



DIVISION OF
CORPORATION FINANCE

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

April 4, 2025

Ronald O. Mueller
Gibson, Dunn & Crutcher LLP

Re: Amazon.com, Inc. (the "Company")
Incoming letter dated March 13, 2025

Dear Ronald O. Mueller:

This letter is in response to your correspondence concerning the shareholder proposal (the "Proposal") submitted to the Company by the As You Sow Foundation and co-filers for inclusion in the Company's proxy materials for its upcoming annual meeting of security holders.

The Proposal requests that the board issue a report describing how the Company could address flexible plastic packaging in alignment with the findings of the Pew Report, or other authoritative sources, to reduce its contribution to plastic pollution.

We are unable to concur in your view that the Company may exclude the Proposal under Rule 14a-8(i)(5).

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: Luke Morgan
As You Sow

March 13, 2025

VIA ONLINE PORTAL SUBMISSION

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

Re: *Amazon.com, Inc.*
Shareholder Proposal of the As You Sow Foundation Fund et al.
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 2025 Annual Meeting of Shareholders (collectively, the “2025 Proxy Materials”) a shareholder proposal (the “Proposal”) and related recitals and statement in support thereof (the “Supporting Statement”) submitted by As You Sow on behalf of the As You Sow Foundation, the Common Market Philadelphia Inc., Ken Olum, and LZFT Descendants TR GST Exempt (collectively, the “Proponents”). Pursuant to Rule 14a-8(j), we have concurrently sent a copy 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 Securities and Exchange Commission (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 Proposal, a copy of such correspondence should be furnished concurrently to the undersigned on behalf of the Company pursuant to Rule 14a-8(k) and SLB 14D.

THE PROPOSAL

The Proposal states:

RESOLVED: Shareholders request that the Board issue a report, at reasonable expense and excluding proprietary information, describing how Amazon could address flexible plastic packaging in alignment with the findings of the Pew Report, or other authoritative sources, to reduce its contribution to plastic pollution.

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

BASIS FOR EXCLUSION

We hereby respectfully request that the Staff concur in our view that the Proposal may be excluded from the 2025 Proxy Materials pursuant to Rule 14a-8(i)(5) because the Proposal relates to operations that are not economically significant or otherwise significantly related to the Company's business.

I. The Proposal May Be Excluded Under Rule 14a-8(i)(5) Because It Relates To Operations That Account For Less Than Five Percent Of The Company's Operating Expenses And Total Assets And The Proposal Is Not Otherwise Significantly Related To The Company's Business.

A. Background On Rule 14a-8(i)(5).

Rule 14a-8(i)(5) provides that a shareholder proposal may be excluded "[i]f the proposal relates to operations which account for less than 5 percent of the company's total assets at the end of its most recent fiscal year, and for less than 5 percent of its net earnings and gross sales for its most recent fiscal year, and is not otherwise significantly related to the company's business." The Commission stated in 1982 that it was adopting the economic tests that now appear in Rule 14-8(i)(5) because previously the Staff would not agree with the exclusion of a proposal "where the proposal has reflected social or ethical issues, rather than economic concerns, raised by the issuer's business, and the issuer conducts any such business, no matter how small." Exchange Act Release No. 19135 (Oct. 14, 1982). The Commission stated that this interpretation of the rule may have "unduly limit[ed] the exclusion," and proposed adopting the economic tests that appear in the rule today.

In Staff Legal Bulletin No. 14M (Feb. 12, 2025) ("SLB 14M"), the Staff stated that, although it has at times looked to an early court decision that placed heavy emphasis on "the ethical and social significance" of a proposal when applying Rule 14a-8(i)(5), going forward it "will focus on a proposal's significance to the company's business when it otherwise relates to operations that account for less than 5% of total assets, net earnings and gross sales." The Staff explained that, when assessing whether a proposal is "otherwise significantly related" under Rule 14a-8(i)(5), the Staff will apply a "separate analytical framework[]" from whether the proposal raises a significant policy issue under Rule 14a-8(i)(7)'s "ordinary business" exception. Accordingly, "proposals that raise issues of social or ethical significance may be excludable, notwithstanding their importance in the abstract, based on the application and analysis of each of the factors of Rule 14a-8(i)(5) in determining the proposal's relevance to the company's business." *Id.* In addition, the Staff stated that "[t]he mere possibility of reputational or economic harm alone will not demonstrate that a proposal is 'otherwise significantly related to the company's business'" and that it will not look to its analysis under Rule 14a-8(i)(7) when evaluating arguments under Rule 14a-8(i)(5). *Id.*

B. The Proposal Relates To Operations That Account For Less Than Five Percent Of The Company's Operating Expenses And Total Assets.

The Proposal requests that the Company's board of directors issue a report describing how the Company can "address flexible plastic packaging . . . to reduce its contribution to plastic

pollution.” The Supporting Statement asserts that the Company “markets more than 100 brands of consumer goods, food, and beverages, many of which are packaged in flexible plastic,” and that two of the Company’s grocery operations sell “numerous goods” in flexible multi-layer packaging that cannot be routinely recycled. As such, the Proposal addresses flexible plastic that the Company uses for packaging across the Company’s operations, and does not address a business unit or set of discrete operations of the Company. In the context of such proposals, where a comparison of company expense against gross sales and net earnings would be incommensurate, Rule 14a-8(i)(5)’s five percent tests have instead been applied to a company’s total assets and operating expenses. See *AT&T Co.* (avail. Jan 17, 1990) (“[t]he operation of the program [addressed in the proposal] entails the incurrence of expenses rather than the generation of revenues and net earnings. In fact, the expenses associated with the [program] was less than 1 percent of the Company’s operating expenses and assets for its most recent fiscal year”); see also *Atlantic Richfield Co.* (avail. Jan. 28, 1997) (company noted that spending obligations that were the subject of the proposal represented a de minimis percentage of capital expenditures and assets); *Atlantic Richfield Co.* (avail. Jan. 6, 1995) (same). Applying the foregoing approach, the Company has confirmed that its expenditures for flexible plastic used for packaging for fiscal year 2024 accounted for less than five percent of the Company’s total assets as of December 31, 2024 and less than five percent of the Company’s fiscal 2024 operating expenses. The Company also has confirmed that it expects such expenditures to represent less than five percent of the Company’s total assets and operating expenses for fiscal year 2025.¹ Accordingly, the Proposal does not relate to Company operations that are economically significant to the Company for purposes of the objective standards under Rule 14a-8(i)(5).

C. *The Proposal Is “Not Otherwise Significantly Related” To The Company’s Business, As That Term Is Interpreted Under Rule 14a-8(i)(5).*

The Proposal is “not otherwise significantly related to the [C]ompany’s business.” In SLB 14M, the Staff stated that it “will focus on a proposal’s significance to the company’s business when it otherwise relates to operations that account for less than 5% of total assets, net earnings and gross sales.”

