



DIVISION OF
CORPORATION FINANCE

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

April 7, 2022

Ronald O. Mueller
Gibson, Dunn & Crutcher LLP

Re: Amazon.com, Inc. (the "Company")
Incoming letter dated January 24, 2022

Dear Mr. Mueller:

This letter is in response to your correspondence concerning the shareholder proposal (the "Proposal") submitted to the Company by the New York City Employees' Retirement System et al. for inclusion in the Company's proxy materials for its upcoming annual meeting of security holders.

The Proposal urges the board to issue a report examining whether the Company's health and safety practices give rise to any racial and gender disparities in workplace injury rates among its warehouse workers and the impact of any such disparities on the long-term earnings and career advancement potential of female and minority warehouse workers, including lost time injury rates for all warehouse workers, broken down by race, gender and ethnicity.

We are unable to concur in your view that the Company may exclude the Proposal under Rule 14a-8(i)(11). In our view, the Proposal does not substantially duplicate the proposal submitted by the New York State Common Retirement Fund et al.

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: Michael Garland
City of New York
Office of the Comptroller

January 24, 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 the New York City Employees' Retirement System,
the New York City Teachers' Retirement System, and the New York City
Board of Education Retirement System
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 “Duplicate Proposal”) and statement in support thereof (the “Supporting Statement”) received from the New York City Employees’ Retirement System, the New York City Teachers’ Retirement System, and the New York City Board of Education Retirement System (collectively, the “Proponents”).

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 copies of this correspondence to the Proponents.

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 Proponents that if the Proponents elect to submit additional correspondence to the Commission or the Staff with respect to the Duplicate Proposal, a copy of such correspondence should be

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furnished concurrently to the undersigned on behalf of the Company pursuant to Rule 14a-8(k) and SLB 14D.

THE DUPLICATE PROPOSAL

The Duplicate Proposal states:

RESOLVED: Shareholders urge the Amazon.com (“Amazon”) Board of Directors to issue a report, at reasonable cost and excluding proprietary information, examining whether Amazon’s health and safety practices give rise to any racial and gender disparities in workplace injury rates among its warehouse workers and the impact of any such disparities on the long-term earnings and career advancement potential of female and minority warehouse workers.

Among other things, the report shall include lost time injury rates for all warehouse workers, broken down by race, gender and ethnicity.

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

BASIS FOR EXCLUSION

We hereby respectfully request that the Staff concur in our view that the Duplicate Proposal may be excluded from the 2022 Proxy Materials pursuant to Rule 14a-8(i)(11) because it substantially duplicates another proposal previously submitted to the Company that the Company expects to include in its 2022 Proxy Materials.

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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ANALYSIS

The Duplicate 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.

The Duplicate Proposal substantially duplicates a shareholder proposal the Company previously received 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 Duplicate Proposal, the “Proposals”) and statements in support thereof (together with the Supporting Statement, the “Supporting Statements”) because (i) both Proposals seek to have the Company assess and report on implications of the Company’s operations on civil rights and racial equity; (ii) the Prior Proposal was submitted to the Company before the Duplicate Proposal; and (iii) the Company expects to include the Prior Proposal in the 2022 Proxy Materials.

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.

A copy of the Prior Proposal and statement in support thereof is attached to this letter as Exhibit B.

The Company received the Prior Proposal on October 20, 2021, whereas the Company subsequently received the Duplicate Proposal on December 15, 2021. The Company intends to include the Prior Proposal in the 2022 Proxy Materials. As discussed below, the Proposals

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share the same core concern, and the Duplicate 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 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.” Exchange Act Release No. 12999 (Nov. 22, 1976) (the “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*

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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.

C. The Duplicate 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 asserts that "[c]ompanies would benefit from assessing the potential risks of their . . . corporate practices that are or are perceived to be discriminatory, racist, or increasing inequalities." It 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." The supporting statement states that "the core issues of this proposal" are "how Amazon is implementing its racial equity, diversity and inclusion strategy."

Although phrased differently, the principal concern of the Prior Proposal encompasses the diversity, equity, and inclusion concern of the Duplicate 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 Proposals and Supporting Statements 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

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Principles” and its “Our Positions” statement,² in Company policies,³ and in various commitments issued by the Company.⁴ 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 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 duplication in the core concern and primary focus of the Proposals is demonstrated by the overlapping language, focus, and concerns expressed in the Proposals and their Supporting Statements:

<i>The Prior Proposal</i>	<i>The Duplicate Proposal</i>
<i>Both Proposals ask for Board oversight of the requested review and report.</i>	
“Shareholders of Amazon.com, Inc. (‘Amazon’) request that the Board of Directors commission a racial equity audit”	“Shareholders urge the Amazon.com (‘Amazon’) Board of Directors to issue a report”
<i>Both Proposals 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	“[I]ssue a report . . . examining whether Amazon’s . . . practices give rise to any racial . . . disparities in workplace injury

² 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>.

³ 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.

⁴ 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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publicly disclose a] report on the audit”	rates among its warehouse workers and the impact of any such disparities on . . . minority warehouse workers.” ⁵
<i>Both Supporting Statements highlight concerns for systemic racism and racial equity.</i>	
<p>“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.”</p> <p>“Amazon tweeted its solidarity with the fight against systemic racism.”</p> <p>“Amazon has taken some measures to address racial justice and equity, including committing financial resources and publishing workforce diversity data.”</p>	<p>“[W]ork injuries and illnesses exact a tremendous toll on society, and COVID-19 has unequally affected many racial and ethnic minority groups by putting them more at risk of getting sick and dying.”</p> <p>“One pre-pandemic study found that non-Hispanic Black and Hispanic workers were more likely to experience work-related disabilities, compared to white workers.”</p> <p>“An older study found that Black workers’ occupational fatality rate was 1.3 to 1.5 times higher.”</p>
<i>Both Supporting Statements specifically address potential risks to minority workers.</i>	
“Lawsuits alleging . . . failure to protect warehouse workers, who are mostly people of color”	“Given its racially and ethnically diverse warehouse workforce, Amazon’s higher illness and injury rates may have a more pronounced impact on workers of color.”

⁵ While the Duplicate Proposal requests that the report address “any racial *and* gender disparities” (emphasis added) and the impact on “female and minority warehouse workers,” the Duplicate Proposal’s focus is unambiguously highlighted by the Supporting Statement. The Supporting Statement makes eight references to race—“workers of color,” “systemic racism,” “racial and ethnic minority groups,” “non-Hispanic Black and Hispanic workers . . . compared to white workers,” “Black workers’ occupational fatality rate,” “racially and ethnically diverse warehouse workforce,” “more pronounced impact on workers of color,” and “warehouse workers of color”—and zero references to women or gender.

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<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 . . .”	“To the extent that more workers of color are affected [by workplace injuries], Amazon may perpetuate systemic racism.”
<i>Both allege 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.”	“[I]nvestors lack transparency into how Amazon analyzes adverse impacts of the [C]ompany’s health and safety practices on its . . . workers of color.”
“[W]e believe that it is in shareholders’ best interests for Amazon to proactively identify and mitigate risks through an independent racial equity audit.”	“[Amazon] does not . . . publicly disclose such data, which may be material to long-term investors.”

