collection practices and technologies used;

Whereas, five hundred Amazon Web Services employees submitted a letter of opposition to this contract and civil society organizations staged protests outside an AWS meeting, shutting down the West Side Highway in New York City and prompting walk outs, strikes and boycotts at Whole Foods across the country, disrupting productivity, and affecting Amazon’s brand and hiring pipelines;

Be it Resolved that Amazon disclose the process of reviewing the material risk to the company of Amazon Web Services Users’ violations of the Company’s Terms of Service, particularly concerns raised by employees regarding highly public policy issues, (omitting disclosure of any proprietary information).

5 https://www.huffpost.com/entry/amazon-prime-day-2019-boycott-strikes
November 21, 2019

DAN B PHUNG

To Whom It May Concern:

Thank you for the recent request in regard to the Individual: TOD Brokerage account ... which is owned by Dan B Phung, for which Fidelity Investments is the broker-dealer holding the account. Listed below is the information regarding the Amazon shares in the account.

On the 29th of April 2014, 66 shares of Amazon common stock, Symbol AMZN with CUSIP 023135106, were purchased in the account listed above. The shares have been held continuously in that account since the purchase.

At present, Amazon common stock has a 52-week low of $1,307.00, so the value of the shares was in excess of $2,000.00 for the last year.

Please note, this information is unaudited and is not intended to replace your monthly statement or official tax documents.

I hope this information is helpful. If you have any questions, please contact Fidelity Investments anytime at (800) 544-6666. We appreciate your business and value our relationship with you.

Sincerely,

David Winfrey

Help Desk, Client Services

Our file: W067705-18NOV19