



DIVISION OF
CORPORATION FINANCE

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

March 18, 2025

Mark A. Stagliano
Wachtell, Lipton, Rosen & Katz

Re: Uber Technologies, Inc. (the "Company")
Incoming letter dated January 3, 2025

Dear Mark A. Stagliano:

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

The Proposal asks the board of directors to disclose information concerning the distribution of "gross bookings" between recipients and purposes served.

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: Tejal K. Patel
SOC Investment Group

WACHTELL, LIPTON, ROSEN & KATZ

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NEW YORK, N.Y. 10019-6150

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January 3, 2025

VIA ONLINE PORTAL

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

Re: *Uber Technologies, Inc. – Shareholder Proposal Submitted by the SOC Investment Group*

Dear Sir or Madam:

This letter is submitted on behalf of Uber Technologies, Inc. (the “Company”) to confirm to the Staff of the Division of Corporation Finance (the “Staff”) of the Securities and Exchange Commission (the “Commission”) that the Company intends to exclude 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 statements in support thereof received from SOC Investment Group (the “Proponent”).

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For the reasons outlined below, the Company hereby respectfully requests that the Staff concur in its view that the Proposal may be properly excluded from the 2025 Proxy Materials. In accordance with Rule 14a-8(j) of the Securities Exchange Act of 1934, this letter is being filed with the Commission no later than eighty (80) calendar days before the Company intends to file its definitive 2025 Proxy Materials with the Commission, and we are contemporaneously sending a copy of this letter and its attachments to the Proponent. On behalf of the Company, we confirm that the Company will promptly forward to the Proponent any Staff response to this no-action request that the Staff transmits only to the Company.

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

SUMMARY OF THE PROPOSAL

The Proposal sets forth the following proposed resolution for the vote of the Company's shareholders at its 2025 annual meeting of stockholders:

RESOLVED: Shareholders ask the UBER Board of Directors to disclose information concerning the distribution of "gross bookings" between recipients and purposes served.

A full copy of the Proposal and statements in support thereof is attached to this letter as Exhibit A hereto.

BASIS FOR EXCLUSION

The Company respectfully requests that the Staff concur in its view that the Proposal may be excluded from the 2025 Proxy Materials pursuant to Rule 14a-8(i)(7) as the Proposal relates to the Company's ordinary business operations and seeks to micromanage the Company.

ANALYSIS

The Proposal May Be Excluded Under Rule 14a-8(i)(7) Because The Proposal Relates To The Company's Ordinary Business Operations And Seeks To Micromanage The Company.

A. Background On The Ordinary Business Standard.

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 consideration recognizes that certain tasks are so fundamental to management's ability to run a company on a day-

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to-day basis that they could not, as a practical matter, be subject to direct shareholder oversight. *Id.* The second consideration concerns “the degree to which the proposal seeks to ‘micro-manage’ the company by probing too deeply into matters of a complex nature upon which shareholders, as a group, would not be in a position to make an informed judgment.” *Id.*, citing Exchange Act Release No. 12999 (Nov. 22, 1976) (the “1976 Release”). More recently, in Staff Legal Bulletin No. 14L (Nov. 3, 2021), the Staff stated that it will look to whether the policy issue raised in a shareholder proposal may have broad societal impact such that it transcends the ordinary business of the company, regardless of nexus between the issue and the company’s business. In addition, the Commission has stated that when a proposal requests the preparation of a report, the relevant inquiry is whether the subject matter of the report relates to a company’s ordinary business. *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)”).

B. The Proposal Is Excludable Because It Relates To The Ordinary Business Matters Of Non-Executive Compensation and Financial Reporting.

The Proposal is excludable pursuant to Rule 14a-8(i)(7) because it relates to non-executive compensation, specifically, driver earnings, a core aspect of the Company’s ordinary business operations. In previous analyses of shareholder proposals regarding compensation matters, the Staff has set apart proposals that relate to general compensation practices and proposals that address only executive officer and director compensation, specifying that proposals that relate to general compensation practices involve a company’s ordinary business operations and thus are excludable under Rule 14a-8(i)(7). *See* Staff Legal Bulletin No. 14A (July 12, 2002) (“SLB 14A”) (noting that “[s]ince 1992, [the Staff has] applied a bright-line analysis to proposals concerning equity or cash compensation” under which companies may exclude proposals that relate to general compensation matters in reliance on [R]ule 14a-8(i)(7) but “may [not] exclude proposals that concern only senior executive and director compensation”).