Here, the Proposal and Supporting Statement do not demonstrate that the Proposal is otherwise significant to the Company’s business. The potential regulatory risks and environmental concerns addressed in the Supporting Statement are not targeted at or unique to the Company, and instead reflect general social concerns. Moreover, in the context of the particular circumstances of the Company, and in light of the information about the Company’s efforts to reduce its use of plastic and increase the recyclability of the materials it uses, the Proposal is not otherwise significant to the Company’s overall operations.

¹ While not clearly applicable, as addressed above, the Company also has confirmed that flexible plastic used for packaging accounted for less than five percent of its total assets as of December 31, 2024 and that its expenditures for flexible plastic used for packaging for fiscal year 2024 was less than five percent of the Company’s net sales and net income, and that the Company expects such amounts to represent less than five percent of the Company’s net sales and net income for fiscal year 2025.

The Company has already publicly stated that it is working to reduce plastic waste by promoting reusable and recyclable packaging.² In particular, the Company is addressing four primary areas in its efforts to reduce its use of plastics: (1) plastics for products it repackages for delivery, (2) plastics in physical stores, primarily the Company's grocery business, (3) plastics in the Company's devices and private label products, and (4) plastics in packaging for products manufactured by other companies that it sells to its customers. The Company has reported that, in contrast to consumer-packaged goods companies, its greatest impact comes from reducing the use of plastic for products repackaged for delivery. To measure its progress, the Company publicly reports each year on the amount of single-use plastic being used across its global operations network to ship orders to customers.³

With respect to products that the Company repackages for delivery, the Company's average plastic packaging weight per shipment decreased by 9% in 2023, building on the over 17% reduction achieved in 2022.⁴ As of October 2024, the Company has removed all plastic air pillows from its delivery packaging used at its global fulfillment centers, creating the biggest reduction in its plastic packaging use in North America to date. As part of this transition, the Company expanded its use of paper filler made from 100% recycled content across North America.⁵ This follows the Company having replaced single-use plastic outbound packaging with 100% recyclable paper and cardboard packaging in its fulfillment network in Europe during 2022. In addition, during 2023, the Company continued to expand recyclable paper padded bag use across the U.S. and Canada, replacing 99.7% of harder-to-recycle padded bags that contain both plastic and paper.

With respect to flexible plastic use in the Company's physical stores, the Company's Whole Foods Market was the first U.S. grocer to ban disposable plastic bags at checkout, instead opting for 100% post-consumer recycled-content and Forest Stewardship Council ("FSC")-certified paper grocery bags, and in 2023 Whole Foods Market introduced stronger twist handle bags at select Whole Foods Market stores that are still 100% post-consumer recycled content and FSC-certified, which reduce the need for double bagging, dramatically reducing the amount of bags used at checkout. Whole Foods Market also implemented smaller produce bags at its stores in 2019, a change that significantly reduces the use of plastic annually. In July 2019, Whole Foods Market became the first national retailer to remove all the plastic straws from its cafes and coffee bars, replacing them with FSC-certified paper straws that are recyclable and compostable. Also, in 2019, Whole Foods Market stores replaced all plastic rotisserie chicken

² See Amazon Notice of 2024 Annual Meeting of Shareholders & Proxy Statement at 58, *available at* https://www.sec.gov/ix?doc=/Archives/edgar/data/1018724/000110465924045910/tm2329302d4_def14a.htm.

³ See Amazon 2023 Sustainability Report at 32, *available at* <https://sustainability.aboutamazon.com/2023-sustainability-report.pdf>.

⁴ *Id.*; see also <https://www.aboutamazon.com/news/sustainability/how-amazon-is-reducing-packaging>. This metric is based on the total weight of single-use plastic packaging (in metric tons) from Company-owned and operated global fulfillment operations, including both Amazon-sold and third-party seller products fulfilled by Amazon. This includes plastic packaging used in shipments across the Company's fulfillment operations globally, including Amazon Grocery Logistics shipments. The weight is calculated using actual shipment data multiplied by packaging weights, or through procurement data for plastic protective materials added by the Company. The metric excludes adhesives, tape, labels, and third-party packaging not added by the Company.

⁵ See <https://www.aboutamazon.com/news/sustainability/how-amazon-is-reducing-packaging>.

containers with bags that use approximately 70% less plastic. Whole Foods Market is currently working toward making 100% of its own packaging, including private label and in-store food service packaging, reusable, recyclable, or compostable. Across the Company's own device product lines, the Company averages 98% wood fiber-based materials in its packaging. In 2023, 90% of its new devices and accessories launched with packaging that is 100% recyclable in the United States, up from 79% in 2022.⁶

With respect to products that are manufactured by others and the Company sells, the Company helps manufacturers reduce their use of plastics through programs such as the Ships in Product Packaging ("SIPP") program, which financially incentivizes manufacturers to package their products in easy-to-open, 100% recyclable packaging, including plastics, that allows the Company to ship products in their own containers, eliminating all additional packaging material for these products, including plastics. Through the SIPP program and related packaging design and testing services, the Company has helped manufacturers develop more sustainable packaging. In 2024, nearly 4 million seller products were certified to ship in their own product packaging.

As noted above, neither the Proposal nor the Supporting Statement establish that the Proposal is otherwise significant to the Company's business, particularly in the context of the Company's existing actions and disclosures. The Resolved clause specifically requests a report for how the Company can "address flexible plastic packaging in alignment with the findings of the Pew Report," which Report the Supporting Statement asserts has concluded that "recycling must be coupled with reductions in use, materials redesign, and substitution" and that the "greatest opportunity to reduce or eliminate plastic lies with flexible plastic packaging." The Supporting Statement also states that the requested report should address "actions to achieve fully recyclable packaging including elimination and accelerated research into innovative reusable substitution" and "opportunities to pre-competitively work with peers to research and develop reusable packaging as an alternative to single-use packaging." As demonstrated above, the Company's initiatives relating to recycling as well as its efforts to reduce, redesign, and substitute the Company's use of plastics in its operations, and its collaboration efforts to address plastic packaging industry-wide, already address each of the parameters described in the Proposal and, accordingly, the differences—or the delta—between the Proposal's specific request and the actions the Company has already taken are minor. While the Supporting Statement asserts that the Company "could avoid regulatory, environmental, and competitive risks by adopting a comprehensive approach to addressing flexible plastic packaging use at scale," there is no basis for the assertion that issuing the requested report will be more effective at achieving those goals than the actions the Company has already taken and continues to pursue. Moreover, SLB 14M confirms that "[t]he mere possibility of reputational or economic harm alone will not demonstrate that a proposal is 'otherwise significantly related to the company's business.'"

