



DIVISION OF  
CORPORATION FINANCE

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

April 20, 2023

Danielle Fugere  
As You Sow

Re: Amazon.com, Inc. (the "Company")  
Incoming letter dated April 14, 2023

Dear Danielle Fugere:

This letter is in response to your correspondence concerning the shareholder proposal (the "Proposal") submitted to the Company by Green Century Capital Management and co-filers. On April 7, 2023, we issued a no-action response expressing our informal view that the Company could exclude the Proposal from its proxy materials for its upcoming annual meeting. You have asked us to reconsider our position, or, in the alternative, present the matter to the Commission.

The Division "endeavors to act upon a request for reconsideration within a reasonable time, giving due consideration to the demands of the management's schedule for printing its proxy materials" and to process requests for Commission review "provided they are received sufficiently far in advance of the scheduled printing date for the management's definitive proxy materials to avoid a delay in the printing process." *See* Statement of Informal Procedures for the Rendering of Staff Advice with Respect to Shareholder Proposals, Exchange Act Release No. 12599 (July 7, 1976).

The Company has informed us that it began printing and filed its 2023 proxy materials before it received your request for reconsideration. In light of these timing considerations, we deny the requests for reconsideration and Commission review.

Sincerely,

Rule 14a-8 Review Team

cc: Ronald O. Mueller  
Gibson, Dunn & Crutcher LLP

April 14, 2023

**VIA EMAIL**

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](mailto:shareholderproposals@sec.gov)

**Re: Request for Staff Reconsideration and Presentation to Commission for Review of April 7, 2023 Decision Permitting Amazon.com, Inc. to Exclude Shareholder Proposal of Green Century Capital Management, Longview Largecap 500 Index Fund, et al.**

Ladies and Gentlemen,

By letter dated April 7, 2023, the Staff stated that it would not recommend enforcement action to the Commission if Amazon.com, Inc. (“Amazon” or “the Company”) were to omit from its 2023 proxy materials the shareholder proposal requesting disclosure of Scope 3 greenhouse gas emissions filed by Green Century Capital Management and Amalgamated Bank’s Longview Largecap 500 Index Fund (the “Proposal”). I write on behalf of the Proponents.

The Proposal requests that “Amazon measure and disclose Scope 3 GHG emissions from its full value chain inclusive of its physical stores and e-commerce operations and all products that it sells directly and those sold by third party vendors.”

Proponents respectfully request that the Staff reconsider the No-Action Decision and/or present it to the Commission for review. As described herein, the implications of the No-Action Decision are significant and incompatible with shareholders’ right to seek critical and material information from issuers, and the No-Action Decision is flatly incompatible with a number of Staff precedents from this season alone.

**I. Background: Amazon Omits Material Emissions Information from its Disclosures**

Amazon has two types of sales: it sells its own Amazon-branded products and it sells third-party products. This Proposal asks for the emissions associated with the second category.

Currently, Amazon discloses a limited set of Scope 3 emissions, i.e., emissions associated with the sale and use of Amazon-branded products. Amazon fails, however, to disclose Scope 3 emissions associated with the sale and use of third-party (*i.e.*, non-Amazon-branded) products. This omission is significant. By Amazon’s own accounting, sales of third-party products account for more than 99% of Amazon’s product sales.<sup>1</sup> In other words, Amazon only discloses emissions associated with less than 1% of its product sales.

Investors believe that the full range of emissions associated with Amazon’s retail activities constitute material information about Amazon’s climate risk and its impact on the climate. As Chair Gensler has stated, “investors . . . support climate-related disclosures because they recognize that climate risks can pose significant financial risks to companies, and investors need reliable information about climate risks

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<sup>1</sup> <https://www.congress.gov/116/meeting/house/110883/documents/HHRG-116-JU05-20200729-QFR052.pdf>, p.23-24.

to make informed investment decisions.”<sup>2</sup> In particular, Chair Gensler notes that “Scope 3 disclosure ‘may be necessary to present investors a complete picture of the climate-related risks—particularly transition risks—that a registrant faces.’”<sup>3</sup>

In this instance, investors have every reason to seek disclosure of the requested data. Available information (along with common sense) suggests that omitting 99% of product sales emissions results in a serious underreporting of Amazon’s total emissions. This reporting failure can skew investor decision-making related to Amazon’s risk and its alignment with global 1.5°C goals. For example, while Amazon has twice the total sales of Target,<sup>4</sup> it actually reports *lower* Scope 3 emissions both on an absolute basis and as a percentage of its total emissions.<sup>5</sup> This underreporting gives investors an inaccurate picture of how Amazon’s climate risk and responsive actions compare to peers. Without the requested information from Amazon, many investors would be unaware of this gap; others are simply left to guess at how big the gap might be.

