



DIVISION OF
CORPORATION FINANCE

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

April 15, 2025

Raquel Fox
Skadden, Arps, Slate, Meagher & Flom LLP

Re: PayPal Holdings, Inc. (the "Company")
Incoming letter dated January 31, 2025

Dear Raquel Fox:

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

The Proposal requests the board of directors issue a report evaluating how it oversees risks related to surveilling or monitoring customers based on their political or religious status, views, or activities, and how such viewpoint discrimination impacts individuals' exercise of their constitutionally protected civil rights.

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

Copies of all of the correspondence on which this response is based will be made available on our website at <https://www.sec.gov/corpfin/2024-2025-shareholder-proposals-no-action>.

Sincerely,

Rule 14a-8 Review Team

cc: Jerry Bowyer
Bowyer Research, Inc.

SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP
1440 NEW YORK AVENUE, N.W.
WASHINGTON, D.C. 20005-2111

TEL: (202) 371-7000
FAX: (202) 393-5760
www.skadden.com

FIRM/AFFILIATE OFFICES

BOSTON
CHICAGO
HOUSTON
LOS ANGELES
NEW YORK
PALO ALTO
WILMINGTON

ABU DHABI
BEIJING
BRUSSELS
FRANKFURT
HONG KONG
LONDON
MUNICH
PARIS
SÃO PAULO
SEOUL
SINGAPORE
TOKYO
TORONTO

DIRECT DIAL
202-371-7050
DIRECT FAX
202-661-4050
EMAIL ADDRESS
RAQUEL.FOX@SKADDEN.COM

VIA STAFF ONLINE FORM

January 31, 2025

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

RE: PayPal Holdings, Inc. – 2025 Annual Meeting
Omission of Shareholder Proposal of
American Family Association

Ladies and Gentlemen:

Pursuant to Rule 14a-8(j) promulgated under the Securities Exchange Act of 1934, as amended (the “Exchange Act”), we are writing on behalf of our client, PayPal Holdings, Inc., a Delaware corporation (the “Company”), to request that the Staff of the Division of Corporation Finance (the “Staff”) of the U.S. Securities and Exchange Commission (the “Commission”) concur with the Company’s view that, for the reasons stated below, it may exclude the shareholder proposal and supporting statement (the “Proposal”) submitted by Bowyer Research, Inc. (“Bowyer Research”) on behalf of the American Family Association (the “Proponent”) from the proxy materials to be distributed by the Company in connection with its 2025 annual meeting of shareholders (the “2025 proxy materials”).

In accordance with relevant Staff guidance, we are submitting this letter and its attachments to the Staff through the Staff’s online Shareholder Proposal Form. In accordance with Rule 14a-8(j), we are simultaneously sending a copy of this letter and

its attachments to Bowyer Research, on behalf of the Proponent, as notice of the Company's intent to omit the Proposal from the 2025 proxy materials.

Rule 14a-8(k) and Section E of Staff Legal Bulletin No. 14D (Nov. 7, 2008) provide that shareholder proponents are required to send companies a copy of any correspondence that the shareholder proponents elect to submit to the Commission or the Staff. Accordingly, we are taking this opportunity to remind the Proponent that if the Proponent, or Bowyer Research on behalf of the Proponent, submits correspondence to the Commission or the Staff with respect to the Proposal, a copy of that correspondence should concurrently be furnished to the Company.

I. The Proposal

The text of the resolution contained in the Proposal is set forth below:

Resolved: Shareholders request the Board of Directors of PayPal Holdings issue a report within the next year, at reasonable cost and excluding confidential information, evaluating how it oversees risks related to surveilling or monitoring customers based on their political or religious status, views, or activities, and how such viewpoint discrimination impacts individuals' exercise of their constitutionally protected civil rights.

II. Basis for Exclusion

We hereby respectfully request that the Staff concur with the Company's view that the Proposal may be excluded from the 2025 proxy materials pursuant to Rule 14a-8(i)(7) because the Proposal deals with matters relating to the Company's ordinary business operations.

III. Background

The Company received the Proposal and a cover letter from Bowyer Research via FedEx on December 6, 2024. On December 20, 2024, after confirming that the Proponent was not a registered holder of the Company's common stock, in accordance with Rule 14a-8(f)(1), the Company sent a letter to Bowyer Research, via email, requesting a written statement from the record owner of the Proponent's shares verifying that the Proponent beneficially owned the requisite number of shares of the Company's common stock continuously for at least the requisite period preceding and including the date of submission of the Proposal, which Bowyer Research satisfactorily

responded to on December 27, 2024. Copies of the Proposal, cover letter and related correspondence are attached hereto as Exhibit A.¹

IV. The Proposal May Be Excluded Pursuant to Rule 14a-8(i)(7) Because the Proposal Deals with Matters Relating to the Company’s Ordinary Business Operations.

Under Rule 14a-8(i)(7), a shareholder proposal may be excluded from a company’s proxy materials if the proposal “deals with matters relating to the company’s ordinary business operations.” In Exchange Act Release No. 34-40018 (May 21, 1998) (the “1998 Release”), the Commission stated that the policy underlying the ordinary business exclusion rests on two central considerations. The first recognizes that certain tasks are so fundamental to management’s ability to run a company on a day-to-day basis that they could not, as a practical matter, be subject to direct shareholder oversight. The second consideration relates to the degree to which the proposal seeks to “micro-manage” the company by probing too deeply into matters of a complex nature upon which shareholders, as a group, would not be in a position to make an informed judgment. As demonstrated below, the Proposal implicates the first consideration.

The Commission also has stated that a proposal requesting the dissemination of a report is excludable under Rule 14a-8(i)(7) if the substance of the proposal involves a matter of ordinary business of the company. *See* Exchange Act Release No. 34-20091 (Aug. 16, 1983) (“[T]he staff will consider whether the subject matter of the special report or the committee involves a matter of ordinary business; where it does, the proposal will be excludable under Rule 14a-8(c)(7).”). In addition, in Staff Legal Bulletin No. 14E (Oct. 27, 2009) (“SLB 14E”), the Staff noted that if a proposal relates to management of risks or liabilities that a company faces as a result of its operations, the Staff will focus on the “subject matter to which the risk pertains or that gives rise to the risk” in making a decision regarding whether a proposal can be properly excluded pursuant to Rule 14a-8(i)(7). Pursuant to SLB 14E, the Staff has consistently permitted exclusion of shareholder proposals under Rule 14a-8(i)(7) requesting an assessment of risks when the underlying subject matter concerns the ordinary business of the company. *See, e.g., Netflix, Inc.* (Mar. 14, 2016) (permitting exclusion under Rule 14a-8(i)(7) of a proposal that requested a report “describing how company management identifies, analyzes and oversees reputational risks related to offensive and inaccurate portrayals of Native Americans, American Indians and other indigenous peoples, how it mitigates these risks and how the company incorporates these risk assessment results into company policies and decision-making,” noting that the proposal related to the

¹ Exhibit A omits correspondence between the Company and Bowyer Research that is irrelevant to this request, such as the aforementioned deficiency letter and subsequent response. *See* the Staff’s “Announcement Regarding Personally Identifiable and Other Sensitive Information in Rule 14a-8 Submissions and Related Materials” (Dec. 17, 2021), available at <https://www.sec.gov/corpfin/announcement/announcement-14a-8-submissions-pii-20211217>.

ordinary business matter of the “nature, presentation and content of programming and film production”).