In light of the Company's particular circumstances, there is an even more compelling basis for exclusion of the Proposal under Rule 14a-8(i)(5) than there was in *Dunkin' Brands Group, Inc.* (avail. Feb. 22, 2018). There, the Staff concurred with the exclusion under Rule 14a-8(i)(5) of a

⁶ See Amazon 2023 Sustainability Report at 33.

proposal seeking a report assessing the environmental impacts of continuing to use K-Cup Pods brand packaging for sales of the company's branded coffee. The company confirmed that its K-Cup Pods brand packaging business was below the relevant five percent thresholds and set forth a number of factors indicating that, even though the proposal and supporting statement raised a number of social or ethical concerns in terms of potential environmental, reputational, and financial implications of the company's K-Cup Pods business, the proposal was not otherwise significantly related to the company's business. In concurring with exclusion in *Dunkin' Brands Group*, the Staff noted "that the [p]roposal's significance to the [c]ompany's business is not apparent on its face, and that the [p]roponent has not demonstrated that it is otherwise significantly related to the [c]ompany's business." Here, consistent with the framework in Staff Legal Bulletin No. 14K (Oct. 16, 2019), the Company's actions have diminished any significance of the Proposal's policy issue to such an extent that the Proposal does not present a policy issue that is significant to the Company. As such, because the Proponent has failed to demonstrate that the Proposal is "otherwise significantly related to the [C]ompany's business," the Proposal properly may be excluded under Rule 14a-8(i)(5).

II. Waiver Of The 80-Day Requirement In Rule 14a-8(j)(1) Is Appropriate.

We request that the Staff waive the 80-day filing requirement set forth in Rule 14a-8(j) with respect to the basis for exclusion under Rule 14a-8(i)(5) presented in this letter. Rule 14a-8(j)(1) states that a company that "intends to exclude a proposal from its proxy materials . . . must file its reasons with the Commission no later than 80 calendar days before it files its definitive proxy statement and form of proxy with the Commission." However, Rule 14a-8(j)(1) allows the Staff, in its discretion, to permit a company to make its submission within 80 days of filing its definitive proxy materials if the company demonstrates "good cause" for missing the deadline. In SLB 14M, the Staff stated that it "consider[s] the publication of [SLB 14M] to be 'good cause' if it relates to legal arguments made by" a new no-action request. The legal arguments set forth in this request arise from and relate to the Staff's guidance in SLB 14M. Accordingly, we believe that the Company has "good cause" for its inability to meet the 80-day requirement, and we respectfully request that the Staff waive the 80-day requirement with respect to the economic relevance argument presented in this letter.

CONCLUSION

Based upon the foregoing analysis, the Company intends to exclude the Proposal from its 2025 Proxy Materials, and we respectfully request that the Staff concur that the Proposal may be excluded under Rule 14a-8.

We would be happy to provide you with any additional information and answer any questions that you may have regarding this subject. Correspondence regarding this letter should be sent to shareholderproposals@gibsondunn.com. If we can be of any further assistance in this matter, please do not hesitate to call me at (202) 955-8671, or Mark Hoffman, the Company's Vice President, Associate General Counsel, and Corporate Secretary, at (206) 266-1000.

Sincerely,



Ronald O. Mueller

Enclosures

cc: Mark Hoffman, Amazon.com, Inc.
Conrad MacKerron, As You Sow
shareholderengagement@asyousow.org
Harold Dutton III, The Common Market Philadelphia Inc.
Ken Olum
Julia Barry, LZFT Descendants TR GST Exempt

EXHIBIT A

WHEREAS: Without immediate and sustained new commitments throughout the plastics value chain, annual flows of plastics into oceans could nearly triple by 2040.¹

The growing plastic pollution crisis poses increasing risks to Amazon. Corporations could face an annual financial risk of approximately \$100 billion should governments require them to cover the waste management costs of packaging they produce.² Governments around the world are increasingly enacting such policies, including five new state laws that impose fees on corporations for single-use plastic (SUP) packaging.³ The European Union has banned ten SUP pollutants and taxed some non-recycled plastic packaging.⁴ A French law requires 10% of packaging be reusable by 2027 and Portugal requires 30% reusable packaging by 2030.⁵ Additionally, consumer demand for sustainable packaging is increasing.⁶

Pew Charitable Trusts' groundbreaking study, *Breaking the Plastic Wave* ("Pew Report"), concluded that improved recycling alone is insufficient to address plastic pollution—instead, recycling must be coupled with reductions in use, materials redesign, and substitution.⁷ The Pew Report finds that the greatest opportunity to reduce or eliminate plastic lies with flexible plastic packaging, often used for chips, sweets, and condiments among other uses, and virtually unrecyclable in America. With innovation, redesign, and substitution, 26 million metric tons of flexibles can be avoided globally.⁸

The Company markets more than 100 brands of consumer goods, food, and beverages, many of which are packaged in flexible plastic. Its Whole Foods subsidiary and Happy Belly brand sell numerous goods in flexible multi-layer packaging that cannot be routinely recycled. The Company is also notably absent from participation in the largest pre-competitive corporate initiative to address plastic pollution, the New Plastics Economy Global Commitment. Competitors, including Walmart and Target, have adopted goals to make plastic packaging recyclable, reusable, or compostable by 2025, while Amazon has not.

Our Company could avoid regulatory, environmental, and competitive risks by adopting a comprehensive approach to addressing flexible plastic packaging use at scale.

RESOLVED: Shareholders request that the Board issue a report, at reasonable expense and excluding proprietary information, describing how Amazon could address flexible plastic packaging in alignment with the findings of the Pew Report, or other authoritative sources, to reduce its contribution to plastic pollution.

¹ https://www.pewtrusts.org/-/media/assets/2020/10/breakingtheplasticwave_mainreport.pdf, p.4

² https://www.pewtrusts.org/-/media/assets/2020/10/breakingtheplasticwave_mainreport.pdf, p.9

³ <https://www.packworld.com/sustainable-packaging/recycling/article/22922253/ameripen-shares-key-lessons-from-early-epr-adopters>

⁴ https://environment.ec.europa.eu/topics/plastics/single-use-plastics_en

⁵ <https://www.greenpeace.org/international/story/51843/plastics-reuse-and-refill-laws>

⁶ <https://www.shorr.com/resources/blog/the-2022-sustainable-packaging-consumer-report/>

⁷ https://www.pewtrusts.org/-/media/assets/2020/10/breakingtheplasticwave_mainreport.pdf, p.9

⁸ https://www.pewtrusts.org/-/media/assets/2020/10/breakingtheplasticwave_mainreport.pdf, p.51;

https://www.pewtrusts.org/-/media/assets/2020/10/breakingtheplasticwave_mainreport.pdf, p.51

SUPPORTING STATEMENT: The report should, at Board discretion:

- Assess the reputational, financial, and operational risks associated with continuing to use non-recyclable plastic packaging while plastic pollution grows;
- Evaluate actions to achieve fully recyclable packaging including elimination and accelerated research into innovative reusable substitution; and
- Describe opportunities to pre-competitively work with peers to research and develop reusable packaging as an alternative to single-use packaging.