A complete and accurate accounting of Amazon’s Scope 3 emissions is necessary for investors to understand Amazon’s “overall risk exposure”<sup>6</sup> and therefore is a reasonable subject of reporting. Investor proposals regularly request that companies measure, disclose, and *reduce* their Scope 3 emissions. In 2022, resolutions requesting that companies measure, disclose, and reduce Scope 3 emissions garnered 69.9% of the vote at Costco, 87.6% at Builders FirstSource, and 88.5% at US Foods.<sup>7</sup> In each case, the resolutions specified additional subcategories of Scope 3 emissions that investors believed were particularly important to measure and reduce.<sup>8</sup>

Nor are investors alone in this assessment. As explained in Proponents’ No-Action Response, every major emissions measurement standard is in accord that companies releasing Scope 3 emissions data must ensure that the disclosures include *all* material emissions sources. In its No-Action Letter, the Company relied heavily on a misleading and inaccurate portrayal of the Greenhouse Gas Protocol. While this widely referenced standard does not require that companies report Scope 3 emissions in the first instance, *if they do*, the Protocol states that “[c]ompanies should not exclude any activity that would compromise the relevance of the reported inventory. . . . In particular, companies should not exclude

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<sup>2</sup> <https://www.sec.gov/news/statement/gensler-climate-disclosure-20220321>.

<sup>3</sup> <https://www.sec.gov/news/statement/gensler-climate-disclosure-20220321>.

<sup>4</sup> <https://nrf.com/resources/top-retailers/top-100-retailers/top-100-retailers-2022-list>

<sup>5</sup> Compare <https://corporate.target.com/media/TargetCorp/Sustainability-ESG/PDF/2022-CDP-Climate-Response.pdf> with <https://sustainability.aboutamazon.com/environment/carbon-footprint>.

<sup>6</sup> <https://www.wri.org/update/trends-show-companies-are-ready-scope-3-reporting-us-climate-disclosure-rule>

<sup>7</sup> <https://www.corporatesecretary.com/articles/shareholders/32889/costco-shareholders-back-net-zero-proposal-including-scope-3-emissions>; <https://www.corporatesecretary.com/articles/esg/33053/builders-firstsource-shareholders-back-emission-targets-proposal>; <https://www.greencentury.com/statement-green-century-shareholder-proposal-on-climate-change-wins-vote-with-88-5-approval-at-us-foods-annual-meeting>.

<sup>8</sup> See <https://www.sec.gov/divisions/corpfin/cf-noaction/14a-8/2021/gccmicostco092121-14a8-incoming.pdf> (Costco; proposal requested “emissions reduction targets inclusive of all GHG Protocol-defined sources of Scope 3 emissions – including from agriculture, land use change, and deforestation”); <https://investors.bldr.com/static-files/b43378a0-f737-4797-be46-bf7b28711834> (Builders FirstSource; requesting “emissions reduction targets inclusive of all GHG Protocol-defined sources of Scope 3 emissions – including from deforestation and forest degradation”); [https://engagements.ceres.org/ceres\\_engagementdetailpage?recID=a015c00000TRfcHAAT](https://engagements.ceres.org/ceres_engagementdetailpage?recID=a015c00000TRfcHAAT) (US Foods; proposal requested “emissions reduction targets inclusive of all GHG Protocol-defined sources of Scope 3 emissions – including from agriculture, land use change, and deforestation”).

any activity that is expected to contribute significantly to the company’s total scope 3 emissions.”<sup>9</sup> Further, “[c]ompanies are required to disclose and justify any exclusions in the public report.”<sup>10</sup> This prohibition on selective reporting ensures that, where Scope 3 emissions reporting occurs, it gives a complete picture of all material emissions.

Complete reporting on material Scope 3 emissions is critical to investors. Reporting one category of Scope 3 emissions, while ignoring other material categories that would significantly increase emissions if reported, is misleading to investors that rely on companies for accurate reporting. This potential for misleading reporting is precisely why every major reporting standard requires reporting of all material categories.

In short, investors seek the omitted data because it is material for their investment decision making. The parameters of the Proposal—*i.e.*, its specificity—are necessary.

## **II. This No-Action Decision Jeopardizes Disclosure Proposals and Directly Conflicts with Established Precedent**

The Staff appears to have agreed with the Company’s argument that, by asking the Company to identify the specific missing emissions data sought by investors, the Proposal “micromanage[s] the Company.” Amazon’s argument attempts to apply a rationale to disclosure requests that has previously been limited to requests for action – that a specific disclosure request is forbidden because it does not provide discretion to management to provide different information. Removed from abstraction, however, the “discretion” that management seeks to retain here is simply the discretion not to disclose certain material information.