In accordance with the policy considerations underlying the ordinary business exclusion, the Staff consistently has permitted exclusion under Rule 14a-8(i)(7) of shareholder proposals relating to a company’s relationships with its customers. *See, e.g., JPMorgan Chase & Co.* (Feb. 21, 2019) (permitting exclusion under Rule 14a-8(i)(7) of a proposal requesting that the board complete a report on the impact to customers of the Company’s overdraft policies); *Anchor Bancorp Wisconsin Inc.* (May 13, 2009) (permitting exclusion under Rule 14a-8(i)(7) of a proposal requesting that the board adopt a new policy for the lending of funds to borrowers and the investment of assets after taking preliminary actions specified in the proposal, noting that the proposal related to the company’s “ordinary business operations (i.e., credit policies, loan underwriting and customer relations)”); *JPMorgan Chase & Co.* (Feb. 21, 2006) (permitting exclusion under Rule 14a-8(i)(7) of a proposal recommending that the company not issue first mortgage home loans, except as required by law, no greater than four times the borrower’s gross income, noting that the proposal related to the Company’s “ordinary business operations (i.e., credit policies, loan underwriting and customer relations)”).

In particular, the Staff has permitted exclusion under Rule 14a-8(i)(7) of proposals relating to a company’s decisions with regard to the handling of customer accounts. For example, in *JPMorgan Chase & Co. (National Center for Public Policy Research)* (Mar. 29, 2024), the proposal requested a report on whether and to what extent the company requested that its clients deny their products or services to certain customers or categories of customers, or has demanded such restrictions as a condition of the company’s continuing to do business with said clients. The company argued, in part, that its “relationship with its customers and the handling of customer accounts without interference is essential to the operation of the [c]ompany’s business as a financial services institution.” In permitting exclusion under Rule 14a-8(i)(7), the Staff noted that the “[p]roposal relates to ordinary business matters.” In *JPMorgan Chase & Co. (National Center for Public Policy Research)* (Mar. 21, 2023, *recon. denied* Apr. 3, 2023), the proposal requested that the board commission and disclose a report on the risks created by the company’s business practices that prioritize non-pecuniary factors when it comes to establishing, rejecting, or failing to continue client relationships. The company argued, in part, that its “[d]ecisions regarding customer accounts, including the termination of accounts, involve legal, regulatory and operational considerations” and thus related to the company’s ordinary business matters. In permitting exclusion under Rule 14a-8(i)(7), the Staff noted that “the [p]roposal relates to, and does not transcend, ordinary business matters.” Similarly, in *JPMorgan Chase & Co. (National Legal and Policy Center)* (Mar. 21, 2023), the Staff permitted exclusion under Rule 14a-8(i)(7) of a proposal requesting a report on the company’s policy in responding to requests to close, or in issuing warnings of imminent closure about, customer accounts

by governmental authorities. The company argued, in part, that the proposal related to ordinary business matters because the company's "handling of customer accounts, including when, how and why to close customer accounts . . . is a core component of the [c]ompany's ordinary business as a global financial services company providing commercial banking services." In permitting exclusion under Rule 14a-8(i)(7), the Staff noted that "the [p]roposal relates to, and does not transcend, ordinary business matters." *See also, e.g., PayPal Holdings, Inc.* (Apr. 10, 2023) (permitting exclusion under Rule 14a-8(i)(7) of a proposal recommending that the Company report publicly on the number and categories of account suspensions and closures); *Comcast Corp.* (Apr. 13, 2022) (permitting exclusion under Rule 14a-8(i)(7) of a proposal that requested that the company notify a customer in advance of any termination, suspension or cancellation of service to the customer, noting that "the [p]roposal relates to, and does not transcend, ordinary business matters"); *PayPal Holdings, Inc.* (Apr. 2, 2021)* (permitting exclusion under Rule 14a-8(i)(7) of a proposal that requested that the Company not freeze or terminate customer accounts without first providing the Company's rationale to customers); *TD Ameritrade Holding Corp.* (Nov. 20, 2017) (permitting exclusion under Rule 14a-8(i)(7) of a proposal that requested that the company's shareholders have the right to be clients of the company, noting that "the [p]roposal relates to the [c]ompany's policies and procedures for opening and maintaining customer accounts").

In this instance, as was the case in *JPMorgan Chase & Co. (National Center for Public Policy Research)* (Mar. 29, 2024), *JPMorgan Chase & Co. (National Center for Public Policy Research)* (Mar. 21, 2023, *recon. denied* Apr. 3, 2023) and *JPMorgan Chase & Co. (National Legal and Policy Center)* (Mar. 21, 2023), the Proposal focuses primarily on the Company's relationships with customers and, specifically, on the Company's decisions with regard to the handling of customer accounts, which are ordinary business matters conducted in accordance with our legal and regulatory obligations. In this respect, the Proposal's resolved clause requests that the Company issue a report on how the Company "oversees risks related to surveilling or monitoring customers based on their political or religious status, views, or activities." The Proposal's supporting statement indicates a particular concern with the Company's monitoring of customer transactions for allegedly discriminatory purposes, including by asserting that PayPal cooperated with government agencies "to collect, share, and monitor Americans' data." The supporting statement further alleges that "PayPal's actions betrayed its customers' privacy and put millions of Americans at risk for having their accounts frozen, being de-banked, placed on a government watchlist, or even wrongly prosecuted, all for exercising their First and Second Amendment rights." When read together, the Proposal's resolved clause and supporting statement demonstrate that the Proposal's requested report relates to the Company's relationships

* Citations marked with an asterisk indicate Staff decisions issued without a letter.

with its customers and the handling of customer accounts, including monitoring account activities for potential violations of law, which are ordinary business matters.

The Company is a leading technology platform that enables digital payments and simplifies commerce experiences for merchants and consumers worldwide. As of December 31, 2023, the Company operated a global, two-sided network at scale that connected consumers and merchants with 426 million active accounts across approximately 200 markets. Necessarily, the Company's relationship with its merchants and consumers and the handling of such accounts without interference are essential to the operation of the Company's business as a payment processor that helps merchants and consumers connect, transact, and complete payments. Further, as a payment platform, the Company is subject to complex laws and regulations including, among others, those relating to consumer protection, privacy and data protection, fraud and identify theft prevention, anti-money laundering and sanctions compliance. In this regard, the Company monitors activity and transactions across its platform and millions of merchants globally to help protect customer accounts, keep customer data secure and comply with applicable laws. Decisions regarding customer relationships, including monitoring account activities, involve legal, regulatory and operational considerations that are so fundamental to the Company's day-to-day operations that they cannot, as a practical matter, be subject to shareholder oversight. Accordingly, the Proposal is precisely the type that companies are permitted to exclude under Rule 14a-8(i)(7).

