

January 25, 2021

VIA E-MAIL

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

Re: *Amazon.com, Inc.*
Shareholder Proposal of the AFL-CIO Reserve Fund
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 2021 Annual Meeting of Shareholders (collectively, the “2021 Proxy Materials”) a shareholder proposal (the “Proposal”) and statements in support thereof (the “Supporting Statement”) received from the AFL-CIO Reserve Fund (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 2021 Proxy Materials with the Commission; and
- concurrently sent copies of this correspondence to the Proponent.

Rule 14a-8(k) and Staff Legal Bulletin No. 14D (Nov. 7, 2008) (“SLB 14D”) provide that 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 the Proponent elects to submit additional correspondence to the Commission or the Staff with respect to the Proposal, a copy of that correspondence should be furnished concurrently to the undersigned on behalf of the Company pursuant to Rule 14a-8(k) and SLB 14D.

Office of Chief Counsel
Division of Corporation Finance
January 25, 2021
Page 2

THE PROPOSAL

The Proposal states:

Resolved: Shareholders request that the Board of Directors of Amazon.com Inc. (the “Company”) adopt a policy for improving workforce diversity by requiring that the initial pool of candidates from which new employees are hired by the Company shall include, but need not be limited to, qualified women and minority candidates (a “Diverse Candidate Search Policy”).

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

BASES FOR EXCLUSION

The Company fully supports the objective of this Proposal, which is to improve workforce diversity, and as discussed below and on the Company’s website, the Company has many programs in place across its worldwide operations that are designed to achieve that objective. Moreover, the Company’s leadership has indicated its commitment to advancing diversity, equity, and inclusion as well as fostering a Company culture that values and respects diversity and inclusion within the Company, and thus the Company has put into place many policies and programs that fully align with the objective of the Proposal. Accordingly, we respectfully request that the Staff concur in our view that the Proposal may properly be excluded from the 2021 Proxy Materials pursuant to Rule 14a-8(i)(10) because the Company has substantially implemented the Proposal.

In addition, because the Proposal is focused on the hiring process, addressing how the Company “widens the talent pool” from which it recruits, the Proposal falls within the scope of the Commission’s long-standing position relating to ordinary business operations (management of a company’s workforce). As well, the Proposal seeks to micromanage the Company’s diversity recruiting processes across a huge range of circumstances, many of which are more effectively handled through the Company’s existing workplace diversity programs. Accordingly, we believe that the Proposal may be excluded from the 2021 Proxy Materials pursuant to Rule 14a-8(i)(7) since it addresses the Company’s ordinary business operations and micromanages the Company by seeking to impose specific methods for implementing complex policies.

Office of Chief Counsel
Division of Corporation Finance
January 25, 2021
Page 3

BACKGROUND

Diversity, equity, and inclusion are enduring values for the Company, which takes very seriously its commitment to diversity and respect for people from all backgrounds, including gender, race, ethnicity, religion, sexual orientation, veteran status, and disability. This Company-wide commitment to diversity and inclusion in hiring and in the workplace is reflected in the Company's policies¹ and its position statements.²

Given the size, scope, and diversity of its operations, the Company's businesses utilize numerous programs that focus on recruiting women and underrepresented racial/ethnic minorities to advance and implement the Company's diverse hiring commitment. As a result, each of the Company's businesses have diverse recruiting strategies whereby they engage in targeted outreach to women, underrepresented minorities, and other groups to encourage them to apply for jobs at the Company. For example, the Company participates in events and partnerships with groups like AnitaB.org, GEM Consortium Fellows, AfroTech, Lesbians Who Tech, Girls in Tech, and the American Indian Science and Engineering Society, and the Company is collaborating with Management Leadership for Tomorrow ("MLT"), which partners with more than 150 leading companies, social sector organizations, and universities to strengthen recruitment and retention of Black, Latinx, and Native American talent. The Company is one of twelve launch employers participating in the MLT Black Equity at Work Certification Program, which is a clear and comprehensive standard that requires employers to make meaningful progress toward achieving Black equity internally while supporting Black equity in society.³ Other examples of the Company's efforts to recruit women and underrepresented racial/ethnic minority talent include recruiting from diverse colleges and universities (including Historically Black Colleges and Universities ("HBCUs"), Hispanic Serving Institutions, women's colleges,

¹ See, e.g., Amazon.com Code of Business Conduct and Ethics, available at <https://ir.aboutamazon.com/corporate-governance/documents-and-charters/code-of-business-conduct-and-ethics/default.aspx> ("Amazon.com provides equal opportunity in all aspects of employment and will not tolerate any illegal discrimination or harassment of any kind. For more information, see the Amazon.com policies on Equal Employment Opportunity and Workplace Harassment in the Amazon.com Owner's Manual"); Amazon Global Human Right Principles, available at <https://sustainability.aboutamazon.com/people/human-rights/principles> ("As outlined in our Code of Business Conduct and Ethics, we do not tolerate discrimination").

² See <https://www.aboutamazon.com/about-us/our-positions> ("Diversity and inclusion are good for business—and more fundamentally—simply right").

³ See <https://www.mltblackequityatwork.org>.

