

January 22, 2021

VIA EMAIL ([shareholderproposals@sec.gov](mailto:shareholderproposals@sec.gov))

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

Re: *PayPal Holdings, Inc.*  
*Stockholder Proposal of NorthStar Asset Management, Inc. Funded Pension Plan*

Ladies and Gentlemen:

This letter is submitted by PayPal Holdings, Inc., a Delaware corporation (“PayPal” or the “Company”), pursuant to Rule 14a-8(j) under the Securities Exchange Act of 1934 (the “Exchange Act”), to notify the Securities and Exchange Commission (the “Commission”) of the Company’s intention to exclude from its proxy materials for its 2021 Annual Meeting of Stockholders (the “2021 Proxy Materials”) a stockholder proposal (the “Proposal”) and statements in support thereof from NorthStar Asset Management, Inc. Funded Pension Plan (the “Proponent”). The Company requests confirmation that the staff of the Division of Corporation Finance (the “Staff”) will not recommend an enforcement action to the Commission if the Company excludes the Proposal from its 2021 Proxy Materials in reliance on Rule 14a-8.

Pursuant to Rule 14a-8(j) and Staff Legal Bulletin No. 14D (November 7, 2008) (“SLB 14D”), we have (i) submitted this letter and its exhibit to the Commission within the time period required under Rule 14a-8(j) and (ii) concurrently sent copies of this correspondence to the Proponent as notification of the Company’s intention to exclude the Proposal from its 2021 Proxy Materials.

Rule 14a-8(k) and SLB 14D provide that stockholder proponents are required to send companies a copy of any correspondence that the proponents elect to submit to the Commission or 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.

## **The Submission**

The Company received the Proposal on November 30, 2020. A full copy of the Proposal is attached hereto as Exhibit A. The Proposal includes the following:

RESOLVED: Shareholders urge the Board of Directors to prepare a report to shareholders on whether written policies or unwritten norms at the Company reinforce racism in company culture.

## **Basis for Exclusion**

We hereby respectfully request the Staff concur in our view that the Proposal may be excluded from the 2021 Proxy Materials pursuant to Rule 14a-8(i)(10) because the Company has substantially implemented the Proposal.

## **Analysis**

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

#### *a. Background to Rule 14a-8(i)(10)*

Rule 14a-8(i)(10) permits a company to exclude a shareholder proposal if the company has already substantially implemented the proposal. The Commission adopted the “substantially implemented” standard in 1983 after determining that the “previous formalistic application” of the rule defeated its purpose, which is to “avoid the possibility of shareholders having to consider matters which already have been favorably acted upon by the management.” *See* Exchange Act Release No. 34-20091 (Aug. 16, 1983) (the “1983 Release”); Exchange Act Release No. 34-12598 (July 7, 1976). Accordingly, the actions requested by a proposal need not be “fully effected” provided that they have been “substantially implemented” by the company. *See* 1983 Release.

Applying this standard, the Staff has consistently permitted the exclusion of a proposal when it has determined that the company’s policies, practices and procedures or public disclosures compare favorably with the guidelines of the proposal. *See*, e.g., *The Allstate Corp.* (Mar. 15, 2019); *United Cont’l Holdings, Inc.* (Apr. 13, 2018); *eBay Inc.* (Mar. 29, 2018); *Wal-Mart Stores, Inc.* (Mar. 16, 2017).

In addition, the Staff has permitted exclusion under Rule 14a-8(i)(10) where the company already addressed the underlying concerns and satisfied the essential objectives of the proposal, even if the proposal had not been implemented exactly as proposed by the proponent. For example, in *Wal-Mart Stores, Inc.* (Mar. 30, 2010), the proposal requested that the company adopt six principles for national and international action to stop global warming. The company argued that its Global Sustainability Report, which was available on the company’s website, substantially implemented the proposal. Although the Global Sustainability Report set forth only four principles that covered most, but not all, of the issues raised by the proposal, the Staff concluded that the company’s “policies, practices and procedures compare[d] favorably with the guidelines of the

proposal and that [the company] has, therefore, substantially implemented the proposal.” *See also Visa Inc.* (Oct. 11, 2019) (permitting exclusion of a proposal recommending that the compensation committee reform the company’s executive compensation philosophy to include social factors to enhance the company’s social responsibility where the company’s “policies, practices and procedures compare[d] favorably with the guidelines of the [p]roposal”); *Applied Materials, Inc.* (Jan. 17, 2018) (permitting exclusion under Rule 14a-8(i)(10) of a proposal requesting that the company “improve the method to disclose the Company’s executive compensation information with their actual information,” on the basis that the company’s “public disclosures compare[d] favorably with the guidelines of the [p]roposal,” where the company argued that its current disclosures follow requirements under applicable securities laws for disclosing executive compensation); *Oshkosh Corp.* (Nov. 4, 2016) (permitting exclusion under Rule 14a-8(i)(10) of a proposal requesting six changes to the company’s proxy access bylaw, on the basis that the company’s “policies, practices and procedures compare favorably with the guidelines of the proposal,” where the company amended its proxy access bylaw to implement three of six requested changes); *Alcoa Inc.* (Feb. 3, 2009) (permitting exclusion under Rule 14a-8(i)(10) of a proposal requesting a report describing how the company’s actions to reduce its impact on global climate change may have altered the current and future global climate, where the company published general reports on climate change, sustainability and emissions data on its website that did not discuss all topics requested in the proposal).

