



DIVISION OF
CORPORATION FINANCE

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

March 30, 2022

Michael Kaplan
Davis Polk & Wardwell LLP

Re: Meta Platforms, Inc. (the "Company")
Incoming letter dated January 18, 2022

Dear Mr. Kaplan:

This letter is in response to your correspondence concerning the shareholder proposal (the "Proposal") submitted to the Company by Mercy Investment Services, Inc. for inclusion in the Company's proxy materials for its upcoming annual meeting of security holders.

The Proposal directs the board to publish an independent third-party Human Rights Impact Assessment, examining the actual and potential human rights impacts of Facebook's targeted advertising policies and practices throughout its business operations.

We are unable to concur in your view that the Company may exclude the Proposal under Rule 14a-8(i)(7). In our view, the Proposal transcends ordinary business matters.

We are unable to concur in your view that the Company may exclude the Proposal under Rule 14a-8(i)(12)(ii). In our view, the Proposal does not address substantially the same subject matter as the proposals previously included in the Company's 2020 and 2019 proxy materials.

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: Lydia Kuykendal
Mercy Investment Services, Inc.

January 18, 2022

Re: Shareholder Proposal of Mercy Investment Services, Inc. Pursuant to Rule 14a-8
of the Securities Exchange Act of 1934

U.S. Securities and Exchange Commission
Office of Chief Counsel
Division of Corporation Finance
100 F. Street, N.E.
Washington, D.C. 20549
Via email: shareholderproposals@sec.gov

Dear Sir or Madam:

On behalf of Meta Platforms, Inc., a Delaware corporation (the “**Company**” or “**Meta**”), and in accordance with Rule 14a-8 under the Securities Exchange Act of 1934, as amended, we are filing this letter with respect to the shareholder proposal submitted by Mercy Investment Services, Inc. (the “**Proponent**”), on December 7, 2021 (the “**Proposal**”) for inclusion in the proxy materials that the Company intends to distribute in connection with its 2022 Annual Meeting of Shareholders (the “**2022 Proxy Materials**”). We hereby request confirmation that the staff of the Office of Chief Counsel (the “**Staff**”) will not recommend any enforcement action if, in reliance on Rule 14a-8, the Company omits the Proposal from its 2022 Proxy Materials.

Pursuant to Rule 14a-8(j), this letter is being filed with the Securities and Exchange Commission (the “**Commission**”) no later than 80 days before the Company files its definitive 2022 Proxy Materials. Pursuant to Staff Legal Bulletin No. 14D (CF), *Shareholder Proposals* (Nov. 7, 2008), question C, we have submitted this letter to the Commission via email to shareholderproposals@sec.gov.

Pursuant to Rule 14a-8(j), a copy of this submission is being sent simultaneously to the Proponent as notification of the Company’s intention to omit the Proposal from its 2022 Proxy Materials. This letter constitutes the Company’s statement of the reasons that it deems the omission of the Proposal to be proper. We have been advised by the Company as to the factual matters set forth herein.

A copy of the Proposal is attached to this letter as Exhibit A.

The Proposal sets forth the following resolution:

Human Rights Impact Assessment

RESOLVED: Shareholders direct the board of directors of Meta Platforms, Inc. (formerly known as Facebook, Inc) to publish an independent third-party Human Rights Impact Assessment (HRIA), examining the actual and potential human rights impacts of Facebook's targeted advertising policies and practices throughout its business operations. This HRIA should be conducted at reasonable cost; omit proprietary and confidential information, as well as information relevant to litigation or enforcement actions; and be published on the company's website by June 1, 2023.

The Company recognizes the need to respect human rights. Over the last three years, the Company has taken significant action in this area. For example, the Company has adopted a corporate human rights policy that includes commitments to human rights due diligence in accordance with the United Nations' Guiding Principles on Business and Human Rights. There is more work to be done and the Company is committed to continuing to make progress. However, for the reasons stated below the Company believes the Proposal should be excluded from its 2022 Proxy Materials.

Statement of Reasons to Exclude

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

The Proposal may be omitted as it relates to the Company's ordinary business operations and does not raise a significant policy issue that transcends the Company's ordinary business operations.

A. Background

Under Rule 14a-8(i)(7), a shareholder proposal may be excluded from a company's proxy materials if the proposal "deals with matters relating to the company's ordinary business operations." The purpose 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." See Release No. 34-40018 (May 21, 1998) (the "**1998 Release**"). As explained by the Commission, the term "ordinary business" in this context refers to "matters that are not necessarily 'ordinary' in the common meaning of the word, and is rooted in the corporate law concept providing management with flexibility in directing certain core matters involving the company's business and operations." *Id.*

The ordinary business exclusion is based on two central considerations. First, the Commission notes that "[c]ertain tasks are so fundamental to management's ability to run a company on a day-to-day basis" that they are not proper subjects for shareholder proposals." The Commission added, "[e]xamples includedecisions on production quality and quantity." While "proposals . . . focusing on sufficiently significant social policy issues (e.g., significant discrimination matters) generally would not be considered excludable," the Staff has indicated that proposals relating to both ordinary business matters and significant social policy issues may be excludable in their entirety in reliance on Rule 14a-8(i)(7) if they do not "transcend the day-to-day business matters" discussed in the proposals. *Id.* The second consideration "relates to the degree to which the proposal seeks to 'micro-manage' the company by probing too deeply into matters of a complex nature upon which shareholders, as a group, would not be in a position to make an informed judgment." *Id.*

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 report is within the ordinary

business of the issuer. See Exchange Act Release No. 20091 (Aug. 16, 1983). In addition, the Staff has indicated that “[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).” *Johnson Controls, Inc.* (Oct. 26, 1999).

B. The Proposal Be Excluded Under Rule 14a-8(i)(7) Because It Relates To Products And Services Offered By The Company.

The Proposal requests a report on purported human rights impacts of the Company’s targeted advertising policies and practices. The Company generates substantially all of its revenue from selling advertising placements to marketers, with ads enabling marketers to reach people based on a variety of factors including age, gender, location, interests and behaviors. Marketers purchase ads that can appear in multiple places including on Facebook, Instagram, Messenger and third-party applications and websites. The Company’s advertising revenue is negatively impacted if its ability to target and measure the effectiveness of advertising on its platform is limited.