While we acknowledge that a proposal may not be excluded under Rule 14a-8(i)(7) if it focuses on a significant policy issue, the mere fact that a proposal may touch upon a significant policy issue does not preclude exclusion under Rule 14a-8(i)(7). Instead, the question is whether the proposal focuses primarily on a matter of broad public policy versus matters related to the company's ordinary business operations. *See* 1998 Release; Staff Legal Bulletin No. 14E (Oct. 27, 2009). The Staff has consistently permitted exclusion of shareholder proposals where the proposal focused on ordinary business matters, even though it also related to a potential significant policy issue. Notably, in *JPMorgan Chase & Co. (National Legal and Policy Center)* (Mar. 21, 2023), the excluded proposal requested, among other things, that the Company publish a report describing the Company's policy in responding to requests to close, or in issuing warnings of imminent closure of, customer accounts by governmental authorities. In permitting exclusion under Rule 14a-8(i)(7), the Staff noted that "the [p]roposal relates to, and does not transcend, ordinary business matters." *See also, e.g., Comcast Corp.* (Apr. 13, 2022) (permitting exclusion under Rule 14a-8(i)(7) of a proposal requesting, among other things, that the company adopt a policy of notifying a customer in advance of any termination, suspension or cancellation of service to the customer, noting that "the [p]roposal relates to, and does not transcend, ordinary business matters"); *CIGNA Corp.* (Feb. 23, 2011) (permitting exclusion under Rule 14a-8(i)(7) where the proposal addressed the potential significant policy issue of access to affordable health care but also asked CIGNA to report on expense

management, an ordinary business matter); *Capital One Financial Corp.* (Feb. 3, 2005) (permitting exclusion under Rule 14a-8(i)(7) where the proposal addressed the significant policy issue of outsourcing but also asked the company to disclose information about how it manages its workforce, an ordinary business matter).

In this instance, while the Proposal references alleged discrimination based on political or religious status, views or activities, its overwhelming concern is with the Company's relationships with its customers and the handling of customer accounts, which are ordinary business matters. Therefore, even if the Proposal could be viewed as touching upon a significant policy issue, its focus is squarely on ordinary business matters.

Accordingly, consistent with the precedent described above, the Proposal may be excluded under Rule 14a-8(i)(7) as relating to the Company's ordinary business operations.

V. Conclusion

Based upon the foregoing analysis, the Company respectfully requests that the Staff concur that it will take no action if the Company excludes the Proposal from its 2025 proxy materials. Should the Staff disagree with the conclusions set forth in this letter, or should any additional information be desired in support of the Company's position, we would appreciate the opportunity to confer with the Staff concerning these matters prior to the issuance of the Staff's response. Please do not hesitate to contact the undersigned at (202) 371-7050.

Very truly yours,



Raquel Fox

Enclosures

cc: Brian Y. Yamasaki
Vice President, Corporate Legal and Secretary
PayPal Holdings, Inc.

Jerry Bowyer
Bowyer Research, Inc.

EXHIBIT A

(see attached)



Bowyer Research

December 5, 2024

Corporate Secretary
PayPal Holdings, Inc.
2211 North First Street
San Jose, California 95131

Re: Report on Risks of Financial Surveillance

Dear Secretary,

I hereby submit the enclosed shareholder proposal ("Proposal") for inclusion in PayPal's (the "Company") 2025 proxy statement to be circulated to Company shareholders in conjunction with the Company's 2025 annual meeting of shareholders. The Proposal is submitted under Rule 14a-8 (Proposals of Security Holders) of the United States Securities and Exchange Commission's proxy regulations. The resolution at issue relates to the subject described below.

Proponent: American Family Association
Company: PayPal Holdings, Inc.
Subject: Report on Risks of Financial Surveillance

I submit the Proposal on behalf of, and with the permission of, American Family Association, which has continuously owned 150 Company securities for more than 3 years and intends to continue holding the requisite amount of Company shares through the date of the Company's 2025 Annual Meeting of Shareholders. A letter from American Family Association authorizing us to submit this proposal on their behalf is enclosed.

A Proof of Ownership letter attesting to the Shareholder's ownership of the shares as of the date of this proposal's submission is forthcoming. Copies of correspondence or any request for a "no-action" letter may be sent to Jerry Bowyer, Bowyer Research, [REDACTED] or emailed to me at [REDACTED], copying [REDACTED].

Sincerely,

Jerry Bowyer
Bowyer Research
Enclosures (2)

[REDACTED]

12/4/2024

Corporate Secretary
PayPal Holdings, Inc.
2211 North First Street
San Jose, California 95131

Re: Report on Risks of Financial Surveillance

Dear Secretary,

In accordance with Rule 14a-8 of the General Rules and Regulations of the Securities and Exchange Act of 1934, the undersigned ("Proponent") authorizes Bowyer Research, Inc. to file a shareholder proposal on the Proponent's behalf with PayPal ("the Company") for inclusion in the Company's 2025 proxy statement. The proposal at issue relates to the subject described below.

Proponent: American Family Association
Company: PayPal
Subject: Report on Risks of Financial Surveillance


The Proponent gives Bowyer Research, Inc. the authority to address, on the Proponent's behalf, any and all aspects of the shareholder proposal, including drafting and editing the proposal, representing the Proponent in engagements with the Company, entering into any agreement with the Company, and designating another entity as lead filer and representative of the Proponent. The Proponent understands that the Proponent's name may appear on the company's proxy statement as the filer of the aforementioned proposal, and that the media may mention the Proponent's name in relation to the proposal. The Proponent supports this proposal and authorizes *Bowyer Research* to write a more detailed statement of support of the proposal on the Proponent's behalf.

American Family Association (the "Proponent") has continuously owned 150 PayPal securities for more than 3 years and intends to continue holding the requisite amount of Company shares through the date of the Company's 2025 Annual Meeting of Shareholders. Pursuant to interpretations of Rule 14a-8 by the U.S. Securities and Exchange Commission staff, I initially propose the following times for a telephone conference to discuss this proposal:

December 18, 2024, at 10AM PT or
December 24, 2024, at 10AM PT

If these times prove inconvenient, please suggest some other times to speak. Feel free to contact me at [REDACTED], copying [REDACTED] and [REDACTED], so that we can determine the mode and method of that discussion.

Sincerely,

Signed by:

4943A5F490C84EB...
Walter Billingsley
Chief Financial Officer
American Family Association

Report on Risks of Financial Surveillance

Whereas: Financial institutions control access to the marketplace. Because of their pivotal role, such institutions are subject to a wide variety of federal and state regulations and anti-discrimination laws. It is therefore essential for the Company to provide financial services on an equal basis without regard to factors such as political/religious views.

But a recent Congressional report revealed that PayPal and many other of the largest financial institutions colluded with the FBI and U.S. Treasury Department to surveil transactions of ordinary citizens, flagging them as potential domestic violent extremists if they made purchases at Dick's Sporting Goods, Bass Pro Shops, and Cabela's, or bought "religious texts" like Bibles. This includes PayPal, which has become the target of queries from lawmakers over potentially discriminatory surveillance practices.¹ In its fishing expedition, the federal government also flagged many mainstream conservative and religious organizations, like Alliance Defending Freedom, the Family Research Council, and the Ruth Institute, and their donors for the same treatment.

The report² elaborated on PayPal's role in these attempts at government surveillance. PayPal, along with many other financial institutions, reportedly participated in meetings with the FBI in order to "devise the best methods for gathering Americans' private financial information." This participation led the House Committee on the Judiciary & the Select Subcommittee on the Weaponization of the Federal Government to request information from executives at institutions including PayPal to determine "to what extent [PayPal] worked with federal law enforcement to collect, share, and monitor Americans' data."