April 2, 2025

VIA ONLINE SUBMISSION

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

Email: shareholderproposals@sec.gov

Re: Shareholder Proposal to Amazon.com, Inc. Regarding Plastic Packaging

Ladies and Gentlemen:

As You Sow Foundation Fund, a beneficial owner of common stock of Amazon.com, Inc. (the “Company” or “Amazon”), has submitted a shareholder proposal (the “Proposal”) asking the Company to issue a report describing how Amazon could address flexible plastic packaging to reduce its contribution to plastic pollution. *As You Sow* writes in response to the Company’s March 13, 2025 “No Action” letter (the “Company Letter”).

At the outset, we note that the Company submitted an out-of-time no-action letter in response to Staff Legal Bulletin 14M (“SLB 14M”) (Feb. 12, 2025), which purported to grant a “good cause” exception under Rule 14a-8(j) for past-deadline no-action letters seeking retroactive application of the standards announced in SLB 14M. However, the Company’s Letter—which contains approximately 3.5 pages of substantive argumentation—comes *more than a month* after the publication of SLB 14M, and the Company makes no effort to explain or justify this significant delay. SLB 14M cannot reasonably be read to simply erase the deadline, without limit, for filing a no-action request. The Staff should decline to consider the Company’s arguments based on this delay, which stretches the concept of “good cause” well past its breaking point.

If the Staff nonetheless grants the Company’s request for a waiver of its deadline under Rule 14a-8(j), the no-action request merits a denial on substantive grounds. The Company Letter contends that the Proposal may be excluded from the Company’s 2025 proxy statement under Rule 14a-8(i)(7) because, Amazon argues, the Proposal relates to operations that are not economically or otherwise significant to the Company’s business. The Company Letter is wrong on the merits of this argument.¹ The Proposal concerns an issue significantly related to the Company’s business and creates substantial risk for the Company.

¹ In responding to the Company’s arguments herein, the Proponent does not concede the lawfulness of the blanket 14a-8(j) exception or the retroactive application of the SLB 14M standards to proposals written and due prior to its publication. Proponent expressly reserves all rights and arguments to challenge the 14a-8(j) waiver and/or the retroactive application of the SLB 14M standards and seek other appropriate relief as permitted by law. For avoidance of doubt, Proponent explicitly contests that the retroactive application of new standards effectively reversing key interpretive guidance can ever constitute “good cause” supporting a waiver of the Company’s deadlines under the promulgated Rule.

A copy of this letter is being emailed to the Company concurrently with its submission to the Commission's online shareholder proposal portal.

SUMMARY

The Proposal, reproduced in full below, requests that the Company, at reasonable expense and excluding proprietary information, issue a report describing how it could address flexible plastic packaging in alignment with the findings of the Pew Report, or other authoritative sources, to reduce its contribution to plastic pollution. The Company contends that it may exclude the Proposal under Rule 14a-8(i)(5), because the Proposal relates to operations that account for less than 5% of the Company's expenses or assets and is not otherwise significantly related to the Company.

The Company's argument that its packaging is not significantly related to its business—primarily because it is apparently relatively cheap—is unpersuasive. Regardless of whether the Company's financial 5% threshold calculation is correct, the risks associated with the Company's contribution to plastic pollution, particularly at a time of heightened litigation risk concerning corporate contributions to plastic pollution and criticism directed at the Company's own practices, make it beyond dispute that the Proposal is “significantly related to the Company's business.”

THE PROPOSAL

WHEREAS: Without immediate and sustained new commitments throughout the plastics value chain, annual flows of plastics into oceans could nearly triple by 2040.¹

The growing plastic pollution crisis poses increasing risks to Amazon. Corporations could face an annual financial risk of approximately \$100 billion should governments require them to cover the waste management costs of packaging they produce.² Governments around the world are increasingly enacting such policies, including five new state laws that impose fees on corporations for single-use plastic (SUP) packaging.³ The European Union has banned ten SUP pollutants and taxed some non-recycled plastic packaging.⁴ A French law requires 10% of packaging be reusable by 2027 and Portugal requires 30% reusable packaging by 2030.⁵ Additionally, consumer demand for sustainable packaging is increasing.⁶

Pew Charitable Trusts' groundbreaking study, *Breaking the Plastic Wave* (“Pew Report”), concluded that improved recycling alone is insufficient to address plastic pollution—instead, recycling must be coupled with reductions in use, materials redesign, and substitution.⁷ The Pew Report finds that the greatest opportunity to reduce or eliminate plastic lies with flexible plastic

¹ https://www.pewtrusts.org/-/media/assets/2020/10/breakingtheplasticwave_mainreport.pdf, p.4

² https://www.pewtrusts.org/-/media/assets/2020/10/breakingtheplasticwave_mainreport.pdf, p.9

³ <https://www.packworld.com/sustainable-packaging/recycling/article/22922253/ameripen-shares-key-lessons-from-early-epr-adopters>

⁴ https://environment.ec.europa.eu/topics/plastics/single-use-plastics_en

⁵ <https://www.greenpeace.org/international/story/51843/plastics-reuse-and-refill-laws>

⁶ <https://www.shorr.com/resources/blog/the-2022-sustainable-packaging-consumer-report/>

⁷ https://www.pewtrusts.org/-/media/assets/2020/10/breakingtheplasticwave_mainreport.pdf, p.9

packaging, often used for chips, sweets, and condiments among other uses, and virtually unrecyclable in America. With innovation, redesign, and substitution, 26 million metric tons of flexibles can be avoided globally.⁸

The Company markets more than 100 brands of consumer goods, food, and beverages, many of which are packaged in flexible plastic. Its Whole Foods subsidiary and Happy Belly brand sell numerous goods in flexible multi-layer packaging that cannot be routinely recycled. The Company is also notably absent from participation in the largest pre-competitive corporate initiative to address plastic pollution, the New Plastics Economy Global Commitment. Competitors, including Walmart and Target, have adopted goals to make plastic packaging recyclable, reusable, or compostable by 2025, while Amazon has not.

Our Company could avoid regulatory, environmental, and competitive risks by adopting a comprehensive approach to addressing flexible plastic packaging use at scale.