The Company competes with companies that sell advertising to businesses looking to reach consumers and/or develop tools and systems for managing and optimizing advertising campaigns, and its revenues rely in part on enabling marketers to reach their existing or prospective audiences. Marketers pay for ad products based on the number of impressions delivered or the number of actions, such as clicks, performed by users. The Company’s advertising revenue is dependent on targeting and measurement tools that incorporate data signals from user activity on certain websites and services. The number of ads the Company shows is subject to methodological changes as the Company continues to evolve its ad business and structure of its ad products. With regard to the Company’s advertising sales and operations, the majority of its marketers use the Company’s self-service advertisement platform to launch and manage their advertising campaigns. Additionally, the Company has a global sales force that is focused on attracting and retaining advertisers and providing support to them throughout the stages of the marketing cycle from pre-purchase decision-making to real-time optimizations to post-campaign analytics. The Company also invests in self-service tools that provide direct customer support to users and marketers.

Since substantially all of the Company’s revenue is generated from advertisements, these advertising decisions are core to the Company’s business and an essential part of management’s responsibilities for running the Company’s day-to-day operations. Management devotes significant time, energy and resources in making decisions concerning the placement of ads for its marketers, and in determining the impact of those decisions as to its effectiveness and other implications for the Company. By requesting a report on the assessment of the impacts of these decisions the Proposal attempts to impose on the Company the Proponent’s own views and preferences on advertising strategy and standards.

As a result, the Proposal relates at its core to how the Company manages its day-to-day operations, specifically how it enables marketers to use its advertising services and manages its online products, and how those decisions affect the business. The Company’s decisions regarding the management of its products and services are ordinary business matters of a complex and strategic nature that should not be subject to direct management by shareholders. Nor would it be practical for the Company’s shareholders to oversee such decisions given their scope, deliberative nature and speed of the Company’s operations.

The Staff has consistently agreed that proposals that seek to dictate how a company offers or designs its products or services implicate a company’s ordinary business operations. For example, in *The Walt Disney Company* (Jan 8, 2021), the Staff concurred that a substantially similar proposal to the Proposal may be excluded. The proposal requested a report “assessing how and whether Disney ensure the company’s advertising policies are not contributing to violations of civil and human rights.” The supporting statement to the proposal specifically referenced “reputational and business risks . . . through advertising on social media platforms like Facebook, YouTube and Twitter.” The company argued that the proposal sought to interfere with its advertising policies and management decisions

regarding the appropriate channels for advertising. Similarly here, the Company's advertising policies are designed to enable its marketers to successfully place ads on the Company's platforms. These policies are strategically designed by management to meet the needs of the Company's marketers. As such, the Company's advertising policies are closely tied to the advertising needs of its marketers. The Staff has consistently concurred that a proposal relating to advertising decisions may be excluded.

Like the precedents noted above, the Proposal relates to the Company's advertising policies. As such, the Proposal is properly excludable under Rule 14a-8(i)(7).

C. The Proposal Does Not Transcend The Company's Ordinary Business Operations.

The Proposal does not present any significant policy issues (that transcend the day-to-day nature of the Company's business operations. See Staff Legal Bulletin No. 14K (Oct. 16, 2019). In determining whether a shareholder proposal raises significant policy issues, the Staff has noted that it is not sufficient that the topic may have "recently attracted increasing levels of public attention," but instead it must have "emerged as a consistent topic of widespread public debate." *Comcast Corp.* (Feb. 15, 2011).

The Proponent seeks to cast the Proposal as relating to a significant policy issue by asserting that the Company's decision to advertise on certain social media platforms "contribute[s] to the spread of racism, hate speech, and disinformation online;" however, the mere reference to a significant policy issue does not alter the fundamentally ordinary business focus of the Proposal with regard to the Company in particular. The Staff has consistently concurred with the exclusion of proposals where the primary focus was on ordinary business matters. See *Ford Motor Company* (February 2, 2017) (concurring in exclusion of a proposal requesting that the company assess the political activity resulting from its advertising and any resulting exposure to risk because the proposal related to Ford's ordinary business operations); *FedEx Corp.* (July 11, 2014) (concurring in exclusion of a proposal relating to the company's sponsorship of the Washington DC NFL franchise team given controversy over the team's name because the proposal "relate[d] to the manner in which FedEx advertise[d] its products and services"); *Tootsie Roll Industries Inc.* (January 31, 2002) (concurring in exclusion of a proposal asking the company to identify and disassociate from any offensive imagery to the American Indian community in product marketing and advertising because the proposal related to "the manner in which a company advertises its products"); *The Quaker Oats Company* (March 16, 1999) (concurring in exclusion of a proposal requesting the formation of an employee committee to review advertising for content slandering people based on race, ethnicity, or religion because the proposal related to "the manner in which a company advertises its products"); *PepsiCo, Inc.* (February 23, 1998) (concurring in exclusion of a proposal requesting that the Board of Directors prepare a report regarding the use of nonracist portrayals by the company because the proposal related to "the manner in which a company advertises its products"); and *General Mills, Inc.* (July 14, 1992) (concurring in exclusion of a proposal to establish a policy of not advertising on Geraldo Rivera's show and other "trash TV" programs because the proposal related to "the manner in which a company advertises its products").

The Proposal seeks to alter the ordinary business nature of the Proposal by making references to purported human rights impacts resulting from the Company's products. However, the principal thrust of the Proposal focuses on how the Company offers its advertising products—a function that is fundamental to the Company's ordinary business operations.

II. The Proposal May Be Excluded Pursuant To 14a-8(i)(12) Because It Deals With Substantially The Same Subject Matter As At Least Two Proposals Previously Submitted Within The Last Five Years.

The Company believes that the Proposal may be properly omitted from the 2022 Proxy Materials pursuant to Rule 14a-8(i)(12) because the Proposal deals with substantially the same subject matter as prior proposals that have been included in the Company's proxy materials and voted on more than two

times within the preceding five calendar years and the most recent vote on such prior proposal, at the Company's 2020 Annual Meeting of Shareholders, was less than 15% of the votes cast (the **"2020 Annual Meeting"**).

Rule 14a-8(i)(12) states in relevant part:

"If the proposal addresses substantially the same subject matter as a proposal, or proposals, previously included in the company's proxy materials within the preceding five calendar years if the most recent vote occurred within the preceding three calendar years and the most recent vote was... (ii) Less than 15 percent of the votes cast if previously voted on twice."

The Commission has stated that judgments under Rule 14a-8(i)(12) are to be "based upon a consideration of the substantive concerns raised by a proposal rather than the specific language or actions proposed to deal with those concerns." Exchange Act Release No. 34-20091 (August 16, 1983). In past decisions, the Staff has consistently concluded that companies may properly exclude resubmissions that are based on similar substantive concerns, notwithstanding differences in specific language or implementing activities. (See, e.g., *Microsoft Corporation* (Sept. 28, 2021); *Alphabet, Inc.* (Apr. 16, 2019); *Apple Inc.* (Nov. 20, 2018); *JPMorgan Chase & Co.* (Jan. 27, 2017); *The Coca-Cola Co.* (Jan. 18, 2017)).