The differences in the wording and scope of the Proposals do 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 Duplicate Proposal. Both focus on 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 Duplicate Proposal seeks to evaluate that information in the context of one aspect of the Company’s operations – its health and safety practices – does not prevent the Duplicate Proposal from substantially duplicating the Prior Proposal. Likewise, even though the Duplicate Proposal refers to “racial and gender disparities” and the potential impact of Company practices on “female and minority warehouse workers,” these concerns align with the Prior Proposal’s references to

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“impacts on civil rights, diversity, equity and inclusion” and to “assessing . . . corporate practices that are or are perceived to be discriminatory, racist, or increasing inequalities.”⁶

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 one aspect of the Company’s operations on racial equity. 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 Duplicate Proposal addresses one aspect of that same topic—the potential impact of the Company’s operations on injury rates, long-term earnings, and career advancement among the Company’s racial/ethnic minority workers. 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.

⁶ A report authored by the individual who conducted the racial equity audits at Facebook and Airbnb and issued by The Leadership Conference on Civil and Human Rights states, “I [have] found that the media and stakeholders used the terms ‘racial equity audit,’ ‘civil rights audit’ and ‘civil rights assessment’ interchangeably. You will notice that I do so in this paper as well.” See The Leadership Conference on Civil and Human Rights, *The Rationale for and Key Elements of a Business Civil Rights Audit*, at 11, available at <http://www.civilrightsdocs.info/pdf/reports/Civil-Rights-Audit-Report-2021.pdf>.

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As in *Amazon 2021*, the Proposals are not identical and differ slightly in their scope, but the core concern regarding the potential impact of the Company's operations on racial equity is the same in each case. The Company had received additional proposals that were considered in *Amazon 2021* that provide informative examples of proposals that the Staff determined did *not* have the same principal focus as the 2021 Proposal—these concerned surveillance, cloud, or computer vision capabilities that contribute to human rights violations; hate speech and sales of offensive products; and promotion velocity rates. The proposal concerning promotion velocity rates did mention that the requested report should provide data “by title and level for different gender and racial identities,” but this appeared to be merely additional information and secondary to the primary focus of whether the Company in practice discriminated in promoting employees, and was not focused on assessing potential racial equity impacts of the Company's operations. These examples of what the Staff determined were not substantially duplicative of the 2021 Proposal provide a helpful and straightforward point of comparison—where it was clear that racial equity (or the lack thereof, whether broadly or narrowly) was a focus, such as with the Duplicate Proposal, the Staff concurred with the exclusion of the subsequently received proposal.

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

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encourage the [c]ompany to adopt policies that reduce greenhouse gas emissions in order to enhance competitiveness”).

In addition, even if the Duplicate 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. 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

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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 Duplicate Proposal, which addresses a subset of issues (limited to the subject of civil rights, diversity, racial equity, and inclusion). Specifically, the Duplicate Proposal focuses on the narrower topic of analyzing the impacts on diversity, racial equity, and inclusion of workplace injury rates among the Company's warehouse workers, while the Prior Proposal encompasses the subject matter of the Duplicate Proposal by broadly assessing Amazon's impacts on "civil rights, diversity, equity and inclusion" (which would include racial disparities in workplace health and safety practices).

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 Duplicate 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 racial equity implications of its operations, and the Company should not have to risk creating shareholder 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 Duplicate Proposal was not approved, it would be unclear whether shareholders did not support the Duplicate 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 Duplicate 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 the Duplicate Proposal would have its core concern addressed through implementation of the Prior Proposal and shares the same core concern and principal focus. Accordingly, the Duplicate Proposal may be excluded pursuant to Rule 14a-8(i)(11) as substantially duplicative of the Prior Proposal.

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CONCLUSION

Based upon the foregoing analysis, the Company intends to exclude the Duplicate Proposal from its 2022 Proxy Materials, and we respectfully request that the Staff concur that the Duplicate Proposal may be excluded under Rule 14a-8.

We would be happy to provide you with any additional information and answer any questions that you may have regarding this subject. Correspondence regarding this letter should be sent to shareholderproposals@gibsondunn.com. If we can be of any further assistance in this matter, please do not hesitate to call me at (202) 955-8671, or Mark Hoffman, the Company's Vice President & Associate General Counsel, Corporate and Securities, and Legal Operations, and Assistant Secretary, at (206) 266-2132.

Sincerely,

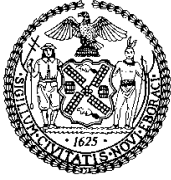


Ronald O. Mueller

Enclosures

cc: Mark Hoffman, Amazon.com, Inc.
Michael Garland, Office of the Comptroller of the City of New York

EXHIBIT A



CITY OF NEW YORK
OFFICE OF THE COMPTROLLER
SCOTT M. STRINGER

MUNICIPAL BUILDING
ONE CENTRE STREET, 8TH FLOOR NORTH
NEW YORK, N.Y. 10007-2341

Michael Garland
ASSISTANT COMPTROLLER
CORPORATE GOVERNANCE AND
RESPONSIBLE INVESTMENT



December 14, 2021

David A. Zapolsky
Secretary
Amazon.com
410 Terry Avenue North,
Seattle, WA 98109

Dear Mr. Zapolsky:

I write to you on behalf of the Comptroller of the City of New York, Scott M. Stringer. The Comptroller is the custodian and a trustee of the New York City Employees' Retirement System, the New York City Teachers' Retirement System, and custodian of the New York City Board of Education Retirement System (individually a "System," collectively the "Systems"). The Systems' boards of trustees have authorized the Comptroller to submit and otherwise act on the Systems' behalf with respect to the enclosed shareholder proposal, and to inform you of the Systems' intention to present the shareholder proposal for the consideration and vote of stockholders at the Company's next annual meeting.

Therefore, we offer the enclosed proposal for the consideration and vote of shareholders at the Company's next annual meeting. It is submitted to you in full compliance with Rule 14a-8 of the Securities Exchange Act of 1934, and I ask that it be included in the Company's proxy statement.

Each System is the beneficial owner of at least \$25,000 in market value of the Company's securities entitled to vote on the shareholder proposal and have held such stock continuously for at least one year. Furthermore, each System intends to continue to hold at least \$25,000 worth of these securities through the date of the Company's next annual meeting. Proof of continuous ownership for the requisite time period will be sent by the Systems' custodian bank, State Street Bank and Trust Company, under separate cover.

We welcome the opportunity to discuss the shareholder proposal with you and are available to meet via teleconference at 3:30 pm ET on January 10 or January 12, 2021.

Please note that if the Company believes that the Systems or the enclosed shareholder proposal has failed to meet one or more of the eligibility or procedural requirements set forth in answers to Questions 1 through 4 of Rule 14a-8, the Company must notify us in writing of any alleged deficiency within 14 calendar days of receiving the proposal and provide us with an opportunity to respond to any alleged deficiency within 14 days of receiving the Company's written notification.

I can be contacted at the phone number or email address set forth above to schedule a meeting with the Company or to address any questions the Company may have about the enclosed proposal.

Sincerely,

A handwritten signature in blue ink, appearing to read "Michael Garland", with a stylized flourish at the end.

