



DIVISION OF
CORPORATION FINANCE

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

April 8, 2022

Ronald O. Mueller
Gibson, Dunn & Crutcher LLP

Re: Amazon.com, Inc. (the "Company")
Incoming letter dated January 21, 2022

Dear Mr. Mueller:

This letter is in response to your correspondence concerning the shareholder proposal (the "Proposal") submitted to the Company by the AFL-CIO Reserve Fund for inclusion in the Company's proxy materials for its upcoming annual meeting of security holders.

The Proposal requests that the Company report to shareholders on the Company's workforce turnover rates and the effects of labor market changes that have resulted from the coronavirus disease ("COVID-19") pandemic. The report should assess the impact of the Company's workforce turnover on the Company's diversity, equity and inclusion.

There appears to be some basis for your view that the Company may exclude the Proposal under Rule 14a-8(i)(7). In our view, the Proposal relates to ordinary business matters and does not focus on significant social policy issues. Accordingly, we will not recommend enforcement action to the Commission if the Company omits the Proposal from its proxy materials in reliance on Rule 14a-8(i)(7).

Copies of all of the correspondence on which this response is based will be made available on our website at <https://www.sec.gov/corpfin/2021-2022-shareholder-proposals-no-action>.

Sincerely,

Rule 14a-8 Review Team

cc: Brandon J. Rees
AFL-CIO

January 21, 2022

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 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 2022 Annual Meeting of Shareholders (collectively, the “2022 Proxy Materials”) a shareholder proposal (the “Proposal”) and statement 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 2022 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 the Proponent elects to submit additional correspondence to the Commission or the Staff with respect to the Proposal, a copy of such correspondence should be furnished concurrently to the undersigned on behalf of the Company pursuant to Rule 14a-8(k) and SLB 14D.

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THE PROPOSAL

The Proposal states:

RESOLVED, shareholders request that Amazon.com, Inc. (“Amazon” or “Company”) report to shareholders on the Company’s workforce turnover rates and the effects of labor market changes that have resulted from the coronavirus disease (“COVID-19”) pandemic. The report should assess the impact of the Company’s workforce turnover on the Company’s diversity, equity and inclusion. The report should be prepared at reasonable cost and omit proprietary information.

A copy of the Proposal and the Supporting Statement, as well as related correspondence with the Proponent, is attached to this letter as Exhibit A.¹

BASES FOR EXCLUSION

We hereby respectfully request that the Staff concur in our view that the Proposal may be excluded from the 2022 Proxy Materials pursuant to Rule 14a-8(i)(7) because the Proposal relates to the Company’s ordinary business operations.

Alternatively, if the Staff does not concur that the Proposal may be excluded on the basis of Rule 14a-8(i)(7), we believe that the Proposal may be excluded pursuant to Rule 14a-8(i)(11) because (i) the Proposal substantially duplicates a different shareholder proposal received by the Company from the New York State Common Retirement Fund, Sisters of the Holy Names of Jesus and Mary, U.S.-Ontario Province, Northwest Women Religious Investment Trust, Congregation of Sisters of St. Joseph of Peace, Praxis Growth Index Fund, and The Robert H. and Elizabeth Fergus Foundation (the “Prior Proposal,” and together with the Proposal, the “Proposals”); (ii) the Prior Proposal was submitted to the Company before the Proposal; and (iii) the Company expects to include the Prior Proposal in the 2022 Proxy Materials. A copy of the Prior Proposal and statement in support thereof is attached to this letter as Exhibit B.

¹ In reliance on the announcement by the Staff, we have omitted all correspondence that is not directly relevant to this no-action request. *See* Announcement Regarding Personally Identifiable and Other Sensitive Information in Rule 14a-8 Submissions and Related Materials, *available at* <https://www.sec.gov/corpfin/announcement/announcement-14a-8-submissions-pii-20211217> (last updated Dec. 17, 2021).

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BACKGROUND

The Company is proud to create both short-term and long-term jobs with great pay and great benefits. Some employees stay with the Company throughout the year, and others choose to work with the Company only for a few months to earn extra income when they need it. A large percentage of people that the Company hires are re-hires, demonstrating that employees choose to work with the Company when they want to, and return to work at the Company when it is convenient for them. To help manage its workforce, the Company focuses on hiring, developing, and retaining the best talent. It relies on numerous and evolving initiatives to implement these objectives, including competitive compensation and employee benefits, flexible work arrangements, skills training and educational programs, mentorship and support resources, and numerous programs that advance employee engagement, communication, and feedback.²

ANALYSIS

I. The Proposal May Be Excluded Under Rule 14a-8(i)(7) Because The Proposal Relates To The Company's Ordinary Business Operations.

A. Background On 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 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. *Id.* As relevant here, one of these considerations is that "[c]ertain tasks are so fundamental to management's ability to run a company on a day-to-day basis that they could not, as a practical matter, be subject to direct shareholder oversight." *Id.* The

² See *Amazon.com, Inc. (AFL-CIO Reserve Fund)* (avail. Apr. 9, 2021), detailing some of the Company's initiatives for recruiting women and underrepresented racial/ethnic minorities.

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Commission stated that examples of tasks that implicate the ordinary business standard include “*the management of the workforce*, such as the hiring, promotion, and termination of employees, decisions on production quality and quantity, and the retention of suppliers.” *Id.* (emphasis added).

A shareholder proposal being framed in the form of a request for a report does not change the nature of the proposal. The Commission has stated that a proposal requesting the dissemination of a report may be excludable under Rule 14a-8(i)(7) if the subject matter of the proposed report is within the ordinary business of the issuer. *See* Exchange Act Release No. 20091 (Aug. 16, 1983); *Johnson Controls, Inc.* (avail. Oct. 26, 1999) (“[Where] the subject matter of the additional disclosure sought in a particular proposal involves a matter of ordinary business . . . it may be excluded under [R]ule 14a-8(i)(7).”); *see also Ford Motor Co.* (avail. Mar. 2, 2004) (concurring with the exclusion of a proposal requesting that the company publish a report about global warming/cooling, where the report was required to include details of indirect environmental consequences of its primary automobile manufacturing business).

B. The Proposal Is Excludable Because It Relates To The Quintessential Ordinary Business Topic Of Managing The Workforce.

The Proposal requests a report “on the Company’s workforce turnover rates and the effects of labor market changes that have resulted from the coronavirus disease (‘COVID-19’) pandemic” and that the report assess “the impact of the Company’s workforce turnover on the Company’s diversity, equity and inclusion.” The subject matter of the report requested in the Proposal address the ordinary business topic of management of the workforce; specifically, turnover within the workforce. Workforce turnover implicates complex but routine business and operational considerations, such as decisions on whether and to what extent to rely on seasonal employees, whether to hire internally or outsource certain jobs, wage and benefit levels, and scope of operations, that are fundamental to management’s ability to run the Company on a day-to-day basis, implicating complex considerations that are not appropriately addressed through the shareholder proposal process. The Proposal thus implicates a quintessentially routine business management consideration and therefore is excludable under Rule 14a-8(i)(7) as relating to the Company’s ordinary business operations.

The Commission and Staff have long held that shareholder proposals relating to the management of the company’s workforce, including the relationship with its employees, are excludable under Rule 14a-8(i)(7). Notably, in *United Technologies Corp.* (avail. Feb. 19, 1993), the Staff provided the following examples of excludable ordinary business categories:

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“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). *PepsiCo, Inc.* (avail. Mar. 24, 1993) (same). 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.”