The Proposal's subject matter is a request that the Board prepare a report analyzing the human rights impacts of the Company's social media platforms on its users. This involves the same substantive concerns as prior shareholder proposals that were submitted and voted on at the Company's annual meetings held in 2020 and 2019 (respectively, the **"2020 Proposal"** and the **"2019 Proposal,"** and collectively, the **"Prior Proposals"**). The text of the 2020 Proposal and the 2019 Proposal are attached hereto as Exhibit B and Exhibit C, respectively. The resolved clause of the Proposal essentially requests the same action of the Company as each of the Prior Proposals. Although they have certain differences, each fundamentally focuses on a request that the Company should provide a report on the purported human rights impacts of its social media platforms on its users. Below is a summary chart comparing the language of the Proposal to that of the Prior Proposals and demonstrating that the Proposal and the Prior Proposals all address substantially the same subject matter:

| Proposal | 2020 Proposal | 2019 Proposal |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| RESOLVED: Shareholders direct the board of directors of Meta Platforms, Inc. (formerly known as Facebook, Inc) to publish an independent third-party Human Rights Impact Assessment (HRIA), examining the actual and potential human rights impacts of Facebook's targeted advertising policies and practices throughout its business operations. This HRIA should be conducted at reasonable cost; omit proprietary and confidential information, as well as information relevant to litigation or enforcement actions; and be published on the company's website by June 1, 2023. | RESOLVED: Shareholders urge the Board of Directors to oversee management's preparation of a report on Board-level oversight of civil and human rights risks. In doing so, Facebook might consider reporting on board level expertise in civil and human rights; board level responsibilities for advising on and managing civil and human rights risk; board level expertise pertinent to oversight regarding civil and human rights issues impacting Facebook's community of global users; and the presence of board level infrastructure ensuring ongoing consultation with leading civil and human rights experts. | RESOLVED , The Company publish a report (at reasonable cost, omitting proprietary or legally privileged information) evaluating its strategies and policies on content governance, including the extent to which they address human rights abuses and threats to democracy and freedom of expression, and the reputational, regulatory, and financial risks posed by content governance controversies. |

| | | Proposal | 2020 Proposal | 2019 Proposal |
|--|--|----------|---------------|---------------|
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|-----------------------|---------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Subject Matter | Focus on the Company's Platform | "Targeted advertising given concerns around the fairness, accountability, and transparency of the underlying algorithmic system, has been heavily scrutinized for its adverse impacts on human rights." | "While Facebook recently took steps to limit discriminatory targeting in advertising, concerns have been raised that the algorithm used to determine how ads are delivered to users is itself discriminatory. . . ." | "Facebook's content governance challenges are complex. . . ." |
| | Focus on the Company's Business Model | "Facebook's business model relies almost entirely on ads, with 98% of Facebook's global revenue in 2020 generated from advertising." | "Accordingly to Investopedia, almost all of Facebook's revenue comes from advertising. . . ." | "News of Cambridge Analytica's misappropriation of millions of Facebook users' data preceded a decline in Facebook's stock market capitalization of over 100 billion dollars in March 2017. Another 100-billion plus decline in market value—a record-setting drop—came in July after Facebook's quarterly earnings report reflected increasing costs and decreasing revenue growth." |
| | Impact to "Human Rights" | "Shareholders direct the board of directors . . . to publish an independent third-party Human Rights Impact Assessment examining the actual and potential human rights impacts of Facebook's targeted advertising policies and practices throughout its business operations." | "Shareholders urge the Board of Directors to oversee management's preparation of a report on Board-level oversight of civil and human rights risks." | "The Company publish a report . . . evaluating its strategies and policies on content governance, including the extent to which they address human rights abuses. . . ." |
| | Alleged human rights abuses as a result of the Company's platform | "exacerbating systemic discrimination and other human rights abuses" | ". . . excluded people from seeing housing, employment and credit ads based on age, gender, race . . ." | "propagating hate speech"; "abuse and misinformation campaigns continue, implicating issues such as democracy, human rights, and freedom of expression" |
| | Concerns regarding the effectiveness of the Company's mitigation efforts | "However, it was discovered that, outside of stated parameters, Facebook is still using the vast amount of data it collects about young people to determine which children are most likely to be vulnerable to a given ad, opening them to allegations of human rights violations. . . ." | "Although Facebook has taken steps to limit its civil and human rights risk exposure . . . [w]e are concerned that these efforts have not received adequate attention from leadership." | "Despite Facebook's recent efforts to increase disclosures and enhance internal compliance and enforcement strategies, abuse and misinformation campaigns continue, implicating issues such as democracy, human |

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|--|-----------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| | | Additionally, Facebook does not publish data on alleged violations of the policies they do have, making it impossible to know if they are effective” | | rights, and freedom of expression.” |
| | Focus on potential financial and legal implications | “Facebook was fined \$5 billion for such privacy violations by the U.S. Federal Trade Commission in 2019.” | “In 2019, Facebook paid \$5 million to settle civil rights lawsuits claiming Facebook’s advertising systems excluded people from seeing housing, employment and credit ads based on age, gender and race . . .” | “News of Cambridge Analytica’s misappropriation of millions of Facebook users’ data preceded a decline in Facebook’s stock market capitalization of over 100 billion dollars in March 2018. Another 100-billion plus decline in market value—a record-setting drop—came in July after Facebook’s quarterly earnings report reflected increasing costs and decreasing revenue growth.” |
| | Types of additional reporting each of the proposals want | “examining the actual and potential human rights impacts” and “information relevant to litigation or enforcement actions. . .” | “reporting on . . . board level responsibilities for advising on and managing civil and human rights risks” | “evaluating [the Company’s] strategies and policies on continent governance, including the extent to which they address human rights abuses. . .” |

There are also strong similarities between the whereas section of the Proposal and those of the Prior Proposals. For example, each of the Proposal and the Prior Proposals focus on human rights issues stemming from the Company’s social networking services, rather than targeting other types of human rights matters such as through the Company’s supply chain or employment practices. All the proposals allege that the content on the platform, including the targeted advertisements, results in various forms of human rights abuses that pose risks to the Company, including discrimination and financial impacts. We note that there are also certain differences. For example, the Proposal and the 2020 Proposal reference purported human rights violations stemming from advertising on the Company’s platforms, while the 2019 Proposal is focused on human rights abuses in the Company’s products more generally. However, while there are certain differences in the wording of the resolved clauses and the whereas sections, these distinctions do not change the substantive concern of the Proposal and the Prior Proposals. The Proposal and the Prior Proposals address the same subject matter and request the same action, in that they all seek a report the purported human rights impact of the Company’s social media platforms on users.