PayPal's actions betrayed its customers' privacy and put millions of Americans at risk for having their accounts frozen, being de-banked, placed on a government watchlist, or even wrongly prosecuted, all for exercising their First and Second Amendment rights. As the oversight report stated, "This raises

¹<https://judiciary.house.gov/media/press-releases/new-report-exposes-massive-government-surveillance-americans-financial-data>; https://www.warren.senate.gov/newsroom/press-releases/warren-omar-lawmakers_seek-information-from-big-banks-on-account-closure-practices-that-discriminate-against-muslim-americans

²<https://judiciary.house.gov/sites/evo-subsites/republicans-judiciary.house.gov/files/evo-media-document/How-Federal-Law-Enforcement-Commandeered-Financial-Institutions-to-Spy.pdf>

serious concerns and doubts about federal law enforcement's and financial institutions' commitment to respecting Americans' privacy rights and fundamental civil liberties."

PayPal's actions also create significant legal exposure under anti-discrimination laws.

PayPal needs to rebuild trust by providing transparency around these policies and actions. This will assure customers, shareholders, and others that it is protecting, not targeting, free speech and religious freedom and is respecting its customers' privacy.

Resolved: Shareholders request the Board of Directors of PayPal Holdings issue a report within the next year, at reasonable cost and excluding confidential information, evaluating how it oversees risks related to surveilling or monitoring customers based on their political or religious status, views, or activities, and how such viewpoint discrimination impacts individuals' exercise of their constitutionally protected civil rights.



February 28, 2025

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

RE: Shareholder Proposal of American Family Association at PayPal Holdings, Inc. under Securities Exchange Act of 1934— Rule 14a-8

Ladies and Gentlemen:

I am writing for American Family Association (“Proponent” or “American Family”) to defend its shareholder proposal (“Proposal”) to PayPal Holding, Inc. (“PayPal” or the “Company”). The Proposal deals with the rising trend of large financial institutions politicizing their services and, at times, even denying service to customers or helping law enforcement profile them as potential terrorists for ostensibly discriminatory reasons. The Proposal thus asks PayPal to report on the “risks related to surveilling or monitoring customers based on their political or religious status, views, or activities, and how such viewpoint discrimination impacts individuals’ exercise of their constitutionally protected civil rights.” PayPal has the burden of showing it can exclude the Proposal under Rule 14a-8(g). But it cannot bear its burden.

PayPal argues that the Proposal is excludable under Rule 14a-8(i)(7) because it relates to ordinary business operations. But Staff consistently recognize discrimination as a perennial issue of social significance, including when financial institutions discriminate against customers. *PayPal Holdings, Inc. (NCPPR)* (Apr. 10, 2023). This is also true in the specific context of how financial surveillance impacts a significant social policy issue, like firearms rights, *American Express Co.* (Mar. 13, 2024) (“*Amex 2024*”), or abortion, *American Express Co.* (Mar. 6, 2023) (“*AmEx 2023*”). PayPal’s own dominance in the marketplace as a payment platform, its commitments to human rights and free speech, and the controversy generated from its financial surveillance also make the significance of the issue to PayPal inescapable. PayPal’s arguments fail.

The Proposal

The Proposal provides:

Resolved: Shareholders request the Board of Directors of PayPal Holdings issue a report within the next year, at reasonable cost and excluding confidential information, evaluating how it oversees risks related to surveilling or monitoring customers based on their political or religious status, views, or activities, and how such viewpoint discrimination impacts individuals' exercise of their constitutionally protected civil rights.

The Supporting Statement explains that financial institutions occupy a “pivotal role” in America’s economy because they “control access to the marketplace.” So it is “essential for companies like PayPal to provide financial services on an equal basis without regard to factors such as political/religious views,” especially given the “wide variety of federal and state regulations and anti-discrimination laws” it must obey.

Unfortunately, the Statement notes, a “recent Congressional report revealed that many of America’s largest financial institutions,” including PayPal, “colluded with the FBI and U.S. Treasury Department to surveil transactions of ordinary citizens.” The report found that “PayPal, along with many of its competitors, reportedly participated in meetings with the FBI in order to devise the best methods for gathering Americans’ private financial information.” The Company’s surveillance efforts have opened it to “queries” from lawmakers “over potentially discriminatory surveillance practices.”

PayPal’s “actions betrayed its customers’ privacy and put millions of Americans at risk for having their accounts frozen, being de-banked, placed on a government watchlist, or even wrongly prosecuted all for exercising their First and Second Amendment rights.” They also “create significant legal exposure under anti-discrimination laws.” Because of all this, PayPal “needs to rebuild trust by providing transparency around these policies and actions.”

Discussion

The Proposal unambiguously focuses on a significant social policy issue, religious and political discrimination, in the context of financial surveillance. Staff routinely recognize that these are significant social policy issues. Finally, the use and abuse of financial institutions for political gain is itself its own significant social policy issue. This is another independent and sufficient reason the Proposal may not be excluded. PayPal disagrees. It says the Proposal is focused on customer relations, account management, and legal compliance. But a proposal can both relate to the company’s “nitty gritty” of ordinary business operations and still focus on a significant social policy issue. Division of Corporate Finance, Staff Legal Bulletin No. 14H (Oct. 22, 2015) (“SLB 14H”). Further, the Proposal here focuses on potentially illegal

discrimination, not routine legal compliance or anything else that may qualify as ordinary.

1. Proposals that focus on a significant social policy issue transcend a company's ordinary business operations.

Under Rule 14a-8(i)(7), a shareholder proposal may be excluded from a company's proxy materials if the proposal "deals with a matter relating to the company's ordinary business operations." These include "management of the workforce . . . decisions on production quality and quantity, and the retention of suppliers," which are "tasks so fundamental to management's ability to run a company on a day-to-day basis that they could not, as a practical matter, be subject to direct shareholder oversight." Exchange Act Release No. 40018, 63 Fed. Reg. 29106, 29108 (May 21, 1998) (the "1998 Release"). When assessing a proposal, the Commission looks at the underlying "subject matter" of the proposal, not whether it prescribes a particular policy, board action, or disclosures. Exchange Act Release No. 20091, 48 Fed. Reg. 38218-01, 38221 (Aug. 16, 1983).

Notwithstanding the above, proposals that "focus[] on sufficiently significant social policy issues" are not excludable under Rule 14a-8(i)(7) even if they relate to ordinary business operations. 1998 Release at 29108. This is because they "transcend the day-to-day business matters and raise policy issues so significant that it would be appropriate for a shareholder vote." *Id.* When determining whether a proposal focuses on a matter of significant social policy, Staff focus on "the significance in relation to the company," Division of Corporate Finance, Staff Legal Bulletin No. 14M (Feb. 12, 2025) ("SLB 14M"), and the "presence of widespread public debate," Division of Corporation Finance, Staff Legal Bulletin No. 14A (July 12, 2002) ("SLB 14A). Staff clarified this approach in Bulletin 14H to correct the misunderstanding that a proposal must both focus on a "significant social policy" and be "divorced from how a company approaches the nitty-gritty of its core business." SLB 14H.