Consistent with the Commission’s statement in the 1998 Release and the Staff’s statement in *United Technologies Corp.* categorizing proposals that address “management of the workforce” as relating to a company’s “ordinary business” operations, the Staff has recognized that a wide variety of proposals pertaining to management of a company’s workforce are excludable under Rule 14a-8(i)(7), including proposals addressing employee retention and turnover. *See Sprint Corp.* (avail. Jan. 28, 2004) (concurring with the exclusion under Rule 14a-8(i)(7) of a proposal requesting a report on “the impact on the [c]ompany’s recruitment and retention of employees due to the [c]ompany’s changes to retiree health care and life insurance coverage”); *Delhaize America, Inc.* (avail. Mar. 9, 2000) (concurring with the exclusion under Rule 14a-8(i)(7) of a proposal requesting that the company adopt a policy “to be more aggressive in employee retention” for certain non-executive positions). In fact, the Staff has long concurred with the exclusion under Rule 14a-8(i)(7) of proposals that address enhancing employee retention and reducing turnover when those proposals do not otherwise address a significant social policy issue. *Walmart Inc.* (avail. Apr. 7, 2021) (concurring with the exclusion of a proposal requesting a report on risks of complying with certain government regulations, “including, but not limited to: effects on employee hiring, retention, and productivity”); *Johnson & Johnson* (avail. Feb. 23, 2017) (concurring with the exclusion of a proposal requesting a report detailing the known and potential risks and costs to the company caused by a pressure campaign to oppose certain types of laws, including “negative effects on employee hiring and retention caused by such pressure campaigns”); *Northrop Grumman Corp.* (avail. Mar. 18, 2010) (concurring with the exclusion of a proposal requesting that the board identify and modify procedures to improve the visibility of educational status in the company’s reduction-in-force review process, noting that “[p]roposals concerning a company’s management of its workforce are generally excludable under [R]ule 14a-8(i)(7)”; *Wal-Mart Stores, Inc. (SEIU Master Trust)* (avail. Mar. 17, 2003) (concurring with the exclusion of a proposal dealing with employee benefits, which the supporting statement claimed “play a critical role in retaining employees”).

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As the foregoing precedents demonstrate, motivating and retaining employees and managing turnover are core functions in management of the workforce. Here, the Proposal addresses workforce turnover and an assessment of the current labor market, thus seeking to inject shareholders into oversight of this “core matter[] involving the company’s business and operations.” The Supporting Statement reinforces that the objective of the Proposal is to address management of the Company’s business, asserting that “turnover creates challenges for the successful operation of any company” and noting that the Company faces “business challenges” that “are compounded by the fact that Amazon has a large and rapidly growing workforce.” Accordingly, like the proposals excluded in the precedents discussed above, the Proposal implicates the types of complex but routine workplace-oriented matters that Rule 14a-8(i)(7) is intended to address and is therefore excludable as relating to the Company’s ordinary business operations.

C. The Proposal Does Not Focus On A Significant Social Policy Issue That Transcends The Company’s Ordinary Business Operations.

In the 1998 Release, the Commission reaffirmed the standards for when proposals are excludable under the “ordinary business” provision that the Commission had initially articulated in Exchange Act Release No. 12999 (Nov. 22, 1976) (the “1976 Release”). In the 1998 Release, the Commission also distinguished proposals pertaining to ordinary business matters that are excludable under Rule 14a-8(i)(7) from those that “focus on” significant social policy issues. The Commission stated, “proposals relating to [ordinary business] matters but focusing on sufficiently significant social policy issues (e.g., significant discrimination matters) generally would not be considered to be excludable, because the proposals would transcend the day-to-day business matters and raise policy issues so significant that it would be appropriate for a shareholder vote.” 1998 Release.

In contrast, proposals with passing references touching upon topics that might raise significant social policy issues—but which do not focus on or have only tangential implications for such issues—are not transformed from an otherwise ordinary business proposal into one that transcends ordinary business, and as such, remain excludable under Rule 14a-8(i)(7). For example, in *Dominion Resources, Inc.* (avail. Feb. 3, 2011), a proposal requested that the company promote “stewardship of the environment” by initiating a program to provide financing to home and small business owners for installation of rooftop solar or renewable wind power generation. Even though the proposal touched upon environmental matters, the Staff concluded that the subject matter of the proposal actually related to “the products and services offered for sale by the company” and therefore determined that the proposal could be excluded under Rule 14a-8(i)(7). *See also, General*

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Electric Co. (avail. Feb. 10, 2000) (concurring with the exclusion of a proposal relating to the accounting and use of funds for the company's executive compensation program because it both touched upon the significant social policy issue of senior executive compensation, and involved the ordinary business matter of choice of accounting method).

In Staff Legal Bulletin No. 14L (Nov. 3, 2021) ("SLB 14L"), the Staff stated that it "will realign its approach for determining whether a proposal relates to 'ordinary business' with the standard the Commission initially articulated in [the 1976 Release], which provided an exception for certain proposals that raise significant social policy issues, and which the Commission subsequently reaffirmed in the 1998 Release." As such, the Staff stated that it will focus on the issue that is the subject of the shareholder proposal and determine whether it has "a broad societal impact, such that [it] transcend[s] the ordinary business of the company." The Staff noted further that "proposals squarely raising human capital management issues with a broad societal impact would not be subject to exclusion solely because the proponent did not demonstrate that the human capital management issue was significant to the company" (citing to the 1998 Release and *Dollar General Corp.* (avail. Mar. 6, 2020) and providing "significant discrimination matters" as an example of an issue that transcends ordinary business matters).

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.").

Here, although the Proposal references the COVID-19 pandemic and asks that the requested report also assess the impact of turnover on the Company's diversity, equity, and inclusion, the Supporting Statement addresses only business and management implications of workforce turnover and demonstrates that the Proposal relates to the ordinary business issue of managing the workforce. The Supporting Statement further admits that the goal of the Proposal is simply to provide information on "Amazon's human capital management practices."³ The Proposal's passing reference to the COVID-19 pandemic does not raise a

³ We recognize that the Commission has adopted rules requiring enhanced disclosure of human capital management matters, and that Chair Gensler has identified retention and turnover as possible topics for further disclosure requirements. However, the Commission's disclosure rules have never been a measurement of whether a topic implicates a significant social policy issue. For example, Item 103 of Regulation S-K requires disclosure of material legal proceedings, and yet management of legal proceedings has long been an ordinary business issue that does not implicate significant social policy issues.

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significant social policy issue, as the Proposal and Supporting Statement do not address the public health implications of the pandemic. Moreover, the Supporting Statement states that “workforce turnover has been an issue at Amazon” even before changes in the labor market resulting from the COVID-19 pandemic, clearly indicating that the COVID-19 pandemic is not the focus of the Proposal.

Similarly, although the Proposal states that the requested report should assess the impact of workforce turnover on the Company’s diversity, equity, and inclusion, and the Supporting Statement has a passing reference to diversity, equity, and inclusion, the overall focus of the Proposal and Supporting Statement are on management of the Company’s operations. Numerous statements in the Supporting Statement demonstrate that the Proposal is addressed to the business of managing the Company’s workforce and general operations, including:

- “Workers have been quitting their jobs at historically unprecedented rates as a result of the COVID-19 pandemic... This labor market phenomenon has been called the “Great Resignation” or the “Big Quit” by many economic observers.”
- “High workforce turnover creates challenges for the successful operation of any company. Employers must spend more time and resources on hiring and recruitment.”
- “We believe that the business challenges created by Amazon’s workforce turnover are compounded by the fact that Amazon has a large and rapidly growing workforce.”

As noted above, the Supporting Statement says that the requested report on workforce turnover “will provide shareholders with material information regarding Amazon’s human capital management practices.” But here, the emphasis is on management of the workforce, including attracting, training, and retaining employees, which is historically and quintessentially an ordinary business matter. As in the *Dominion Resources, Inc.* and *General Electric Co.* precedents cited above, even if a proposal touches upon a significant social policy issue, the proposal remains excludable under Rule 14a-8(i)(7) when it primarily relates to an ordinary business matter. Here, the inclusion of a few references to diversity, equity, and inclusion do not shift the focus of the proposal away from the central theme of the Company’s management of its workforce. As stated in SLB 14L, “the [S]taff is no longer taking a company-specific approach to evaluating the significance of a policy issue under Rule 14a-8(i)(7).” Here, the Proposal is not raising a specific social policy issue “with a broad societal impact,” as addressed in SLB 14L, but instead it addresses the Company’s human capital management practices in terms of workforce retention and turnover. Thus, the Proposal relates directly to management of the workforce, and does not focus on a significant

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social policy issue that transcends the Company's day-to-day business matters. As such, the Proposal may properly be excluded under Rule 14a-8(i)(7).