The extension of this theory by companies will swallow the Rule. If a company is free to ignore a request for materially significant information simply by claiming that the issue area is complex and that management made a decision not to disclose the information, *any* company facing *any* disclosure proposal can claim that its discretion to produce limited information has been improperly limited. Thus, the No-Action Decision creates a particularly dangerous precedent limiting all but the most simplistic disclosure proposals. This strikes at the heart of Rule 14a-8, the “cornerstone of corporate democracy”<sup>11</sup> and a mechanism for “the owners’ voice to reach the suites of corporate executives.”<sup>12</sup>

The No-Action Decision is also in direct conflict with recent precedent permitting investors to request disclosure of material information. As just one example, consider the proposal at issue in *Eli Lilly and Company* (Mar. 10, 2023). That proposal requested the Company report “quantitative metrics for hiring, retention, and promotion of employees, including data by gender, race, and ethnicity.” The company unsuccessfully argued that the proposal micromanaged it by “limiting the Company’s discretion in preparing the requested report by dictating the metrics and data the report must contain.” *Id.* (Company Letter at 19). This is *identical* to the argument successfully made by Amazon here: that the Proposal micromanages “[b]y dictating the scope of activities and categories to be included within the Company’s scope 3 emissions inventory.” Amazon No-Action Request at 7.

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<sup>9</sup> [https://ghgprotocol.org/sites/default/files/standards/Corporate-Value-Chain-Accounting-Reporting-Standard\\_041613\\_2.pdf](https://ghgprotocol.org/sites/default/files/standards/Corporate-Value-Chain-Accounting-Reporting-Standard_041613_2.pdf), p.60.

<sup>10</sup> *Id.*

<sup>11</sup> <https://www.sec.gov/news/speech/jones-cii-2022-03-08>.

<sup>12</sup> [https://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=6798&context=faculty\\_scholarship](https://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=6798&context=faculty_scholarship).

The No-Action Decision here is even more anomalous when compared to other proposals seeking the measurement and disclosure of Scope 3 emissions data. The Staff has repeatedly, and as recently as one week before the No-Action Decision, allowed proponents to request that companies measure and disclose specific categories of Scope 3 emissions. *See, e.g., Chubb Limited* (Mar. 26, 2022) (proposal addressed “emissions associated with its underwriting, insuring, and investment activities,”<sup>13</sup> micromanagement exclusion request denied); *The Travelers Companies, Inc.* (Mar. 30, 2023) (same proposal, same result); *J.P. Morgan Chase & Co.* (Feb. 28, 2020) (proposal addressed Scope 3 “GHG emissions associated with its lending activities,” micromanagement exclusion request denied). It is unclear how the Proposal meaningfully differs from these precedents; like them, it simply “request[s] that Amazon measure and disclose” a particularly important subset of Scope 3 emissions.

If the difference in treatment is based on the “complexity” of Amazon determining its full range of Scope 3 emissions, such a distinction is unworkable. The SEC has provided no guidance to allow it to distinguish between disclosure proposals based on the alleged complexity of the requested disclosure. By appearing to credit a company’s argument that a particular disclosure is too “complex” for proponents to request, the Staff has waded into an impossible line-drawing exercise. The insured and financed emissions involved in *Travelers*, *Chubb*, and *J.P. Morgan* are likely to be just as complex to calculate and disclose as a retailer’s Scope 3 emissions.

Even if a “complexity” distinction for disclosure proposals were workable, this Proposal falls on the permissible side of the line. The requested disclosure is not unworkably complex. It simply asks for the disclosure of emissions associated with the full range of Amazon’s retail sales. Walmart exceeds Amazon’s annual retail sales significantly,<sup>14</sup> yet calculates and discloses the emissions associated with its sale of third-party products.<sup>15</sup> In this sense, the Proposal is readily distinguishable from, for example, the proposals in *Verizon* (Mar. 17, 2022), *Deere & Co.* (Jan. 3, 2022), and *American Express* (Mar. 11, 2022), which requested disclosures unnecessary to the purpose of the proposal such as the “written and oral content” of *all* employee training materials for a diversity related proposal. The Proposal here does not request a level of detail beyond what is material and germane to shareholders such as the detailing of all products sold, retailer names, dates of sales, location or format of sale, or the emissions associated with individual products, sales, or retailers.