Accordingly, the Staff has consistently concurred with the exclusion of shareholder proposals under Rule 14a-8(i)(7) when such proposals concern compensation that does not relate to senior executive and director compensation. In *Amazon.com, Inc.* (Apr. 1, 2024), the Staff concurred with the exclusion of a proposal that requested the board oversee the preparation of a living wage report on the basis that such proposal sought to micromanage the Company. Similarly, in *Dollar Tree, Inc.* (May 2, 2022), the Staff concurred with the exclusion of a proposal on the basis of relating to ordinary business matters where it requested a report explaining how the company’s incentives “will enable competitive employment standards, including wages [and] benefits” and to “include particular attention to [the] lowest paid employees.” Likewise, in *Amazon.com, Inc.* (Apr. 8, 2022), the proposal demanded an annual report on the distribution of stock-based incentives in the company’s workforce. The Staff agreed with the company’s assertion that the proposal related to one aspect of non-executive compensation and did not focus on significant social policy issues, and the proposal thus related to the company’s ordinary business operations and could be excluded. Similarly, in *JPMorgan Chase & Co. (Ott)* (avail. Mar. 25, 2022), *recon. denied on procedural grounds* (Apr. 19, 2022), pursuant to Rule 14a-8(i)(7), the Staff concurred that the company could exclude a proposal requesting an annual report on total estimated compensation for each employee. These recent examples follow a long history of

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the Staff's consistent approach to excluding proposals addressing non-executive compensation on the basis of Rule 14a-8(i)(7). See *Amazon.com, Inc.* (Mar. 1, 2017), *CVS Health Corp.* (Mar. 1, 2017), and *The TJX Companies, Inc.* (Mar. 1, 2017) (concurring with the exclusion of proposals requesting the companies adopt and make public principles for minimum wage reform because each "proposal relates to general compensation matters, and does not otherwise transcend day-to-day business matters"). See also *McDonald's Corp.* (Mar. 18, 2015) (concurring with the exclusion of a proposal to increase the minimum wage, on the basis that the proposal "relates to general compensation matters"); *Yum! Brands, Inc.* (avail. Feb. 24, 2015) (concurring with the exclusion of a proposal requesting a particular format for reporting on "store employees' median wage," on the basis that the proposal related to "ordinary business operations" and "compensation that may be paid to employees generally and is not limited to compensation that may be paid to senior executive officers and directors"); *International Business Machines Corp. (Boulain)* (avail. Jan. 22, 2009) (concurring with the exclusion of a proposal requiring no employee above a certain level of seniority to receive a raise in a year in which at least two-thirds of all employees did not receive a three percent raise). In sum, the Staff has consistently concurred with the exclusion of proposals addressing non-executive compensation on the basis of Rule 14a-8(i)(7).

Here, the Proposal requests the Company's Board of Directors (the "Board") to disclose how the Company's gross bookings are shared among the various recipients. Specifically, the Proposal seeks information on per-trip prices for users and per-trip pay for drivers to assess how driver earnings has changed over time and whether drivers can earn a living wage. Similar to the precedents cited above, the Proposal is focused on non-executive compensation, in particular, how the Company manages and allocates its gross bookings and how much individual drivers earn for each trip they provide—all of which are complex operational questions that are beyond the remit of shareholder oversight. Accordingly, as in the above-cited precedents, the Proposal relates to ordinary business matters and is properly excludable under Rule 14a-8(i)(7).

In addition, the Proposal seeks disclosure of certain company financial information, specifically, granular information on the allocation of its gross bookings. This level of information is competitively sensitive, is not required by SEC public reporting standards, and is a matter to be properly determined by management as part of its risk management and oversight functions. The Commission and Staff have long held that shareholder proposals may be excluded under Rule 14a-8(i)(7) when they relate to a company's management of its financial reporting, a core aspect of management's day-to-day running of the company. The Staff has historically found that proposals seeking additional, detailed financial disclosure, the subject matter of which involves ordinary business operations, may be excluded under Rule 14a-8(i)(7). See, e.g., *Citigroup Inc.* (Feb. 20, 2008) (permitting exclusion of a proposal requesting disclosure of certain prescribed financial information on a website on a quarterly basis); *AmerInst Insurance Group. Ltd.* (April 14, 2005) (permitting the exclusion of a proposal requesting that the board provide each quarter a full, complete and adequate disclosure of the accounting of the line items and amounts of the operating and management expenses of the company); *Johnson Controls, Inc.* (Oct. 26, 1999) (permitting the exclusion of a proposal requesting additional disclosure of financial statements in reports to shareholders); and *Santa Fe Southern Pacific Corp.* (Jan. 30, 1986) (permitting exclusion of a proposal requesting disclosure of cost basis financial statements to all shareholders, noting that the proposal related to the conduct of ordinary business operations, including "financial disclosure not required by law"). As with the precedents cited above, the Proposal seeks

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granular disclosures regarding the attribution of gross bookings, a matter that relates to the conduct of the Company's ordinary business operations and which is properly determined by management as part of its ordinary operational responsibilities.

C. The Proposal Does Not Focus On A Significant Social Policy Issue That Transcends The Company's Ordinary Business Operations.

In the 1998 Release, the Commission reaffirmed the standards for when proposals are excludable under the "ordinary business" provision that the Commission initially articulated in the 1976 Release. In the 1998 Release, the Commission also distinguished proposals pertaining to ordinary business matters that are excludable under Rule 14a-8(i)(7) from those that "focus on" significant social policy issues. The Commission stated, "proposals relating to [ordinary business] matters but focusing on sufficiently significant social policy issues (e.g., significant discrimination matters) generally would not be considered to be excludable, because the proposals would transcend the day-to-day business matters and raise policy issues so significant that it would be appropriate for a shareholder vote." 1998 Release. When assessing proposals under Rule 14a-8(i)(7), the Staff considers the terms of the resolution and its supporting statement as a whole. See Staff Legal Bulletin No. 14C, Part D.2 (June 28, 2005) ("In determining whether the focus of these proposals is a significant social policy issue, we consider both the proposal and the supporting statement as a whole.").