Based on this, Staff have approved a variety of proposals that touch on discrete and varying aspects of a company's operations. *See, e.g., Johnson & Johnson* (Mar. 3, 2022) (recommending that company "discontinue global sales of its talc-based Baby Powder" in light of public health risks to customers); *Alphabet, Inc. (Mims Trust)* (Apr. 12, 2022) (report on how company is "address[ing] the human rights impacts of its content management policies to address misinformation and disinformation across its platforms"); *Meta Platforms, Inc. (Cortese)* (Apr. 2, 2022) (report on "potential psychological and civil and human rights harms" from "the use and abuse" of company's "metaverse project"); *Caesars Entertainment, Inc.* (Apr. 19, 2024) (report on "adoption of a smokefree policy for Company properties").

PayPal interprets the rule differently: "the question is whether the proposal focuses primarily on a matter of broad public policy versus matters related to the company's ordinary business operations." PayPal No-Action Request ("NAR") at 6.

This muddies the waters and treats the significant social policy and ordinary business operations rules as a binary. But Staff and the Commission have expressly rejected this interpretation and consistently explained that “significant social policy” operates as an exception to the “ordinary business” ground for exclusion. Put another way, relating to ordinary business operations and focusing on a significant social policy issue are separate and independent inquiries. And the company must win on both to exclude the proposal.

PayPal relies on several precedents, but none of them addressed significant social policy issues. The proposal in *JPMorgan Chase & Co. (NLPC)* (Mar. 21, 2023) asked about account closures but did not reference discrimination on protected classes. Contrast this with another proposal approved on the same day, also at Chase, and also dealing with account closures. The difference was that it asked about accounts closed based on discriminatory reasons, i.e. religion, political views, and other grounds. *JPMorgan Chase & Co. (Bahnsen)* (Mar. 21, 2023) (the “*Bahnsen Proposal*”).

Likewise, the proposal in *Comcast Corp. (Grossman)* at 20 (Apr. 13, 2022) provided absolutely no social policy justification or reference but was based on the proponent’s personal experience of having his account cancelled. And the proposal in *CIGNA Corp.* (Feb. 23, 2011) was concerned about “long-term affordability and accountability for controlling [healthcare] costs,” *id.* at 19, which has not been recognized as a significant social policy issue.

If the SEC adopted PayPal’s version of the rule, shareholders could almost never address any discrete parts of a company’s operations, from customer relations to supply chain issues to workforce management. But that is not the case. Staff have consistently approved proposals focusing on different parts, policies, or practices of the company, including monitoring customers.

2. Staff regularly agree that discrimination and collusion with government entities are significant social policy issues.

The Commission’s and Staff’s interpretations of the “significant social policy exception” repeatedly cite discrimination in civil rights matters as the prototypical examples of significant social policy issues that transcend ordinary business matters. For example, the Commission’s 1998 Release explained that proposals “focusing on sufficiently significant social policy issues (e.g., *significant discrimination matters*) generally would not be considered to be excludable.” 1998 Release at 29108 (emphasis added).

Staff have consistently approved proposals that relate to discrimination in civil rights matters on a wide range of protected characteristics and in many contexts across a company. *See, e.g., the Bahnsen Proposal* (risks related to closing customer accounts based on “race, color, religion (including religious views), sex, national origin, or political views”); *PayPal Holdings, Inc. (NCPFR)* (Apr. 10, 2023) (same);

CVS Health Corp. (Mar. 17, 2022) (audit on “Company’s impacts on civil rights and non-discrimination” arising from employment practices); *McDonald’s Corp.* (Apr. 5, 2022) (audit analyzing the “adverse impact” of the company’s “policies and practices on the civil rights of company stakeholders”); *CorVel Corp.* (June 5, 2019) (report on “risks associated with omitting ‘sexual orientation’ and ‘gender identity’ from its written equal employment opportunity policy”); *General Electric Co.* (Feb. 10, 2015) (adopt “Holy Land” principles of religious non-discrimination).

This includes discrimination in the specific context of customer privacy regarding financial and governmental surveillance. *AmEx 2023* (report on “known and potential risks and costs to the Company of fulfilling information requests regarding its customers for the enforcement of state laws criminalizing abortion access.”); *AmEx 2024* (risks of creating merchant category codes to track standalone gun and ammunition stores).

PayPal argues that “Staff have consistently permitted exclusion under Rule 14a-8(i)(7) of shareholder proposals relating to a company’s relationships with its customers.” NAR at 4. It cites several decisions that dealt with decisions around whether to close customer accounts. *JPMorgan Chase & Co. (NCPPR)* (Mar. 29, 2024); *JPMorgan Chase & Co. (NCPPR)* (Mar. 21, 2023); *JPMorgan Chase & Co. (NLPC)* (Mar. 21, 2023). But none of these *JPMorgan* decisions dealt with the closure of accounts based on discriminatory reasons. The *Bahnsen Proposal* did just that. And it was approved by the SEC on the same day as two of the above decisions. A materially identical proposal was actually approved at *PayPal* later that year. *PayPal Holdings, Inc. (NCPPR)* (Apr. 10, 2023).

PayPal also relies on *PayPal Holdings, Inc. (Ritter)* (Apr. 10, 2023). There, the proponent ostensibly asked about “free speech” but was focused on fringe topics like “banning legal sex workers access to services” and “enabling anonymous communication.” *Id.* at 13. Contrast this with the concerns of this Proposal, which notes that financial surveillance was based on purchasing “religious texts” or supporting “mainstream conservative or religious organizations,” or with the House Report’s observation that the FBI also wanted financial institutions to track “Americans who expressed opposition to firearm regulations, open borders, COVID-19 lockdowns, vaccine mandates, and the ‘deep state.’”¹ Reading religious texts receives the utmost religious freedom protection and speaking out on political issues “has always rested on the highest rung of the hierarchy of First Amendment values.” *NAACP v. Claiborne Hardware Co.*, 458 U.S. 886, 913 (1982). Similarly, the “right”

¹ Interim Staff of the Comm. on the Judiciary, *Financial Surveillance in the United States: How Federal Law Enforcement Commandeered Financial Institutions to Spy on Americans*, 118th Cong. at 3 (Mar. 6, 2024) <https://judiciary.house.gov/sites/evo-subsites/republicans-judiciary.house.gov/files/evo-media-document/How-Federal-Law-Enforcement-Commandeered-Financial-Institutions-to-Spy.pdf>.

at issue in *PayPal Holdings, Inc. (Heagy)* at 8 (Apr. 2, 2021), was “full participation in the global economy,” not discrimination.

3. The Proposal shows a clear focus on discrimination in civil rights.

The Proposal here focuses on a significant social policy issue, religious and political discrimination, in the context of financial surveillance. Staff routinely recognize that the former are significant social policy issues, as shown by proposals like the de-banking proposal in *PayPal Holdings, Inc. (NCPPR)* (Apr. 10, 2023). Staff also recognize that a proposal may address a significant social policy issue like discrimination in varying discrete contexts, including financial surveillance, as shown by *AmEx 2023* and *AmEx 2024*. The Company fails to address this and other precedent on civil rights discrimination and argues instead that the Proposal lacks a sufficient focus on said discrimination. This too fails.

As an initial matter, the Proposal does not relate to ordinary business operations. PayPal says it “focuses primarily on the Company’s relationships with its customers and, specifically, on the Company’s decisions with regard to the handling of customer accounts.” NAR at 5. But the Proposal is not concerned with the minutiae of these practices. It instead deals with religious and political discrimination against customers in surveillance, in whatever form it may take. And it focuses on activity that potentially violates customers’ and others’ First Amendment rights. Aiding and abetting the government in illegal activity cannot be part of PayPal’s ordinary business operations.