The most recent of these Prior Proposals was submitted and voted on at the 2020 Annual Meeting. According to the Company’s Form 8-K filed on May 29, 2020, there were 408,918,830 votes cast “for” the 2020 Proposal and 5,293,964,911 votes cast “against” the 2020 Proposal. There were also 23,497,456 “abstentions”. The Form 8-K is attached hereto as Exhibit D and is also available at <https://www.sec.gov/ix?doc=/Archives/edgar/data/0001326801/000132680120000058/form8-k2020annualmeet.htm>. As described in Section F.4 of the Division of Corporation Finance: Staff Legal Bulletin No. 14 (Jul. 13, 2001), only votes cast “for” and “against” a proposal are included in the calculation of the shareholder vote on a proposal for purposes of Rule 14a-8. The percentage of shares voting “for” the Proposal at the 2020 Annual Meeting thus constituted 7.7% of the total votes cast on the Proposal, which is below the 15% threshold established in Rule 4a-8(i)(12)(ii) for a proposal that has been proposed two times or more within the preceding five calendar years.

* * *

For the reasons set forth above, we believe that the Proposal may be excluded from the 2022 Proxy Materials pursuant to Rule 14a-8(i)(12). The Company respectfully requests the Staff's concurrence with its decision to exclude the Proposal from its 2022 Proxy Materials and further requests confirmation that the Staff will not recommend enforcement action to the SEC if it so excludes the Proposal.

We would be happy to provide you with any additional information and answer any questions that you may have regarding this request. Please do not hesitate to call me at (212) 450-4111 if we may be of any further assistance in this matter.

Respectfully yours,



Michael Kaplan

Attachment: Exhibit A, Exhibit B, Exhibit C, Exhibit D

cc: Lydia Kuykendal, Mercy Investment Services, Inc.
Katherine R. Kelly, Vice President, Deputy General Counsel and Secretary,
Meta Platforms, Inc.

EXHIBIT A

RESOLVED: Shareholders direct the board of directors of Meta Platforms, Inc. (formerly known as Facebook, Inc) to publish an independent third-party Human Rights Impact Assessment (HRIA), examining the actual and potential human rights impacts of Facebook's targeted advertising policies and practices throughout its business operations. This HRIA should be conducted at reasonable cost; omit proprietary and confidential information, as well as information relevant to litigation or enforcement actions; and be published on the company's website by June 1, 2023.

WHEREAS: Facebook's business model relies almost entirely on ads, with 98% of Facebook's global revenue in 2020 generated from advertising. Facebook ad revenue stood at close to \$86 billion in 2020, a new record for the company and a significant increase from previous years.¹

Algorithmic systems are deployed to enable the delivery of targeted advertisements, determining what users see, resulting in and exacerbating systemic discrimination² and other human rights violations. Data used to enable the targeting of such ads include personal and behavioral data of Facebook users, which further exposes Facebook to user privacy violations. Facebook was fined \$5 billion for such privacy violations by the U.S. Federal Trade Commission in 2019.

Targeted ads have been the subject of much controversy. Just this year, Frances Haugen revealed that Facebook had long known that targeted ads are detrimental to mental health, body image, and political polarization.³ Facebook now faces a lawsuit from investors for allegedly violating federal securities laws by presenting inaccurate statements about the harm its products, funded through targeted advertisements, can cause.⁴

Facebook continues to mislead the public on its use of targeted ads. In July 2021 the company stated that "we'll only allow advertisers to target ads to people under 18 (or older in certain countries) based on their age, gender and location". However, it was discovered that, outside of stated parameters, Facebook is still using the vast amount of data it collects about young people to determine which children are most likely to be vulnerable to a given ad, opening them to allegations of human rights violations.⁵ Additionally, Facebook does not publish data on alleged violations of the policies they do have, making it impossible to know if they are effective.⁶

There is growing global consensus among civil society experts, academics, and policymakers that targeted advertising can lead to the erosion of human rights. Legislation in Europe⁷ and the United States⁸ is poised to severely restrict or even ban targeted ads.

Facebook's business model relies on a single source of revenue - advertising. Targeted advertising, given concerns around the fairness, accountability, and transparency of the underlying algorithmic system, has been heavily scrutinized for its adverse impacts on human rights, and is targeted for significant regulation. This is a material risk to investors. A robust HRIA will enable the company to better identify, address, mitigate and prevent such adverse human rights impacts that expose the company to reputational, legal, business and financial risks.

¹ <https://www.statista.com/statistics/271258/facebooks-advertising-revenue-worldwide/>

² <https://www.nytimes.com/2019/03/28/us/politics/facebook-housing-discrimination.html>

³ <https://www.washingtonpost.com/technology/2021/10/03/facebook-whistleblower-frances-haugen-revealed/>

⁴ <https://www.enbc.com/2021/11/15/ohio-ag-accuses-facebook-of-securities-fraud-for-misleading-investors.html>

⁵ <https://techcrunch.com/2021/11/16/facebook-accused-of-still-targeting-teens-with-ads/>

⁶ <https://rankingdigitalrights.org/index2020/companies/Facebook>

⁷ <https://www.brookings.edu/techstream/what-the-european-dsa-and-dma-proposals-mean-for-online-platforms/>

⁸ <https://mashable.com/article/filter-bubble-transparency-act-threatens-facebook-news-feed>

EXHIBIT B

Financial and operational risks related to a lack of civil and human rights oversight, such as reputational damage and litigation, can adversely affect shareholder value.

According to Investopedia, almost all of Facebook's revenue comes from advertising (<https://bit.ly/36A8nsZ>). Targeted advertising associated with civil and human rights violations presents financial, legal and reputational risk. In 2019, Facebook paid \$5 million to settle civil rights lawsuits claiming Facebook's advertising systems excluded people from seeing housing, employment and credit ads based on age, gender and race (<https://cnn.it/2RKXJLD>). This included lawsuits claiming violations of the Fair Housing Act by "encouraging, enabling, and causing housing discrimination through the company's advertising platform," as well as a gender discrimination complaint alleging Facebook posted biased jobs ads in violation of the Civil Rights Act.

While Facebook recently took steps to limit discriminatory targeting in advertising, concerns have been raised that the algorithm used to determine how ads are delivered to users is itself discriminatory (<https://bit.ly/2DERRLJ>). This may leave Facebook vulnerable to additional lawsuits for violations of the Fair Housing Act, Equal Credit Opportunity Act, and Title VII of the Civil Rights Act of 1964, among others. Many states also have anti-discrimination and equal opportunity laws, which may be more inclusive than federal statutes.

According to several experts, including the President and Executive Director of the Lawyers' Committee for Civil Rights Under Law, Facebook continues to engage in practices that target protected classes, making it vulnerable to further lawsuits. These practices can also lead to boycotts, which can reduce overall advertising revenue. For instance, in 2018 the National Association for the Advancement of Colored People launched a boycott of Facebook after a report revealed that a Russian influence campaign undertaken during the 2016 U.S. presidential elections explicitly targeted African Americans.