Office of Chief Counsel
Division of Corporation Finance
January 25, 2021
Page 4

and tribal colleges), hosting hiring fairs within underrepresented communities around the world, and committing to the HBCU Partnership Challenge to support greater engagement between private companies and HBCUs.

Throughout 2020, the Company also hosted several hiring fairs and career enrichment summits to partner with underrepresented communities around the world. These included Amazon Career Day in September 2020, a virtual event with over 300,000 attendees that was designed to help people—regardless of their level of experience, professional field, or background—find new opportunities either at the Company or another company, and the Represent the Future, Success is Inclusive Summit in October 2020, a virtual career enrichment experience designed to uplift Black, Latinx, and Native American professionals of all backgrounds and experience levels. The Company’s diversity and inclusion website⁴ and sustainability report⁵ provide other examples of the many proactive recruitment and hiring practices taken to promote gender and racial diversity and inclusion in the Company’s workforce.

To oversee and support its workplace diversity and inclusion commitment, the Company has a full-time director of inclusion, diversity, and equity who reports directly to the chief human resources officer and a staff of hundreds of professionals in the Company’s central diversity, equity, and inclusion organization and in teams embedded in the Company’s businesses who are devoted full-time to promoting diversity, equity, and inclusion goals, initiatives, and mechanisms.

These programs and personnel operate to implement the Company’s company-wide diversity and inclusion commitment. For example, in 2020, the Company set and achieved a goal to double the number of Black directors and vice presidents at the Company, and the Company is committed to doubling representation again in 2021.

⁴ See <https://www.aboutamazon.com/workplace/diversity-inclusion>.

⁵ See All In: Staying the Course on Our Commitment to Sustainability, available at <https://sustainability.aboutamazon.com/pdfBuilderDownload?name=sustainability-all-in-september-2020>.

Office of Chief Counsel
Division of Corporation Finance
January 25, 2021
Page 5

ANALYSIS

I. The Proposal May Be Excluded Under Rule 14a-8(i)(10) Because The Company Has Substantially Implemented The Proposal.

A. The Substantial Implementation Standard.

Rule 14a-8(i)(10) permits a company to exclude a shareholder proposal from its proxy materials if the company has “substantially implemented” the proposal. The Commission stated in 1976 that the predecessor to Rule 14a-8(i)(10) was “designed to avoid the possibility of shareholders having to consider matters which already have been favorably acted upon by the management.” Exchange Act Release No. 12598 (July 7, 1976) (“1976 Release”). Originally, the Staff narrowly interpreted this predecessor rule and concurred with the exclusion of a proposal only when proposals were “‘fully’ effected” by the company. *See* Exchange Act Release No. 19135 (Oct. 14, 1982). By 1983, the Commission recognized that the “previous formalistic application of [the Rule] defeated its purpose” because proponents were successfully avoiding exclusion by submitting proposals that differed from existing company policy in minor respects. Exchange Act Release No. 20091, at § II.E.6. (Aug. 16, 1983) (“1983 Release”). Therefore, in the 1983 Release, the Commission adopted a revised interpretation of the rule to permit the omission of proposals that had been “substantially implemented,” and the Commission codified this revised interpretation in Exchange Act Release No. 40018, at n.30 (May 21, 1998) (the “1998 Release”).

Applying this standard, when a company can demonstrate that it already has taken actions to address the underlying concerns and essential objectives of a shareholder proposal, the Staff has concurred that the shareholder proposal has been “substantially implemented” and may be excluded as moot. The Staff has noted that “a determination that the company has substantially implemented the proposal depends upon whether [the company’s] particular policies, practices and procedures compare favorably with the guidelines of the proposal.” *Walgreen Co.* (avail. Sept. 26, 2013); *Texaco, Inc.* (avail. Mar. 6, 1991, *recon. granted* Mar. 28, 1991).

At the same time, a company need not implement a proposal in exactly the same manner set forth by the proponent. In *General Motors Corp.* (avail. Mar. 4, 1996), the company observed that the Staff has not required that a company implement the action requested in a proposal exactly in all details but has been willing to issue no-action letters under the predecessor of Rule 14a-8(i)(10) in situations where the “essential objective” of the proposal had been satisfied. The company further argued, “[i]f the mootness requirement [under the predecessor rule] were applied too strictly, the intention of [the rule]—permitting exclusion of ‘substantially implemented’ proposals—could be evaded merely by including some element in the proposal

Office of Chief Counsel
Division of Corporation Finance
January 25, 2021
Page 6

that differs from the registrant's policy or practice." Therefore, if a company has satisfactorily addressed both the proposal's underlying concerns and its "essential objective," the proposal will be deemed "substantially implemented" and, therefore, may be excluded. *See, e.g., Quest Diagnostics, Inc.* (avail. Mar. 17, 2016); *Exelon Corp.* (avail. Feb. 26, 2010); *Anheuser-Busch Companies, Inc.* (avail. Jan. 17, 2007); *ConAgra Foods, Inc.* (avail. July 3, 2006); *Johnson & Johnson* (avail. Feb. 17, 2006); *Talbots* (avail. Apr. 5, 2002); *Masco Corp.* (avail. Mar. 29, 1999); *The Gap, Inc.* (avail. Mar. 8, 1996).