Ultimately, investors need to understand if Amazon is addressing climate risk, and its contribution to climate change, across the full range of its business activities. This is reflected in significant part by accounting for the full range of its Scope 3 emissions.

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<sup>13</sup> As Chubb acknowledged, these constituted categories of its Scope 3 emissions. *See id.* (Company Letter at 6).

<sup>14</sup> <https://nrf.com/resources/top-retailers/top-100-retailers/top-100-retailers-2022-list>.

<sup>15</sup> <https://corporate.walmart.com/esgreport/media-library/document/cdp-climate-change-2021/proxyDocument?id=0000017f-d222-d452-a3ff-da66867f0000>.

Office of Chief Counsel

April 14, 2023

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### CONCLUSION

The No-Action Decision creates precedent that threatens the viability of disclosure proposals and directly conflicts with numerous precedents from this season alone. Proponents respectfully request that the Staff reconsider the No-Action Decision. Failing that, Proponents request that the Division of Corporation Finance forward to the Commission this petition for review.

Sincerely,



Danielle Fugere

President and Chief Counsel

cc:

Victor Twu, Gibson Dunn & Crutcher LLP

Robert Mueller, Gibson Dunn & Crutcher LLP

Mark Hoffman, Amazon.com, Inc.

Luke Morgan, *As You Sow*

Andrea Ranger, Green Century Capital Management, Inc.

Ivan Frishberg, Amalgamated Bank

Mackenzie Birkey, Dwight Hall at Yale

Holly Testa, First Affirmative Financial Network

April 14, 2023

VIA E-MAIL

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

Re: *Amazon.com, Inc.*  
*Shareholder Proposal of Green Century Capital Management, et al.*  
*Securities Exchange Act of 1934—Rule 14a-8*

Ladies and Gentlemen:

By letter dated April 14, 2023, As You Sow, on behalf of Green Century Capital Management, the Longview Largecap 500 Index Fund, Dwight Hall at Yale, and First Affirmative Financial Network, LLC (on behalf of Ann Testa and Gordon R Feighner and Katherine A Prevost) (collectively, the “Proponents”), requested (i) that the staff of the Division of Corporation Finance (the “Staff”) reconsider its decision, dated April 7, 2023, concurring that Amazon.com, Inc. (the “Company”) could omit a shareholder proposal submitted by the Proponents (the “Proposal”) from the Company’s proxy statement and form of proxy for its 2023 Annual Meeting of Shareholders (the “2023 Proxy Materials”) under Rule 14a-8(i)(7) and (ii) Commission review of the same (the “Request for Reconsideration”).

As discussed further below, we believe the Request for Reconsideration should be denied because it is untimely and without merit.

By way of background, the Proponents first delivered the Proposal to the Company on December 14, 2022. The Company then submitted a no-action request (the “No-Action Request”), with a copy to the Proponents on January 20, 2023, more than 80 days prior to the date that the Company intended to file its definitive 2023 Proxy Materials with the Commission. On behalf of the Proponents, As You Sow subsequently submitted to the Staff a letter, dated February 21, 2023 (the “As You Sow Letter”), setting forth a number of arguments to support its request that the Staff deny the No-Action Request. The Staff

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responded to the No-Action Request on April 7, 2023, concurring that the Company could exclude the Proposal under Rule 14a-8(i)(7) as it sought to micromanage the Company.

Thereafter, in reliance on the Staff's response to the No-Action Request, the Company began printing its 2023 Proxy Materials and, on April 13, 2023, the Company filed the 2023 Proxy Materials (which do not include the Proposal) with the Commission via EDGAR. The Company has commenced mailing and distribution of the 2023 Proxy Materials and has already incurred substantial time and expense in preparing and printing the 2023 Proxy Materials for shareholders in accordance with its previously established schedule and process for the 2023 Annual Meeting of Shareholders. Therefore, granting the Request for Reconsideration would impose significant burdens and expense on the Company. Likewise, if required, mailing supplemental proxy materials and soliciting revised proxies for the 2023 Annual Meeting of Shareholders would impose substantial time and expense burdens on the Company and create potential confusion among shareholders. As such, it would be unfair and unduly burdensome for the Staff to consider the Request for Reconsideration at this time. *See The Goldman Sachs Group, Inc.* (avail. Mar. 8, 2022, *recon. denied* Mar. 21, 2022).