Although Facebook has taken steps to limit its civil and human rights risk exposure - such as beginning a civil rights audit in 2018 - Color of Change, a leading civil rights organization, has noted that "the permanent structure of civil rights work is woefully under-addressed" in the audit. We are concerned that these efforts have not received adequate attention from leadership. In testimony before the House Committee on Financial Services in October 2019, Mark Zuckerberg was questioned about Facebook's civil rights expertise and, according to The Washington Post, stumbled when asked to name the Civil Rights Audit's recommendations (<https://wapo.st/2LMemmc>).

RESOLVED: Shareholders urge the Board of Directors to oversee management's preparation of a report on Board-level oversight of civil and human rights risks. In doing so, Facebook might consider reporting on board level expertise in civil and human rights; board level responsibilities for advising on and managing civil and human rights risk; board level expertise pertinent to oversight regarding civil and human rights issues impacting Facebook's community of global users; and the presence of board level infrastructure ensuring ongoing consultation with leading civil and human rights experts.

EXHIBIT C

WHEREAS, News of Cambridge Analytica's misappropriation of millions of Facebook users' data preceded a decline in Facebook's stock market capitalization of over 100 billion dollars in March 2018. Another 100-billion plus decline in market value—a record-setting drop—came in July after Facebook's quarterly earnings report reflected increasing costs and decreasing revenue growth.

These abrupt market reactions likely reflect investors' deep concern over the Company's inadequate approach to governing content appearing on its platforms. Shareholders are concerned Facebook's approach to content governance has proven ad hoc, ineffectual, and poses continued risk to shareholder value.

In September 2018 testimony, COO Sheryl Sandberg noted, "Trust is the cornerstone of our business." Yet, trust appears seriously eroded. Pew Research found 44 percent of young Americans have deleted the Facebook app from their phones in the past year, and 74 percent of users have either deleted the app, taken a break from checking the platform, or adjusted privacy settings.

Despite Facebook's recent efforts to increase disclosures and enhance internal compliance and enforcement strategies, abuse and misinformation campaigns continue, implicating issues such as democracy, human rights, and freedom of expression.

Facebook has been called repeatedly to testify before Congress. One Congressman noted, "Facebook can be a weapon for those, like Russia and Cambridge Analytica, that seek to harm us and hack our democracy." In August 2018, Facebook found 652 fake accounts spreading misinformation globally. Facebook's former head of security said misinformation on Facebook shows "America's adversaries believe that it is still both safe and effective to attack U.S. democracy using American technologies."

The United Nations says social media played a "determining role" propagating hate speech in Myanmar, where violence against the Rohingya "bears the hallmarks of genocide." Yet, Facebook "will not reveal exactly how many Burmese speakers are evaluating content." In Germany, researchers found correlation between right-wing anti-refugee sentiment on Facebook and anti-refugee violence. In Libya, armed groups have used Facebook to find opponents and traffic weapons.

Facebook's content governance challenges are complex. ProPublica reported inconsistent enforcement of hate speech, and that "racist or sexist language may survive scrutiny because it is not sufficiently derogatory or violent to meet Facebook's definition of hate speech." In August, Facebook censored valid users organizing against white supremacy.

RESOLVED, The Company publish a report (at reasonable cost, omitting proprietary or legally privileged information) evaluating its strategies and policies on content governance, including the extent to which they address human rights abuses and threats to democracy and freedom of expression, and the reputational, regulatory, and financial risks posed by content governance controversies. Supporting Statement: Proponents recommend that, in the Company's discretion, the report should consider the relevance of the Universal Declaration of Human Rights, the United Nations' Special Rapporteur reports on Freedom of Expression, and the Santa Clara Principles, which ask companies to disclose the impact of content policies according to:

- Numbers (posts removed, accounts suspended)
- Notices (of content removals, account suspensions)
- Appeals (for users impacted by removals, suspensions)

EXHIBIT D

Form 8-K

**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549**

FORM 8-K

**CURRENT REPORT
PURSUANT TO SECTION 13 or 15(d) OF
THE SECURITIES EXCHANGE ACT OF 1934
Date of Report (Date of earliest event reported): May 27, 2020**

Facebook, Inc.

(Exact name of registrant as specified in its charter)

Delaware

(State or Other Jurisdiction
of Incorporation)

001-35551

(Commission
File Number)

20-1665019

(IRS Employer
Identification No.)

1601 Willow Road, Menlo Park, California 94025
(Address of principal executive offices and Zip Code)

(650) 543-4800
(Registrant's telephone number, including area code)

N/A
(Former name or former address, if changed since last report)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

- ☐ Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
- ☐ Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
- ☐ Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
- ☐ Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

Securities registered pursuant to Section 12(b) of the Act:

| Title of each class | Trading Symbol(s) | Name of each exchange on which registered |
|--------------------------------------------|-------------------|-------------------------------------------|
| Class A Common Stock, \$0.000006 par value | FB | The Nasdaq Stock Market LLC |

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 (§230.405 of this chapter) or Rule 12b-2 of the Securities Exchange Act of 1934 (§240.12b-2 of this chapter).

Emerging growth company ☐

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act. ☐

Item 5.07 Submission of Matters to a Vote of Security Holders.

On May 27, 2020, Facebook, Inc. (the "Company") held its annual meeting of stockholders via live audio webcast (the "Annual Meeting"). At the Annual Meeting, the Company's stockholders voted on eleven proposals, each of which is described in more detail in the Company's definitive proxy statement filed with the Securities and Exchange Commission on April 10, 2020, as supplemented on May 13, 2020 (collectively, the "Proxy Statement"). At the beginning of the Annual Meeting, there were 2,018,434,962 shares of Class A common stock and 397,890,205 shares of Class B common stock present or represented by proxy at the Annual Meeting, which represented 87.53% of the combined voting power of the shares of Class A common stock and Class B common stock entitled to vote at the Annual Meeting (voting together as a single class), and which constituted a quorum for the transaction of business. Holders of the Company's Class A common stock were entitled to one vote for each share held as of the close of business on April 3, 2020 (the "Record Date"), and holders of the Company's Class B common stock were entitled to ten votes for each share held as of the Record Date.