Michael Garland

Enclosure

Board Report on Worker Health and Safety Disparities

RESOLVED: Shareholders urge the Amazon.com (“Amazon”) Board of Directors to issue a report, at reasonable cost and excluding proprietary information, examining whether Amazon’s health and safety practices give rise to any racial and gender disparities in workplace injury rates among its warehouse workers and the impact of any such disparities on the long-term earnings and career advancement potential of female and minority warehouse workers.

Among other things, the report shall include lost time injury rates for all warehouse workers, broken down by race, gender and ethnicity.

SUPPORTING STATEMENT:

As recognized by Occupational Safety and Health Administration, the cost of workplace injuries is borne primarily by injured workers (who, on average, earn 15% less over ten years following an injury), their families, and taxpayer-supported components of the social safety net, with societal costs adding “inequality to injury.”¹

Amazon is the second largest employer in the United States; its health and safety issues have a significant impact on its 1.3 million workers, their households and society. To the extent that more workers of color are affected, Amazon may perpetuate systemic racism.

According to the Centers for Disease Control, “[w]ork injuries and illnesses exact a tremendous toll on society, and COVID-19 has unequally affected many racial and ethnic minority groups by putting them more at risk of getting sick and dying.”² One pre-pandemic study found that non-Hispanic Black and Hispanic workers were more likely to experience work-related disabilities, compared to white workers.³ An older study found that Black workers’ occupational fatality rate was 1.3 to 1.5 times higher.⁴

Amazon has been cited for significantly higher injury rates at its warehouses before and during the pandemic. Since 2017, according to one analysis of government data, Amazon reported a higher rate of serious injury incidents leading to missed work or to light-duty shifts than at other retailers’ warehouses.⁵ Data also show Amazon’s serious injury rates were nearly double those of their peers.⁶ One national health and safety group included Amazon in its 2018 and 2019 “Dirty Dozen” list of most dangerous employers in the United States, citing it in 2020 for dishonorable mention.⁷

Given its racially and ethnically diverse warehouse workforce,⁸ Amazon’s higher illness and injury rates may have a more pronounced impact on workers of color.

Amazon has announced that it is making large investments in safety and health initiatives (although details are lacking) and it already discloses the company’s lost time injury rate to the federal government. It does not, however, publicly disclose such data, which may be material to long-term investors. Also, investors lack transparency into how Amazon analyzes adverse impacts of the company’s health and safety practices on its workers, especially warehouse workers of color.

We urge shareholders to vote FOR this proposal.

¹https://www.osha.gov/sites/default/files/inequality_michaels_june2015.pdf

²<https://www.cdc.gov/coronavirus/2019-ncov/community/health-equity/race-ethnicity.html>

³[Racial And Ethnic Differences In The Frequency Of Workplace Injuries And Prevalence Of Work-Related Disability | Health Affairs](#)

⁴ <https://ajph.aphapublications.org/doi/pdf/10.2105/AJPH.88.1.40>

⁵<https://www.washingtonpost.com/technology/2021/06/01/amazon-osha-injury-rate/>

⁶<https://www.washingtonpost.com/technology/2021/06/01/amazon-osha-injury-rate/>;

<https://www.forbes.com/sites/niallmccarthy/2021/06/08/amazon-warehouse-injuries-significantly-higher-than-competitors-infographic/?sh=fa002626854b>; <https://thesoc.org/wp-content/uploads/2021/02/PrimedForPain.pdf>

⁷ <https://www.coshnetwork.org/national-cosh-reports>

⁸<https://www.seattletimes.com/business/amazon/amazons-workforce-split-sharply-along-the-lines-of-race-gender-and-pay-new-data-indicates/>

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.



CITY OF NEW YORK
OFFICE OF THE COMPTROLLER
BRAD LANDER

JUSTINA K. RIVERA
GENERAL COUNSEL AND DEPUTY
COMPTROLLER FOR LEGAL AFFAIRS

OFFICE OF THE GENERAL COUNSEL

February 25, 2022

By e-mail: shareholderproposals@sec.gov

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

Re: Response to Amazon.com, Inc.'s
January 24, 2022 No-Action Request

Dear Counsel:

I write on behalf of the New York City Employees' Retirement System, the New York City Teachers' Retirement System, and the Board of Education Retirement System of the City of New York (collectively, the "Systems") in response to the letter from Amazon.com, Inc. ("Amazon" or the "Company"), dated January 24, 2022, that informed the staff of the Office of Chief Counsel of the Division of Corporate Finance ("Staff") of the Securities and Exchange Commission ("Commission") that Amazon intends to omit the Systems' shareholder proposal ("Systems' Proposal") from its 2022 proxy materials ("No-Action Request"). As detailed below, Amazon has not met its burden of establishing that the Systems' Proposal may be excluded under Rule 14a-8(i)(11) as substantially duplicative of the earlier shareholder proposal of 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 ("Prior Proposal," and together with the Systems' Proposal, the "Proposals"). In particular, the Proposals request different corporate actions and degrees of Board involvement; require different informational inputs; have scopes that only partially overlap and differ substantially in the level of requested granularity, and do not overlap at all with respect to gender-related assessments; examine different impacts; and have different purposes and concerns. Accordingly, the Proposals are not substantially duplicative and the Systems request that the Staff deny Amazon's No-Action Request.

THE TWO PROPOSALS

The Systems' Proposal¹ states:

RESOLVED: Shareholders urge the Amazon.com ("Amazon") Board of Directors to issue a report, at reasonable cost and excluding proprietary information, examining whether Amazon's health and safety practices give rise to any racial and gender disparities in workplace injury rates among its warehouse workers and the impact of any such disparities on the long-term earnings and career advancement potential of female and minority warehouse workers. Among other things, the report shall include lost time injury rates for all warehouse workers, broken down by race, gender and ethnicity.

The Systems' Proposal is focused on the narrow issue of obtaining greater transparency from Amazon into: (a) workplace injury rates at Amazon's warehouses (including a specific request for the disclosure of "lost time injury rates for all warehouse workers, broken down by race, gender and ethnicity"); (b) how Amazon analyzes any adverse impacts of the Company's health and safety practices on its warehouse workers; (c) whether the Company's health and safety practices give rise to any racial and gender disparities in workplace injury rates; and (d) if such disparities exist, the impact of those disparities on the long-term earnings and career advancement potential of female and minority warehouse workers. The Systems' Proposal requests a report directly from Amazon's Board of Directors ("Board") on these issues; it does not request that the report be prepared by an independent third party, much less informed by input from third-party stakeholders.

The Systems' supporting statement explains why these issues are material to long-term investors. Although Amazon has announced that it is making large investments in its safety and health initiatives, Amazon historically has had very high injury rates at its warehouses, both before and during the COVID-19 pandemic. The rate of serious injuries at Amazon's warehouses is nearly double that of its peers. Additionally, given Amazon's diverse workforce, it is possible that the Company's higher injury rates have disproportionately affected its female and minority warehouse workers. The supporting statement notes that injured workers typically earn 15% less over the ten years following their workplace injury than non-injured workers, and injured workers are more likely to have to rely on support from their families and the taxpayer-supported social safety net. Accordingly, any disparities in workplace injury rates along racial, ethnic, or gender lines may have the effect of perpetuating a variety of societal ills, such as systemic racism and pay inequality for female and minority workers. However, it is not possible for investors to currently determine whether this is the case because Amazon does not publicly disclose the data and information needed to make this determination, including its lost time injury rates (much less a breakdown of that data by race, gender, and ethnicity) or how it analyzes the adverse impacts of its health and safety practices on warehouse workers.