The Staff has concurred that, when substantially implementing a shareholder proposal, companies can address aspects of implementation in ways that may differ from the manner in which the shareholder proponent would implement the proposal. *Johnson & Johnson* (avail. Feb. 17, 2006) (concurring with the exclusion of a proposal that requested the company to confirm the legitimacy of all current and future U.S. employees was substantially implemented because the company had verified the legitimacy of over 91% of its domestic workforce); *PPG Industries, Inc.* (avail. Jan. 19, 2004) (concurring with the exclusion under Rule 14a-8(i)(10) of a proposal requesting the board adopt a policy statement "generally committing [the company] to the elimination of product testing on animals" in favor of alternative product testing methods, where the company had already issued an "animal welfare policy committing the company to use alternatives to animal testing").

Moreover, the Staff has consistently concurred with the exclusion of shareholder proposals that, like the Proposal, ask the company to adopt a policy where the company has already accomplished the essential objective of the policy. *See also Amazon.com, Inc. (Öhman Fonder)* (avail. Mar. 27, 2020) (concurring with the exclusion of a proposal requesting the Company to adopt a "comprehensive policy applicable to [the Company]'s operations and subsidiaries that commits the [C]ompany to respect human rights" where the Company had a well-established human rights policy); *The Wendy's Co.* (avail. Apr. 10, 2019) (concurring with the exclusion of a proposal requesting that the company report on its "process for identifying and analyzing potential and actual human rights risk of operations and supply chain" where "the [c]ompany's public disclosures compare[d] favorably with the guidelines of the [p]roposal"); *Exelon Corp.* (avail. Feb. 26, 2010) (concurring with the exclusion under Rule 14a-8(i)(10) of a proposal that requested a report on different aspects of the company's political contributions when the company had already adopted its own set of corporate political contribution guidelines and issued a political contributions report that, together, provided "an up-to-date view of the [c]ompany's policies and procedures with regard to political contributions"); *Freeport-McMoRan Copper & Gold Inc.* (avail. Mar. 5, 2003) (concurring with the exclusion under Rule 14a-8(i)(10) of a proposal requesting that the board amend its human rights policy as

Office of Chief Counsel
Division of Corporation Finance
January 25, 2021
Page 7

substantially implemented when the company's existing policies addressed the subject matter of the proposal).

B. The Policies And Programs Implementing The Company-Wide Diversity And Inclusion Commitment Substantially Implement The Proposal.

The Proposal requests that the Board “adopt a policy for improving workforce diversity” in order to “further enhance [the Company’s] own diversity efforts” by requiring that “the initial pool of candidates from which new employees are hired by the Company shall include, but need not be limited to, qualified women and minority candidates.” The Company’s existing policies and programs implementing the Company-wide diversity and inclusion commitment compare favorably with and substantially implement the Proposal because they achieve the Proposal’s essential objective of improving workforce diversity by “[widening] the talent pool by requiring a diverse set of candidates for consideration before a hiring decision is made.”

As disclosed on the Company’s website, the Company values and promotes diversity and inclusion in every aspect of its business and at every level of its organization. Moreover, in addition to the Company-wide policies and programs, the Company already has numerous programs across all of the Company’s businesses that are designed to achieve the same essential objective as the Proposal of widening the talent pool from which the Company recruits to advance the Company’s diversity and inclusion commitment. While the Company’s approach to this essential objective is not identical to the policy requested in the Proposal, it still achieves the Proposal’s essential objective of improving workforce diversity.

In this respect, the Company’s approach is similar to that considered by the Staff in *PACCAR Inc.* (avail. Jan. 31, 2020), where the Staff concurred with the exclusion under Rule 14a-8(i)(10) of a shareholder proposal requesting that the board of directors “adopt a policy for improving board and top management diversity . . . requiring that the initial lists of candidates from which new management-supported director nominees and chief executive officers . . . recruited from outside the company are chosen by the board or relevant committee . . . include qualified female and racially/ethnically diverse candidates.” The company asserted that it had substantially implemented the proposal’s request with respect to directors by amending its governing documents⁶ and with respect to “top management” through other means. Specifically, the company noted that lists regarding external searches for candidates were “not relevant” because the company’s actual practice for chief executive officer appointments consisted of internal

⁶ The board of directors approved changes to the board membership guidelines, which then stated “initial lists of candidates from which new director nominees are chosen will include qualified female and racially/ethnically diverse candidates.”

Office of Chief Counsel
Division of Corporation Finance
January 25, 2021
Page 8

promotions to the position. However, the company argued that the proposal's essential objective was still accomplished through its internal diversity and inclusion programs, including diversity councils and leadership programs, even though the proposal requested a diversity policy regarding external chief executive officer searches. *See also, Wal-Mart Stores, Inc.* (Mar. 30, 2010) (concurred with exclusion under Rule 14a-8(i)(10) that the company's existing Global Sustainability Report, which was available on the company's website, substantially implemented the proposal's request for the company adopt six principles for national and international action to stop global warming, even though the Global Sustainability Report set forth only four principles). Thus, just as in *PACCAR* and *Wal-Mart Stores, Inc.*, the Company has addressed the Proposal's essential objective, albeit in a different manner than set forth in the Proposal based on the Company's own analysis of its U.S. workforce.