II. The Proposal May Be Excluded Under Rule 14a-8(i)(11) Because It Substantially Duplicates Another Proposal That The Company Expects To Include In Its 2022 Proxy Materials.

A. Background.

To the extent the Staff disagrees that the Proposal is excludable under Rule 14a-8(i)(7) and determines that the Proposal relates to the Company's diversity, equity, and inclusion initiatives among its workforce, the Proposal is excludable under Rule 14a-8(i)(11) because it substantially duplicates the Prior Proposal, which also requests that the Company assess and report on implications of the Company's operations on racial equity, including among its workforce. The Prior Proposal states:

Resolved

Shareholders of Amazon.com, Inc. ("Amazon") request that the Board of Directors commission a racial equity audit analyzing Amazon's impacts on civil rights, diversity, equity and inclusion, and the impacts of those issues on Amazon's business. The audit may, in the board's discretion, be conducted by an independent third party with input from civil rights organizations, employees, communities in which Amazon operates and other stakeholders. A report on the audit, prepared at reasonable cost and omitting confidential or proprietary information, should be publicly disclosed on Amazon's website.

The Company received the Prior Proposal on October 20, 2021, whereas the Company subsequently received the Proposal on December 14, 2021. The Company intends to include the Prior Proposal in the 2022 Proxy Materials. As discussed below, the Proposals share the same core concern, and the Proposal therefore is properly excludable under Rule 14a-8(i)(11).

B. The "Substantially Duplicates" Standard.

Rule 14a-8(i)(11) provides that a shareholder proposal may be excluded if it "substantially duplicates another proposal previously submitted to the company by another proponent that will be included in the company's proxy materials for the same meeting." The Commission

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has stated that “the purpose of [Rule 14a-8(i)(11)] is to eliminate the possibility of shareholders having to consider two or more substantially identical proposals submitted to an issuer by proponents acting independently of each other.” 1976 Release. When two substantially duplicative proposals are received by a company, the Staff has indicated that the company must include the first of the proposals it received in its proxy materials, unless that proposal otherwise may be excluded. *See, e.g., Great Lakes Chemical Corp.* (avail. Mar. 2, 1998); *Pacific Gas and Electric Co.* (avail. Jan. 6, 1994).

A proposal may be excluded as substantially duplicative of another proposal despite differences in terms or scope and even if the proposals request different actions. *See, e.g., Exxon Mobil Corp.* (avail. Mar. 13, 2020) (concurring with the exclusion of a proposal as substantially duplicative where the Staff explained that “the two proposals share a concern for seeking additional transparency from the [c]ompany about its lobbying activities and how these activities align with the [c]ompany’s expressed policy positions” despite the proposals requesting different actions); *Exxon Mobil Corp.* (avail. Mar. 9, 2017) (concurring with the exclusion of a proposal requesting a report on the company’s political contributions as substantially duplicative of a proposal requesting a report on lobbying expenditures); *Wells Fargo & Co.* (avail. Feb. 8, 2011) (concurring with the exclusion of a proposal seeking a review and report on the company’s loan modifications, foreclosures, and securitizations as substantially duplicative of a proposal seeking a report that would include “home preservation rates” and “loss mitigation outcomes,” which would not necessarily be covered by the other proposal); *Chevron Corp.* (avail. Mar. 23, 2009, *recon. denied* Apr. 6, 2009) (concurring with the exclusion of a proposal requesting that an independent committee prepare a report on the environmental damage that would result from the company’s expanding oil sands operations in the Canadian boreal forest as substantially duplicative of a proposal to adopt goals for reducing total greenhouse gas emissions from the company’s products and operations); *Bank of America Corp.* (avail. Feb. 24, 2009) (concurring with the exclusion of a proposal requesting the adoption of a 75% hold-to-retirement policy as subsumed by another proposal that included such a policy as one of many requests); *Ford Motor Co. (Leeds)* (avail. Mar. 3, 2008) (concurring with the exclusion of a proposal to establish an independent committee to prevent founding family shareholder conflicts of interest with non-family shareholders as substantially duplicative of a proposal requesting that the board take steps to adopt a recapitalization plan for all of the company’s outstanding stock to have one vote per share). The Staff has traditionally referred to Rule 14a-8(i)(11)’s substantial duplication standard as assessing whether the later proposal presents the same “principal thrust” or “principal focus” as a previously submitted proposal, *see Pacific Gas & Electric Co.* (avail. Feb. 1, 1993), or the same core concern.

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C. The Proposal Has The Same Core Concern As The Prior Proposal.

As noted above, the Prior Proposal “request[s] that the Board of Directors commission a racial equity audit analyzing Amazon’s impacts on civil rights, diversity, equity and inclusion, and the impacts of those issues on Amazon’s business.” The Prior Proposal’s supporting statement makes clear that the requested assessment and report is to address the impact of the Company’s operations on diversity, equity, and inclusion among the Company’s workforce. For example, the supporting statement notes that the Company has taken some measures to address racial justice and equity, including “publishing workforce diversity data,” but asserts that the Company faces “[c]ontroversies related to workforce diversity [and] treatment of minority workers,” and “failure to protect warehouse workers, who are mostly people of color.”

Although phrased differently, the principal concern of the Prior Proposal encompasses the diversity, equity, and inclusion concern of the Proposal: both Proposals include a request that the Company assess and report on implications of the Company’s operations on its racial equity, diversity, and inclusion initiatives with respect to its employees. It is important to note that, although not pertinent to the Rule 14a-8 basis addressed in this no-action request, the Company believes that the actions and issues addressed in the Prior Proposal and its supporting statement do not accurately reflect the Company’s commitment to, support of, and existing actions to address the important social issues of civil rights, racial justice and equity, and diversity and inclusion, as reflected in numerous Company statements, including the Company’s statement of key principles set forth in the Company’s “Leadership Principles” and its “Our Positions” statement,⁴ in Company policies,⁵ and in various commitments issued by the Company.⁶ The Company serves diverse customers, operates in diverse communities, and relies on a diverse workforce. In this regard, the Company currently has policies and procedures in place for its employees, sellers, and customers that

⁴ See Leadership Principles, available at <https://www.aboutamazon.com/about-us/leadership-principles>; Our Positions, available at <https://www.aboutamazon.com/about-us/our-positions>.

⁵ See, e.g., the Company’s Global Human Rights Principles, available at <https://sustainability.aboutamazon.com/people/human-rights/principles>; the Company’s Supply Chain Standards, available at https://sustainability.aboutamazon.com/amazon_supply_chain_standards_english.pdf.

⁶ See, e.g., Housing Equity Fund (a commitment to provide more than \$2 billion in below-market loans and grants to preserve and create more than 20,000 affordable homes for individuals and families earning moderate to low incomes in the Company’s hometown communities), available at <https://www.aboutamazon.com/impact/community/housing-equity>.

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are intended to support its commitment to civil rights, racial equity, and diversity and inclusion, and the Company looks for ways to scale its impact as it grows.