The Staff most recently discussed its interpretation of how it will evaluate whether a proposal "transcends the day-to-day business matters" of a company in Staff Legal Bulletin No. 14L (Nov. 3, 2021) ("SLB 14L"), noting the Staff will "no longer tak[e] a company-specific approach to evaluating the significance of a policy issue under Rule 14a-8(i)(7)," but rather, will consider only "whether the proposal raises issues with a broad societal impact, such that they transcend the ordinary business of the company." The Staff also stated that under its new approach proposals "previously viewed as excludable because they did not appear to raise a policy issue of significance for the company may no longer be viewed as excludable under Rule 14a-8(i)(7)" and that "proposals squarely raising human capital management issues with a broad societal impact would not be subject to exclusion solely because the proponent did not demonstrate that the human capital management issue was significant to the company" (citing to the 1998 Release and *Dollar General Corp.* (Mar. 6, 2020) and providing "significant discrimination matters" as an example of an issue that transcends ordinary business matters).

Nonetheless, the Staff has consistently permitted the exclusion of shareholder proposals where the proposal focused on ordinary business matters, even though the proposal may also touch upon potentially significant policy issues. See *Apple Inc.* (Jan. 3, 2023) (permitting the exclusion of a proposal that requested a report on the effects of the company's return-to-office policy on employee retention and company's competitiveness, notwithstanding the fact that the proposal touched on human capital matters); *Dollar Tree* (May 2, 2022) (permitting the exclusion of a proposal that requested a report on the risks of business strategy from increasing labor market pressure, notwithstanding the fact that the proposal touched on human capital and public health matters); *Amazon.com, Inc.* (Apr. 8, 2022) (permitting the exclusion of a proposal that requested a report on workforce turnover as a result of the Covid-19 pandemic, notwithstanding the fact that the proposal touched on human capital and public health matters); *Kraft Foods Inc.* (Feb. 23, 2012) (permitting the exclusion of a proposal requesting a

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report detailing the ways the company would assess risk to its supply chain, notwithstanding the proponent's claim that water scarcity risk in the supply chain is a significant policy issue); *PetSmart, Inc.* (Mar. 24, 2011) (permitting the exclusion a proposal because, although it addressed the significant policy matter of the humane treatment of animals, it also requested that the company's board require suppliers to provide certain certifications, an ordinary business matter); *CIGNA Corp.* (Feb. 23, 2011) (permitting the exclusion of a proposal when, although the proposal addressed the potential significant policy issue of access to affordable health care, it asked CIGNA to report on expense management, an ordinary business matter); and *Capital One Financial Corp.* (Feb. 3, 2005) (permitting the exclusion of a proposal when, although the proposal addressed the significant policy issue of outsourcing, it also asked the company to disclose information about how it manages its workforce, an ordinary business matter).

Here, the Proposal does not focus on any significant social policy issues that transcend the ordinary business of the Company. Rather, the Proposal concerns the ordinary business issue of driver earnings, and its reference to "living income" does not implicate, much less focus on, a significant social policy issue under Rule 14a-8(i)(7). The Staff has consistently concurred with the exclusion of shareholder proposals under Rule 14a-8(i)(7) relating to fair pay for hourly and non-executive workers, finding that such proposals did not implicate a significant social policy matter. For example, in *Amazon.com, Inc.* (Apr. 1, 2024), the Staff concurred with the exclusion of a proposal requesting the board oversee the preparation of a living wage report on the basis the proposal related to the company's ordinary business notwithstanding the fact the proposal nominally touched upon the issue of fair pay. Similarly, in *Wal-Mart Stores, Inc.* (Mar. 15, 1999), the Staff concurred with exclusion of a proposal requesting a report that was to include, among other things, a description of "[p]olicies to implement wage adjustments to ensure adequate purchasing power and a sustainable living wage," with the Staff noting the proposal was excludable under Rule 14a-8(i)(7) because the quoted language "relate[d] to ordinary business operations." Likewise, in *Apple, Inc. (Zhao)* (Nov. 16, 2015), the Staff concurred with exclusion of a proposal requesting that the company's compensation committee "adopt new compensation principles responsive to America's general economy, such as unemployment, working hour[s] and wage inequality" as relating to the company's ordinary business operations, noting that "the proposal relates to compensation that may be paid to employees generally and is not limited to compensation that may be paid to senior executive officers and directors." Here, the Proposal relates to the ordinary business issue of non-executive compensation, and as with the precedents cited above, a passing reference to "living income" do not implicate, much less focus on, a significant social policy issue under Rule 14a-8(i)(7). Accordingly, the Company asks that the Staff concur that the Company may exclude the Proposal from its 2025 Proxy Materials under Rule 14a-8(i)(7) as relating to its ordinary business operations.