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

A. Background On The Ordinary Business Standard Under Rule 14a-8(i)(7).

Pursuant to Rule 14a-8(i)(7), a shareholder proposal may be excluded from a company's proxy materials if it "deals with a matter relating to the company's ordinary business operations." According to the Commission release accompanying the 1998 amendments to Rule 14a-8, the term "ordinary business" "refers to matters that are not necessarily 'ordinary' in the common meaning of the word," but instead the term "is rooted in the corporate law concept providing management with flexibility in directing certain core matters involving the company's 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. The first is that "[c]ertain tasks are so fundamental to management's ability to run a company on a day-to-day basis that they could not, as a practical matter, be subject to direct shareholder oversight." Accordingly, even if a proposal touches upon a significant policy issue, the proposal may be excludable on ordinary business grounds if the proposal does not transcend a company's ordinary business. The second consideration is related to "the degree to which the proposal seeks to 'micro-manage' the company by probing too deeply into matters of a complex nature upon which shareholders, as a group, would not be in a position to make an informed judgment." *Id.* (citing Exchange Act Release No. 12999 (Nov. 22, 1976)).

Office of Chief Counsel
Division of Corporation Finance
January 25, 2021
Page 9

The 1998 Release distinguishes proposals pertaining to ordinary business matters from those involving “significant social policy issues,” the latter of which are not excludable under Rule 14a-8(i)(7) because they “transcend the day-to-day business matters and raise policy issues so significant that it would be appropriate for a stockholder vote.” *Id.* Examples of the ordinary business tasks cited by the Commission include “*management of the workforce, such as the hiring, promotion, and termination of employees, decisions on production quality and quantity, and the retention of suppliers.*” 1998 Release (emphasis added). When assessing proposals under Rule 14a-8(i)(7), the Staff considers the terms of the resolution and its supporting statement as a whole. *See* Staff Legal Bulletin No. 14C, part D.2 (June 28, 2005) (“In determining whether the focus of these proposals is a significant social policy issue, we consider both the proposal and the supporting statement as a whole.”).

B. The Proposal May Be Excluded Under Rule 14a-8(i)(7) Because It Relates To The Company’s Management Of Its Workforce.

The Proposal requests that the Company “adopt a policy . . . requiring that the initial pool of candidates from which new employees are hired” must “include, but need not be limited to, qualified women and minority candidates . . .” While the Supporting Statement acknowledges “the many steps that our Company has already taken to promote diversity, equity and inclusion,” the Proposal seeks to layer on one more Company-wide policy addressing how the Company advances its diversity and inclusion commitment across the Company’s global enterprise. As discussed below, because the Company is fully aligned with and already has in place policies and programs that it believes are more effectively designed to address the goals of the Proposal, the Proposal does not raise a transcendent policy issue for the Company, but instead addresses the Company’s day-to-day operations. Notably, because the Proposal is focused on the Company’s hiring process with respect to all employees, the Proposal is readily distinguishable from proposals that focus on corporate governance issues such as the selection of members of the board of directors.⁷

⁷ In 2018, the Company formalized its existing practice in the selection of director candidates by amending its Corporate Governance Guidelines to provide that the Board’s Nominating and Corporate Governance Committee includes, and has any search firm that it engages include, women and minority candidates in the pool from which the Committee selects director candidates. Specifically, the Company’s corporate governance guidelines state, “In selecting candidates for recommendation to the Board, the Nominating and Corporate Governance Committee . . . considers . . . diversity with respect to race, gender, geography, and areas of expertise. Accordingly, the Nominating and Corporate Governance Committee includes, and has any search firm that it engages include, women and minority candidates in the pool from which the Committee selects

Office of Chief Counsel
Division of Corporation Finance
January 25, 2021
Page 10

The Commission and Staff have long held that shareholder proposals relating to the management of the company's workforce or workplace environment, including the relationship with its employees, are excludable under Rule 14a-8(i)(7). Notably, in *United Technologies Corp.* (avail. Feb. 19, 1993) ("*United Technologies*"), the Staff provided the following examples of excludable ordinary business categories: "employee health benefits, general compensation issues not focused on senior executives, management of the workplace, employee supervision, labor-management relations, *employee hiring* and firing, conditions of the employment and employee training and motivation" (emphasis added). In the 1998 Release, the Commission subsequently recognized that the "management of the workforce, such as the *hiring, promotion, and termination of employees*" (emphasis added) constitute "tasks . . . 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." *See also Northrop Grumman Corp.* (avail. Mar. 18, 2010) (concurring in the exclusion of a proposal requesting the board provide certain disclosures in the context of the company's reduction-in-force review process and noting "[p]roposals concerning a company's management of its workforce are generally excludable under [R]ule 14a-8(i)(7)").