The fact that the report requested in the Prior Proposal encompasses the diversity, equity, and inclusion concern of the Proposal is demonstrated by the overlapping language, focus, and concerns expressed in the Proposals and their supporting statements:

<i>The Prior Proposal</i>	<i>The Proposal</i>
<i>The Proposals both ask for an assessment and report on potential racial equity impacts of the Company’s operations on its employees.</i>	
“[C]ommission a racial equity audit analyzing Amazon’s impacts on civil rights, diversity, equity and inclusion . . . [and publicly disclose a] report on the audit”	“[R]eport to shareholders on the Company’s workforce turnover rates and the effects of labor market changes . . . [and] assess the impact of the Company’s workforce turnover on the Company’s diversity, equity and inclusion.”
<i>Both supporting statements address concerns regarding a potential disproportionate impact of Company operations on minority workers.</i>	
“Amazon faces controversies . . . includ[ing] . . . related to workforce diversity, treatment of minority workers”	“[H]igh workforce turnover can also work against diversity, equity and inclusion goals if the employer has difficulty retaining diverse employees.”
<i>Each alleges that it is unclear how the Company is addressing the issues raised in the Proposals, and that these issues are relevant to shareholders.</i>	
“There is no public evidence that Amazon is assessing the potential or actual negative impacts of its policies, practices, products, and services through a racial equity lens.”	“A report to shareholders on workforce turnover will provide shareholders with material information regarding Amazon’s human capital management practices.”

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The differences in the wording and scope of the Proposals does not change the fact that the audit and report called for under the Prior Proposal would address and encompass the diversity, equity, and inclusion concern raised in the Proposal—i.e., a concern regarding actual or potential negative impacts of the Company’s operations on the Company’s diverse employees. The fact that the Prior Proposal seeks to assess such information in the context of the Company’s entire business while the Proposal seeks to evaluate that information in the context of the Company’s workforce turnover rates does not prevent the Proposal from substantially duplicating the Prior Proposal.

Notably, this past proxy season, the Staff already concurred with the applicability of Rule 14a-8(i)(11) when the Company received a proposal substantially similar to the Prior Proposal and subsequently received a proposal concerning the potential impacts of the Company’s operations on racial disparities for communities of color. In *Amazon.com, Inc. (John Mixon et al.)* (avail. Apr. 7, 2021) (“*Amazon 2021*”), the Company received an initial proposal with virtually the same “Resolved” clause as the Prior Proposal (except that the sequence of the words “diversity, equity” was reversed) (the “2021 Proposal”) and thereafter received another proposal also centered around potential disparate impacts of the Company’s operations on communities of color (in particular, concerning environmental and health harms associated with pollution from the Company’s delivery logistics and other operations). The Company argued that the 2021 Proposal encompassed the same concern as the subsequent proposal, “focusing on the Company’s entire business, which includes the Company’s delivery logistics and other operations targeted by the [subsequent p]roposal, and focusing on concerns over the potential impact of the Company’s operations on racial equity broadly.” The Company further argued that notwithstanding this difference in scope, both the 2021 Proposal and the subsequent proposal called for a report analyzing the potential effects of the Company’s operations on civil rights and racial equity. The Staff concurred with the exclusion of the subsequent proposal as substantially duplicative of the 2021 Proposal under Rule 14a-8(i)(11).

The Proposals mirror those in *Amazon 2021*. The Prior Proposal again focuses on the Company’s entire business and concerns over the potential impact of the Company’s operations on racial equity, while the subsequently received Proposal addresses one aspect of that same issue—the potential impact of the Company’s workforce turnover rates on the Company’s diversity, equity, and inclusion. Notwithstanding the difference in scope, both Proposals share the same concern in that they call for a report that includes assessing the implications of the Company’s operations on racial equity among the Company’s employees.

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In line with its determination in *Amazon 2021*, the Staff has consistently concurred that two proposals can be substantially similar within the meaning of Rule 14a-8(i)(11) notwithstanding differences in the wording or scope of actions requested. For example, in *Cooper Industries, Ltd.* (avail. Jan. 17, 2006), the Staff concurred with the exclusion under Rule 14a-8(i)(11) of a proposal requesting that the company “review its policies related to human rights to assess areas where the company needs to adopt and implement additional policies and to report its findings” as substantially duplicating a previously submitted proposal requesting that the company “commit itself to the implementation of a code of conduct based on . . . ILO human rights standards and United Nations’ Norms on the Responsibilities of Transnational Corporations with Regard to Human Rights.” *See also, e.g., Caterpillar Inc. (AFSCME Employees Pension Plan)* (avail. Mar. 25, 2013) (concurring with the exclusion of a proposal requesting a report as substantially duplicative of a proposal that the company “review and amend, where applicable,” certain policies and post a summary of the review on the company’s website, despite the addition of an additional action in connection with the requested report); *Ford Motor Co.* (avail. Feb. 19, 2004) (concurring with the exclusion of a proposal calling for internal goals related to greenhouse gases as substantially duplicative of a proposal calling for a report on historical data on greenhouse gas emissions and the company’s planned response to regulatory scenarios, where the company successfully argued that “[a]lthough the terms and the breadth of the two proposals are somewhat different, the principal thrust and focus are substantially the same, namely to encourage the [c]ompany to adopt policies that reduce greenhouse gas emissions in order to enhance competitiveness”).

In addition, even if the Proposal is in some respects narrower or more limited than the Prior Proposal, or touches on issues that are not also directly referenced in the Prior Proposal, the Staff previously has concurred with the exclusion of shareholder proposals as substantially duplicative even when the second proposal differs in scope from the first proposal. For example, in *JPMorgan Chase & Co. (New York City Employees’ Retirement System et al.)* (avail. Mar. 14, 2011), the Staff concurred that a proposal that specifically requested a report on internal controls over the company’s mortgage servicing operations could be omitted in reliance on Rule 14a-8(i)(11) as substantially duplicative of other previous proposals that asked for general oversight on the development and enforcement of already-existing internal controls related to loan modification methods. Irrespective of the differences in scope and detail, the principal focus and the core issue of general mortgage modification practices remained the same. *See also Exxon Mobil Corp. (Goodwin et al.)* (avail. Mar. 19, 2010) (concurring with the exclusion of a proposal seeking consideration of a decrease in the demand for fossil fuels as substantially duplicative of a proposal asking for a report to assess the financial risks associated with climate change); *Lehman Brothers Holdings Inc.* (avail.

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Jan. 12, 2007) (concurring with the exclusion of a proposal requesting semi-annual reports on independent expenditures, political contributions, and related policies and procedures as substantially duplicative of a proposal that sought an annual disclosure of independent expenditures and political contributions); *American Power Conversion Corp.* (avail. Mar. 29, 2002) (concurring with the exclusion of a proposal asking that the company's board of directors create a goal to establish a two-thirds independent board as substantially duplicative of a proposal that sought a policy requiring nomination of a majority of independent directors).

More recently, the Staff has agreed that “where one proposal incorporates or encompasses the elements of a later proposal, the subsequent proposal may be excluded.” *Exxon Mobil Corp.* (avail. Mar. 13, 2020) (“*Exxon Mobil*”). In *Exxon Mobil*, an initially received proposal requested a report disclosing the company's lobbying policies and payments, while a subsequently received proposal requested a report describing how the company's lobbying activities aligned with the Paris Climate Agreement's global warming goal. The company argued that the initially received proposal encompassed the subject matter raised in the subsequent proposal, covering the same subject but with a broader scope, and therefore “subsume[d] and incorporate[d] the [subsequent p]roposal, which addresse[d] a subset of issues (limited to the subject of climate change) covered by the [subsequent p]roposal.” The Staff concurred with the exclusion of the subsequent proposal under Rule 14a-8(i)(11) as substantially duplicative of the initial proposal. *See also Duke Energy Corp.* (avail. Feb. 19, 2016) (concurring with the exclusion of a proposal requesting that the board review and report on the company's relationship with organizations that may engage in lobbying as substantially duplicative of an earlier-received proposal requesting disclosure of the company's lobbying policies and payments); *Pfizer Inc.* (avail. Feb. 17, 2012) (concurring with the exclusion of a proposal requesting a lobbying priorities report as substantially duplicative of an earlier-received proposal requesting increased lobbying disclosure). As in *Exxon Mobil* and the other lines of precedent cited above, the Prior Proposal subsumes and incorporates the Proposal, which addresses a subset of issues (limited to the subject of whether turnover affects the Company's diversity, racial equity, and inclusion initiatives).