What’s more, Staff and the Commission consider civil rights discrimination, and particularly religious discrimination, to be significant policy issues. By any measure, they are issues that generate “widespread public debate,” SLB 14A. Political and religious discrimination are prohibited by the U.S. Constitution and numerous laws.²

Such discrimination is an increasingly hot topic in corporate America through issues like de-platforming, which took center stage at the Supreme Court last summer,³ and again very recently in light of the new presidential administration.⁴ DEI pushback has brought civil rights discrimination front and center too. Major brands are running away from their previous DEI promises, and the new President

² See, e.g., U.S. Const. amend. I; 42 U.S.C. §§ 2000a, 2000e-2, 3604; 15 U.S.C. § 1691; Justia, *Public Accommodations Laws: 50-State Survey*. Political discrimination is also an emerging field in nondiscrimination law. See, e.g., D.C. Code § 2-1402.11; N.Y. Lab. Law § 201-d; Wash. Rev. Code Ann. § 42.17A.495(2).

³ Abbie VanSickle, David McCabe, and Adam Liptak, *Supreme Court Declines to Rule on Tech Platforms’ Free Speech Rights*, The New York Times (July 1, 2024), <https://www.nytimes.com/2024/07/01/us/supreme-court-free-speech-social-media.html>.

⁴ *Here’s the truth: Meta ending fact-checking is a win against censorship*, The Washington Post (Jan. 9, 2025), <https://www.washingtonpost.com/opinions/2025/01/09/meta-facebook-fact-checking/>.

has issued major executive orders against it.⁵ And over the summer, members of the U.S. House revealed that the Global Alliance for Responsible Media (GARM) was colluding with many of the world’s biggest ad buyers to boycott X and pressure social media platforms to more aggressively censor “hate” speech and “misinformation.” After the House Committee report and a lawsuit from X, GARM quickly disbanded.⁶

The broader politicization of financial services is highly relevant too. In *NRA v. Vullo*, 602 U.S. 175 (2024), the Supreme Court held 9-0 that the NRA was allegedly de-banked and de-insured potentially in violation of its First Amendment rights because of pressure from the State of New York on financial institutions. Numerous state attorneys general and financial officers have called on the largest banks in the country to account for apparent politicized de-banking, which has made numerous national headlines.⁷ Very recently, President Trump and Bank of America’s CEO engaged publicly on the debanking allegations against Bank of America.⁸ As discussed more fully below, the misuse and abuse of financial institutions’ outsized power over the marketplace for political ends is itself its own significant policy issue. *Infra* Section A.4.

Of course, PayPal is no stranger to politicizing its services. It has denied service to groups like the Free Speech Union and The Daily Sceptic, among others, in highly publicized incidents.⁹ It took significant backlash from trying to fine users over “the sending, posting, or publication of any messages, content, or materials” that contained “misinformation,” so much backlash that it actually rolled back the

⁵ See, e.g., Sarah Nassauer, *Target Drops DEI Goals and Ends Program to Boost Black Suppliers: Once a stalwart supporter of Black and LGBTQ rights, retailer joins Corporate America’s retreat from DEI initiatives*, The Wall Street Journal (Jan. 24, 2025), <https://www.wsj.com/business/retail/target-dei-program-ended-77cb4c75>; Emma Goldberg, *Trump’s D.E.I. Order Creates ‘Fear and Confusion’ Among Corporate Leaders*, The New York Times (Jan. 23, 2025), <https://www.nytimes.com/2025/01/23/business/trump-dei-corporate-reaction.html>.

⁶ Kate Conger and Tiffany Hsu, *Advertising Coalition Shuts Down After X, Owned by Elon Musk, Sues*, The N. Y. Times (Aug. 8, 2024), <https://www.nytimes.com/2024/08/08/technology/elon-musk-x-advertisers-boycott.html>.

⁷ See, e.g., Thomas Catenacci, *State financial officers put Bank of America on notice for allegedly ‘de-banking’ conservatives*, Fox News (Apr. 18, 2024), <https://www.foxnews.com/politics/state-financial-officers-put-bank-of-america-on-notice-for-allegedly-de-banking-conservatives>; see also Jathon Sapsford, *JPMorgan Targeted by Republican States Over Accusations of Religious Bias*, The Wall Street Journal (May 13, 2023), <https://www.wsj.com/articles/jpmorgan-targeted-by-republican-states-over-accusations-of-religious-bias-903c8b26>.

⁸ Nupur Anand and Saeed Azhar, *BoFA plans to engage with White House, Congress on debanking allegations, spokesperson says*, Reuters (Jan. 24, 2025), <https://www.reuters.com/business/finance/bofa-plans-engage-with-white-house-congress-debanking-spokesperson-2025-01-24/>.

⁹ Aaron Terr, *PayPal is no pal to free expression*, FIRE (Sept. 30, 2022), <https://www.thefire.org/news/paypal-no-pal-free-expression>.

policy.¹⁰ And before that, it faced potential boycotts after PayPal’s CEO stated that the Company had worked with the Southern Poverty Law Center to help identify accounts to ban from the payment platform under its still-extant prohibition on “hate speech.”¹¹

As the Proposal observes, the specific issue of financial surveillance has also generated broad public debate. The U.S. House Subcommittee’s hearing and report sparked national headlines and commentary from legal experts.¹² The Judiciary Committee asked for (and presumably received) disclosures from PayPal related to the surveillance.¹³ The report spurred policy discussions about the need for financial privacy policy reform.¹⁴ And President Trump has already issued a series of executive orders stating that his administration will end the weaponization of these services by government regulators,¹⁵ and that he will ensure regulators themselves do not use and abuse the Bank Secrecy Act and anti-money laundering regulations or support

¹⁰ Robby Soave, *PayPal Says It Won't Fine Users \$2,500 for Misinformation, but It Will Fine Them for 'Intolerance'*, Reason (Oct. 10, 2022), <https://reason.com/2022/10/10/paypal-misinformation-fine-hate-censorship/>.

¹¹ Caleb Parke, *Conservatives call for PayPal boycott after CEO says Southern Poverty Law Center helps ban users*, Fox News (Feb. 28, 2019), <https://www.foxnews.com/tech/conservatives-call-for-paypal-boycott-after-ceo-admits-splc-helps-ban-users>.

¹² See, e.g., Brooke Singman, *Feds using banks to surveil Americans' financial data without warrants, House Judiciary says*, Fox News (Dec. 6, 2024) <https://judiciary.house.gov/media/in-the-news/feds-using-banks-surveil-americans-financial-data-without-warrants-house>; Lauren Sforza, *Jordan seeks answers from former Treasury official over flagged 'MAGA' transactions*, The Hill (Jan. 17, 2024), <https://thehill.com/homenews/house/4414581-jordan-seeks-answers-from-former-treasury-official-over-flagged-maga-transactions/>; J.D. Tuccille, *Did Banks Hand Private Financial Data to the FBI Without Legal Process?*, Reason (Aug. 28, 2023), <https://reason.com/2023/08/28/did-banks-hand-private-financial-data-to-the-fbi-without-legal-process/>.