Consistent with *United Technologies* and the 1998 Release, the Staff has consistently recognized that proposals pertaining to the management of a company's workforce are excludable under Rule 14a-8(i)(7). Proposals addressing how a company manages its relationships with its employees, including how the Company identifies, interviews, and hires its employees, implicate complex considerations that are not appropriately addressed through the shareholder proposal process. For example, in *Merck & Co.* (avail. Mar. 6, 2015) ("*Merck*"), the Staff concurred with the exclusion of a proposal requiring that the company fill only entry-level positions with outside candidates and revert to its original policy of developing individuals for its higher-level research and management positions exclusively from the ranks of its longtime employees. The company argued that because the proposal sought to mandate how the company hired and promoted employees, the proposal "[fell] directly within the ordinary business exclusion." In its concurrence, the Staff specifically noted that because the proposal "relates to procedures for hiring and promoting employees," it therefore concerns the "company's management of its workforce" and is excludable under Rule 14a-8(i)(7), as relating to the company's ordinary business operations. *See also Bristol-Myers Squibb Co.* (avail. Jan. 7, 2015); *The Walt Disney Co.* (avail. Nov. 24, 2014, *recon. denied* Jan. 5, 2015); *Costco Wholesale Corp.* (avail. Nov. 14, 2014, *recon. denied* Jan. 5, 2015); *Deere & Co.* (avail. Nov. 14, 2014, *recon. denied* Jan. 5,

director candidates." The Proposal seeks to expand this practice to apply across the Company's worldwide hiring activities, without regard to whether existing programs are more effective at actually increasing diversity or to whether the proposed practice can even be applied to specific contexts.

Office of Chief Counsel
Division of Corporation Finance
January 25, 2021
Page 11

2015) (in each case, determining that a proposal seeking to change employee anti-discrimination policies to protect employee participation in the political process was excludable under Rule 14a-8(i)(7), because the relationship between the employee and company was part of the day-to-day operations of the company); *Starwood Hotels & Resorts Worldwide, Inc.* (avail. Feb. 14, 2012) (“*Starwood*”) (permitting exclusion of a proposal requesting that management require verified U.S. citizenship for all workers in the U.S. and minimize required training for foreign workers in the U.S. because the proposal “relates to procedures for hiring and training employees” and that “[p]roposals concerning a company’s management of its workforce are generally excludable” under Rule 14a-8(i)(7)); *Wells Fargo & Co.* (avail. Feb. 22, 2008) (concurring that a proposal requesting a policy to not employ individuals who worked at a credit rating agency within the last year could be excluded because it related to “ordinary business operations (i.e., the termination, hiring, or promotion of employees)”).

Like the proposals excluded in the precedents above, the Proposal relates to how the Company manages its workforce and, specifically, how the Company advances diversity and inclusion within its global workforce through its interview and hiring practices. By seeking to dictate how the Company goes about interviewing and hiring employees at all levels within the organization in order to achieve the Company’s existing diversity and inclusion commitment, the Proposal does not raise a significant policy issue, but instead implicates the types of complex workplace-oriented matters that Rule 14a-8(i)(7) is intended to address. Decisions regarding how the Company recruits, interviews, and hires diverse employees are, like the employment objectives addressed in *Merck* and *Starwood*, “multi-faceted, complex and based on a range of factors beyond the knowledge and expertise of the shareholders.”⁸ Hiring policies and procedures that are designed to promote diversity across the Company’s workforce, and determinations with respect to such policies and procedures, are complex but routine aspects of managing the Company’s business.

C. *Although Concerned With The Significant Policy Issue Of Diversity And Inclusion, The Proposal Does Not Transcend The Company’s Ordinary Business.*

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,

⁸ *The Walt Disney* (avail. Nov. 24, 2014, recon. denied Jan. 5, 2015).

Office of Chief Counsel
Division of Corporation Finance
January 25, 2021
Page 12

on the connection between the significant policy issue and the company's business operations," and later stated in Staff Legal Bulletin No. 14K that it "believe[s] the focus of an argument for exclusion under Rule 14a-8(i)(7) should be on whether the proposal deals with a matter relating to that company's ordinary business operations or raises a policy issue that transcends that company's ordinary business operations." Staff Legal Bulletin No. 14K (Oct. 16, 2019) ("SLB 14K").

The Staff has made clear that the mere fact that a proposal is framed to invoke issues that, in different contexts, have been found to implicate significant policy issues is not sufficient to raise a significant social policy issue that transcends day-to-day business matters. For example, in *Walmart Inc.* (avail. Mar. 6, 2020) ("*Walmart 2020*"), the Staff concurred with the exclusion under Rule 14a-8(i)(7) of a proposal requesting a report "on the use of contractual provisions requiring employees of Walmart to arbitrate employment-related claims" where the proposal's supporting statement raised issues including discrimination, sexual harassment, and wage theft. The company argued that the proposal's invocation of such issues was insufficient to preclude exclusion given the proposal's focus on the company's management of its workforce. Similarly, in *Walmart Inc.* (avail. Apr. 8, 2019) ("*Walmart 2019*"), the Staff concurred in the exclusion of a proposal requesting 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 "generally to the [c]ompany's management of its workforce, and [did] not focus on an issue that transcends ordinary business matters." See also *JPMorgan Chase & Co.* (avail. Mar. 9, 2015) (concurring with the exclusion of a proposal requesting the company amend its human rights-related policies "to address the right to take part in one's own government free from retribution" because the proposal related to the company's "policies concerning its employees"); *CVS Health Corp.* (avail. Feb. 27, 2015) (concurring in the exclusion of a proposal requesting that the company "amend its equal employment opportunity policy . . . to explicitly prohibit discrimination based on political ideology, affiliation or activity," finding that the proposal did not focus on a significant social policy issue, as it related to the company's policies "concerning its employees"); *Apache Corp.* (avail. Mar. 5, 2008) (concurring with the exclusion of a proposal requesting the implementation of equal employment opportunity policies based on certain principles and noting that "some of the principles relate to [the company's] ordinary business operations").