As noted above, the purpose of Rule 14a-8(i)(11) “is to eliminate the possibility of shareholders having to consider two or more substantially identical proposals submitted to an issuer by proponents acting independently of each other.” 1976 Release. Because the Proposal substantially duplicates the Prior Proposal, the Company's shareholders should not be required to twice consider whether the Company should evaluate and report on the implications of its operations (and in particular, its workforce turnover) on its diversity, equity, and inclusion, and the Company should not have to risk creating shareholder

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confusion by asking them to vote on two proposals addressing the same concern. In addition, if the voting outcome on the two proposals differed, the shareholder vote would not provide guidance on what actions shareholders want the Company to pursue, given that the same actions would be necessary to implement either proposal. For example, if the Prior Proposal was approved by the Company's shareholders, but the Proposal was not approved, it would be unclear whether shareholders did not support the Proposal because they viewed it as encompassed by the Prior Proposal, or whether the Company should interpret those results to mean that under both the Prior Proposal and the Proposal, the Company's shareholders did not share a concern about potential implications of the Company's operations on its workforce.

As indicated by the Staff's determination in *Amazon 2021*, the variations in wording do not change the conclusion that, to the extent the Staff disagrees that the Proposal is excludable under Rule 14a-8(i)(7) and determines that the Proposal relates to the Company's diversity, equity, and inclusion initiatives, that same concern and focus is addressed through the Prior Proposal. On that basis, the Proposal may be excluded pursuant to Rule 14a-8(i)(11) as substantially duplicative of the Prior Proposal.

CONCLUSION

Based upon the foregoing analysis, the Company intends to exclude the Proposal from its 2022 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

GIBSON DUNN

Office of Chief Counsel
Division of Corporation Finance
January 21, 2022
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cc: Mark Hoffman, Amazon.com, Inc.
Brandon J. Rees, AFL-CIO

EXHIBIT A



AFL-CIO

AMERICA'S UNIONS

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

815 Black Lives Matter
Plaza NW
Washington, DC 20006

202-637-5000

aflcio.org

EXECUTIVE COUNCIL

ELIZABETH H. SHULER
PRESIDENT

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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 Samuelson
Vonda McDaniel
Gwen Mills
Charles Wowkanech
Bonnie Castillo
Warren Fairley
Ernest A. Logan
Capt. Joe DePete
James Slevin
Tom Conway
John Costa
Tim Driscoll
Everett Kelley
Anthony Shelton
Ray Curry
Edward A. Kelly
Evelyn DeJesus
Cheryl Eliano

December 14, 2021

David A. Zapolsky
Corporate Secretary
Amazon.com, Inc.
410 Terry Avenue North
Seattle, Washington 98109

Re: Shareholder proposal for 2022 Annual Shareholder Meeting

Dear Mr. Zapolsky:

The AFL-CIO Reserve Fund is submitting the attached proposal (the "Proposal") pursuant to the Securities and Exchange Commission's Rule 14a-8 to be included in the proxy statement of Amazon.com, Inc. (the "Company") for its 2022 annual meeting of shareholders.

The AFL-CIO Reserve Fund has continuously beneficially owned, for at least three years as of the date hereof, at least \$2,000 worth of the Company's common stock. Verification of this share ownership is attached. The AFL-CIO Reserve Fund intends to continue to hold such shares through the date of the Company's 2022 annual meeting of shareholders.

The AFL-CIO Reserve Fund is available to meet with the Company in person or via teleconference at 4 p.m. ET / 1 p.m. PT on January 3, 2021 or January 5, 2021, or at a mutually agreeable time and date. I can be contacted at [REDACTED] or by email at [REDACTED] to schedule a meeting.

Please feel free to contact me with any questions.

Sincerely,

Brandon J. Rees, Deputy Director
Corporations & Capital Markets

Attachments

RESOLVED, shareholders request that Amazon.com, Inc. (“Amazon” or “Company”) report to shareholders on the Company’s workforce turnover rates and the effects of labor market changes that have resulted from the coronavirus disease (“COVID-19”) pandemic. The report should assess the impact of the Company’s workforce turnover on the Company’s diversity, equity and inclusion. The report should be prepared at reasonable cost and omit proprietary information.

SUPPORTING STATEMENT

Workers have been quitting their jobs at historically unprecedented rates as a result of the COVID-19 pandemic. A record 38 million workers in the U.S. quit their jobs between January 2021 and October 2021.¹ One survey showed that 1 out of 4 U.S. workers plan to leave their employer after the COVID-19 pandemic subsides, and another found that more than half of surveyed workers plan to look for a new job in 2021.² This labor market phenomenon has been called the “Great Resignation” or the “Big Quit” by many economic observers.

Even before the “Great Resignation,” workforce turnover has been an issue at Amazon. Before COVID-19, a report estimated that Amazon’s annual turnover of its hourly associates was about 150 percent.³ During the pandemic, another report estimated Amazon’s front-line turnover rate to be around 100 percent, which is more than double the retail and warehouse industry averages.⁴ Some Amazon managers reportedly “hire to fire” people to meet internal attrition goals.⁵

High workforce turnover creates challenges for the successful operation of any company. Employers must spend more time and resources on hiring and recruitment. Newly hired employees may need time to acquire the job specific training and experience that contributes to a high productivity workforce. And high workforce turnover can also work against diversity, equity and inclusion goals if the employer has difficulty retaining diverse employees.

We believe that the business challenges created by Amazon’s workforce turnover are compounded by the fact that Amazon has a large and rapidly growing workforce. Amazon is the second largest private sector employer in the U.S. where 1 out of 153 workers is estimated to be an Amazon employee.⁶ High workforce turnover reportedly has led some Amazon executives to worry about running out of hireable employees in the U.S.⁷

¹ Business Insider, December 8, 2021, <https://www.businessinsider.com/how-many-why-workers-quit-jobs-this-year-great-resignation-2021-12>

² HR Magazine, June 2, 2021, <https://www.shrm.org/hr-today/news/hr-magazine/summer2021/pages/reducing-turnover.aspx>

³ New York Times, June 15, 2021, <https://www.nytimes.com/interactive/2021/06/15/us/amazon-workers.html>

⁴ Seattle Times, October 10, 2020, <https://www.seattletimes.com/business/amazon/amazons-turnover-rate-amid-pandemic-is-at-least-double-the-average-for-retail-and-warehousing-industries/>

⁵ Business Insider, May 10, 2021, <https://www.businessinsider.com/amazon-managers-performance-reviews-hire-to-fire-internal-turnover-goal-2021-5>

⁶ Business Insider, July 30, 2021, <https://www.businessinsider.com/amazon-employees-number-1-of-153-us-workers-head-count-2021-7>

⁷New York Times, June 15, 2021, <https://www.nytimes.com/interactive/2021/06/15/us/amazon-workers.html>

In our opinion, high workforce turnover works against the goal of Amazon’s founder Jeff Bezos to make Amazon the “Earth’s Best Employer.”⁸ We believe the best way to reduce workforce turnover is to be an “employer of choice” that workers will choose when presented with other employment options. A report to shareholders on workforce turnover will provide shareholders with material information regarding Amazon’s human capital management practices.

For these reasons, we urge a vote FOR this proposal.

⁸ Amazon.com, April 15, 2021,
https://www.sec.gov/Archives/edgar/data/1018724/000110465921050346/tm216818d2_ex99-1.htm

EXHIBIT B

Racial Equity Audit

Resolved

Shareholders of Amazon.com, Inc. (“Amazon”) request that the Board of Directors commission a racial equity audit analyzing Amazon’s impacts on civil rights, diversity, equity and inclusion, and the impacts of those issues on Amazon’s business. The audit may, in the board’s discretion, be conducted by an independent third party with input from civil rights organizations, employees, communities in which Amazon operates and other stakeholders. A report on the audit, prepared at reasonable cost and omitting confidential or proprietary information, should be publicly disclosed on Amazon’s website.