The stockholders of the Company voted on the following proposals at the Annual Meeting:

1. To elect nine directors, each to serve until the next annual meeting of stockholders and until his or her successor has been elected and qualified, or until his or her earlier death, resignation, or removal.
2. To ratify the appointment of Ernst & Young LLP as the Company's independent registered public accounting firm for the fiscal year ending December 31, 2020.
3. To approve the director compensation policy.
4. A stockholder proposal regarding change in stockholder voting.
5. A stockholder proposal regarding an independent chair.
6. A stockholder proposal regarding majority voting for directors.
7. A stockholder proposal regarding political advertising.
8. A stockholder proposal regarding human/civil rights expert on board.
9. A stockholder proposal regarding report on civil and human rights risks.
10. A stockholder proposal regarding child exploitation.
11. A stockholder proposal regarding median gender/racial pay gap.

1. *Election of Directors*

| Nominee | For | Withheld | Broker Non-Votes |
|--------------------|---------------|-------------|------------------|
| Peggy Alford | 5,545,359,996 | 181,021,201 | 271,656,222 |
| Marc L. Andreessen | 4,931,225,127 | 795,156,070 | 271,656,222 |
| Andrew W. Houston | 5,581,414,566 | 144,966,631 | 271,656,222 |
| Nancy Killefer | 5,701,752,186 | 24,629,011 | 271,656,222 |
| Robert M. Kimmitt | 5,554,387,050 | 171,994,147 | 271,656,222 |
| Sheryl K. Sandberg | 5,661,905,416 | 64,475,781 | 271,656,222 |
| Peter A. Thiel | 5,068,409,794 | 657,971,403 | 271,656,222 |
| Tracey T. Travis | 5,484,354,838 | 242,026,359 | 271,656,222 |
| Mark Zuckerberg | 5,571,675,787 | 154,705,410 | 271,656,222 |

Each of the nine nominees for director was elected to serve until the next annual meeting of stockholders and until his or her successor has been elected and qualified, or until his or her earlier death, resignation, or removal.

2. Ratification of Appointment of Independent Registered Public Accounting Firm

| For | Against | Abstentions |
|---------------|----------------|--------------------|
| 5,939,922,762 | 53,174,172 | 4,940,485 |

There were no broker non-votes on this proposal.

The stockholders ratified the appointment of Ernst & Young LLP as the Company's independent registered public accounting firm for the fiscal year ending December 31, 2020.

3. Approval of the Director Compensation Policy

| For | Against | Abstentions | Broker Non-Votes |
|---------------|----------------|--------------------|-------------------------|
| 4,972,277,135 | 748,471,801 | 5,632,261 | 271,656,222 |

The stockholders approved the director compensation policy.

4. Stockholder Proposal Regarding Change in Stockholder Voting

| For | Against | Abstentions | Broker Non-Votes |
|---------------|----------------|--------------------|-------------------------|
| 1,551,886,601 | 4,165,237,742 | 9,256,854 | 271,656,222 |

The stockholders did not approve the stockholder proposal regarding change in stockholder voting.

5. Stockholder Proposal Regarding an Independent Chair

| For | Against | Abstentions | Broker Non-Votes |
|---------------|----------------|--------------------|-------------------------|
| 1,115,681,282 | 4,602,492,213 | 8,207,702 | 271,656,222 |

The stockholders did not approve the stockholder proposal regarding an independent chair.

6. Stockholder Proposal Regarding Majority Voting for Directors

| For | Against | Abstentions | Broker Non-Votes |
|---------------|----------------|--------------------|-------------------------|
| 1,451,866,224 | 4,266,036,982 | 8,477,991 | 271,656,222 |

The stockholders did not approve the stockholder proposal regarding majority voting for directors.

7. Stockholder Proposal Regarding Political Advertising

| For | Against | Abstentions | Broker Non-Votes |
|-------------|----------------|--------------------|-------------------------|
| 725,976,548 | 4,975,556,045 | 24,848,604 | 271,656,222 |

The stockholders did not approve the stockholder proposal regarding political advertising.

8. Stockholder Proposal Regarding Human/Civil Rights Expert on Board

| For | Against | Abstentions | Broker Non-Votes |
|-------------|----------------|--------------------|-------------------------|
| 211,390,205 | 5,490,616,374 | 24,374,618 | 271,656,222 |

The stockholders did not approve the stockholder proposal regarding human/civil rights expert on board.

9. Stockholder Proposal Regarding Report on Civil and Human Rights Risks

| For | Against | Abstentions | Broker Non-Votes |
|-------------|----------------|--------------------|-------------------------|
| 408,918,830 | 5,293,964,911 | 23,497,456 | 271,656,222 |

The stockholders did not approve the stockholder proposal regarding report on civil and human rights risks.

10. Stockholder Proposal Regarding Child Exploitation

| For | Against | Abstentions | Broker Non-Votes |
|-------------|----------------|--------------------|-------------------------|
| 712,472,002 | 4,921,399,311 | 92,509,884 | 271,656,222 |

The stockholders did not approve the stockholder proposal regarding child exploitation.

11. Stockholder Proposal Regarding Median Gender/Racial Pay Gap

| For | Against | Abstentions | Broker Non-Votes |
|-------------|----------------|--------------------|-------------------------|
| 490,540,308 | 5,208,554,957 | 27,285,932 | 271,656,222 |

The stockholders did not approve the stockholder proposal regarding median gender/racial pay gap.

Item 9.01 Financial Statements and Exhibits.

(d) Exhibits

| <u>Exhibit Number</u> | <u>Exhibit Title or Description</u> |
|------------------------------|----------------------------------------------------------------------------------------------------------|
| 104 | Cover Page Interactive Data File (the cover page XBRL tags are embedded within the inline XBRL document) |

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the Registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

FACEBOOK, INC.

Date: May 29, 2020

By: /s/ David Kling

Name: David Kling

Title: Vice President, Deputy General Counsel and Secretary



February 8, 2022

Via e-mail at shareholderproposals@sec.gov

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

Re: Request by Meta Platforms, Inc. to omit proposal submitted by Mercy Investment Services Inc.
and NEI Investments

Ladies and Gentlemen,

Pursuant to Rule 14a-8 under the Securities Exchange Act of 1934, Mercy Investment Services Inc. and NEI Investments (together, the “Proponents”) submitted a shareholder proposal (the “Proposal”) to Meta Platforms Inc. (“Meta” or the “Company”). The Proposal asks Meta to publish an independent human rights risk assessment on the actual and potential human rights impacts of Facebook’s targeted advertising policies and practices.

In a letter to the Division dated January 18, 2022 (the “No-Action Request”), Meta stated that it 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. Meta argues that it is entitled to exclude the Proposal in reliance on Rule 14a-8(i)(7), on the ground that the Proposal deals with the Company’s ordinary business operations; and Rule 14a-8(i)(12), arguing that the Proposal deals with substantially the same subject matter as proposals that were previously voted on and failed to obtain the necessary level of shareholder support for resubmission. As discussed more fully below, Meta has not met its burden of proving its entitlement to exclude the Proposal on any of those bases, and the Proponents respectfully request that Meta’s request for relief be denied.