RESOLVED: Shareholders request that the Board issue a report, at reasonable expense and excluding proprietary information, describing how Amazon could address flexible plastic packaging in alignment with the findings of the Pew Report, or other authoritative sources, to reduce its contribution to plastic pollution.

SUPPORTING STATEMENT: The report should, at Board discretion:

- Assess the reputational, financial, and operational risks associated with continuing to use non-recyclable plastic packaging while plastic pollution grows;
- Evaluate actions to achieve fully recyclable packaging including elimination and accelerated research into innovative reusable substitution; and
- Describe opportunities to pre-competitively work with peers to research and develop reusable packaging as an alternative to single-use packaging.

ANALYSIS

I. The Staff Should Reject the Company's Request For a Rule 14a-8(j) Waiver

The Company has not demonstrated “good cause” for an extension of its deadline under Rule 14a-8(j). Its reliance on SLB 14M to meet the “good cause” requirement is unsatisfactory under the circumstances: the Company Letter, which contains approximately 3.5 pages of substantive argumentation, comes more than a month after the publication of that bulletin (and nearly two months after Amazon’s original deadline). Amazon is one of the most well-capitalized companies in the world and has experienced and skilled Rule 14a-8 counsel at its disposal. Yet, Amazon does not explain why it took the Company *a month* after the publication of SLB 14M to seek no-action relief based on 14M. We note that Amazon is an outlier amongst companies in the lateness of its filing.

⁸ https://www.pewtrusts.org/-/media/assets/2020/10/breakingtheplasticwave_mainreport.pdf, p.51; https://www.pewtrusts.org/-/media/assets/2020/10/breakingtheplasticwave_mainreport.pdf, p.51

Amazon asserts only that SLB 14M granted a blanket “good cause” exception for past-deadline requests based on the guidance changes in that bulletin.¹ While SLB 14M does not contain an explicit limitation on how long the Staff would consider late requests, it would be absurd—not to mention, inconsistent with the language of Rule 14a-8—to suggest that SLB 14M’s purported waiver is available no matter how long the company delays its response. For example, SLB 14M does not say that its waiver is limited to the current no-action season. Can companies submitting no-action requests relating to micromanagement, ordinary business, or relevance exclusions *next season* get to ignore the deadline imposed by the Rule? Surely not—which indicates that SLB 14M’s purported waiver is bound, at a minimum, by principles of reason. This is especially true since the waiver itself creates an uneven playing field between proponents and issuers by allowing issuers to ignore deadlines imposed by Rule 14a-8 while not also giving a similar opportunity to proponents to revise their proposals. Allowing companies to unreasonably delay filing a new No Action letter far beyond the Rule’s limitation, especially without offering any reasonable justification, makes a mockery of the 14a-8 process.

Interpreting SLB 14M to grant a waiver of the 80-day period without regard to whether an issuer has reacted to the new guidance with appropriate speed would also be inconsistent with the Staff’s ordinary practice, which is to *strictly* enforce deadlines, with no allowances for extenuating circumstances. *See, e.g., Exxon Mobil Corp.* (Mar. 6, 2020) (concurring with exclusion due to late response to deficiency notice even where 14-day response period included Christmas Eve, Christmas Day, New Year’s Eve, and New Year’s Day). The Staff has maintained this strict approach to deficiency responses despite the significant and well-documented difficulty proponents face in acquiring broker letters at ordinary times, let alone over the winter holidays, resulting in numerous valid proposals being withdrawn or excluded. An even-handed and consistent application of the Rule would likewise counsel, at a minimum, against allowing issuers to submit out-of-time no-action requests — especially relatively uncomplicated ones — more than four weeks after the publication of SLB 14M.

Here, the circumstances counsel against extending the waiver. The Company’s no-action request is not particularly complex or lengthy. *See generally* Company Letter. The Company does not explain why it needed a month from the publication of SLB 14M to seek no-action relief, in contrast to many smaller companies who have been able to respond much more quickly. Nor is the Company so inundated with opportunities to submit out-of-time requests that its delay might be excused for that reason; the Commission’s incoming requests website indicates that the Company submitted just one other late request (the day before it submitted the Company Letter) — and that request was not particularly complex, either.² The Company’s course of conduct here places unnecessary strain on Staff and the Proponent’s resources, requiring, with no good explanation, expedited timelines for responding. In short, the Company cannot reasonably demand urgency in a situation in which it has not itself acted with urgency. Denying the Company’s request based on its unexplained (and inexplicable) delay is also consistent with ordinary legal practice. Even otherwise meritorious requests for preliminary injunctions or temporary restraining orders — which, like the SLB 14M waiver, are not subject

¹ As indicated *supra*, the Proponent contests the legality of such a blanket waiver based on nothing more than an opportunity for issuers to submit no-action requests based on retroactive application of new guidance.

² <https://www.sec.gov/files/corpfin/no-action/14a-8/donnellyamazon31225-14a8inc.pdf>

to any explicit deadline — are routinely doomed by plaintiffs’ failure to seek preliminary relief with appropriate urgency. *See Lydo Enters. v. City of Las Vegas*, 745 F.2d 1211, 1213 (9th Cir. 1984) (holding that delay in seeking preliminary relief is factor weighing against granting relief); *Dallas Safari Club v. Bernhardt*, 453 F. Supp. 3d 391, 403 (D.D.C. 2020) (“[U]nexcused delay in seeking extraordinary injunctive relief may be grounds for denial because such delay implies lack of urgency and irreparable harm.”). Here, the Company’s one-month delay, had it occurred in a litigation context, would make it extremely unlikely that a court would grant it any relief. *E.g.*, *Bacon v. Woodward*, No. 2:21-cv-0296-TOR, 2021 WL 5183059 (E.D. Wash. Nov. 8, 2021) (denying temporary restraining order, noting six-week delay in seeking relief); *Studio 010, Inc. v. Digital Cashflow LLC*, No. 2:20-cv-01018-RAJ, 2020 WL 3605654, at *6 (W.D. Wash. July 2, 2020) (denying temporary restraining order, noting three-week delay in seeking relief); *Fund for Animals v. Frizzell*, 530 F.2d 982, 987 (D.C. Cir. 1975) (describing 44-day delay in seeking preliminary injunction as “inexcusable”).

Finally, granting the Company’s request for a waiver under Rule 14a-8(j) would violate the Rule itself. The Rule states that the Staff “may permit the company to make” a late submission “if the company demonstrates good cause for missing the deadline.” Rule 14a-8(j). While SLB 14M purports to articulate the Staff’s determination that the publication of SLB 14M is itself “good cause,” the Rule *does not* give the Staff authority to re-define the term in a way that conflicts with its promulgated meaning.³ “Good cause is a legal term of art.” *Robinson v. GDC, Inc.*, 193 F. Supp. 3d 577, 580 (E.D. Va. 2016). Here, Amazon has failed to provide “good cause” why it filed a new no action letter so far beyond SLB 14M’s issuance.