*b. The Company’s Policies, Practices and Initiatives Promoting a Diverse and Inclusive Culture Substantially Implement the Essential Objective of the Proposal*

In this instance, the Company has substantially implemented the Proposal, the essential objective of which is to foster a racially equitable corporate culture. Specifically, the Company takes great pride in the diverse and inclusive workplace culture it provides to its employees and consistently promotes diversity, equity and inclusion in its practices and policies, which is a core aspect of the Company’s corporate culture and a focus of the Proposal’s supporting statement. Additionally, the Company publishes information on its assessment of its programs and initiatives to promote diversity and inclusion, both within and outside of the Company, including the promotion of racial and social justice in communities, as summarized below.

- *Diversity and Inclusion Website.* The Company maintains a website<sup>1</sup> devoted to “Diversity and Inclusion at PayPal” that discusses methods through which the Company promotes diversity and inclusion within and outside of its workplace, including the following examples:
  - Confirmation that PayPal “strive[s] for a diverse workforce that includes people of different ethnic and cultural backgrounds, gender and sexual orientation, veteran status, abilities, and those who bring diverse thoughts, opinions, experience, and leadership styles – and all other characteristics that make people unique.”
  - Active support of PayPal employees through the Company’s Diversity & Inclusion Communities, which serve as (i) a support mechanism for creating an inclusive environment for Company employees, (ii) a collective voice around shared issues or concerns specific to a particular community to promote a sense of belonging and an inclusive and respectful workplace and (iii) a resource for opportunities related

---

<sup>1</sup> <https://www.paypal.com/us/webapps/mpp/jobs/culture>

to employment, education, training, retention and business outreach and development. The Company supports eight employee resource groups, including communities to support its Hispanic, Interfaith, Asian, Black and women employees and their allies. Among the objectives and accomplishments of these communities are:

- promoting a sense of “belonging” and an inclusive and respectful workplace;
  - facilitating strong mentoring relationships and personal development; and
  - providing inspiration and motivation from role models and subject matter experts.
- *2019 Global Impact Report highlights.* The Company’s 2019 Global Impact Report, available on the Company’s website<sup>2</sup>, highlights progress the Company has made to date in advancing, among other things, an inclusive and diverse workforce. For example, in 2019:
    - 87% of its global employees completed the Company’s *Engage* survey. Of those surveyed, 83% responded that they believe PayPal is a diverse place to work.
    - The Company opened a customer service location in Manila, Philippines, where the Company received the RAD Award for the most effective and inclusive candidate experience.
    - The Company developed the Women Luminaries Program in Singapore to help address the gender diversity gap in technology, through which PayPal partnered with local universities to provide scholarships, mentoring, internships, and other opportunities to women studying either computer science, computer engineering or related fields.
    - The Company maintained 100% gender pay equity and US ethnic pay equity for the fourth year in a row.
    - Over 90% of all global employees completed Conscious Inclusion training through in-person or virtual training at 15 global sites, in nine languages.
    - The Company became one of the first in-house legal departments to support the Mansfield Rule, which targets candidate slates that are at least 50% composed of lawyers from underrepresented groups for at least 70% of all new U.S. legal roles and matters.
    - The Company concluded the first full year of its Supplier Diversity Program, with Tier 1 diverse suppliers reaching 9% of total spend.
    - The Company worked with partners in Sao Paolo, Sitel to hire Venezuelan refugees at PayPal’s Brazilian site.
  - *Workplace culture.* PayPal’s Code of Business Conduct and Ethics (the “Code of Conduct”), also available on the Company’s website<sup>3</sup>, confirms the Company’s policy of “respecting and embracing” diversity, and that “all employees are expected to treat each other with mutual respect and foster a culture of inclusion.” The Code of Conduct goes beyond prescriptive actions expected by the Company’s employees and speaks to the

---

<sup>2</sup> <https://www.paypal.com/us/webapps/mpp/globalimpact>

<sup>3</sup> <https://www.paypal.com/nz/webapps/mpp/about/responsible-practices>

broadly inclusive workforce culture that is expected from all PayPal employees as a collective.