Supporting Statement

The murder of George Floyd, and the public outcry over the killings of other Black men and women, has galvanized the movement for racial justice and equity. This movement has focused the attention of media and policymakers on systemic racism, racial violence, and inequities throughout society. Companies would benefit from assessing the potential risks of their products, services and overall corporate practices that are or are perceived to be discriminatory, racist, or increasing inequalities. Companies that fail to assess these risks could face controversies that result in customer and employee attrition, negative press, significant fines or regulatory inquiries.

In 2020, Amazon tweeted its solidarity with the fight against systemic racism. Since then, Amazon has taken some measures to address racial justice and equity, including committing financial resources and publishing workforce diversity data. However, Amazon faces controversies, some significant, that pose various risks and raise questions related to the company’s overall strategy and the company’s alignment with its public statements. This includes:

- Controversies related to workforce diversity, treatment of minority workers, environmental justice in communities of color, surveillance and civil rights;
- Lawsuits alleging discriminatory hiring and promotion practices, and alleging failure to protect warehouse workers, who are mostly people of color; and,
- Criticism regarding its products and services, and their adverse impacts on civil rights and communities of color.

There is no public evidence that Amazon is assessing the potential or actual negative impacts of its policies, practices, products, and services through a racial equity lens.

Amazon has stated it is conducting a human rights assessment, which is not an audit conducted by auditors who are experienced in rooting out biases and discrimination. Amazon’s assessment would not address the core issues of this proposal, including how Amazon is implementing its racial equity, diversity and inclusion strategy, assessing effectiveness, ensuring sufficient oversight mechanisms, and addressing potential structural impediments and implicit biases.

Furthermore, companies, like Starbucks, still faced risks and controversies related to their impacts on people of color after completing similar human rights reporting. Following those controversies, Starbucks conducted an independent racial equity audit that assisted them in identifying, prioritizing, and implementing improvements.

In 2021, 44 percent of Amazon shareholders supported a proposal seeking such an audit.

Because of the pattern and magnitude of controversies repeatedly facing Amazon, we believe that it is in shareholders’ best interests for Amazon to proactively identify and mitigate risks through an independent racial equity audit.



AFL-CIO

AMERICA'S UNIONS

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202-637-5000

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D. Taylor
Stuart Appelbaum
Bhairavi Desai
Paul Rinaldi
Mark Dimondstein
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Sara Nelson
Marc Perrone
Eric Dean
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Christopher Shelton
Lonnie R. Stephenson
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Robert Martinez
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Elissa McBride
John Samuelsen
Vonda McDaniel
Gwen Mills
Charles Wowkanech
Bonnie Castillo
Warren Fairley
Ernest A. Logan
Capt. Joe DePete
James Slevin
Tom Conway
John Costa
Tim Driscoll
Everett Kelley
Anthony Shelton
Ray Curry
Edward A. Kelly
Evelyn DeJesus
Cheryl Eliano
Matthew S. Biggs
Roxanne Brown
Arthur Maratea
James A. Williams Jr.

Via E-Mail

February 15, 2022

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

**Re: Amazon.com, Inc. Request to Exclude a Shareholder
Proposal Submitted by the AFL-CIO Reserve Fund**

Dear Sir or Madam:

Pursuant to Rule 14a-8 under the Securities Exchange Act of 1934, the AFL-CIO Reserve Fund (the "Fund") submitted a shareholder proposal (the "Proposal") to Amazon.com, Inc. (the "Company") on December 14, 2021 for a vote at the Company's 2022 annual meeting of shareholders. In a letter to the staff of the Division of Corporation Finance (the "Division Staff") dated January 21, 2022 (the "No Action Request"), the Company's representative from Gibson, Dunn & Crutcher LLP stated that the Company intends to omit the Proposal from its proxy materials to be distributed to shareholders in connection with the Company's 2022 annual meeting of shareholders.

The resolved clause of the Fund's Proposal states:

RESOLVED, shareholders request that Amazon.com, Inc. ("Amazon" or "Company") report to shareholders on the Company's workforce turnover rates and the effects of labor market changes that have resulted from the coronavirus disease ("COVID-19") pandemic. The report should assess the impact of the Company's workforce turnover on the Company's diversity, equity and inclusion. The report should be prepared at reasonable cost and omit proprietary information.

The No Action Request asks the Division Staff to concur that it will not recommend enforcement action if the Company excludes the Proposal in reliance on Rule 14a-8(i)(7), because the Proposal deals with matters related to the Company's ordinary business operations, and Rule 14a-8(i)(11), because the Proposal substantially duplicates a different shareholder proposal that was

previously received by the Company. For the reasons set forth below, the Proposal may not be excluded under Rule 14a-8(i)(7) because the Proposal addresses a social policy issue that transcends the Company's day-to-day business matters. Nor may the Company exclude the Proposal under Rule 14a-8(i)(11) as the Proposal does not substantially duplicate the previously submitted proposal to the Company.

I. The Proposal Addresses Social Policy Issues That Transcend Ordinary Business

The No Action Request argues that the Proposal may be excluded under Rule 14a-8(i)(7) because it involves matters related to the Company's management of its workforce. As explained below, this argument does not have merit because the Proposal addresses subject matters that are significant social policy issues. As the Division Staff stated in Exchange Act Release No. 34-40018 (May 21, 1998) [63 FR 29106], employment-related shareholder proposals that focus on sufficiently significant social policy issues may transcend the day-to-day business matters and therefore are appropriate for a shareholder vote. In Staff Legal Bulletin 14L (November 3, 2021), the Division Staff reaffirmed the significant social policy exception to the ordinary business exemption such as "human capital management issues with a broad societal impact."

The Proposal asks for a report on the impact of labor market changes due to the COVID-19 pandemic on the Company's workforce turnover rates. It is hard to imagine a social policy issue that is more significant than the COVID-19 pandemic. Over 900,000 lives have been lost in the U.S. alone due to COVID-19.¹ Americans are divided politically over public health efforts to reduce the spread of COVID-19 through mask mandates and vaccines.² The U.S. Supreme Court blocked the Biden administration's proposed vaccine-or-test mandate for large employers.³ And in terms of scale, the COVID-19 pandemic is only rivaled in modern history by the Spanish influenza of 1918-1919.⁴ In other words, no living person on Earth under 100 years of age has ever experienced a pandemic as widespread and contagious as COVID-19.

COVID-19's impact on labor markets has itself become a significant social policy issue. The CARES Act included federal employee retention tax credits and Paycheck Protection Program loans to help companies retain their employees.⁵ Despite this federal assistance, labor market

¹ Julie Bosman and Mitch Smith, "U.S. Covid Death Toll Surpasses 900,000 as Omicron's Spread Slows," New York Times, February 4, 2022, <https://www.nytimes.com/2022/02/04/us/us-covid-deaths.html>.

² Philip Bump, "The Partisan Divide On Covid Isn't Simply Two Groups Pulling In Separate Directions," Washington Post, January 25, 2022, <https://www.washingtonpost.com/politics/2022/01/25/covid-partisan-divide/>.

³ Adam Liptak, "Supreme Court Blocks Biden's Virus Mandate for Large Employers," New York Times, January 13, 2022, <https://www.nytimes.com/2022/01/13/us/politics/supreme-court-biden-vaccine-mandate.html>.

⁴ David Luhnow et. al., "The World Is Likely Sicker Than It Has Been in 100 Years," Wall Street Journal, February 6, 2022, <https://www.wsj.com/articles/the-world-is-likely-sicker-than-it-has-been-in-100-years-11644057003>.