D. The Proposal Is Excludable Because It Seeks To Micromanage The Company.

The Commission and Staff have consistently held that a proposal that seeks to micromanage a company is excludable under Rule 14a-8(i)(7). The Commission has specified that the exclusion of a proposal pursuant to Rule 14a-8(i)(7) on the grounds of micromanagement "may come into play in a number of circumstances, such as where the proposal involves intricate detail, or seeks to impose specific time-frames or methods for implementing complex policies." *1998 Release*. The Staff also has determined that proposals that seek to micromanage the Company "by probing too deeply into matters of a complex

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nature upon which shareholders, as a group, would not be in a position to make an informed judgment” are excludable under Rule 14a-8(i)(7). *Id.*

The Staff has confirmed that this exclusion on the basis of micromanagement also applies to proposals that call for a report, noting a proposal that seeks a detailed report may be excluded on the grounds of micromanagement as this “is consistent with the Commission’s views on the ordinary business exclusion, which is designed to preserve management’s discretion on ordinary business matters but not prevent shareholders from providing high-level direction on large strategic corporate matters.” Staff Legal Bulletin No. 14L (Nov. 3, 2021) (“SLB 14L”). The Staff has additionally stated that it would take into account “well-established national or international frameworks when assessing proposals related to disclosure” as such frameworks would demonstrate that shareholders are able to evaluate a given topic. *Id.*

In assessing whether a proposal seeks to micromanage a company’s ordinary business operations, the Staff evaluates not just the wording of the proposal, but also the action called for by the proposal and the manner in which the action called for under a proposal would affect a company’s activities and management discretion. *See Deere & Co.* (avail. Jan. 3, 2022) and *The Coca-Cola Co.* (Feb. 16, 2022) (permitting the exclusion of proposals both involving a broadly phrased request that required detailed and intrusive actions to implement).

Here, the Proposal requests that the Company disclose detailed information about “‘gross bookings,’ from which guaranteed and most incentive payments to drivers and reimbursement payments to restaurants, as well as some insurance payments, are deducted to determine revenue” and “whether drivers can earn a living income.” The Proposal does not make any references to, or otherwise request, that the Company “use a particular living wage calculator or methodology,” as there are not any “well-established national or international frameworks,” as referenced in SLB 14L, for preparing the requested report. Rather than provide “high-level direction on large strategic corporate matters,” the Proposal takes a highly prescriptive and granular approach, requiring the company to disclose metrics such as per-trip prices for individual platform users or per-trip pay for individual drivers that probe into details that are too complex for shareholders to make an informed judgment on as a group and are properly within the discretion of management. The Proposal seeks to manage how the Company reports on the earnings of drivers and the allocation of its gross bookings, and accordingly is excludable on the basis of Rule 14a-8(i)(7).

CONCLUSION

Based on the foregoing analyses, the Company respectfully requests the Staff’s concurrence with the Company’s view or, alternatively, that the Staff confirm that it will not recommend any enforcement action if the Company excludes the Proposal from the 2025 Proxy Materials.

If we can be of any further assistance in this matter, please do not hesitate to call me at (212) 403-1138. If the Staff is unable to concur with the Company’s conclusions without additional information or discussions, the Company respectfully requests the opportunity to confer with members of the Staff prior to the issuance of any written response to this letter. In accordance with Staff Legal Bulletin No.

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l4F, Part F (Oct. 18, 2011), please kindly send your response to this letter by email to MAStagliano@wlrk.com.

Very truly yours,

A handwritten signature in black ink, appearing to read "Mark A. Stagliano", with a long horizontal flourish extending to the right.

Mark A. Stagliano

Enclosures

cc: Terra Castaldi, Uber Technologies, Inc.
Alvin Huntspon, Uber Technologies, Inc.
Carolyn Mo, Uber Technologies, Inc.
Tejal K. Patel, SOC Investment Group
Richard Clayton, SOC Investment Group

EXHIBIT A

(Copy of Proposal)

November 7, 2024

Via UPS

Uber Technologies, Inc.
c/o Tony West, Corporate Secretary
1725 3rd Street
San Francisco, California 94158

Re: Shareholder proposal for 2025 Annual Shareholder Meeting

Dear Mr. West,


The SOC Investment Group is submitting the attached proposal (the "Proposal") pursuant to the Securities and Exchange Commission's Rule 14a-8 to be included in the proxy statement of Uber (the "Company") for its 2025 annual meeting of shareholders.

We have continuously beneficially owned, for at least 3 years as of the date hereof, at least \$2,000 worth of the Company's common stock. Verification of this ownership will be sent under separate cover. The SOC Investment Group intends to continue to hold such shares through the date of the Company's 2025 annual meeting of shareholders.

The proposal deals with an issue that Uber's CEO has described as "existential" and relates to the long-term success of the company, and we are submitting it for a vote by shareholders for the reasons stated in the proposal.

The SOC Investment Group is available to meet with the Company via teleconference on Monday, November 18 between 11:00 a.m. and 1:30 p.m. PST; Wednesday, November 20 between 12:00 p.m. and 2:00 p.m. PST; or Friday, November 22 between 9:30 a.m. and 12:00 p.m. PST. Please contact Richard Clayton, [REDACTED] or via phone at [REDACTED] to schedule a meeting, or with any questions.