Here, the Proposal does not raise a transcendent policy issue with respect to the Company, as the Company is fully aligned with the objective of the Proposal. Specifically, the Company's policies are already aligned with the objective of the Proposal of "improving workforce diversity." The Proposal instead is focused simply on whether the Proponent is better able to suggest a process for achieving that objective than the policies and programs that the Company

Office of Chief Counsel
Division of Corporation Finance
January 25, 2021
Page 13

already has in place and that its diversity, equity, and inclusion professionals already actively manage to advance the Company's diversity and inclusion commitment. As discussed above, the processes through which the Company identifies, interviews, and hires employees at all levels within the organization have been recognized repeatedly by the Staff as "fundamental to management's ability to run a company on a day-to-day basis." 1998 Release. Because the focus of the Proposal is squarely on matters relating to the Company's ordinary business operations, like the proposals in *Walmart 2020*, *Walmart 2019*, and the other well-established precedent above, the Proponent's references to issues like diversity and inclusion are insufficient to make the Proposal "transcend the day-to-day business matters." Accordingly, the Proposal's request does not transcend the ordinary business considerations of the Company to focus on a significant policy issue on which it is appropriate for shareholders to vote.

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

As explained above, the Commission stated in the 1998 Release that one of the considerations underlying the ordinary business exclusion is "the degree to which the proposal seeks to 'micro-manage' the company by probing too deeply into matters of a complex nature upon which shareholders, as a group, would not be in a position to make an informed judgment." The 1998 Release further states that "[t]his consideration may come into play in a number of circumstances, such as where the proposal involves intricate detail, or seeks to impose specific time-frames or methods for implementing complex policies." In addition, SLB 14K clarified that in considering arguments for exclusion based on micromanagement, the Staff looks to see "whether the proposal . . . imposes a specific strategy, method, action, outcome or timeline for addressing an issue, thereby supplanting the judgment of management and the board." Furthermore, the Staff noted that if a proposal "potentially limit[s] the judgment and discretion of the board and management, the proposal may be viewed as micromanaging the company." SLB 14K.

The Proposal seeks to "impose[] a specific strategy, method, action, [or] outcome . . . for addressing an issue, thereby supplanting the judgment of management and the board." SLB 14K. Specifically, the Proposal requests that the Company "requir[e] that the initial pool of candidates from which new employees are hired by the Company shall include, but need not be limited to, qualified women and minority candidates." As such, the Proposal seeks to dictate a single recruiting and interviewing process that the Company would need to apply to every position it seeks to fill across the Company's global enterprise.

Office of Chief Counsel
Division of Corporation Finance
January 25, 2021
Page 14

The Company has hired more than 400,000 full- and part-time employees worldwide in 2020, and continues to hire. To continue delivering for its customers throughout the 2020 holiday season, the Company hired more than 100,000 additional seasonal employees in the U.S. and Canada alone. The Proposal would, however, require all positions be filled using an initial candidate pool (a “pool”), regardless of whether a “pool” approach is feasible or can be successfully implemented in specific hiring contexts. For example, the process mandated by the Proposal is not feasible for recruiting techniques that do not involve a controlled pool, such as job listings on internet sites and in newspapers, where the Company can (and does) seek to promote diversity among those who respond to the listings, but is not ultimately able to control who responds so as to assure that there is a diverse “pool.” Similarly, the Proposal would require the Company to abandon the use of job fairs and receptions, where the Company cannot control who responds to an invitation or who walks up to its table to conduct an on-site interview. Further, implementing such a pool is impractical for positions that the Company continually seeks to fill, where the concept of an “initial” pool is not applicable, and for positions in specific locales where the talent pool and composition of the workforce are such that implementation of the Proposal could make it difficult to fulfill the Company’s hiring needs. Similarly, as a company with global operations, the determination as to which demographic groups are, or are not, underrepresented could be difficult or unlawful in certain jurisdictions or regions. Additionally, the Proposal is so expansive that it would apply even for job positions where women or racial/ethnic minorities are fairly represented or over-represented. By seeking to mandate a single recruiting approach without regard to the existing representation of women or minorities in the Company’s workforce, without regard to the existence of other more tailored or effective methods of increasing the diversity of the workforce population, and without regard to the nature of the position or the extent of the Company’s hiring capacity, the Proposal “seeks to ‘micro-manage’ the company by probing too deeply into matters of a complex nature” and thus is precisely the type of proposal that the micromanagement prong of Rule 14a-8(i)(7) is designed to address. The issues faced by the Company in satisfying its hiring needs are simply too varied and complex to be subjected to a well-intentioned but overly prescriptive mandate dictated by the Proposal.