There is a mountain of precedent defining “good cause” in the context of the APA, which contains a “good cause” exception to its notice-and-comment rulemaking standard. The lesson from these cases is that “good cause” for deviation from standard procedures is rare. *See Azar*, 587 U.S. 566; *N.C. Growers*, 702 F.3d at 767.

³ The goal of making a rule retroactive does not constitute “good cause” and *As You Sow* retains its objection to SLB 14M purporting to do so. *See, e.g., Azar v. Allina Health Servs.*, 587 U.S. 566 (2019) (concluding that agency did not demonstrate “good cause” to depart from standard notice-and-comment rulemaking for regulation purporting to retroactively reduce payments to hospitals serving low-income patients). *See also N.C. Growers’ Ass’n v. UFW*, 702 F.3d 755, 767 (4th Cir. 2012) (noting that, under APA, good cause for deviation from standard procedure is “rare” and “applies only in ‘emergency situations’”). The “good cause” standard should include any potential prejudice to the shareholder, *i.e.*, “a process of weighing the equities to each side,” not merely an inquiry into whether the company has “a good excuse” or “excusable neglect.” *Whitefeather v. Wiese*, 431 B.R. 456, 458 (W.D. Wisc. B.R. 2010) (collecting Seventh Circuit citations to this effect); *see also Dobyns v. United States*, 101 F.4th 839, 843 (Fed. Cir. 2024) (good cause necessarily incorporates principles of equity and fairness to both sides). Under these principles, the retroactive application of “interpretive guidance” that effectively makes the micromanagement rule the opposite of what it was under the operative guidance at the time a proposal was due, while extending a deadline for opposition, but no opportunity to revise the proposal according to the new guidance, clearly does not constitute “good cause.”

Outside of the APA context, courts agree that “good cause” necessarily incorporates principles of equity and fairness. *See Dobyns v. United States*, 101 F.4th 839, 843 (Fed. Cir. 2024). This includes any potential prejudice to the shareholder, *i.e.*, “a process of weighing the equities to each side,” not merely an inquiry into whether the company has “a good excuse” or “excusable neglect.” *Whitefeather v. Wiese*, 431 B.R. 456, 458 (W.D. Wisc. B.R. 2010) (collecting Seventh Circuit citations to this effect).

For the foregoing reasons, the Company has not demonstrated “good cause” for its failure to timely seek no-action relief following the publication of SLB 14M. The Proponent respectfully requests that the Staff deny the no-action request on this basis.

II. The Proposal Is Significantly Related to Amazon’s Business

A. Rule 14a-8(i)(5) Standard

Rule 14a-8(i)(5) provides for the exclusion of a proposal if it “relates to operations which account for less than 5 percent of the company’s total assets at the end of its most recent fiscal year, and for less than 5 percent of its net earnings and gross sales for its most recent fiscal year, and is not otherwise significantly related to the company’s business.” Accordingly, assuming a proposal does not meet the financial thresholds in the rule, an issuer seeking exclusion bears the burden of further demonstrating that the proposal “is not otherwise significantly related to the company’s business.” Rule 14a-8(i)(5).

In SLB 14M, the Staff noted that whether a proposal satisfies this residual category is “dependent upon the particular circumstances of the company to which the proposal is submitted.” Thus, “a matter significant to one company may not be significant to another.” SLB 14M. Under SLB 14M, if “a proposal’s significance to a company’s business is not apparent on its face,” the proponent should demonstrate that the proposal involves an issue with potentially significant effects on the company’s business.

B. The Company Has Not Demonstrated that the Proposal is Not Significantly Related to Its Business

The Company Letter asserts that the Proposal does not meet Rule 14a-8(i)(5)’s economic threshold and is not otherwise significantly related to the Company’s business. However, the Proposal’s focus on the Company’s use of flexible plastic packaging is squarely and directly “significantly related” to the Company’s business, and the Company’s arguments to the contrary fly in the face of SLB 14M and Staff precedent.

First, and foremost, packaging is necessary for Amazon’s business. Amazon could not sell its products without packaging them. By definition, then, packaging is relevant to its business.

Not only is the proposal significantly related to its business, but the Company’s calculation of the Proposal’s economic relevance is flawed. The Company states that its “expenditures for flexible

plastic used for packaging” constitutes less than five percent of its total assets or total operating expenses. Company Letter at 3. This approach loads the dice. Rule 14a-8(i)(5) inquires into whether the Proposal “relates to *operations* which account for less than 5 percent” of total assets, net earnings, and gross sales for its most recent fiscal year. Rule 14a-8(i)(5) (emphasis added). “Expenditures for flexible plastic used for packaging” is not an “operation” in the ordinary sense of the term, and the Company acknowledges as much.⁴ Despite this acknowledgment, the Company proceeds to treat the Proposal as involving a “discrete operation[,]” and uses annual expenditures for flexible plastic used for packaging as the numerator in its economic relevance formula. *See* Company Letter at 3.

This approach makes little conceptual sense and, if allowed, would encourage companies to narrowly express every proposal in terms of the narrowest, most discrete category it could possibly be understood to fall within and therefore exclude it. For example, a company might seek to exclude a proposal asking it to disclose its emissions by arguing that the material costs of emissions disclosure—*i.e.*, the costs of producing the report—are *de minimis*. In short, where, as is concededly the case here, a proposal involves conduct “across the Company’s operations,” Company Letter at 3, the issuer cannot reasonably seek to exclude the proposal through creative mathematics with the numerator. By the plain text of the Rule and the Company’s own articulation of the Proposal, it “relates to *operations* which account for [more] than 5 percent of” total assets and earnings or expenses. It therefore should not be excluded under the economic threshold.⁵

More fundamentally, the Company’s argument — essentially, that the Proposal is not economically relevant because its flexible plastic packaging expenditures are low (because flexible plastic packaging is cheap to purchase) — underscores exactly why the Proposal is “otherwise significantly related to the Company’s business.” The Company’s expenditures on purchasing flexible plastic packaging are only a fraction of the lifetime costs associated with that packaging. Those costs will be borne as negative externalities by other parties, potentially exposing the Company to significant contingent liabilities as the legal and policy landscape for plastic pollution continues to evolve in the direction of producer (or packager) responsibility.