Sincerely,



Tejal K. Patel
Executive Director
SOC Investment Group

RESOLVED: Shareholders ask the UBER Board of Directors to disclose information concerning the distribution of "gross bookings" between recipients and purposes served.

SUPPORTING STATEMENT: In an August 2020 *New York Times* column, UBER CEO Dara Khosrowshahi wrote: "Since the first UBER trip 10 years ago, an existential question has shadowed us: Do we treat drivers well?" UBER's treatment of drivers has been a controversial topic inspiring legislative efforts to protect drivers in multiple states and cities.¹ Internationally, disputes about the treatment of drivers have led courts to declare UBER drivers to be employees, contrary to UBER's assertion that drivers were self-employed.² Unfortunately for UBER shareholders, the company fails to disclose the metrics necessary to answer this "existential" question because UBER does not classify payments by platform users as revenue. Instead, such payments are (mostly) classified as "gross bookings," from which guaranteed and most incentive payments to drivers and reimbursement payments to restaurants, as well as some insurance payments, are deducted to determine revenue. Unlike rival Lyft, UBER's large delivery segment prevents shareholders from calculating either per-trip prices for platform users or per-trip pay for drivers from the gross bookings and company-wide trip data UBER does disclose. UBER's business model is thus unusually opaque to readers of its financial statements who cannot resolve debates over the size of UBER's "take rate," how driver pay has changed over time, and whether drivers can earn a living income.³

This opacity has only become more frustrating since UBER introduced "upfront" or "guaranteed" fares for drivers in fall 2022.⁴ Since then, UBER has achieved positive operating earnings in six consecutive quarters, the first time that has happened. But without visibility into how drivers are paid, the investing public is unable to meaningfully assess the durability of this achievement. Furthermore, many drivers have become frustrated with what they report as reduced pay resulting from the switch to upfront fares.⁵ Without transparent reporting from UBER, investors cannot assess the accuracy of these claims, and hence cannot estimate whether driver frustration may lead to further regulatory efforts or otherwise undermine UBER's recent accomplishments.

CEO Khosrowshahi was right in 2020: driver pay is an existential question for UBER, because it goes to the heart of its business model and its ability to operate profitably. Shareholders deserve enough transparency to assess UBER's answer to this question for themselves.

¹ "Uber Driver Compromise in Washington Is Tougher Sell Elsewhere," *Bloomberg Law*, 2022; "The Growing Role Of Localities In The United States In Enacting And Enforcing Protections For Gig Economy Workers," *TechReg Chronicle*, 2022.

² "Uber drivers are workers, not self-employed, Supreme Court rules," *BBC*, 2021; "Uber drivers are employees not contractors, says Dutch court" *Reuters*, 2021.

³ "Uber's CEO Hides Driver Pay Cuts To Boost Profits," *Forbes*, 2023.

⁴ "Understanding Upfront Fares," *Medium*, 2023.

⁵ "Will 2024 Be A Year of Reckoning for Uber's Driver Relations?" *Forbes*, January 16, 2024.

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27 January 2025

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

By online portal submission

Re: Shareholder proposal to Uber Technologies, Inc.
from SOC Investment Group

Dear Counsel:

I write on behalf of SOC Investment Group to respond to the letter from counsel for Uber Technologies, Inc. (“Uber” or the “Company”) dated 3 January 2025 (“Uber Letter”) in which Uber advises of its intent to omit a shareholder proposal from SOC Investment Group (the “Proposal”) from Uber’s 2025 proxy materials. For the reasons below we respectfully ask the Division to advise Uber that the Division does not concur with the Company’s arguments.

The Proposal states:

RESOLVED: Shareholders ask the UBER Board of Directors to disclose information concerning the distribution of “gross bookings” between recipients and purposes served.

The Supporting Statement explains the rationale for the Proposal by citing a 2020 statement by CEO Dara Khosrowshahi that since Uber’s first trip in 2010, “an existential question has shadowed us: Do we treat drivers well?” The Supporting Statement notes how this issue has inspired legislative efforts to protect drivers and litigation over Uber’s contention that they should be treated as independent contractors rather than employees, a status that would confer certain legal protections.

The Supporting Statement notes that Uber fails to provide investors with information to answer this “existential” question because Uber does not classify

payments by platform users as revenue. Instead, such payments are mostly classified as “gross bookings,” from which guaranteed and most incentive payments to drivers and reimbursement payments to restaurants, as well as some insurance payments, are deducted to determine revenues.

Unlike Lyft, Uber’s large delivery segment prevents shareholders from calculating either per-trip prices for platform users or per-trip pay for drivers from gross bookings and company-wide trip data that Uber does disclose. The Supporting Statement thus argues that Uber’s business model is “unusually opaque,” as readers cannot determine the “take rate” that drivers receive, how driver pay has changed over time, and whether drivers can earn an adequate income.

The Supporting Statement states that this opacity has increased when Uber introduced “upfront” or “guaranteed” fares for drivers in 2022, following which the Company achieved six consecutive quarters of positive operating earnings. However, investors cannot assess the durability of this achievement without the information requested in the Proposal, particularly as there has been continued driver dissatisfaction expressed over pay levels. This information gap leaves investors unable to assess the accuracy of these claims, which could lead to further regulatory action affecting Uber. Thus, the Supporting Statement concludes, the topic raised in the Proposal is at the heart of the “existential” question posed by CEO Khosrowshahi in 2020.