- *Appropriate dress for the workplace.* As outlined in the Code of Conduct, the Company openly “encourage[s] and foster[s] a workplace where employees are comfortable in what they wear,” so long as it continues to engender a respectful work environment for others.
- *Community contributions.* In June 2020, the Company announced a \$530 million commitment to support Black-owned and other minority-owned businesses in the U.S. and a commitment to further bolster its internal programs to promote diversity, equity and inclusion within the PayPal community. This financial commitment is coupled with other efforts such as an initiative led by the Company’s Social Innovation team to identify opportunities for the Company’s employees to volunteer their time to support Black-owned businesses as part of a #MakeTheCommitment campaign. Under this campaign, Company employees have contributed hundreds of hours sharing their expertise to support Black-owned businesses through pro bono work, coaching, mentoring, and additional volunteer opportunities.
- *Recognitions and awards for diversity and inclusion.* In honor and recognition of PayPal’s work toward creating a diverse and inclusive workforce, the Company has been awarded, among others, Bloomberg’s Gender-Equality Index award in 2020, HRC’s Best Places to Work for LGBTQ Equality award in 2019, and Forbes The Best Employers for Diversity award in 2019.

The written policies and practices discussed above, including the Code of Conduct and information provided on the Company’s diversity and inclusion website, are clear examples of written policies designed to ensure that the Company’s corporate culture embraces respect for racial and ethnic diversity and cultivates an inclusive workplace. The employee survey, ethnic pay equity data and numerous recognitions provide evidence of how these policies, practices, and unwritten norms promote a corporate culture which embraces inclusion. The Company’s policies and practices regarding diversity, inclusion, equity and belonging are reviewed and overseen by the Compensation Committee of the Company’s Board of Directors. The Company’s progress resulting from its policies, practices and culture is reported annually in the Company’s global impact report, demonstrating the Company’s commitment to transparency and accountability for its mission of creating a more inclusive world. Accordingly, the Company has satisfied the Proposal’s essential objective of assessing whether the Company’s policies and culture promote equity and inclusion, as opposed to reinforcing systemic racism.

As a result, the Proposal has been substantially implemented and may be excluded pursuant to Rule 14a-8(i)(10).

### Conclusion

Based upon the foregoing analysis, we respectfully request that the Staff confirm that it will not recommend any enforcement action to the Commission if the Company excludes the Proposal from its 2021 Proxy Materials pursuant to Rule 14a-8. We would be happy to provide any additional information and answer any questions regarding this matter.

Should you have any questions, please contact me at [byamasaki@paypal.com](mailto:byamasaki@paypal.com) or (408) 967-1000.

Thank you for your consideration.

Sincerely,



Brian Y. Yamasaki  
Vice President, Corporate Legal and  
Secretary

cc: NorthStar Asset Management, Inc. Funded Pension Plan  
Julie N.W. Goodridge  
P.O. Box 301840  
Boston, Massachusetts 02130

NorthStar Asset Management, Inc. Funded Pension Plan  
Mari Schwatzer  
[mschwartz@northstarasset.com](mailto:mschwartz@northstarasset.com)

**EXHIBIT A**

## Assessing Inclusion in the Workplace

### WHEREAS:

According to the National Museum of African American History and Culture, “[s]tructural racism is the overarching system of racial bias across institutions and society. These systems give privileges to white people resulting in disadvantages to people of color,” thereby imposing a cultural hierarchy among racial groups;

The Harvard Business Review explains that “[c]ompanies must confront racism at a systemic level – addressing everything from the structural and social mechanics of their own organizations to the role they place in the economy at large”;

A 2020 Citigroup study found that since 2000 the U.S. gross domestic product (GDP) has lost \$16 trillion as a result of discrimination against African Americans, including \$2.7 trillion lost due to pay disparities. The study also found that reversing discriminatory practices could boost U.S. GDP by \$5 trillion in the next five years;

Tema Okun, a veteran racial justice facilitator, illustrates the insidious nature of white supremacist culture by explaining that “[c]ulture is powerful precisely because it is so present and at the same time so very difficult to name or identify.” Cultural racism can manifest as people of color being ignored, overly criticized, undermined, or assumed as inferior. Other manifestations can be strict cultural norms or criticisms of certain hairstyles, manners of speech, or other physical appearances;

Cultural racism can do long-term emotional and psychological damage, and research shows that employees who bring their authentic selves to work perform better and report greater job satisfaction. Recently, a Fortune 500 company announced that it will allow natural black hairstyles and facial hair because the company wants all “employees feel comfortable, genuine and authentic”;

Proponents believe that our company can advance long-term value creation through an analysis of whether and how systemic racism is embedded in company culture, policies and procedures.

**RESOLVED:** Shareholders urge the Board of Directors to prepare a report to shareholders on whether written policies or unwritten norms at the Company reinforce racism in company culture.

**SUPPORTING STATEMENT:** The report should be prepared within one year, at reasonable cost and excluding proprietary and privileged information. The Board is encouraged to assess whether Company policies or unwritten norms:

1. Yield inequitable outcomes for employees based on race and ethnicity in patterns of hiring and retention, promotion and upward mobility, disciplinary action, or employee usage of benefits;
2. Establish a cultural hierarchy through perceived pressure to use “whitened” names rather than birth names, to adopt “white-centric” physical appearance standards in hair style, body art or modifications, and facial hair styles, or to avoid traditional attire and religious head coverings.