¹³ Apr. 24, 2024 Letter to Alex Chriss from U.S. House Judiciary Committee, <https://judiciary.house.gov/sites/evo-subsites/republicans-judiciary.house.gov/files/evo-media-document/2024-04-24%20JDJ%20to%20PayPal%20-%20Chriss.pdf>.

¹⁴ Press Release, *Rep. Rose Introduces the Bank Privacy Reform Act to Stop the Government from Warrantless Surveillance of the American People*, Office of U.S. Rep. John Rose (Oct. 11, 2022), <https://johnrose.house.gov/media/press-releases/rep-rose-introduces-bank-privacy-reform-act-stop-government-warrantless>; Brian Knight, *Financial Privacy: Limits, Developments, and Ideas for Reform*, Mercatus Center (Feb. 14, 2024) <https://www.mercatus.org/research/federal-testimonies/financial-privacy-limits-developments-and-ideas-reform>; Yael Ossowski, *Reform the Bank Secrecy Act to Better Protect Consumer Financial Privacy*, Consumer Choice Center (Oct. 4, 2024), <https://consumerchoicecenter.org/reform-the-bank-secrecy-act-to-better-protect-consumer-financial-privacy/>.

¹⁵ Executive Order, *Ending the Weaponization of the Federal Government* (Jan. 20, 2025) (directing “the Securities and Exchange Commission, and the Federal Trade Commission,” among others, to review and recommend prior administration’s record on this issue), <https://www.whitehouse.gov/presidential-actions/2025/01/ending-the-weaponization-of-the-federal-government/>.

central bank digital currencies.¹⁶ These privacy and civil rights risks are an ongoing part of the national debate happening right now on financial services and financial regulation.

These issues are all significant to PayPal, since it has a history of politicizing its services and was named as a participant in this operation by the U.S. House Report. Further, PayPal takes customer privacy seriously and outlines numerous guidelines for how it protects or discloses its customers' information.¹⁷ These issues also implicate legal compliance and the due process rights of PayPal's customers. PayPal also no doubt has to navigate legal compliance with state and federal anti-discrimination laws, some of which are listed above.

The Proposal takes no position on the balance of these risks against others. But it is undeniable that they are significant, particularly for discrimination, and are growing in their significance in our society today.

The Proposal also reflects a clear and consistent focus on these issues from top to bottom. It highlights the religious and political screens that federal law enforcement used and worked with financial institutions to try and enforce. It notes that these actions "put millions of Americans at risk for having their accounts frozen, being de-banked, placed on a government watchlist, or even wrongly prosecuted, all for exercising their First and Second Amendment rights." And it observes that this "raises serious concerns and doubts about federal law enforcement's and financial institutions' commitment to respecting Americans' privacy rights and fundamental civil liberties." That is why it asks for risks specifically related to financial surveillance that occurred because of a customer's "political or religious status, views, or activities" and about the broader impacts that has on "individuals' exercise of their constitutionally protected civil rights."

The Company disagrees. It reattempts its earlier arguments by stating that the proposal "relates to the Company's relationships with its customers and the handling of customer accounts." NAR at 5–6. But again, the Proposal does not focus on ordinary business matters. And even if it did, a proposal can both relate to the "nitty gritty" of these parts of PayPal's business and still focus on a significant social policy issue, which the Proposal here does.

PayPal also likens this proposal to the precedent explicated above. But again, this runs headlong into the *Bahnsen Proposal* and *PayPal Holdings, Inc. (NCPFR)* (Apr. 10, 2023), which were very similar to the others except that they focused on

¹⁶ Executive Order, *Strengthening American Leadership in Digital Financial Technology* (Jan. 23, 2025), <https://www.whitehouse.gov/presidential-actions/2025/01/strengthening-american-leadership-in-digital-financial-technology/>.

¹⁷ See, e.g., *PayPal Privacy Statement* (last updated Feb. 13, 2025), <https://www.paypal.com/us/legalhub/paypal/privacy-full>; *Privacy Center*, PayPal, <https://www.paypal.com/us/privacy-center/home>.

discrimination. And *AmEx 2023* and *AmEx 2024* show that, when a proposal addresses significant social policy issues in the context of financial surveillance, it is still protected from exclusion under (i)(7).

4. The effect of how banks and other powerful financial firms use their power and privileged position on broader society is one of the longest-running and most significant issues in the country’s history.

As discussed above, the Proposal is focused directly on religious and political discrimination, which are each significant social policy issues. But the Proposal also focuses squarely on another issue—the effect banks and other financial firms’ actions have on broader society, especially if such actions are done to influence or control public policy or civil rights.

Since the founding of this country, large financial firms, like PayPal, have been controversial. While supporters have argued they were necessary for economic development, critics have worried that the power such firms wielded would give them and their leadership too much power over society.¹⁸

Even now, those skeptical of such concentrated power on both right and left have worried that financial institutions can become *de facto* regulators by cutting off disfavored individuals and groups, while others see it as a means for “necessary” social change without the limits of the democratic process.¹⁹

Concerns about financial institutions abusing their privileged positions have also resulted in multiple laws prohibiting discrimination, including on religious grounds. For example, in the 1970s Congress amended the Equal Credit Opportunity Act to prohibit discrimination on the basis of religion, among other protected characteristics, in the provision of credit services. In deciding whether to expand anti-discrimination protection, some members of Congress explicitly pointed to the powers granted to banks as a justification to prevent discrimination. Others pointed (and many today point) to the risk that financial institutions could be co-opted as a political tool as a reason to prevent discrimination.²⁰

¹⁸ See, e.g., Louis D. Brandeis, *Other People’s Money And How The Bankers Use It* (1914); Howard Bodenhorn, *State Banking in Early America: A New Economic History* at 78 (Oxford 2003).

¹⁹ See, e.g., Sylvan Lane, *Bernie Sanders Introduces Bill to Break Up Big Banks* (The Hill, Oct. 3, 2018) <https://thehill.com/policy/finance/409785-bernie-sanders-introduces-bill-to-break-up-big-banks/>; Andrew Ross Sorkin, *How Banks Could Control Gun Sales if Washington Won’t* (N.Y. Times, Feb. 19, 2018) <https://www.nytimes.com/2018/02/19/business/banks-gun-sales.html>; *Governor Ron Desantis Signs Legislation to Protect Floridians’ Financial Future & Economic Liberty* (Press Release May 2, 2023).

²⁰ Brian Knight and Trace Mitchell, *Private Policies and Public Power: When Banks Act as Regulators Within a Regime of Privilege*, 13 N.Y.U. J. L. & Liberty 66, 133-136 (2020).

Recently, several states have also passed laws protecting individuals and industries from politicized de-banking on the basis of both traditionally recognized protected classes and new factors, such as political views or participating in the firearms industry.²¹ These laws are unsurprisingly controversial and have accordingly generated intense public debate.²²

These concerns have extended to all manner of financial institutions, including payment platforms like PayPal. As discussed above, the Consumer Financial Protection Bureau, which regulates PayPal, has noted the disturbing trend of de-banking in recent litigation,²³ and just this January proposed a rule that would prevent financial institutions from denying service based on a customer's speech.²⁴

To be sure, not every proposal involving a financial firm would qualify as a significant social issue. And this issue would not be significant to every financial firm. However, when the proposal focuses on how the largest payment platform in the world that processes over \$1.5 trillion in transactions each year, a market capitalization of over \$69 billion, and over 45% of the global payments market share,²⁵ the significance of the issue is almost self-evident. PayPal could use—and arguably already has used—its power to affect society as a whole. Especially if the question dovetails with other significant social issues like discrimination, it is hard to see how it would not qualify as a significant social issue and not be excludable. This Proposal is one such case, and Staff should refuse to allow PayPal to exclude it.