¹ Full copies of the Proposals and their supporting statements are attached as Exhibits A and B to the No-Action Request.

In contrast to the Systems' Proposal, which focuses on racial, ethnic, and *gender* disparities within the narrow context of workplace injuries at Amazon warehouses, and the effect of any such disparities on the long-term earnings and career advancement potential of female and minority warehouse workers, the Prior Proposal focuses on the entirety of the Company's business, but seeks a holistic examination of Amazon's business through a more limited "racial equity lens," without any examination of gender. In full, 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 Prior Proposal's supporting statement makes clear that the proposed racial equity audit² should be conducted without Company interference by independent third-party auditors "experienced in rooting out biases and discrimination," and with an eye towards examining "the potential or actual negative impacts of [Amazon's] policies, practices, products, and services through a racial equity lens." The supporting statement further identifies the specific "core issues" that should be addressed by any such audit, 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." There is no mention of gender anywhere in the Prior Proposal.

**THE SYSTEMS' PROPOSAL DOES NOT
SUBSTANTIALLY DUPLICATE THE PRIOR PROPOSAL**

Despite obvious differences in subject matter, scope, and the specific actions requested by the Proposals, Amazon argues that the Systems' Proposal substantially duplicates the Prior Proposal because the Systems' Proposal would have its "core concern" addressed through "implementation of the Prior Proposal and shares the same core concern and principal focus [of the Prior Proposal]." No-Action Request at 12. Amazon's argument fails. We explain in detail below the numerous substantive differences between the two Proposals, from which it follows that the Systems' Proposal *does not* have the same "core concern" or "principal focus" as the Prior Proposal, and implementation of the Prior Proposal *would not* address the core concern of the

² The Prior Proposal does not define "racial equity audit." However, it has been defined elsewhere as "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." Typically, racial equity audits are a "holistic review of the entire company and not just a single aspect such as employment practices." Ron Berenblat and Elizabeth Gonzalez-Sussman, "Racial Equity Audits: A New ESG Initiative," Harvard Law School Forum on Corporate Governance, Oct. 30, 2021, *available at* <https://corpgov.law.harvard.edu/2021/10/30/racial-equity-audits-a-new-esg-initiative/>.

Systems' Proposal. Thus, the Systems' Proposal cannot be excluded as substantially duplicative of the Prior Proposal.

A. The Substantial Duplication Standard

A company can exclude a shareholder proposal under Rule 14a-8(i)(11) only if the challenged proposal “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.” Rule 14a-8(i)(11). Upon its release in 1976, the Commission stated that the purpose of this rule 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.” Exchange Act Release No. 12999 (Nov. 22, 1976) (emphasis added). Consistent with this guidance from the Commission, whether a proposal can be excluded under Rule 14a-8(i)(11) is based on whether the proposal is “substantially identical” to an earlier proposal that will be included in a company’s proxy materials. Although the Staff has not identified the specific test it applies to determine whether two proposals are substantially identical,³ prior no-action determinations do establish that a proposal cannot be excluded under Rule 14a-8(i)(11) simply because it addresses the same general subject as, or has some degree of overlap with, an earlier proposal. *See, e.g., Johnson & Johnson* (Feb. 11, 2022) (proposal seeking a third-party audit assessing and producing recommendations for improving the racial impacts of the company’s policies, practices, and products not substantially duplicative of a prior proposal seeking a third-party racial equity audit analyzing the company’s impacts on civil rights, equity, diversity and inclusion, and the impacts of those issues on the company’s business); *CVS Caremark Corp.* (Mar. 15, 2013) (proposal seeking disclosure of lobbying not duplicative of proposal seeking disclosure of political contributions, even though both proposals related to disclosure of corporate political

³ The Staff has not addressed how it applies the substantial duplication standard in any of its Staff Legal Bulletins. Additionally, many companies have misread the Staff’s determination in *Pacific Gas & Electric Co.* (Feb. 1, 1993) to argue that Staff will find a later proposal to be substantially duplicative of an earlier proposal if the two proposals have the same “principal thrust” or “principal focus.” But that reading flips *Pacific Gas* on its head. In *Pacific Gas*, the Staff found that a challenged proposal was *not* substantially duplicative of an earlier shareholder proposal because the challenged proposal had a different “principal thrust” than the “principal focus” of the earlier-submitted proposal. In other words, having a principal thrust that differs from the principal focus of an earlier proposal is *sufficient* to determine that two proposals are *not duplicative*. The Staff never stated or implied that two proposals with the same principal thrust or focus are substantially duplicative. Despite this rather obvious point, Amazon (and many other companies) maintain that “[t]he 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.” No-Action Request at 5. We are not aware of any Staff no-action determination that has expressly invoked a “principal thrust” or “principal focus” test to conclude that a proposal can be excluded on substantial duplication grounds. We do note that in *Exxon Mobil Corp.* (Mar. 13, 2020), the Staff excluded a proposal focused on corporate lobbying as substantially duplicative of an earlier corporate lobbying-focused proposal because the two proposals “share[d] a concern for seeking additional transparency from [Exxon] about its lobbying activities and how these activities align with [Exxon’s] expressed policy positions, of which one is the Company’s stated support of the Paris Climate Agreement.” However, it is unclear if the Staff intended to announce a new standard in *Exxon* (the “shared concern” language has not been used by the Staff since that determination), and, even if that were the Staff’s intent, whether the current Staff still holds the view that a “shared concern” is sufficient to find that a later proposal substantially duplicates an earlier proposal. The Staff’s recent determination in *Johnson & Johnson* (Feb. 11, 2022), which addressed two proposals with a “shared concern” of obtaining external, third-party audits of the racial impacts of the company’s activities, strongly suggests that the Staff is not applying a “shared concern” standard for substantial duplication. Regardless, even if the current Staff employs a “shared concern” or “principal thrust” standard, we establish below that Amazon has not satisfied that standard.

spending); *Bank of America Corp.* (Jan. 7, 2013) (proposal seeking to end political spending on elections not substantially duplicative of a proposal seeking disclosure of spending on elections); *Pharma-Bio Serv., Inc.* (Jan. 17, 2014) (proposal requesting the establishment of quarterly dividend payment policy not duplicative of a proposal requesting an immediate cash dividend); *Exxon Mobil Corp.* (Mar. 17, 2014) (proposal requesting carbon asset risk report not substantially duplicative of proposal seeking GHG reduction goals, despite shared concern of climate change); *Ford Motor Co.* (Mar. 15, 2005) (proposal seeking lobbying disclosure on federal fuel economy standards not duplicative of a proposal requesting a report on greenhouse gas emissions).