Moreover, the Request for Reconsideration fails to satisfy the standards for reconsideration or further review. Under 17 C.F.R. § 202.1(d), the Staff may, in its discretion, present a request for Commission review of a Rule 14a-8 no-action response if the request "involve[s] matters of substantial importance and where the issues are novel or highly complex." The Request for Reconsideration does not raise any new facts or arguments beyond what was already raised in the As You Sow Letter, which was submitted in time for adequate consideration by the Staff, and instead merely reiterates the Proponents' opinions regarding the Company's Scope 3 disclosures and asserts that the Proposal's "requested disclosure is not unworkably complex." The *Chubb Limited* (avail. Mar. 26, 2022) precedent cited in the Request for Reconsideration was already cited and discussed in the As You Sow Letter, and it and the other precedent cited in the As You Sow Letter involve substantively different proposals than the Proposal that the Proponents submitted to the Company. In addition, the Staff's determination that the Proposal "imposes a specific method for implementing a complex policy disclosure without affording discretion to management" is consistent with the guidance set forth in Staff Legal Bulletin No. 14L (Nov. 3, 2021), as well as the precedent cited in the No-Action Request. As a result, the Request for Reconsideration fails to demonstrate that the Proposal presents novel or complex issues of substantial importance to the administration of Rule 14a-8. Accordingly, if the Staff considers the Request for Reconsideration, the Staff should reaffirm its prior determination and deny the Proponents' request for Commission review.



# GIBSON DUNN

Office of Chief Counsel  
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If we can be of any further assistance in this matter, please do not hesitate to call me at (202) 955-8671, or Mark Hoffman, the Company's Vice President & Associate General Counsel, Corporate and Securities, and Legal Operations, and Assistant Secretary, at (206) 266-2132. Correspondence regarding this letter should be sent to [shareholderproposals@gibsondunn.com](mailto:shareholderproposals@gibsondunn.com).

Sincerely,



Ronald O. Mueller

Enclosures

cc: Mark Hoffman, Amazon.com, Inc.  
Andrea Ranger, Green Century Capital Management, Inc.  
Danielle Fugere, As You Sow  
Luke Morgan, As You Sow  
Daniel Stewart, As You Sow  
Ivan Frishberg, Amalgamated Bank  
Mackenzie Birkey, Dwight Hall at Yale  
Holly Testa, First Affirmative Financial Network



April 18, 2023

Office of Chief Counsel  
Division of Corporation Finance  
Securities and Exchange Commission  
100 F Street, NE  
Washington, DC 20549  
Email: [shareholderproposals@sec.gov](mailto:shareholderproposals@sec.gov)

**Re: Comment on Request for Staff Reconsideration and Presentation to Commission for Review of April 7, 2023 Decision Permitting Amazon.com, Inc. to Exclude Shareholder Proposal of Green Century Capital Management, Longview Largecap 500 Index Fund, et al.**

Ladies and Gentlemen,

I am writing in support of the April 14, 2023 letter (attached) sent on our behalf by Danielle Fugere, President and Chief Counsel of As You Sow. I believe that the reasoning applied to granting Amazon.com's no-action request, which Amazon submitted January 20, 2023, will lessen shareholders' abilities to obtain decision-useful information on companies' climate risk and will also set a precedent that allows companies to avoid disclosing material information when they deem it "too complex."

Green Century Funds has filed shareholder proposals for many years requesting companies disclose material risks. We have asked companies to report on complex and difficult-to-quantify issues - including disclosing the origins of deforestation in corporate supply chains or accounting for all plastic used in company packaging. More recently, we've asked companies to set science-based greenhouse gas reduction targets using GHG Protocol-defined sources of scopes 1 - 3 emissions. Amazon's competitors, Walmart and Target, are already reporting on all scope 3 emissions categories, and Walmart has announced plans to include emissions related to its eCommerce sales in its emissions reporting boundary.

On our proposals requesting science-based targets, we have received strong majority support from institutional shareholders. Notably, Costco Wholesale Corp. - 69.9%, US Foods Holding Corp., - 88.5%, Builders FirstSource, Inc. - 87.6%, and we have filed and come to agreements with a number of other companies on the same subject. None has objected to "GHG Protocol - defined" scopes of greenhouse gas emissions.

We wish to seek enhanced disclosure from the companies we invest in, which we believe will help us to better understand the magnitude of their risk and ensure that they are appropriately allocating resources to address their risk. Without additional scrutiny of Amazon's no-action request and the disclosure questions it raises, we fear that the SEC may have inadvertently provided companies carte-blanche to rebuff requests for information from shareholders.

I appreciate your attention to this matter. Thank you.

Sincerely,

A handwritten signature in black ink that reads "Leslie Samuelrich". The signature is written in a cursive style with a prominent initial "L" and a long, sweeping tail.

Leslie Samuelrich

President

Green Century Capital Management & Green Century Funds