In response, Uber argues that the Proposal may be excluded under Rule 14a-8(i)(7), arguing that the matter relates to the “ordinary business operations” of the Company with no transcendent policy issue. In addition, the Proposal is said to micromanage the Company. As we now demonstrate, however, Uber has not sustained its burden of demonstrating that the exemption is applicable here.

DISCUSSION.

Uber argues that the Proposal (1) deals with garden-variety “ordinary business” issues such as non-executive compensation, financial reporting practices, (2) does not involve a transcendent or “significant” public policy issue, and (3) engages in micromanagement. Because the first two points are logically inter-related, we discuss them first and then respond to the micromanagement claim.

1. The Proposal presents an issue that is anything but “ordinary,” but is rather a “significant” policy issue.

It is difficult to see how an issue that the CEO calls “existential” can be viewed as involving a company’s “ordinary business,” but that is the position Uber asks the Division to accept. Uber’s business model is heavily dependent on driver satisfaction, and driver revenue cannot be dismissed as just another input cost.

To understand why that is so, it is important to recall that Uber began operations with a new business model in the so-called “gig economy.” The business model Uber challenged at the outset was local taxi service, which became highly regulated in many cities in the 1930s in response to some of the same economic factors that affects Uber (ease of entry for drivers, low pay), as operators were required to purchase a limited supply of medallions, thus limiting entry into the industry and raising costs to consumers. Fast forward 80 years, and Uber, as a non-regulated entity, was able to exploit that industry structure with cheaper, better and faster service, but at a significant cost in its early years. According to an analyst at Columbia Business School:

While Uber’s business model has created enormous value for consumers, propelling the company’s rapid growth, its extremely aggressive pricing simply doesn’t generate enough revenue to deliver attractive compensation to drivers and sizable profits to shareholders. By pricing its services 30% or more below comparable taxi fares and then retaining 25% of gross bookings for itself, Uber has squeezed the revenues available to compensate drivers, who are ultimately responsible for providing the labor, equipment, maintenance, insurance and fuel to serve consumers. There is nothing in Uber’s business model that promises to reduce the factor costs of its ridesharing service, nor are there inherent economies of scale that would lower unit operating costs with continued growth.

This leads to an inherent conflict between the business objectives of Uber and its drivers. Uber’s revenues are directly proportional to the number of trips it can facilitate, and thus the company has strong incentives to continuously scale its business. Drivers of course want to maximize their revenue per hour worked. But as Uber continues to recruit drivers, the revenue potential *per driver* inevitably declines. As the highest revenue-generating neighborhoods become increasingly saturated, new drivers are forced to seek less attractive service territories to find customers.

Sherman, *Why Can’t Uber Make Money*, FORBES (16 December 2017), available at <https://www.forbes.com/sites/lensherman/2017/12/14/why-cant-uber-make-money/>. (emphasis in original).

This “inherent conflict” lies at the heart of Uber’s operations and has not disappeared since that article appeared. If anything, matters deteriorated during the pandemic. Ironically, in early 2020, shortly before the pandemic took hold in the United States, CEO Khosrowshahi told CNBC that Uber would be profitable by the end of 2020, explaining: “We are structurally set up more efficiently and more optimally than anyone else to move to profitability.” Hendelmann, *Why Is Uber Not*

Profitable? Here Are 5 Reasons Affecting Its Bottom Line, PRODUCTMINT (2022), available at <https://productmint.com/why-is-uber-not-profitable/>. In fact, demand for Uber services dropped so dramatically that Uber lost \$2.986 billion in the first quarter of 2020, up 190 percent from the year's deficit, and had to lay off one-quarter of its workforce. *Id.*

Uber's recovery was slow and was compounded by the fact that the Company faced a severe shortage of drivers, who were concerned about getting sick, even though 2021 saw vaccines were being rolled out and people started going out more. *Id.* Indeed, the problem was so acute that in April 2021 Uber announced a one-time incentive package costing \$250 million to lure drivers back behind the wheel. Bursztynsky, *Uber announces \$250 million stimulus to bring back drivers*, CNBC (7 April 2021), available at <https://www.cnbc.com/2021/04/07/uber-announces-250-million-stimulus-to-bring-back-drivers.html>. The Company ended up losing \$496 million in 2021. See PRODUCTMINT, *supra*.

During Uber's early years of operation, the "inherent conflict" at the heart of Uber's business model thrust Uber into the spotlight of numerous regulatory and legislative battles over driver pay and working conditions.

- In 2018 New York City became the first city to pass legislation to mandate a minimum wage for drivers and limited the issuance of new for-hire operating licenses. Teale, *NYC becomes first US city to regulate ride-hailing*, SmartCitiesDive (9 August 2018), available at <https://www.smartcitiesdive.com/news/nyc-becomes-first-us-city-to-regulate-ride-hailing/529740/>.