In this regard, the Proposal is similar to the proposal in *CBRE Group, Inc.* (avail. Feb. 14, 2020). In *CBRE Group*, the Staff concurred with exclusion on micromanagement grounds for a proposal that requested a company policy to “take the necessary steps to waive its mandatory arbitration requirements for employee claims of sexual harassment unless the [b]oard of [d]irectors concludes, after an evaluation using independent evidence, that mandatory arbitration does not deter reporting of sexual harassment by [c]ompany employees.” The company argued that the proposal sought to micromanage the company by dictating the company’s “approach to its complex employment and risk management practices.” The Staff concurred that the proposal

Office of Chief Counsel
Division of Corporation Finance
January 25, 2021
Page 15

could be excluded on the basis of micromanagement. Similarly, in *Intel Corp.* (avail. Mar. 15, 2019), the proposal requested that the company include a specific policy statement—that “Intel affirms and believes all that the Pride flag and Gay Pride movement it is associated with represent or assert to be right and true”—in its Global Human Rights Principles, as well as certain company websites and communications. The company argued the proposal attempted to micromanage the company by dictating both a specific policy position on a complex matter and how the company communicated that position. The Staff concurred with the exclusion of the proposal as relating to the company’s ordinary business operations, as, in its view, “the [p]roposal [sought] to micromanage the [c]ompany by dictating that the [c]ompany must adopt a specific policy position and prescribing how the [c]ompany must communicate that policy position.”

The extent to which the detailed requirements of the Proposal seek to micromanage the Company is comparable to the specific employment and risk management practices in *CBRE Group* and the specific policy position and communication methods prescribed in *Intel*. The shareholder proposal process is not intended to provide an avenue for shareholders to impose detailed requirements of this sort in areas where they, as a group, are not in the best position to manage a company. As discussed above, determinations regarding how the Company identifies, interviews, and hires employees are decisions that are by their nature day-to-day business issues that are actively addressed by management. These decisions are multifaceted and require the Company to consider, evaluate, and adapt to various complex issues. As discussed above, the Company has gone to great lengths to implement effective hiring processes that are designed to achieve the Company’s workforce diversity commitments while also satisfying the Company’s extensive global hiring needs, the implementation of those policies are fundamental to the management of the Company’s day-to-day operations. By seeking to dictate the Company’s approach to its hiring processes for all employees across the Company’s global enterprise, the Proposal impermissibly seeks to replace management’s informed and reasoned judgments. Thus, the Proposal micromanages the Company’s fundamental day-to-day decisions and policies with respect to its hiring process and therefore may be excluded under Rule 14a-8(i)(7).

CONCLUSION

Based upon the foregoing analysis, the Company intends to exclude the Proposal from its 2021 Proxy Materials, and we respectfully request that the Staff concur that the Proposal may be excluded under Rule 14a-8.

GIBSON DUNN

Office of Chief Counsel
Division of Corporation Finance
January 25, 2021
Page 16

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.
Brandon J. Rees, AFL-CIO

EXHIBIT A

From: Brandon Rees <brees@aficio.org>
Sent: Friday, December 11, 2020 11:43 AM
To: Hoffman (Legal), Mark <markhoff@amazon.com>
Subject: [EXTERNAL] AFL-CIO shareholder proposal

Dear Mark,

Please see the attached letter submitting the AFL-CIO Reserve Fund's shareholder proposal for the 2021 annual meeting of Amazon.com. A printed copy of this correspondence is also being sent by UPS air. As always, we welcome the opportunity to discuss our proposal with you.

Sincerely,

Brandon

Brandon Rees
brees@aficio.org
202-637-5152 (office)
202-486-2187 (cell)



AFL-CIO

AMERICA'S UNIONS

**American Federation
of Labor and
Congress of Industrial
Organizations**

815 16th St. NW
Washington, DC 20006
202-637-5000
aflcio.org

EXECUTIVE COUNCIL

RICHARD L. TRUMKA
PRESIDENT

ELIZABETH H. SHULER
SECRETARY-TREASURER

TEFERE A. GEBRE
EXECUTIVE VICE PRESIDENT

Michael Sacco
Robert A. Scardelletti
Harold Schaitberger
Clyde Rivers
Cecil Roberts
Fred Redmond
Matthew Loeb
Randi Weingarten
Fredric V. Rolando
Baldemar Velasquez
Bruce R. Smith
Lee A. Saunders
Terry O'Sullivan
Lorretta Johnson
James Callahan
DeMaurice Smith
Sean McGarvey
D. Taylor
Kenneth Rigmaiden
Stuart Appelbaum
Bhairavi Desai
Paul Rinaldi
Mark Dimondstein
Cindy Estrada
Sara Nelson
Marc Perrone
Eric Dean
Joseph Sellers Jr.
Christopher Shelton
Lonnie R. Stephenson
Richard Lanigan
Robert Martinez
Gabrielle Carteris
Mark McManus
Elissa McBride
John Samuelsen
George E. McCubbin III
Vonda McDaniel
Gwen Mills
Charles Wovkanech
Bonnie Castillo
Paul Shearon
Warren Fairley
Ernest A. Logan
Capt. Joe DePete
James Slevin
Tom Conway
John Costa
Tim Driscoll
Rory Gamble
Everett Kelley
Anthony Shelton

December 11, 2020

Amazon.com, Inc.
Office of the Corporate Secretary
410 Terry Avenue North
Seattle, Washington 98109

Dear Corporate Secretary:

On behalf of the AFL-CIO Reserve Fund (the "Fund"), I write to give notice that pursuant to the 2020 proxy statement of Amazon.com, Inc. (the "Company"), the Fund intends to present the attached proposal (the "Proposal") at the 2021 annual meeting of shareholders (the "Annual Meeting"). The Fund requests that the Company include the Proposal in the Company's proxy statement for the Annual Meeting.