B. The Proposals Request Different Actions and Degrees of Board Involvement

The first critical difference between the Proposals is that they request different actions and degrees of Board involvement. The Systems' Proposal requests that Amazon's Board "issue a report" examining whether Amazon's health and safety practices give rise to any racial and gender disparities in workplace injury rates among its warehouse workers and the impact of any such disparities on the long-term earnings and career advancement potential of female and minority warehouse workers. It does not request that the report be outsourced to any third party that is external and independent from the Board.

In contrast, the Prior Proposal does not ask Amazon's Board to issue a report of any nature. In fact, the general tenor of the Prior Proposal is that the Board, once it has "commissioned" the requested racial equity audit, should step aside and *not* be involved with or oversee the audit. This is because the audit is to be performed by an independent third-party auditor with expertise in rooting out biases and discrimination. Any involvement of the Board in the audit itself would threaten the independence and objectivity of the audit's findings. Accordingly, Amazon's claim that the two Proposals both "ask for Board oversight of the requested review and report" (No-Action Request at 6) is simply false.

C. The Proposals Seek Different Information from Different Sources

The second difference between the two proposals is that the Systems' Proposal does not seek information from any person or entity external to Amazon. Instead, the Systems' Proposal is narrowly focused on the disclosure of concrete factual data and information held (or obtainable) by Amazon, including workplace injury rates broken down by race, gender and ethnicity; information concerning how Amazon analyzes any adverse impacts of the Company's health and safety practices on its warehouse workers; the existence of any racial and gender disparities caused by the Company's health and safety practices; and the quantifiable impact of any such disparities on the long-term earnings and career advancement potential of female and minority warehouse workers.

In contrast, the Prior Proposal, because it has as its goal a broad-based, holistic assessment of the racial impacts of Amazon's entire business, seeks information from a range of persons and entities external to Amazon, including "civil rights organizations, employees, communities in which Amazon operates and other stakeholders." This broad input is needed because the racial equity audit is not an internal assessment; it has the separate and distinct concern of providing a

global assessment of “Amazon’s impacts on civil rights, diversity, equity and inclusion, *and the impact of those issues on Amazon’s business.*” There is nothing in the Prior Proposal or its supporting statement suggesting (much less assuring) that the particular factual data and information sought by the Systems’ Proposal would be considered or disclosed by the racial equity audit requested in the Prior Proposal. Notably, Amazon never argues that a racial equity audit would disclose this data.

D. The Proposals Have Separate and Distinct Scopes

The third distinction between the Proposals is that the Systems’ Proposal is *both* broader and narrower in scope than the Prior Proposal. As noted above, the Systems’ Proposal seeks greater transparency into certain factual matters internal to Amazon (*i.e.*, workplace injury rates, broken down by race, ethnicity and gender; how Amazon analyzes adverse impacts of the Company’s health and safety practices; whether those health and safety practices give rise to any racial and gender disparities in workplace injury rates; and the impact of any such disparities on the long-term earnings and career advancement potential of its female and minority warehouse workers). The Prior Proposal, on the other hand, seeks a holistic “racial equity audit” of “Amazon’s impacts on civil rights, diversity, equity and inclusion, and the impacts of those issues on Amazon’s business.” Such an audit would provide a high-level assessment of “the potential or actual negative impacts of its policies, practices, products, and services *through a racial equity lens.*” Accordingly, the scope of Systems’ Proposal is broader than the Prior Proposal insofar as it seeks a report that would focus on *both* gender and racial disparities.⁴ But the scope of the Systems’ Proposal is also substantially narrower in that it is limited to the discrete issue of workplace injuries at Amazon warehouses and their long-term impact on female and minority warehouse workers. The Prior Proposal seeks a global assessment of the potential or actual negative impacts of Amazon’s policies, practices, products, and services across its entire business.

E. The Proposals Would Examine Different Impacts

The fourth distinction concerns the different impacts targeted by the Proposals. The Systems’ Proposal is squarely focused on whether Amazon’s health and safety practices give rise to any racial and gender disparities in workplace injury rates and the impact of any such disparities on the long-term earnings and career advancement potential of female and minority warehouse workers. The Prior Proposal, on the other hand, focuses broadly and more generally on “Amazon’s impacts on civil rights, diversity, equity and inclusion, and the impacts of those issues on Amazon’s business.” Admittedly, the Prior Proposal’s supporting statement does make passing reference to Amazon being sued for its alleged failure to protect warehouse workers, but there is no request that the proposed racial equity audit examine the long-term impact of Amazon’s health and safety practices on the career prospects and earning potential of its injured warehouse workers. Furthermore, given the expansive scope of the Prior Proposal, there is little reason to believe that an impact as specific as that raised by the Systems’ Proposal (*i.e.*, the long-term earnings and career advancement potential of injured female and minority warehouse workers) would be addressed by a racial equity audit focused on company-wide issues of much greater generality. And there is certainly no reason to believe that a *racial equity* audit would address the impact of

⁴ Despite Amazon’s suggestion that a racial equity audit would also examine issues faced by female employees, the words “women,” “gender,” and “female” do not appear anywhere in the Prior Proposal or its supporting statement.

Amazon's health and safety practices on the long-term earning and career advancement potential of its female warehouse workers.

F. The Proposals Have Different Purposes and Concerns

The final, and perhaps most important, distinction is that the Proposals simply do not have a shared purpose or concern. The Prior Proposal's supporting statement sets forth the "core issues" or concerns to be addressed by the racial equity audit: "[1] how Amazon is implementing its racial equity, diversity and inclusion strategy, [2] assessing effectiveness, [3] ensuring sufficient oversight mechanisms, and [4] addressing potential structural impediments and implicit biases." There is nothing in the Systems' Proposal concerning the implementation of any corporate strategy, much less Amazon's "racial equity, diversity and inclusion strategy"; there is no request for an assessment of the effectiveness of that strategy; there is no request for information concerning how Amazon ensures sufficient oversight mechanisms; and there is no request that Amazon explain how it is addressing potential structural impediments and implicit biases. The Systems' Proposal is instead narrowly focused on discrete factual matters concerning Amazon's workplace injury rates, whether Amazon's health and safety practices give rise to any racial and gender disparities in workplace injury rates, and the impact of any such disparities on the long-term earnings and career advancement potential of female and minority warehouse workers. Even if there is some high-level (but minimal) degree of overlap between the concerns and purposes of the Proposals (in that both, in some generic sense, would put the racial impact of Amazon's corporate practices under a microscope), there is no reason to believe that a company-wide, holistic racial equity audit conducted at a high level of generality would address the granular, fact-specific issues broached by the Systems' Proposal, especially when those issues include gender.

G. Implementation of the Prior Proposal Would Not Sufficiently Address or Implement the Core Concerns of the Systems' Proposal

Given the numerous substantive differences identified above, Amazon has not established that implementation of the Prior Proposal would sufficiently address or implement the core concerns of the Systems' Proposal. The Proposals request different corporate actions and degrees of Board involvement; require different information for their requested report/audit; have scopes that only partially overlap and differ substantially in the level of requested granularity and concern with gender (or lack thereof); examine different impacts; and have different purposes and concerns. Individually and collectively, these substantial differences provide more than sufficient reason to conclude that the Systems' Proposal does not substantially duplicate the Prior Proposal. Accordingly, Amazon has not satisfied its burden of showing that the Systems' Proposal can be excluded under Rule 14a-8(i)(11).