- In 2019 the California legislature passed a law to re-classify drivers from independent contractors to workers. The next year the ride-sharing industry succeeded in persuading California voters to overturn that law by enacting Proposition 22, which made drivers independent contractors while providing some benefits. See Legislative Analyst's Office, *Proposition 22* (3 November 2020), available at <https://lao.ca.gov/BallotAnalysis/Proposition?number=22&year=2020>. Although Uber succeeded, the victory came at a cost to Uber and others of hundreds of millions of dollars. O'Brien, *The \$185 million campaign to keep Uber and Lyft drivers as contractors in California*, CNN (8 October 2020), available at <https://www.cnn.com/2020/10/08/tech/proposition-22-california/index.html>.

- In 2020 Uber re-classified its drivers in the United Kingdom as employees, not independent contractors, in response to a court ruling that one analyst referred to as a "gut punch" for Uber's prospects in that country. Browne, *Uber employment rights setback is a 'gut punch' to its prospects in the UK*, CNBC (18 March 2021), available at <https://www.cnbc.com/2021/03/18/uber-is-reclassifying-uk-drivers-as-workers-heres-what-happens-next.html>.

These struggles prompted analysts and observers to ask publicly whether the “inherent conflict” at the heart of Uber’s business model could ever lead to profitability. *E.g.*, PRODUCTMINT, *supra*; Kindig, *Uber And Profitability: A Deep-Dive Analysis*, SEEKING ALPHA (8 April 2020), available at <https://seekingalpha.com/article/4336694-uber-and-profitability-a-deep-dive-analysis>. As one observer put it, Uber’s business model “needs more drivers to give more rides and, deliveries,” yet Uber’s “driver costs are increasing along with revenue because a driver can only work so much.” Pope, *Are Investors Overlooking Uber's Potential Profit Problems?*, MOTLEY FOOL (28 July 2021), available at <https://www.fool.com/investing/2021/07/28/investors-overlook-uber-potential-profit-problem/>. The writer added: “[T]here are times when a great service for consumers is a poor business for investors.” *Id.*

The controversy has not abated in recent years. In 2024 the Minneapolis City Council passed a law to increase driver pay, Uber then threatened to leave the state, and the Minnesota legislature passed a law to increase driver pay, but at a lower level. Ahmed, *Uber and Lyft say they won't leave Minnesota after all — and drivers are getting a raise*, ASSOCIATED PRESS (20 May 2024), available at <https://apnews.com/article/uber-lyft-minnesota-legislature-compromise-53eb2e44c666969e2be2bbf25d4d1b80>.

So where are we now? The Supporting Statement pointed out that Uber has managed to achieve six straight quarters of profitability, but the question remains: Is this progress sustainable? That is the question at the heart of this Proposal. Has Uber found a way to resolve the “inherent conflict” at the core of its business model? And if so, at what cost?

Uber’s recent profitability follows the introduction in 2022 of “upfront” fares, a fact also acknowledged in the Supporting Statement. This new system moved away from time and distance rate cards and, according to an Uber spokesperson, now calculates fares based on an algorithm-driven assessment of estimated time and distance to pickup, estimated time and distance to destination, current demand at the driver’s location, and forecasted demand at the destination. Chaum, *Understanding Upfront Fares*, MEDIUM (28 April 2023), available at <https://medium.com/uber-under-the-hood/understanding-upfront-fares-491cbaf975d6>.

An analyst at Columbia Business School was critical of these changes, noting that at the end of 2023 “Uber decreased its US driver pay per trip by nearly 12% YOY in Q3 2023, and grossly overstates (by more than double) what drivers can expect to be paid per working hour, net of high and increasing operating expenses.” Sherman, *Uber’s CEO Hides Driver Pay Cuts to Boost Profits*, FORBES (15 December 2023), available at <https://www.forbes.com/sites/lensherman/2023/12/15/ubers-ceo-hides-driver-pay-cut>

[s-to-boost-profits/](#). The article acknowledges that Uber disputes the point, but does not provide data to permit investors and others to draw their own conclusions. *Id.* In a follow-up article the author went into more detail about Uber’s upfront fares, summing up the overall situation as follows:

1. Can Uber fulfill its long-term vision of transforming global urban mobility by operating a marketplace where passengers and drivers don’t know what price or pay to expect from trip to trip, controlled by an algorithm that stacks the deck increasingly in Uber’s favor? In other words, will local and regional governments continue to accept Uber’s business model as being in the best interests of the constituencies they represent?
2. Even absent government regulation, can a service industry business with poor labor relations continue to thrive?

Sherman, *Will 2024 Be A Year Of Reckoning For Uber’s Driver Relations?*, FORBES (16 January 2024), available at <https://www.forbes.com/sites/lensherman/2024/01/16/will-2024-be-a-year-of-reckoning-for-ubers-driver-relations/>.

Investors cannot determine the answer – and that is the point of the Proposal. As one observer put it, Uber’s journey to profitability “may be longer than we thought,” citing Uber’s “never-ending legal battles over the classification of its drivers, as well as the waning demand in certain markets.” Hawkins, *Uber’s not out of the woods yet*, THE VERGE (8 May 2024), available at <https://www.theverge.com/2024/5/8/24151901/uber-q1-2024-earnings-net-loss-profit-settlement-drivers>. The article noted that Uber “has spent tens of billions of dollars to oppose these [regulatory and legislative] efforts, and while it occasionally wins, it doesn’t seem to be any closer to putting the issue to rest.” The conclusion:

People don’t seem to care that Uber is more expensive. But if the company had to suddenly start paying drivers full benefits and a living wage across major markets, that willingness could erode in the face of a much more expensive trip or takeout order.