The Fund is the beneficial owner of 345 shares of voting common stock (the "Shares") of the Company. The Fund has held at least \$2,000 in market value of the Shares for over one year, and the Fund intends to hold at least \$2,000 in market value of the Shares through the date of the Annual Meeting. A letter from the Fund's custodian bank documenting the Fund's ownership of the Shares is enclosed.

The Proposal is attached. I represent that the Fund or its agent intends to appear in person or by proxy at the Annual Meeting to present the Proposal. I declare that the Fund has no "material interest" other than that believed to be shared by stockholders of the Company generally. I am available to meet via teleconference during the Company's regular business hours and I look forward to discussing the Proposal with the Company. Please direct all communications or correspondence regarding the Proposal to me at 202-486-2187 or brees@aflcio.org.

Sincerely

Brandon J. Rees, Deputy Director
Corporations & Capital Markets

Attachments

BJR/sdw
opeiu#2, aflcio

Resolved: Shareholders request that the Board of Directors of Amazon.com Inc. (the “Company”) adopt a policy for improving workforce diversity by requiring that the initial pool of candidates from which new employees are hired by the Company shall include, but need not be limited to, qualified women and minority candidates (a “Diverse Candidate Search Policy”).

Supporting Statement

A diverse workforce at all levels of a company can enhance long-term company performance. Workforce diversity provides a competitive advantage to companies by helping to attract and retain talented employees, strengthening customer relationships, increasing employee satisfaction, improving corporate decision-making, and enhancing corporate reputations.

According to a recent study by McKinsey & Company, there is a “positive, statistically significant correlation between company financial outperformance and diversity, on the dimensions of both gender and ethnicity. This is evident at different levels of the organization, particularly on executive teams” (Diversity Wins: How Inclusion Matters, May 2020).

The purpose of the requested Diverse Candidate Search Policy is to assure that the Company’s recruitment pools for external hires are adequately diverse. This proposal is intended to provide flexibility to the Board of Directors to design the specific terms of a Diverse Candidate Search Policy with respect to race, ethnicity, gender, sexual orientation, disability and other groups.

This proposal is modeled on the National Football League’s adoption of the “Rooney Rule” which requires teams to interview minority candidates for head coaching and other senior positions. The Rooney Rule does not dictate who should be hired, but instead widens the talent pool by requiring a diverse set of candidates for consideration before a hiring decision is made.

We commend the steps that our Company has already taken to promote diversity, equity and inclusion. In 2018, our Company’s Board of Directors adopted new language requiring the consideration of women and minority candidates in the pool from which director candidates are selected.¹ In our view, such a policy also makes sense for our Company’s workforce hiring decisions and will complement our Company’s existing workforce diversity efforts.

We believe that a Diverse Candidate Search Policy will broaden our Company’s access to talent for recruitment and diversify its talent pipeline for management level positions. As of December 31, 2019, 72.5 percent of the Company’s global managers were men compared to 57.3 percent of the Company’s global workforce, and 59.3 percent of the Company’s U.S. managers were white compared to 34.7 percent of the Company’s U.S. workforce.²

The Black Lives Matter and #MeToo movements have highlighted the social policy significance of diversity, equity and inclusion. Many companies have also embraced the business case for promoting workforce diversity. We believe that our Company can further enhance its own diversity efforts by adopting a Diverse Candidate Search Policy as requested by this proposal.

For these reasons, we urge shareholders to vote for this proposal.

¹ <https://www.sec.gov/Archives/edgar/data/1018724/000119312518162552/d588714ddefa14a.htm>

² <https://www.aboutamazon.com/news/workplace/our-workforce-data>

December 11, 2020

Amazon.com, Inc.
Office of the Corporate Secretary
410 Terry Avenue North
Seattle, Washington 98109

Dear Corporate Secretary:

Amalgamated Bank of Chicago, is the record holder of 345 shares of Common Stock (the "Shares") of Amazon.com, Inc. beneficially owned by the AFL-CIO Reserve Fund as of December 11, 2020. The AFL-CIO Reserve Fund has continuously held at least \$2,000 in market value of the Shares for over one year as of December 11, 2020. The Shares are held by Amalgamated Bank of Chicago at the Depository Trust Company in our participant account No. 2567.

If you have any questions concerning this matter, please do not hesitate to contact me at (312) 822-3112.

Sincerely,



Mary C. Murray
Senior Vice President

cc: Brandon J. Rees
Deputy Director, AFL-CIO Corporations & Capital Markets