Although Amazon provides a blunderbuss list of prior no-action determinations that purportedly support its argument, it principally relies on just two determinations, both of which are easily distinguishable and do not support Amazon's argument for substantial duplication. In *Exxon Mobil Corp.* (Mar. 13, 2020), a duplicate proposal was excluded because it "shared a concern for seeking additional transparency from [Exxon] about its lobbying activities and how these activities align with the Company's expressed policy positions, of which one is the Company's stated support of the Paris Climate Agreement." Both proposals in *Exxon* requested

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the same action (that the Board prepare and issue a report); sought the same information (if and how Exxon's lobbying activities align with its policy objectives); had the same narrow scope (limited to the Company's lobbying activities); would have the same impact (both reports would corroborate if Exxon's policies were, in fact, aligned with its policies, including support of the Paris Climate Agreement); and had the same purpose and concern (to ensure that Exxon's lobbying activities are in line with the company's policy objectives). The request from the later proposal would thus be covered wholly by the prior proposal. This is plainly different from the Proposals at issue here because, as discussed above, there is no such substantial overlap between the Systems' Proposal and the Prior Proposal.

Amazon also relies heavily on the Staff's determination last year in *Amazon.com, Inc. (John Mixon et al.)* (Apr. 7, 2021) ("*Amazon 2021*"). There, the Staff was unable to concur in the exclusion of three out of four challenged proposals on substantial duplication grounds. Despite broadly overlapping on matters arguably falling under the rubric of "civil rights, equity, diversity, and inclusion," the challenged proposals sought more granular data than the high-level of generality requested in the earlier-submitted proposal (which was nearly identical to the Prior Proposal at issue here). The only challenged proposal that the Staff found duplicative in *Amazon 2021* was an environmental justice proposal that sought a report "describing [Amazon's] efforts ... to identify and reduce disproportionate environmental and health harms to communities of color, associated with past, present and future pollution from its delivery logistics and other operations." Unlike the Systems' Proposal, the request from this environmental justice proposal did not seek the disclosure of any specific workplace employment data, broken out along racial, ethnic and gender lines, and did not articulate any concerns left unaddressed by the racial equity audit proposed by the earlier-submitted proposal, which would address the Company's policies, practices, products, and services across its entire business, including delivery logistics and related operations. Although Amazon claims that the Systems' Proposal is analogous to the environmental justice proposal excluded on substantial duplication grounds in *Amazon 2021*, the Systems' Proposal is in fact more analogous to the "promotion velocity proposal" that Amazon unsuccessfully challenged on substantial duplication grounds. The promotion velocity proposal concerned Amazon's potential disparate treatment of its workers (how quickly employees were promoted) and sought disclosure of promotion velocity rates broken down along racial *and gender* lines so that shareholders could assess whether there was disparate treatment of Amazon's employees along racial and gender lines. In the same way, the Systems' Proposal focuses on the disparate impact that Amazon's health and safety practices may have on its minority and female employees, and specifically requests the disclosure of "lost time injury rates for all warehouse workers, broken down by race, gender and ethnicity." Accordingly, the non-excluded promotion velocity proposal is highly analogous to the Systems' Proposal, and the Systems' Proposal should likewise survive Amazon's No-Action Request.

Also relevant to this No-Action Request is the Staff's determination just two weeks ago in *Johnson & Johnson* (Feb. 11, 2022). There, the earlier-submitted proposal's resolved clause stated:

Resolved: Shareholders of Johnson & Johnson, Inc. ("the Company") request that the Board of Directors commission a racial equity audit analyzing the Company's impacts on civil rights, equity, diversity and inclusion, and the impacts of those issues on the

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Company'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 the Company operates and other stakeholders. A report on the audit, prepared at reasonable cost and omitting confidential or proprietary information, should be publicly disclosed on the Company's website.

The resolved clause of a later-submitted proposal contained a nearly identical request. It stated:

Resolved, shareholders urge the board of directors to oversee a third-party audit (within a reasonable time and at a reasonable cost) which assesses and produces recommendations for improving the racial impacts of its policies, practices and products, above and beyond legal and regulatory matters. Input from stakeholders, including civil rights organizations, employees, and customers, should be considered in determining the specific matters to be assessed. A report on the audit, prepared at reasonable cost and omitting confidential/proprietary information, should be published on the company's website.

Despite the obvious and substantial overlap in the subject matter of the two requested audits—the earlier one requesting a “racial equity audit analyzing the Company's impacts on civil rights, equity, diversity and inclusion, and the impacts of those issues on the Company's business,” and the later one requesting a “third-party audit ... which assesses and produces recommendations for improving the racial impacts of its policies, practices and products”—the Staff was unable to concur with the company that the later-submitted proposal could be excluded as substantially duplicative of the earlier-submitted proposal. Although the Staff did not specify the basis for its determination, the only substantial difference between the two proposals was that the supporting statements demonstrated the two proposals were coming from separate sides of the political spectrum and requested input from different civil rights groups. Nevertheless, these differences were sufficient for the Staff to conclude that the later-submitted proposal was not substantially duplicative of the earlier-submitted proposal.

The determination in *Johnson & Johnson* demonstrates that the Staff will rigorously examine a no-action request to determine whether the challenged proposal is, in fact, substantially identical to a previously submitted proposal, and will not award no-action relief based on superficial similarities between two proposals, such as an overlap of topics or some degree of shared concerns. The differences between the Systems' Proposal and the Prior Proposal are certainly more pronounced, numerous, and substantial than any of the differences found in *Johnson & Johnson*. Accordingly, the Staff should deny Amazon's No-Action Request here as well.

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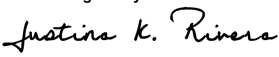
February 25, 2022

CONCLUSION

For the reasons set forth above, we respectfully request that Amazon's No-Action Request be denied.

If you have any questions or need additional information, please do not hesitate to contact me at the phone number or email address provided above.

Respectfully submitted,

DocuSigned by:

4FA7FC017929408...
Justina K. Rivera

cc: shareholderproposals@gibsondunn.com

March 18, 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 the New York City Employees' Retirement System,
the New York City Teachers' Retirement System, and the New York City
Board of Education Retirement System
Securities Exchange Act of 1934—Rule 14a-8

Ladies and Gentlemen:

This letter relates to the no-action request (the “No-Action Request”) submitted to the staff of the Division of Corporation Finance (the “Staff”) on January 24, 2022 on behalf of our client, Amazon.com, Inc. (the “Company”), in response to the shareholder proposal (the “Proposal”) and statement in support thereof (the “Supporting Statement”) received from the New York City Employees’ Retirement System, the New York City Teachers’ Retirement System, and the New York City Board of Education Retirement System (collectively, the “Proponents”).

The Proposal requests that the Company issue a report examining whether the Company’s health and safety practices give rise to any racial and gender disparities in warehouse workers’ injury rates, and whether this impacts female and minority warehouse workers’ long-term earnings and career advancement potential. In the No-Action Request, the Company demonstrated that the Proposal is properly excludable from the Company’s proxy statement and form of proxy for its 2022 Annual Meeting of Shareholders (collectively, the “2022 Proxy Materials”) pursuant to Rule 14a-8(i)(11) because the Proposal substantially duplicates another proposal (the “Prior Proposal,” and together with the Proposal, the “Proposals”) that the Company expects to include in its 2022 Proxy Materials.