To be sure, not all of the reaction to Uber’s recent performance has been skeptical. A more upbeat assessment of Uber’s recent performance concluded that Uber has “nailed the landing.” Wilhelm, *Uber is now a profitable, cash-generating machine*, TECHCRUNCH (1 August 2023), available at <https://techcrunch.com/2023/08/01/uber-profitable-earnings-analysis/>. However, the article mentioned – but then sidestepped – a crucial issue: A major reason for Uber’s improvement was the fact that gross bookings (including driver costs) increased more slowly than Uber’s revenue.

Why was that? The article does not venture a guess, but the answer might be that Uber is again trying to contain driver costs, with consequences yet to be determined. The information requested in the Proposal would allow investors to determine if the author's enthusiasm is warranted. Because Lyft, Uber's largest competitor in ridesharing in the U.S., has no delivery service (which results in payments being transferred from the platform to the restaurant), and because Lyft treats the driver insurance costs it is obligated to pay as an expense deducted from revenue rather than as part of "gross bookings," it is straightforward for an investor to calculate Lyft's per-trip driver average pay, the necessary first step in assessing the sustainability of such pay.

The foregoing discussion demonstrates that the Proposal raises issues that cannot be dismissed as matters of "ordinary business," nor can Uber plausibly claim that the Proposal is devoid of policy "significance." The issue here goes well beyond efforts by a start-up company to get its labor costs right. Indeed, one is hard-pressed to think of other startups that have had to spend billions of dollars on regulatory, legislative and courtroom battles.¹

The policy issue here is larger than one company – even one where the CEO views the issue as "existential" to the company's future. What happens at Uber has policy significance beyond Uber and beyond the ride-sharing industry, with consequences for the broader "gig economy" and the national economy as a whole. As one observer put it:

1. Uber serves a pivotal role in providing mobility for well over 100 million consumers worldwide. Other entities in a similar role – public transportation systems and airlines for example – routinely provide detailed data on fare levels, employee pay, on-time performance, and other performance metrics that are in the public interest to know.

2. *Given millions of independent contractors in its US workforce, Uber's business practices establish an important precedent for labor policy more broadly in the US.* Uber has always devoted considerable resources to lobbying state and city governments, often threatening to suspend operations in cities considering pay minimums or enhanced worker protections, but rarely supports its claims with relevant data

¹ Just last month Uber settled a lawsuit based on its illegal entry into Australia, with \$152 million going to taxi and hire-car drivers injured by the move. Thomsen, *Nearly 9000 taxi drivers just scored \$152 million from Uber as compensation for its illegal launch in Australia*, STARTUP DAILY (2 December 2024), available at <https://www.startupdaily.net/topic/global-tech/8000-taxi-drivers-just-scored-152-million-from-uber-as-compensation-for-its-illegal-launch-in-australia/>

from its own operations.

3. When researchers provide independent assessments of Uber's operations based on third-party information, the company predictably dismisses their validity while refusing to provide a counterfactual rebuttal from its own proprietary data.

Sherman (2023), *supra*, pp. 5-6 (emphasis added).

The issues here are thus light years away from the situation in the “ordinary business” letters upon which Uber relies, which generally sought to provide a certain level of compensation or benefits or equity compensation to non-executive employees. *E.g., Dollar Tree, Inc.* (2 May 2023) (seeking higher pay for lowest paid employees). Uber Letter, pp. 3-4. Moreover, the Proposal does more than “touch upon” potentially significant policy issues, as was the case with the letters Uber cites in support of that claim. Uber Letter, pp. 4-6. *E.g., Apple, Inc.* (3 January 2023) (return-to-office policy only touches upon broader human capital management concerns). At a minimum, none of the proposals Uber cites involved an issue that the CEO termed “existential” to the company's future and that could have a significant ripple effect throughout the economy.

2. The Proposal does not involve micromanagement.

Uber's final argument misperceives the Proposal by arguing that it is “probing too deeply” into the Company's affairs, is “highly prescriptive,” and seeks “granular data.” Uber Letter pp. 6-7.

These buzz words notwithstanding, Uber ignores the fact that the Proposal does not ask the Company to change its practices. The Proposal seeks the disclosure of information necessary for investors to perform the same calculation of average driver pay that they can already perform using the information disclosed by its principal competitor (Lyft), thus permitting Uber stockholders and investors generally to assess the risks associated with investing in Uber stock, particularly in light of the seemingly endless controversies in which Uber's business plan has enmeshed the Company.

CONCLUSION

For these reasons SOC Investment Group respectfully asks the Division to advise Uber that the Division does not concur in Uber's assessment of the Proposal.

Thank you for your consideration of these points. Please do not hesitate to contact me if we can provide any additional information.

Respectfully submitted,

Cornish F. Hitchcock

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cc: Mark A. Stagliano