⁵ Michael Cohn, "IRS Offers Guidance on Employee Retention Credit and PPP Eligibility," Accounting Today, March 1, 2021, <https://www.accountingtoday.com/news/irs-offers-guidance-on-employee-retention-credit-and-ppp-eligibility>.

participation has fallen dramatically in the United States as a result of COVID-19.⁶ The U.S. total monthly nonfarm quit rate reached an all-time high of 2.9 percent in August 2021.⁷ The effect of COVID-19 on the workforce has disrupted a wide variety of industries,⁸ including manufacturing,⁹ supermarkets,¹⁰ food processing,¹¹ retail,¹² airlines,¹³ education,¹⁴ and health care.¹⁵ According to a survey of human resources executives, employee retention amid the Great Resignation is the single greatest challenge currently facing their organizations.¹⁶

The Division Staff has recognized that proposals addressing the COVID-19 pandemic transcend ordinary business and thus may not be excluded under Rule 14a-8(i)(7). For example, in *Johnson & Johnson* (February 8, 2022), the Division Staff declined to concur with the exclusion of a proposal regarding the company's sharing of COVID-19 vaccine technologies. Similarly in *Johnson & Johnson* (February 26, 2021) and *Pfizer Inc.* (February 26, 2021), the Division Staff was unable to concur with the exclusion of proposals requesting a report on government support

⁶ Josh Mitchell et. al., "4.3 Million Workers Are Missing. Where Did They Go?," Wall Street Journal, October 14, 2021, <https://www.wsj.com/articles/labor-shortage-missing-workers-jobs-pay-raises-economy-11634224519>.

⁷ "Quits rate of 2.9 percent in August 2021 an all-time high," TED: The Economics Daily, U.S. Bureau of Labor Statistics, October 18, 2021, <https://www.bls.gov/opub/ted/2021/quits-rate-of-2-9-percent-in-august-2021-an-all-time-high.htm>.

⁸ Lauren Weber and Chip Cutter, "Worker Absences From Covid-19 Hold Back Companies' Growth," Wall Street Journal, February 6, 2022, <https://www.wsj.com/articles/staff-shortages-fed-by-omicron-curbed-growth-in-fourth-quarter-11644143402>.

⁹ Justin Lahart, "Despite Demand, Factories Still Aren't Humming," Wall Street Journal, July 15, 2021, <https://www.wsj.com/articles/despite-demand-factories-still-arent-humming-11626367441>.

¹⁰ Stephen Council and Jaewon Kang, "Grocery Stores Cut Hours, Services as Omicron Infects Workers," Wall Street Journal, January 13, 2022, <https://www.wsj.com/articles/supermarkets-cut-hours-services-as-omicron-infects-workers-11642078804>.

¹¹ Jaewon Kang and Jesse Newman, "Food Companies Rely More on Temp Workers as Labor Shortages Persist," Wall Street Journal, February 7, 2022, <https://www.wsj.com/articles/food-companies-rely-more-on-temp-workers-as-labor-shortages-persist-11644229801>.

¹² Sapna Maheshwari and Michael Corkery, "Retailers Scramble to Attract Workers Ahead of the Holidays," New York Times, November 8, 2021, <https://www.nytimes.com/2021/11/08/business/retail-hiring-holidays-workers.html>.

¹³ Alison Sider, "After Two Weeks of Flight Cancellations, Airlines Assess What Went Wrong," Wall Street Journal, January 7, 2022, <https://www.wsj.com/articles/after-two-weeks-of-flight-cancellations-airlines-assess-what-went-wrong-11641551402>.

¹⁴ Kathryn Dill, "Teachers Are Quitting, and Companies Are Hot to Hire Them," Wall Street Journal, February 2, 2022, <https://www.wsj.com/articles/teachers-are-quitting-and-companies-are-hot-to-hire-them-11643634181>.

¹⁵ Rachel Feintzeig, "Stressed Nurses Wonder: How to Quit a Job When It's Your Calling?," Wall Street Journal, January 10, 2022, <https://www.wsj.com/articles/when-youre-burned-out-at-your-job-but-its-also-your-calling-11641790863>.

¹⁶ Kathryn Mayer, "What's Keeping HR Up at Night? The Great Resignation and More, Our Survey Shows," Human Resource Executive, January 24, 2022, <https://hrexecutive.com/whats-keeping-hr-up-at-night-the-great-resignation-and-much-more/>.

for the development and manufacture of COVID-19 vaccines and therapeutics. Moreover, the Division Staff has recognized that COVID-19's impact on the workforce also transcends ordinary business. In *Walmart Inc.* (February 19, 2021), a proposal requesting a "Pandemic Workforce Advisory Council" of hourly associates to advise the board on pandemic-related workforce issues was not permitted to be excluded under Rule 14a-8(i)(7).

The No Action Letter argues that the Proposal does not transcend the Company's ordinary business because the Proposal seeks a report on workforce retention and turnover, and that the "Proposal's passing reference to the COVID-19 pandemic does not raise a significant social policy issue." In support of this assertion, the No Action Letter points to various phrases in the Supporting Statement regarding the importance of human capital management to the Company. In doing so, the No Action Letter ignores the clear language of the Proposal's resolved clause that limits the scope of the requested report on workforce turnover to the impacts of COVID-19. The No Action Letter also discounts the entire first paragraph of the Supporting Statement that underlines the Proposal's central focus on labor market changes due to COVID-19:

Workers have been quitting their jobs at historically unprecedented rates as a result of the COVID-19 pandemic. A record 38 million workers in the U.S. quit their jobs between January 2021 and October 2021.¹⁷ One survey showed that 1 out of 4 U.S. workers plan to leave their employer after the COVID-19 pandemic subsides, and another found that more than half of surveyed workers plan to look for a new job in 2021.¹⁸ This labor market phenomenon has been called the "Great Resignation" or the "Big Quit" by many economic observers.

Similarly, the No Action Letter disregards the plain language of the Proposal's resolved clause that requests that the report address the impact of the Company's workforce turnover on the Company's diversity, equity and inclusion. The Proposal's Supporting Statement further reinforces the connection between workforce turnover and workforce diversity, explaining that "high workforce turnover can also work against diversity, equity and inclusion goals if the employer has difficulty retaining diverse employees." The Division Staff have long recognized that workforce diversity, equity and inclusion are significant social policy issues ever since Exchange Act Release No. 34-40018 (May 21, 1998) reversed *Cracker Barrel Old Country Stores, Inc.* (October 13, 1992). Diversity, equity and inclusion is an even more significant social policy issue today as a result of the #MeToo and Black Lives Matter movements.

Finally, recent trends in workforce turnover have become a significant social policy issue. Even before the first reported case of COVID-19, employers were struggling to retain their workforces

¹⁷ Juliana Kaplan and Andy Kiersz, "2021 Was The Year of The Quit: For 7 Months, Millions of Workers Have Been Leaving," Business Insider, December 8, 2021, <https://www.businessinsider.com/how-many-why-workers-quit-jobs-this-year-great-resignation-2021-12>.

¹⁸ Kathryn Tyler, "How to Ride the Great Resignation Wave," HR Magazine, June 2, 2021, <https://www.shrm.org/hr-today/news/hr-magazine/summer2021/pages/reducing-turnover.aspx>.

as a result of one of the tightest labor markets in the past 50 years.¹⁹ According to the U.S. Bureau of Labor Statistics, the median tenure for wage and salary workers with their current employer declined from 4.4 years in January 2010 to 4.1 years in January 2020.²⁰ This increase in workforce turnover has been attributed to a variety of significant social policy issues including Baby Boomer retirements,²¹ Millennial job-hopping,²² and the growth of the “gig” economy.²³ The impact of these workforce turnover trends on the U.S. economy is significant. Voluntary employee turnover has been estimated to cost U.S. businesses \$1 trillion every year.²⁴

For these reasons, the Proposal raises significant social policy issues that transcend the day-to-day management of the workforce. The No Action Letter has not met the burden of showing that the Company is entitled to omit the Proposal in reliance on Rule 14a-8(i)(7), and the Company’s request for relief to exclude the Proposal on ordinary business grounds should be denied.

II. The Proposal Does Not Substantially Duplicate the Previously Submitted Proposal

The No Action Request also claims that the Proposal may be excluded pursuant to Rule 14a-8(i)(11) because the Proposal substantially duplicates a previously submitted proposal. As stated in Release No. 34–12598 (July 7, 1976) [41 FR 29982], “[t]he purpose of the provision is to eliminate the possibility of shareholders having to consider two or more substantially identical proposals submitted to an issuer by proponents acting independently of each other.” The Division Staff has interpreted these provisions to only allow exclusion of proposals with the same subject matter and having the same “principal thrust” or “principal focus.”