That is, the plastic the Company is purchasing for packaging is artificially cheap because the price paid by the Company does not take into account the costs of post-consumer collection, disposal, or recycling. Nor does it consider the costs associated with damages to the environment from escaped plastic. One recent report indicated that the ecological, social, and economic costs associated with the plastic produced just in 2009 will total at least \$3.7 trillion.⁶ As these costs mount, there is a significant and growing movement in the direction of requiring businesses to

⁴ *See, e.g.*, Company Letter at 3 (acknowledging that the Proposal “addresses flexible plastic packaging that the Company uses for packaging *across the Company’s operations*, and does not address a business unit or a *set of discrete operations* of the Company”) (emphasis added).

⁵ The precedent cited by the Company Letter is readily distinguishable on this basis. *See AT&T* (Jan. 17, 1990) (proposal concerned a particular, discrete “program”); *Atlantic Richfield Co.* (Jan. 28, 1997) (proposal solely concerned company’s operations in Myanmar).

⁶ World Wildlife Federation, *Plastics: The Costs to Society, the Environment, and the Economy* (2021), https://wwflac.awsassets.panda.org/downloads/wwf_pctsee_report_english.pdf

pay for the clean-up costs of the plastic waste they create. These policy and legal developments, including state and international laws, are well beyond “hypothetical” and are creating significant risk for the Company.

Already, the Company’s plastic use is a source of non-hypothetical reputational risk. The news media reports frequently about Amazon’s contribution to the plastic pollution crisis.⁷ Civil society groups likewise seek to put constant public pressure on the Company to shift its practices.⁸ Amazon itself has repeatedly acknowledged the importance of the plastic pollution issue and the need for it to take steps to reduce its contribution to plastic waste.⁹ Amazon’s customers, too, are “overwhelmingly concerned about plastic pollution.”¹⁰ So are its investors; last year, more than 33% of independent shares votes in favor of a similar proposal asking the company to report on how it can address plastic pollution, the latest in a strong series of votes on the topic that peaked at 60% of independent shares in 2022.

Finally, the Company generates enormous positive press when it takes positive steps on plastic pollution.¹¹ All this serves to demonstrate that plastic packaging presents very real, non-hypothetical, and significant potential impacts to the Company’s reputation and business. These reputational impacts come at a critical time for the Company, which slid eight spots year-over-year in the Harris Poll corporate reputation rankings, driven primarily by low scores in Character, Culture, Ethics, and Citizenship.¹² Citizenship, which reflects the Company’s impact on external issues like plastic pollution, earned its lowest score.

⁷ E.g., Oliver Milman, *Amazon increased US plastic packaging despite global phase-out, report says*, Guardian (Apr. 4, 2024), <https://www.theguardian.com/technology/2024/apr/04/amazon-increases-plastic-packaging-us>; Justine Calma, *Amazon still has a serious plastic waste problem in the US*, The Verge (Apr. 4, 2024), <https://www.theverge.com/2024/4/4/24118295/amazon-plastic-waste-oceana-report-growth-us>; Joseph Winters, *Amazon Is Capable of Reducing Plastic Waste in the US. So Why Isn’t It?*, Mother Jones (Apr. 8, 2024), <https://www.motherjones.com/politics/2024/04/amazon-plastic-packaging-waste-sustainability-report/>.

⁸ See *Too much plastic: Why Amazon’s packaging needs to change*, Beyond Plastic (Feb. 17, 2025), <https://pirg.org/articles/its-prime-time-for-amazon-to-reduce-its-plastic-shipping-waste/>; Campaign: *Amazon’s Plastic Packaging*, Oceana, <https://oceana.org/our-campaigns/amazon/>; *Amazon’s United States of Plastic* (Apr. 2024), <https://oceana.org/reports/amazons-united-states-of-plastic/>;

⁹ See *Packaging Innovation*, Amazon.com, <https://sustainability.aboutamazon.com/waste/packaging>; *Reducing waste and packaging*, Amazon.com, <https://sustainability.aboutamazon.com/waste>; Press Release: *Amazon announces its largest reduction in plastic packaging in North America to date* (June 20, 2024), <https://www.aboutamazon.com/news/sustainability/amazon-replaces-plastic-air-pillows-in-packaging-north-america-us>.

¹⁰ Press Release: *Survey: Amazon Customers Overwhelmingly Concerned About Plastic Pollution, Want Plastic-Free Choices*, Oceana (July 14, 2020), <https://oceana.ca/en/press-releases/survey-amazon-customers-overwhelmingly-concerned-about-plastic-pollution/>; Milana Nikolova, *Amazon US holiday season consumer survey reveals major interest in sustainable packaging*, Packaging Insights (Dec. 6, 2024), <https://www.packaginginsights.com/news/amazon-us-holiday-season-consumer-survey-reveals-major-interest-in-sustainable-packaging.html>.

¹¹ E.g., Hiroko Tabuchi, *Amazon Says It Will Stop Using Puffy Plastic Shipping Pillows*, N.Y. Times (June 20, 2024), <https://www.nytimes.com/2024/06/20/climate/amazon-plastic-shipping-pillows.html>; Amaris Encinas, *Amazon announces ‘largest reduction in plastic packaging,’ doing away with air pillows*, USA Today (June 20, 2024), <https://www.usatoday.com/story/money/2024/06/20/amazon-package-plastic-air-pillows-paper/74160412007/>.

¹² *The 2024 Axios Harris Poll 100 Reputation Rankings*, Axios (May 22, 2024), <https://www.axios.com/2024/05/22/axios-harris-poll-company-reputation-ranking-data-source>

The increasingly likely possibility of significant contingent liability also exists for the company. Public and private litigation targeting plastic polluters is increasing in frequency as cities, states, attorneys general, and consumers seek to recoup from corporations the externalized costs of single-use plastic.¹³ These include class actions targeting single-use plastic producers,¹⁴ public enforcement actions targeting product manufacturers and retailers by cities¹⁵ and state attorneys general,¹⁶ and lawsuits brought by nonprofits.¹⁷ Major law firms are warning clients about the “proliferation of plastics litigation.”¹⁸ And Amazon has in the past been forced to defend against plastic-related lawsuits.¹⁹

Accordingly, the Proposal is significantly related to the Company’s business. The Company Letter’s arguments to the contrary are not persuasive:

- “The potential regulatory risks and environmental concerns addressed in the Supporting Statement are not targeted at or unique to the Company and instead reflect general social concerns.” Company Letter at 3. This argument mistakes the Rule 14a-8(i)(5) standard. The Company does not contest that it uses flexible plastic for many of its products, as described in the Proposal. Potential regulatory, environmental, and reputational risks for companies that use flexible plastic for packaging are, therefore, “targeted at” the Company. Nothing in the Rule requires that a risk be “unique to” the issuer to which a proposal is submitted, a frankly impossible standard to meet in any event. Nor does the Rule require the level of specificity concerning risk exposure that the Company Letter demands. For instance, the Company’s exact expenses and/or liability should it face legal

¹³ See James Bruggers, *Lawsuits Targeting Plastic Pollution Pile Up as Frustrated Citizens and States Seek Accountability*, Inside Climate News (June 5, 2024), <https://insideclimatenews.org/news/05062024/lawsuits-targeting-plastic-pollution-pile-up-as-frustrated-citizens-and-states-seek-accountability/>; *Plastics on Trial* Briefing Series, ClientEarth (Sept. 2022), <https://www.clientearth.org/latest/documents/plastics-on-trial-4-waste-disposal-recycling/>; Connor Fraser, *Plastics in the Courtroom: The Evolution of Plastics Litigation*, NYU State Energy & Env’tl Impact Ctr. (July 15, 2022), <https://stateimpactcenter.org/insights/plastics-in-the-courtroom-the-evolution-of-plastics-litigation>.