The Proposal

The Proposal states:

RESOLVED: Shareholders direct the board of directors of Meta Platforms, Inc. (formerly known as Facebook, Inc) to publish an independent third-party Human Rights Impact

Assessment (HRIA), examining the actual and potential human rights impacts of Facebook's targeted advertising policies and practices throughout its business operations. This HRIA should be conducted at reasonable cost; omit proprietary and confidential information, as well as information relevant to litigation or enforcement actions; and be published on the company's website by June 1, 2023.

Ordinary Business

Rule 14a-8(i)(7) allows exclusion of proposals related to a company's ordinary business operations. Meta urges that the Proposal is excludable on ordinary business grounds because it "relates at its core to how the Company manages its day-to-day operations, specifically how it enables marketers to use its advertising services and manages its online products, and how those decisions affect the business."¹ That argument is not compelling because the Proposal's clear focus is on human rights, which the Staff has consistently found to be a significant policy issue.²

Meta likens the Proposal to the one at issue in last season's Disney³ determination, where the Staff allowed exclusion of a proposal asking Disney to report on whether and how it ensured that its advertising policies are not contributing to violations of civil and human rights. The proposal requested that the report "consider whether advertising policies contribute to the spread of hate speech, disinformation, white supremacist recruitment efforts, or voter suppression efforts, and whether the policies undermine efforts to defend civil and human rights such as through the demonetization of content that seeks to advance and promote such rights." The Disney proposal made clear that the risks to Disney stemmed from its behavior *as an advertiser* on social media platforms like Facebook, YouTube and Twitter, which have been criticized for facilitating the spread of misinformation and hate speech. Indeed, the supporting statement's second paragraph opened with "Social media platforms face criticism for failing to protect the civil and human rights of billions of people" and criticized Disney for advertising on Facebook.

Disney argued that the proposal was excludable because it related to "the manner in which the Company advertises its products and services," asserting that "[t]he allocation of advertising resources to best promote a company's products and services is a key management function." The proponent urged that "the impact of social media advertising on the proliferation of hate speech and misinformation online" was a significant policy issue, and that Disney exposed itself to substantial reputational risk by advertising on social media platforms. The Staff concurred with Disney, though there was no written determination setting forth its reasoning.

Meta's reliance on Disney is misplaced because the company's connection to the harms discussed in the proposal was much more remote than it is here. As one of many advertisers, Disney's actions did not, and could not, cause civil or human rights violations; the most the proponent could argue was that advertising on social media platforms could lead to an "association of the Disney brand with hate speech, discrimination and disinformation." Here, however, Meta owns and operates the social media platform whose targeted advertising leads to civil and human

¹ No-Action Request, at 3.

² *E.g.*, Halliburton Co. (Mar. 9, 2009) (proposal asking Halliburton to "review its policies related to human rights to assess areas where the company needs to adopt and implement additional policies" not excludable); Abbott Laboratories (Feb. 28, 2008) (proposal asking Abbott to "amend the company's human rights policy to address the right to access to medicines" not excludable).

³ The Walt Disney Company (Jan. 8, 2021).

rights violations. The No-Action Request itself highlights the centrality of the Proposal's subject to Meta's business, stating that "[t]he Company generates substantially all of its revenue from selling advertising placements to marketers."⁴

Meta cites no determinations or Staff guidance supporting the notion that a proposal addressing a company's core business is always excludable on ordinary business grounds. Such a rule would be inconsistent with the Commission's own interpretive approach. The Commission's 1998 release specifically stated that "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."⁵ Put another way, the fact that a proposal focuses on a significant social policy issue trumps the fact that it addresses matters that are otherwise ordinary business.

On numerous occasions, the Staff has declined to concur with company arguments that proposals dealing with their products or services were excludable on ordinary business grounds, where proponents have shown that their proposals' subjects were significant policy issues. In addition to the human rights proposals discussed below, proposals on drug pricing at pharmaceutical firms,⁶ animal cruelty at restaurant companies,⁷ and opioid-related risks at drug distributors,⁸ to name a few, have survived ordinary business challenge despite their connection to the companies' products and core businesses.

Using Meta's logic, identifying products that may give rise to human rights risk has the effect of changing the Proposal's subject from human rights to "sale of products." But it would be very difficult to discuss a company's actual and potential human rights impacts without mentioning its products and/or services. The UN Guiding Principles on Business and Human Rights state that a company may cause or contribute to such impacts through its own activities or through business relationships that link impacts to the company's own operations, products or services.⁹

Arguments like Meta's have been rejected many times by the Staff, which has declined to allow companies to omit proposals on human rights even when they addressed the human rights implications of particular products or the use of the company's products under specific circumstances. For example, the proposal in Amazon.com¹⁰ urged the company to "publish Human Rights Impact Assessment(s), at reasonable cost and omitting proprietary/confidential information,

⁴ No-Action Request, at 3.

⁵ Exchange Act Release No. 40018 (May 21, 1998).

⁶ Gilead Sciences Inc. (Feb. 23, 2015); Celgene Corporation (Mar. 19, 2015); Vertex Pharmaceuticals Inc. (Feb. 25, 2015); Eli Lilly and Company (Feb. 25, 1993); Bristol-Myers Squibb Company (Feb. 21, 2000); Warner Lambert Company (Feb. 21, 2000).

⁷ Denny's Inc. (Mar. 17, 2009)

⁸ AmerisourceBergen Corp. (Jan. 11, 2018).

⁹ Office of the High Commissioner on Human Rights, "Guiding Principles on Business and Human Rights," at 17 (2011)

¹⁰ Amazon.com, Inc. (Apr. 1, 2020). An earlier human rights proposal at Amazon, seeking disclosure regarding its human rights due diligence process, was deemed not excludable on ordinary business grounds despite the company's objection that the proposal "relate[d] to the products and services offered for sale by the Company." Amazon.com, Inc. (Mar. 25, 2015).

examining the actual and potential impacts of one or more high risk products sold by Amazon or its subsidiaries.” Amazon argued that the proposal’s subject was the ordinary business of the company’s products, not human rights, but the Staff did not concur with that view.

The proposal in Yahoo¹¹ was much more specific and directive than the Proposal about the company’s products and services, yet was deemed not excludable on ordinary business grounds. The Yahoo proposal asked the company to adopt human rights principles to guide its business in China and provided that “[n]o information technology products or technologies will be sold, and no assistance will be provided to authorities in China and other repressive countries that could contribute to human rights abuses.” The Staff was not persuaded by Yahoo’s argument that the proposal addressed “the ordinary business matters of determining the manner in which the Company should or should not provide its products and services, [and] determining what products and services to offer.” The Staff sided with the proponent, stating that “In our view, the proposal focuses on the significant policy issue of human rights.”