The prior proposal requests that the that the Board of Directors commission a racial equity audit analyzing the Company’s impacts on civil rights, diversity, equity and inclusion, and the impacts of those issues on the Company’s business. The No Action Request asserts that the current Proposal substantially duplicates this previously submitted proposal because both proposals have the same core concern of diversity, equity and inclusion. In asserting this claim that the core

¹⁹ Theresa Agovino, “To Have and to Hold,” Society for Human Resource Management, February 23, 2019, <https://www.shrm.org/hr-today/news/all-things-work/pages/to-have-and-to-hold.aspx>.

²⁰ “Table 1. Median years of tenure with current employer for employed wage and salary workers by age and sex, selected years, 2010-2020,” Economic News Release, U.S. Bureau of Labor Statistics, September 20, 2020, <https://www.bls.gov/news.release/tenure.t01.htm>.

²¹ Kathy Gurchiek, “Employers Face Hiring Challenge as Boomers Retire in Record Numbers,” Society for Human Resource Management, June 28, 2021, <https://www.shrm.org/resourcesandtools/hr-topics/talent-acquisition/pages/employers-face-hiring-challenge-as-boomers-retire-in-record-numbers.aspx>.

²² Amy Adkins, “Millennials: The Job-Hopping Generation,” Gallup, <https://www.gallup.com/workplace/231587/millennials-job-hopping-generation.aspx>.

²³ Christopher Mims, “In a Tight Labor Market, Gig Workers Get Harder to Please,” Wall Street Journal, May 4, 2019, <https://www.wsj.com/articles/in-a-tight-labor-market-gig-workers-get-harder-to-please-11556942404>.

²⁴ Shane McFeely and Ben Wigert, “This Fixable Problem Costs U.S. Businesses \$1 Trillion,” Gallup, March 13, 2019, <https://www.gallup.com/workplace/247391/fixable-problem-costs-businesses-trillion.aspx>.

concerns of the two proposals are substantially similar, the No Action Request contradicts its own prior assertion that the current Proposal only contains a “passing reference” to diversity, equity and inclusion and therefore should be excluded as an ordinary business matter.²⁵

The text of each proposal demonstrates that they do not share the same “principal thrust” or “principal focus.” According to one definition, “[a] Racial Equity Audit is, at its core, an independent, objective and holistic analysis of a company’s policies, practices, products, services and efforts to combat systemic racism in order to end discrimination within or exhibited by the company with respect to its customers, suppliers or other stakeholders.”²⁶ In contrast, the current Proposal does not address issues of systemic racism or even mention race. Rather, the Proposal seeks a report on COVID-19-related workforce turnover and its impact diversity, equity and inclusion. Diversity, equity and inclusion is not limited to race, but also includes ethnicity, national origin, age, gender, religion, sexual orientation, gender identity, gender expression, disability, veteran’s status, economic status and other diverse backgrounds.

The No Action Request goes on to argue that the current Proposal nevertheless may be excluded despite the prior submitted proposal’s narrower focus on systemic racism. In other words, the No Action Request presumes that Rule 14a-8(i)(11) will only permit one proposal on any subject matter that falls under the broad topic of diversity, equity and inclusion. This overbroad reasoning defies logic. Like many significant social policy issues, the topic of diversity, equity and inclusion is not one dimensional. Should only one proposal be permitted to address significant social policy issues concerning the environment or executive compensation? The Division Staff has rejected similar arguments made by company no action requests before.

For example, the Division Staff has recognized that Rule 14a-8(i)(11) does not prohibit two or more proposals that fall under the broad topic of the environment. In *Kraft Foods Group, Inc.* (January 28, 2015), a proposal on non-recyclable packaging and a proposal requesting a compressive sustainability report were not duplicative of a proposal on deforestation. In *Ford Motor Company* (March 14, 2005), a proposal seeking lobbying disclosure on federal Corporate Average Fuel Economy standards was not duplicative of a proposal requesting a board assessment of greenhouse gas emissions. And in *Citigroup Inc.* (February 7, 2003), a proposal urging adoption of a strategy on old growth forest protection and climate change did not substantially duplicate a proposal requesting a climate change audit.

Likewise the Division Staff has permitted multiple proposals to go to a vote that address different aspects of executive compensation. For example, in *Pulte Homes, Inc.* (March 17, 2010), the Division Staff did not concur with the exclusion of a proposal requesting a stock holding requirement for equity-based executive compensation where the previously submitted

²⁵ No Action Request, P. 8.

²⁶ Ron Berenblat and Elizabeth Gonzalez-Sussman, “Racial Equity Audits: A New ESG Initiative,” Harvard Law School Forum on Corporate Governance, October 30, 2021, <https://corpgov.law.harvard.edu/2021/10/30/racial-equity-audits-a-new-esg-initiative/>.

proposal had requested a prohibition on executives hedging and pledging of their company stock. In *Ford Motor Company* (March 3, 2008), the Division Staff did not permit the exclusion of a proposal to limit executive pay where the prior proposal would prohibit stock option grants to executives. And in *AT&T Corp.* (March 2, 2005), a proposal on executive pension benefits was not duplicative of a proposal on executive severance benefits.

Lastly, the Division Staff has permitted multiple proposals on the same subject matter if the two proposals request different outcomes or actions. In *Johnson & Johnson* (February 8, 2022), a proposal requesting a report on the public health implications of the company's COVID-19 vaccine availability was not duplicative of a proposal asking for a report on government support for the development of COVID-19 vaccines. In *Pharma-Bio Serv, Inc.* (January 17, 2014), a proposal requesting that the board establish a quarterly dividend payment policy was not duplicative of a proposal requesting an immediate special cash dividend. In *Verizon Communications Inc.* (February 23, 2006), a proposal that requested that the company refrain from nominating interlocking directors was not duplicative of a proposal that requested the nomination of a two-thirds independent board. And in *Bristol-Myers Squibb Company* (February 11, 2004), the Division Staff did not concur with the exclusion of a proposal to ban political contributions where the prior proposal requested a report on the company's political spending.

Like proposals on the environment and executive compensation, proposals on the broad topic of diversity, equity and inclusion can address a wide variety of subject matter issues. They may also ask the company to take different actions regarding the same subject matter. In this case, the prior submitted proposal requests a racial equity audit, whereas the current Proposal requests a report on workforce turnover. Shareholders can easily distinguish the requested actions of the two proposals, and the company will have no difficulty interpreting the vote results if only one of the proposals is adopted by shareholders. If shareholders adopt the previously submitted proposal, the Company will be instructed to conduct a racial equity audit. If shareholders adopt the current Proposal, the Company will be instructed to prepare a report on workforce turnover.

For these reasons, the No Action Request has failed to establish that the Proposal substantially duplicates the previously submitted proposal that requests a racial equity audit. The Company should not be permitted to exclude the Proposal in reliance on Rule 14a-8(i)(11), and the Proposal should be permitted to go to a vote with the previously submitted proposal.

III. Conclusion

In conclusion, the Division Staff should not concur with the Company's No Action Request that the Proposal may be excluded. The Proposal may not be excluded under Rule 14a-8(i)(7) because the Proposal addresses significant social policy issues that transcend the Company's day-to-day business matters. Nor may the Company exclude the Proposal under Rule 14a-8(i)(11) as the Proposal does not substantially duplicate the previously submitted proposal to the Company. If you have any questions, please contact me at (202) 637-5152 or brees@aflcio.org.

Office of Chief Counsel
Division of Corporation Finance
February 15, 2022
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Sincerely,

A handwritten signature in black ink, consisting of three distinct, stylized cursive marks that appear to be initials or a first name followed by a last name.

Brandon J. Rees
Deputy Director, Corporations and Capital Markets

cc: Ronald O. Mueller, Gibson, Dunn & Crutcher LLP
Mark Hoffman, Amazon.com, Inc.