The Proponents submitted a letter, dated February 25, 2022, setting forth arguments opposing the No-Action Request (the “Proponents’ Letter”). The Proponents’ Letter argues that the Proposal does not substantially duplicate the Prior Proposal, claiming that the Proposals have

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several differences such as in their scope, impact, and purpose, and asserting that the implementation of the Prior Proposal would not sufficiently address the core concerns of the Proposal. This letter addresses those claims.

As an initial matter, the Proponent's Letter, as with the Proposal, is premised on inaccurate, outdated, and mischaracterized information. In particular, the Proponent's Letter does not mention the Company's workplace safety website¹ or its safety report, "Delivered with Care: Safety, Health, and Well-Being at Amazon" (the "Safety Report").² The Safety Report sets forth facts that dispel common misconceptions about work and safety conditions at Amazon. Specifically, the Safety Report sets forth data for the Company's U.S. and global fulfillment, sorting, logistics, and retail stores, and compares that data to a number of industries.³ It reports that nearly 45% of work-related injuries at the Company are related to musculoskeletal disorders (MSDs), which include carpal tunnel syndrome, tendinitis, muscle strains, and lower back injuries.⁴ As reflected on pages 11 and 12 of the Safety Report, the Company's 2020 Lost Time Incident Rate—a measure of the number of injuries and illnesses that result in time away from work—was 2.3 globally and 2.6 in the United States (per 200,000 working hours), while its Recordable Incident Rate—which measures how often an injury or illness occurs at work—was 5.1 globally and 6.5 in the United States in 2020. The Safety Report shows the U.S. rates were only slightly higher than rates within the general warehousing and storage industry, were lower than those among couriers and express delivery services, and were generally comparable to those of various retail businesses. Thus, the claims in the Proposal and the Proponent's Letter that the Company's rate of serious injuries at its warehouses is nearly double that of its peers, and that the Company does not publicly disclose workplace injury rates including lost time injury rates, are not accurate.

Seeking to avoid exclusion under Rule 14a-8(i)(11), the Proponents' Letter attempts to recharacterize the Proposal. In particular, the Proponent's Letter seeks to characterize the Proposal as primarily requesting certain statistical information, whereas the actual text of the Proposal requests that the Company's Board "issue a report examining whether Amazon's health and safety practices give rise to any racial and gender disparities in workplace injury rates among its warehouse workers and the impact of any such disparities on the long-term

¹ See <https://www.aboutamazon.com/workplace/safety>.

² Available at <https://safety.aboutamazon.com/delivered-with-care>.

³ Safety Report at 11. The data excludes performance data from the Company's corporate offices, call centers, and at Amazon Web Services, which would lower reported injury rates.

⁴ Safety Report at 14.

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earnings and career advancement potential of female and minority warehouse workers.” Rather than being the central, narrow focus of the Proposal, its request for statistical information on lost time injury rates for warehouse workers is just one component of the examination and report requested by the Proposal, and is neither the primary nor the leading focus of the Proposal.

Instead, as stated plainly in the Proposal’s “Resolved” clause, the Proposal’s core concern and primary focus is not on safety statistics, but rather an examination and a report on that examination regarding “whether Amazon’s health and safety practices give rise to any racial and gender disparities in workplace injury rates among its warehouse workers,” and, if so, “the impact of any such disparities.” Thus, the core concern and primary focus of the Proposal is an assessment of whether certain aspects of the Company’s operations are having adverse impacts on civil rights, diversity, and equity. Likewise, the Prior Proposal requests an examination (referred to as a racial equity audit) and report on whether and how the Company’s operations practices impact civil rights, diversity and inclusion, including among the Company’s employees, and if so, the nature of such impacts. Accordingly, regardless of whether applying a “substantially identical proposal” test, examining the principal thrust and focus of the Proposals and their supporting statements, or assessing their common concern, the Proposal substantially duplicates the Prior Proposal.

The Proponents’ Letter claims that differences in the wording and scope of the Proposal versus the Prior Proposal sufficiently differentiate the two.⁵ These differences boil down to the fact that the Prior Proposal, in addition to encompassing the type of review and evaluation called for by the Proposal, also requires a racial equity assessment of other aspects of the Company’s operations, as well as an assessment of those issues on the Company’s business. However, the fact that an earlier received proposal may have a more expansive scope than a later received proposal has never been determinative under Rule 14a-8(i)(11), as demonstrated through the extensive precedents discussed on pages 4, 5, 10, 11, and 12 of the No-Action Request. This is because conducting the racial equity audit requested under the Prior Proposal would necessarily result in an assessment and report on whether the

⁵ Several aspects of the Proponent’s Letter likewise distort the terms of the Prior Proposal. For example, the Proponent’s Letter asserts that the Prior Proposal requesting a racial equity audit “does not ask Amazon’s Board to issue a report of any nature” and that “the general tenor of the Prior Proposal is that the Board, once it has ‘commissioned’ the requested racial equity audit, should step aside and not be involved with or oversee the audit.” In fact, however, the Prior Proposal requests that the Board commission an audit and that “[a] report on the audit ... should be publicly disclosed on Amazon’s website” and states “[t]he audit may, in the board’s discretion, be conducted by an independent third party,” but does not require that it be outsourced to an independent third party.

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Company's health and safety practices give rise to any racial disparities among the Company's warehouse workers and the impact of such disparities. The one area touched on by the Proposal that is arguably not addressed by the Prior Proposal is the Proposal's explicit reference to both racial and gender diversity. Even here, however, the Proponent's Letter overstates the differences, since an assessment of the impact of the Company's practices on racially and ethnically diverse workers would necessarily assess any impacts on workers of each gender.

Moreover, the Proponent's Letter fails to reconcile its argument with the fact that the Staff has already determined in *Amazon.com, Inc. (John Mixon et al.)* (avail. Apr. 7, 2021) ("*Amazon 2021*") that comparable differences do not prevent a finding that similar proposals were substantially duplicative within the scope of Rule 14a-8(i)(11). As described in the No-Action Request, the Staff determined in *Amazon 2021* that the excluded proposal (the "Mixon Proposal") substantially duplicated a proposal almost identical to the Prior Proposal (the "2021 Prior Proposal"),⁶ even though the Mixon Proposal differed in several respects from the 2021 Prior Proposal. As demonstrated in the table below, each difference between the Proposal and the Prior Proposal addressed in the Proponents' Letter also existed as between the Mixon Proposal and the 2021 Prior Proposal. Notwithstanding such differences, the Staff concurred that the Mixon Proposal substantially duplicated the 2021 Prior Proposal, and, because the 2021 Prior Proposal and the Prior Proposal are nearly identical, it therefore follows that the Proposal substantially duplicates the Prior Proposal.

⁶ The "Resolved" clause of the 2021 Prior Proposal reads as follows:

Shareholders of Amazon.com, Inc. ("Amazon") request that the Board of Directors commission a racial equity audit analyzing Amazon's impacts on civil rights, equity, diversity 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.