²¹ See, e.g. Tenn. Code Ann. § 45-1-128 (2024); Fla. Stat. § 655.0323 (2024).

²² See, e.g., John Tammy, *Ron DeSantis Goes to Perilous Lengths to Politicize Banking In Florida*, Forbes (Jul. 15, 2024) <https://www.forbes.com/sites/johntammy/2024/07/15/ron-desantis-goes-to-perilous-lengths-to-politicize-banking-in-florida/>.

²³ Jon Hill, *CFPB Urges 5th Circ. To Revive Anti-Bias Exam Policy*, Law360 (Aug. 8, 2024), <https://www.law360.com/articles/1867585>.

²⁴ Press Release, *CFPB Proposes Rule to Ban Contract Clauses that Strip Away Fundamental Freedoms*, Consumer Financial Protection Bureau (Jan. 13, 2025), <https://www.consumerfinance.gov/about-us/newsroom/cfpb-proposes-rule-to-ban-contract-clauses-that-strip-away-fundamental-freedoms>.

²⁵ Tom-Chris Emewulu, *PayPal Statistics and Facts 2024*, Chargeflow (Mar. 29, 2024), <https://www.chargeflow.io/blog/paypal-statistics-facts>.

Conclusion

For these reasons, we request that the Staff reject PayPal's request for relief from American Family Association's Proposal. A copy of this correspondence has been timely provided to PayPal. Correspondence regarding this letter should be sent to my attention at mross@adflegal.org. If we can provide additional materials to address any queries the Commission may have on this letter, please feel free to contact me via email or at 571-707-4655.

Sincerely,



Michael Ross

Cc: Raquel Fox

SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP
1440 NEW YORK AVENUE, N.W.
WASHINGTON, D.C. 20005-2111

TEL: (202) 371-7000
FAX: (202) 393-5760
www.skadden.com

FIRM/AFFILIATE OFFICES

BOSTON
CHICAGO
HOUSTON
LOS ANGELES
NEW YORK
PALO ALTO
WILMINGTON

ABU DHABI
BEIJING
BRUSSELS
FRANKFURT
HONG KONG
LONDON
MUNICH
PARIS
SAO PAULO
SEOUL
SINGAPORE
TOKYO
TORONTO

DIRECT DIAL
202-371-7050
DIRECT FAX
202-661-4050
EMAIL ADDRESS
RAQUEL.FOX@SKADDEN.COM

VIA STAFF ONLINE FORM

March 10, 2025

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

RE: PayPal Holdings, Inc. – 2025 Annual Meeting
Supplement to Letter dated January 31, 2025
Relating to Shareholder Proposal of
American Family Association

Ladies and Gentlemen:

We refer to our letter dated January 31, 2025 (the “No-Action Request”), submitted on behalf of our client, PayPal Holdings, Inc., a Delaware corporation (the “Company”), pursuant to which we requested that the Staff of the Division of Corporation Finance (the “Staff”) of the U.S. Securities and Exchange Commission (the “Commission”) concur with the Company’s view that the shareholder proposal and supporting statement (the “Proposal”) submitted by Bowyer Research, Inc. (“Bowyer Research”) on behalf of the American Family Association (the “Proponent”) may be excluded from the proxy materials to be distributed by the Company in connection with its 2025 annual meeting of shareholders (the “2025 proxy materials”).

This letter is in response to the letter to the Staff, dated February 28, 2025, submitted by Michael Ross on behalf of the Proponent (the “Proponent’s Letter”),

and supplements the No-Action Request. In accordance with Rule 14a-8(j), a copy of this letter also is being sent to the Proponent.

We believe the Proponent's Letter presents an unconvincing attempt to rebut the No-Action Request. In particular, the No-Action Request should be considered in light of the Staff's relevant and newly issued guidance in Staff Legal Bulletin No. 14M (Feb. 12, 2025) ("SLB 14M"), which will be "the guidance in place at the time [the Staff] issues a response" to the No-Action Request. As explained below, SLB 14M validates and reinforces the arguments previously made in the No-Action Request that the Proposal may be excluded from the 2025 proxy materials because it deals with matters relating to the Company's ordinary business operations.

SLB 14M further supports the No-Action Request's argument that the Proposal may be excluded as it deals with matters relating to the Company's ordinary business operations. The Company already demonstrated in the No-Action Request that the Proposal focuses on the Company's relationships with customers and, specifically, on the Company's decisions with regard to the handling of customer accounts, which are ordinary business matters conducted in accordance with the Company's legal and regulatory obligations. The Proponent's Letter conflates the Proposal's focus on the Company's ordinary business operations with the policy issue raised by the Proposal on religious and political discrimination. In this regard, the Proponent's Letter attempts to sidestep the issue by asserting that the Proposal is not concerned with "the minutiae" of the Company's handling of customer accounts and instead deals with "religious and political discrimination against customers in surveillance." The Proposal's request, however, squarely implicates the Company's ordinary business operations—a report on how the Company "oversees risks related to surveilling or monitoring" certain customers. For that reason, the Proposal may be excluded under Rule 14-8(i)(7) unless it raises policy issues so significant that it would be appropriate for a shareholder vote.

In SLB 14M, the Staff clarified that evaluations of the significance of a policy issue raised by a proposal "focus on whether the proposal deals with a matter relating to an individual company's ordinary business operations or raises a policy issue that transcends the individual company's ordinary business operations," rather than "focusing solely on whether a proposal raises a policy issue with broad societal impact or whether particular issues or categories of issues are universally 'significant.'" The bulk of the Proposal and the Proponent's Letter references the latter: allegedly significant policy issues of religious or political discrimination only in the broad societal context. The Proponent's Letter then attempts to extend the alleged significance of those issues to the Company in the abstract, asserting that because the Company is the largest payment platform in the world, "the significance

Office of Chief Counsel
March 10, 2025
Page 3

of the issue is almost self-evident.” Other than such generalized and conclusory assertions, neither the Proposal nor the Proponent’s Letter identifies any specific risks or concerns to the Company from its monitoring of customer accounts or the significance of the policy issues raised by the Proposal for the Company specifically. Therefore, any significant policy issue raised by the Proposal lacks a clear nexus to the Company. Accordingly, the Proposal may be excluded from the Company’s 2025 proxy materials pursuant to Rule 14a-8(i)(7) as relating to its ordinary business operations.

Should the Staff disagree with the conclusions set forth in this letter, or should any additional information be desired in support of the Company’s position, we would appreciate the opportunity to confer with the Staff concerning these matters prior to the issuance of the Staff’s response. Please do not hesitate to contact the undersigned at (202) 371-7050.

Very truly yours,



Raquel Fox

cc: Brian Y. Yamasaki
Vice President, Corporate Legal and Secretary
PayPal Holdings, Inc.

Jerry Bowyer
Bowyer Research, Inc.

Michael Ross
Alliance Defending Freedom