Finally, Northrop Grumman¹² sought to exclude a proposal asking it to publish “the results of human rights impact assessments examining the actual and potential human rights impacts associated with high-risk products and services, including those in conflict-affected areas.” Northrop Grumman claimed it was entitled to exclude the proposal because it dealt with the company’s relationships with certain customers, whose misuse of the company’s products had prompted the proposal, rather than with human rights. The proponent argued that the proposal’s subject was human rights and that its discussion of Northrop Grumman’s customers was integral to making the case for a human rights risk assessment. The Staff did not grant relief.

The presence of a significant policy issue distinguishes the Proposal from those at issue in the determinations Meta cites on page 4 of the No-Action Request. None of those determinations involved a proposal dealing with human rights or any other established significant policy issue. Five of the six proposals asked the companies to report on risks related to advertising or marketing that contained or was associated with offensive portrayals of racial, ethnic or religious groups,¹³ while the sixth asked the company to conduct an assessment of political activity resulting from the company’s advertising.¹⁴ In each case, the company receiving the proposal was the one doing the advertising or marketing, as in the Disney determination discussed above. The proponents did not respond to four of the no-action requests, so the Staff did not have the benefit of proponent evidence showing that the proposals addressed significant policy issues. In FedEx and Tootsie Roll, the proponents unsuccessfully argued that the controversy regarding offensive names—FedEx sponsored the Washington Redskins football team—was a significant policy issue.

In sum, the Proposal’s subject is human rights, a longstanding significant policy issue, and discussion of Meta’s product, the Facebook platform, is an integral part of the human rights issues facing the Company. That focus on human rights sets the Proposal apart from the proposals in the determinations on which Meta relies, which did not address significant social policy issues. As a

¹¹ Yahoo, Inc. (Apr. 5, 2011).

¹² Northrop Grumman Corp. (Mar. 13, 2020).

¹³ See FedEx Corp. (July 11, 2014); Tootsie Roll Industries Inc. (Jan. 31, 2002); The Quaker Oats Company (Mar. 16, 1999); PepsiCo, Inc. (Feb. 23, 1998); General Mills, Inc. (July 14, 1992).

¹⁴ See Ford Motor Company (Feb. 2, 2017).

result, the Proposal's subject transcends ordinary business operations, making exclusion inappropriate.

Resubmission Threshold

Meta also claims that the Proposal can be omitted pursuant to Rule 14a-8(i)(12) because (i) it deals with substantially the same subject matter as two previous proposals and (ii) the most recent voting support for those proposals fell short of the 15% resubmission threshold applicable to proposals that have been voted on twice in the past five years. One of the proposals, which received support from holders of 7.7% of shares voted for and against at the 2020 annual meeting (the "2020 Proposal"), asked for a report on board-level oversight of civil and human rights risk. A second proposal, voted on in 2019 (the "2019 Proposal") and supported by 5.7% of shares voted for and against, requested a report on "strategies and policies on content governance, including the extent to which they address human rights abuses and threats to democracy and freedom of expression, and the reputational, regulatory, and financial risks posed by content governance controversies."

Meta identifies overbroad similarities among the proposals, including that they all focus on Meta's Facebook platform and business model, and ignores the significant differences among them. First, the 2019 Proposal focuses exclusively on content governance and does not mention targeted advertising, the central focus of the Proposal. Although the 2019 Proposal's supporting statement refers to the U.N. Declaration of Human Rights as a potentially relevant document, the remainder of the 2019 Proposal discusses controversies involving hate speech and misinformation allowed to remain on the Facebook platform.

In his 2018 "A Blueprint for Content Governance and Enforcement" (the "Blueprint"), Facebook CEO Mark Zuckerberg characterized the central tension of content governance, deciding what kinds of expression are permitted on the platform, as balancing giving users voice against keeping users safe.¹⁵ He identified key questions related to that balancing: "What should be the limits to what people can express? What content should be distributed and what should be blocked? Who should decide these policies and make enforcement decisions? Who should hold those people accountable?" Notably absent from the Blueprint is any mention of advertising. The Proposal, by contrast, does not discuss content governance; rather, it focuses exclusively on the dangers posed by targeted advertising, such as algorithmic bias, data privacy violations, collection of data on children, and impact on body image and mental health.

The 2019 Proposal, then, does not address substantially the same subject matter as the Proposal. As a result, even assuming that the 2020 Proposal did deal with substantially the same subject matter as the Proposal, which the Proponents do not concede, the applicable resubmission threshold is 5%. The 2020 Proposal's 7.7% support level means that the Proposal is not excludable based on failure to meet the resubmission threshold.

As well, the 2020 Proposal differs significantly from the Proposal. The 2020 Proposal addresses process—the mechanisms Meta (then Facebook) had in place to ensure civil and human rights were protected—while the Proposal seeks a report on substance. The report issued in

¹⁵ <https://www.facebook.com/notes/751449002072082/>

response to the 2020 Proposal would describe the responsibilities of the board and any relevant board committees, the qualifications of board members, and avenues by which the board may consult with civil and human rights experts. None of that report would be responsive to the Proposal, which does not mention board oversight. Implementation of the Proposal would require a third party to identify actual and potential human rights impacts created by Facebook's targeted advertising and publish a report on them. Thus, the reports elicited by the Proposal and 2020 Proposal would not overlap at all.

The Proposal does not deal with substantially the same subject matter as the 2019 or 2020 Proposal. The 2019 Proposal seeks reporting on content governance, which is unrelated to targeted advertising, though both may impact human rights. The 2020 Proposal's sole focus on board oversight sets it apart from the Proposal's request for a substantive human rights risk assessment, which is not concerned with board-level processes. Accordingly, none of the resubmission thresholds contained in Rule 14a-8(i)(12) are relevant here. However, in the event the Staff concludes that the Proposal deals with substantially the same subject matter as either the 2019 Proposal or 2020 Proposal, the 5% resubmission threshold, rather than the 15% threshold, would apply. Because the voting support for both the 2019 Proposal (7.7%) and 2020 Proposal (5.7%) exceed the 5% threshold, the Proposal is not excludable pursuant to Rule 14s-8(i)(12).

* * *

For the reasons set forth above, Meta has not satisfied its burden of showing that it is entitled to omit the Proposal in reliance on Rule 14a-8(i)(7) or (i)(12). The Proponents thus respectfully request that Meta's request for relief be denied.

The Proponents appreciate the opportunity to be of assistance in this matter. If you have any questions or need additional information, please contact me at (317) 910-8581.

Sincerely,



Lydia Kuykendal
Director of Shareholder Advocacy
Mercy Investment Services, Inc.

cc: Ning Chiu
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