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Proponents’ Analysis of the Proposal	How the Proponents’ Analysis Also Applies to the Mixon Proposal
“The Proposals Request Different Actions and Degrees of Board Involvement”	
The Proposal “does not request that the report be outsourced to any third party that is external and independent from the Board.”	The Mixon Proposal also does not request that preparation of the requested report be outsourced externally or independently.
“The Proposals Seek Different Information from Different Sources”	
The “Proposal does not seek information from any person or entity external to Amazon. Instead, the [Proposal] is narrowly focused on the disclosure of concrete factual data and information held (or obtainable) by Amazon.”	The Mixon Proposal also does not seek information from any external sources—it narrowly focuses on disclosure of concrete information on the Company’s efforts to identify and reduce any harms to communities of color from the Company’s delivery logistics and other operations.
“The Proposals Have Separate and Distinct Scopes”	
<p>The “Proposal seeks greater transparency into certain factual matters internal to Amazon” such as how the Company analyzes adverse, disparate impacts of its health and safety practices on workplace injury rates and the further impact on long-term earnings and advancement potential.</p> <p>“[T]he scope . . . is broader . . . as it seeks a report that would focus on <i>both</i> gender and racial disparities” but “is also substantially narrower in that it is limited to the discrete issue of workplace injuries at Amazon warehouses and their long-term impact on female and minority warehouse workers.”</p>	<p>The Mixon Proposal seeks greater transparency into certain factual matters internal to the Company; <i>i.e.</i>, its efforts to identify and reduce health and environmental harms to communities of color associated with its operations.</p> <p>The scope is broader as the Mixon Proposal addresses impacts on “communities of color,” which are defined as zip codes with “majority minority” populations; thus the Mixon Proposal also addressed impact on people who are not</p>

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	diverse, but who live in “majority minority” communities.
“The Proposals Would Examine Different Impacts”	
The “Proposal is squarely focused on whether Amazon’s health and safety practices give rise to any racial and gender disparities in workplace injury rates and the impact[s] [there]of . . . on the long-term earnings and career advancement potential of female and minority warehouse workers.”	The Mixon Proposal is squarely focused on environmental and health impacts of the Company’s delivery logistics and other operations on communities of color.
“The Proposals Have Different Purposes and Concerns”	
<p>“There is nothing in the [Proposal] concerning the implementation of any corporate strategy, much less Amazon’s ‘racial equity, diversity and inclusion strategy’; there is no request for an assessment of the effectiveness of that strategy” or information regarding how the Company “ensures sufficient oversight mechanisms,” or that the Company “explain how it is addressing potential structural impediments and implicit biases.”</p> <p>“Even if there is some high-level (but minimal) degree of overlap between the concerns and purposes of the Proposals (in that both, in some generic sense, would put the racial impact of Amazon’s corporate practices under a microscope), there is no reason to believe that a company-wide, holistic racial equity audit conducted at a high level of generality would address the</p>	Same as the Proposal on all points.

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granular, fact-specific issues broached by the [Proposal].”	
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As demonstrated in the table above, each aspect of the Proposal that the Proponents’ Letter identifies is directly aligned with the Mixon Proposal in *Amazon 2021*. Thus, the differences addressed in the Proponent’s Letter are not substantive differences in this context under Rule 14a-8(i)(11).

The Proponent’s Letter also attempts to claim that the Proposal is comparable to the “promotion velocity” proposal that also was considered in *Amazon 2021*. However, the promotion velocity proposal did not share the core concern that is common to the Proposal, the Prior Proposal, the Mixon Proposal and the 2021 Prior Proposal (requesting a racial equity assessment). The focus in the promotion velocity proposal was singular—it straightforwardly and singularly requested a public report disclosing promotion velocity rates at the Company by title, gender, and racial identity. Unlike the Proposal, the Prior Proposal, the Mixon Proposal, and the 2021 Prior Proposal, the promotion velocity proposal did not seek any assessment of the impacts of Company operations on racial equities or disparities. Similarly, the promotion velocity proposal did not seek any examination or analysis of how aspects of the Company’s operations were affecting civil rights or racial equity.

Furthermore, the Proponents’ Letter does not cite any precedent to support its claims that the differences it identifies between the Proposal and the Prior Proposal are relevant for purposes of Rule 14a-8(i)(11), and there are several Staff determinations that demonstrate that such differences are not determinative under Rule 14a-8(i)(11). The Staff has concurred with the exclusion of proposals as substantially duplicative under Rule 14a-8(i)(11) that, for example:

- requested different actions and levels of board involvement (*see Caterpillar Inc.* (avail. Mar. 25, 2013) (concurring with the exclusion of a proposal requesting a report assessing the impact of human rights criticisms and boycott and divestment efforts arising from the company’s activities in the occupied Palestinian Territory as substantially duplicative of a proposal requesting that the board review and amend the company’s policies related to human rights that guide the company’s international and U.S. operations to conform with international human rights standards, and post on the company’s website the summary of such review));
- had separate and distinct scopes (*see Exxon Mobil Corp.* (avail. Mar. 13, 2020) (concurring with the exclusion of a proposal requesting a report on how the

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company's lobbying activities aligned with the Paris Climate Agreement's goal as substantially duplicative of a proposal requesting a report on the company's lobbying policy and expenditures and the management's oversight thereof));

- would examine different impacts (*see id.*); and
- would have different purposes and concerns (*see id.*; *Caterpillar Inc.* (avail. Mar. 25, 2013)).

In its final argument, the Proponents' Letter cites to the recent determination in *Johnson & Johnson* (avail. Feb. 11, 2022) ("*J&J*"), in which the company received a proposal requesting a third-party audit assessing and producing recommendations for improving the racial impacts of its policies, practices, and products. The Staff did not concur with the exclusion of the proposal as substantially duplicative of a proposal with a "Resolved" clause nearly identical to that of the Prior Proposal. Despite the overt similarity between the "Resolved" clauses, the proponent of the *J&J* proposal argued in its response to the company's no-action request that the underlying concern of the two proposals differed, which may have impacted the Staff's determination. Specifically, the proponent argued that its proposal had a "supporting statement [that was] congruent with the resolved clause," but that the prior proposal had a supporting statement, which, "by contrast, [was] inconsistent with the resolved clause's request." The proponent asserted that the prior proposal "promote[d] a view of 'racial equity' that [was] entirely at odds with the common understanding of that term," and that the prior proposal's supporting statement indicated that anti-racist programs "are themselves deeply racist and otherwise discriminatory," and that "illegal discrimination against employees deemed 'non-diverse' . . . [would be] unforgivable." As such, although the "Resolved" clauses were facially similar, the proponent argued that the underlying concern between the two proposals was diametrically opposed.

In contrast, here the Proposals share a core concern and primary focus, and the Proponents have not demonstrated that the differences between the Proposals are meaningful in a way that would result in clearly distinct issues for shareholders to vote on. Accordingly, we continue to believe that the Proposal may properly be excluded under Rule 14a-8(i)(11).

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(i)(11).

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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

cc: Mark Hoffman, Amazon.com, Inc.
Michael Garland, Office of the Comptroller of the City of New York