¹⁴ See *Rodriguez v. Exxon Mobil Corp. et al.*, No. 4:24-cv-00803 (W.D. Mo. 2024).

¹⁵ See *People v. Pepsico, Inc. et al.*, No. 24-cv-10340 (C.D. Cal. 2024); *Mayor & City Council of Baltimore v. Pepsico, Inc. et al.*, No. C-24-CV-24-001003 (Cir. Ct. Balt. Cty. 2024); *Ford County, Kansas v. Exxon Mobil Corp. et al.*, No. 2:24-cv-02547 (D. Kan. 2024)

¹⁶ *People v. Pepsico, Inc. et al.*, No. 814682/2023 (N.Y. Sup. Ct. 2023)

¹⁷ *Sierra Club, Inc. v. Exxon Mobil Corp. et al.*, No. 3:24-cv-07288 (N.D. Cal. 2024); *Earth Island Inst. v. Coca-Cola Co.*, No. 1:21-cv-1926 (D.D.C. 2022); *Earth Island Inst. v. Crystal Geyser Water Co.*, No. 20-cv-01213 (Cal. Super. Ct. 2020).

¹⁸ Brian Scarbrough, Arie Feltman-Frank, *Client Alert: The Proliferation of Plastics Litigation and Insurance Coverage*, Jenner & Block (Sept. 23, 2024), <https://www.jenner.com/en/news-insights/publications/client-alert-the-proliferation-of-plastics-litigation-and-insurance-coverage>; *The Expanding Landscape of Plastic Litigation*, Crowell & Moring LLP (Sept. 26, 2024), <https://www.crowell.com/en/insights/client-alerts/the-expanding-landscape-of-plastic-litigation-state-attorneys-general-target-allegedly-deceptive-advertising-and-environmental-impacts>; *Plastics Cases in the U.S. – An overview*, King & Spalding (Apr. 18, 2024), <https://www.kslaw.com/news-and-insights/plastics-cases-in-the-us-an-overview>.

¹⁹ *Amazon to Pay \$1.5M for ‘Misleading’ Plastic Labels*, Waste360 (Aug. 7, 2018), <https://www.waste360.com/waste-legislation/amazon-to-pay-1-5m-for-misleading-plastic-labels>.

action(s) over its plastic packaging are literally unknowable *ex ante*, being entrusted in the first instance to a jury.

- “The Company has already publicly stated that it is working to reduce plastic waste.” Company Letter at 4-5. While the bulk of the Company Letter is dedicated to describing efforts the Company is taking to address plastic waste, it does not follow that the Proposal is not significant to the Company’s business, as the Company Letter at p. 5 argues. In fact, this information *emphasizes* the relevance of plastic pollution concerns to the Company’s business. More to the point, Amazon’s list of actions is the type of information sought in the Proposal and should more appropriately be disclosed to investors so they are able to make informed investment decisions related to risks to Amazon from its use of plastic packaging.

Substantively, this argument is a thinly veiled “substantial implementation” argument — *see* Company Letter at 5 (“the differences—or the delta—between the Proposal’s specific request and the actions the Company has already taken are minor”), *id.* (“[T]here is no basis for the assertion that issuing the requested report will be more effective . . . than the actions the Company has already taken and continues to pursue”). Presumably this argument is shoehorned into its (i)(5) argument in an effort to take advantage of the opportunity to exclude the Proposal after SLB 14M’s late issuance. This is yet another reason to deny the Company’s request for a waiver of its deadline—*contra* 14M’s instructions, the Company’s arguments do not actually “relate” to the bulletin’s changes to the (i)(5) exclusion.

- The only precedent cited by the Company, *Dunkin’ Brands Grp., Inc.* (Feb. 22, 2018) does not support the Company’s argument that its efforts to address plastic pollution somehow demonstrate that plastic pollution is not relevant to the Company. In that case, the Staff straightforwardly interpreted the extreme specificity of the proposal—the company’s use of K-Cup plastic pods, rather than plastic pollution across its full range of products or even single-use plastic more broadly—as not significant enough to the company’s activities to satisfy the relevance threshold. There is no analogy to be drawn to the broader and more significant Proposal here.

Finally, post-SLB 14M precedent supports the inclusion of the Proposal. In *Wells Fargo & Co. (American Baptist Home Mission Society)* (Mar. 5, 2025), the proposal requested that the company “provide a report outlining the effectiveness of the Company’s policies, practices, and performance indicators” regarding “internationally recognized human rights standards for Indigenous Peoples’ rights in its existing and proposed general corporate and project financing.” The proposal identified *two* projects where the company’s financing may have impacted Indigenous peoples’ rights, and the Company argued against the economic relevance of the proposal. The Staff rejected the Company’s (i)(5) argument that the issue raised by the proposal was not significant. Here, there can be little doubt that the Company’s use of flexible packaging is more significant to its business, implicates a broader range of corporate activities, and exposes the Company to significant environmental, regulatory, reputational, and litigation risk. *See also*

Wells Fargo & Co. (Harrington) (Mar. 5, 2025) (proposal requested report on misalignment of electioneering expenditures and corporate values, (i)(5) exclusion rejected).

CONCLUSION

Based on Amazon's failure to justify its late no-action filing, the Staff should deny the Company a waiver of its deadline for submitting a no-action request under Rule 14a-8(j). If the Staff nonetheless considers the Company's request, the Company has not met its burden of demonstrating that the Proposal is not significant to the Company's business. Therefore, the Company has no valid basis to exclude it from its 2025 proxy statement pursuant to Rule 14a-8. We respectfully urge the Staff to deny the no action request.

Sincerely,

A handwritten signature in black ink, appearing to read 'LM', with a stylized flourish extending to the right.

Luke Morgan
Staff Attorney, *As You Sow*

CC:

Ronald Mueller, Gibson Dunn