



DIVISION OF  
CORPORATION FINANCE

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

March 17, 2016

Ronald O. Mueller  
Gibson, Dunn & Crutcher LLP  
shareholderproposals@gibsondunn.com

Re: Amazon.com, Inc.  
Incoming letter dated January 17, 2016

Dear Mr. Mueller:

This is in response to your letter dated January 17, 2016 concerning the shareholder proposal submitted to Amazon by As You Sow on behalf of Samajak LP. We also have received a letter on the proponent's behalf dated March 9, 2016. Copies of all of the correspondence on which this response is based will be made available on our website at <http://www.sec.gov/divisions/corpfin/cf-noaction/14a-8.shtml>. For your reference, a brief discussion of the Division's informal procedures regarding shareholder proposals is also available at the same website address.

Sincerely,

Matt S. McNair  
Senior Special Counsel

Enclosure

cc: Sanford Lewis  
sanfordlewis@strategiccounsel.net

March 17, 2016

**Response of the Office of Chief Counsel**  
**Division of Corporation Finance**

Re: Amazon.com, Inc.  
Incoming letter dated January 17, 2016

The proposal requests that the board prepare a report on the company's policy options to reduce potential pollution and public health problems from electronic waste generated as a result of its sales to consumers, and to increase the safe recycling of such wastes.

There appears to be some basis for your view that Amazon may exclude the proposal under rule 14a-8(i)(7), as relating to Amazon's ordinary business operations. In this regard, we note that the proposal relates to the company's products and services and does not focus on a significant policy issue. Accordingly, we will not recommend enforcement action to the Commission if Amazon omits the proposal from its proxy materials in reliance on rule 14a-8(i)(7). In reaching this position, we have not found it necessary to address the alternative basis for omission upon which Amazon relies.

Sincerely,

Justin A. Kisner  
Attorney-Adviser

**DIVISION OF CORPORATION FINANCE**  
**INFORMAL PROCEDURES REGARDING SHAREHOLDER PROPOSALS**

The Division of Corporation Finance believes that its responsibility with respect to matters arising under Rule 14a-8 [17 CFR 240.14a-8], as with other matter under the proxy rules, is to aid those who must comply with the rule by offering informal advice and suggestions and to determine, initially, whether or not it may be appropriate in a particular matter to recommend enforcement action to the Commission. In connection with a shareholder proposal under Rule 14a-8, the Division's staff considers the information furnished to it by the Company in support of its intention to exclude the proposals from the Company's proxy materials, as well as any information furnished by the proponent or the proponent's representative.

Although Rule 14a-8(k) does not require any communications from shareholders to the Commission's staff, the staff will always consider information concerning alleged violations of the statutes administered by the Commission, including argument as to whether or not activities proposed to be taken would be violative of the statute or rule involved. The receipt by the staff of such information, however, should not be construed as changing the staff's informal procedures and proxy review into a formal or adversary procedure.

It is important to note that the staff's and Commission's no-action responses to Rule 14a-8(j) submissions reflect only informal views. The determinations reached in these no-action letters do not and cannot adjudicate the merits of a company's position with respect to the proposal. Only a court such as a U.S. District Court can decide whether a company is obligated to include shareholders proposals in its proxy materials. Accordingly a discretionary determination not to recommend or take Commission enforcement action, does not preclude a proponent, or any shareholder of a company, from pursuing any rights he or she may have against the company in court, should the management omit the proposal from the company's proxy material.

# **SANFORD J. LEWIS, ATTORNEY**

March 9, 2016  
Via electronic mail

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

Re: Shareholder Proposal to Amazon.com regarding electronics recycling on Behalf of As You Sow

Ladies and Gentlemen:

As You Sow on behalf of Samajak LP (the “Proponent”) has submitted a proposal regarding electronics recycling to Amazon.com (the “Company”). I have been asked by the Proponent to respond to the letter dated January 17, 2016 sent to the Securities and Exchange Commission by Ronald Mueller of Gibson Dunn. In that letter, the Company contends that the Proposal may be excluded from the Company’s 2016 proxy statement by virtue of Rule 14a-8(i)(7) and Rule 14a-8(i)(10).

I have reviewed the Proposal, as well as the letter sent by the Company, and based upon the foregoing, as well as the relevant rules, it is my opinion that the Proposal must be included in the Company’s 2016 proxy materials and that it is not excludable by virtue of those rules. A copy of this letter is being emailed concurrently to Ronald Mueller of Gibson Dunn.

## **SUMMARY**

The Proposal requests a report from the Company on policy options to reduce potential pollution and public health problems from electronic waste generated as a result of its sales to consumers, including internal or external strategies to facilitate management of consumers’ waste and prevent improper export of hazardous electronic waste.

The Company asserts that the Proposal may be excluded under Rule 14a-8(i)(7) as addressing the company’s ordinary business operations. However, the Proposal addresses a significant policy issue of pollution prevention with a strong nexus to the Company’s status as one of the largest sellers of electronic goods. The fact that the Company serves as an Internet marketplace for such goods does not immunize it from accountability to shareholders or from developing an effective response on this issue. The Proposal requests a report at a high level that is consistent with the role of shareholders in raising policy issues and encouraging companies to develop solutions. It does not micromanage the Company’s business but presses for effective solutions.

The Company also asserts that it has substantially implemented the Proposal. However, the existing company actions are not responsive to the requests of the Proposal and therefore the proposal is not excludable under Rule 14a-8(i)(10). In particular, the Company’s existing activities on which it reports

neglect to provide responsive recycling solutions for most of the consumer electronic waste generated by the Company's business, including preventing improper export of hazardous materials.

## THE PROPOSAL

The Proposal states:

**RESOLVED:** Shareholders request that Amazon.com's Board of Directors prepare a report, at reasonable cost and excluding confidential information, on the company's policy options to reduce potential pollution and public health problems from electronic waste generated as a result of its sales to consumers, and to increase the safe recycling of such wastes.

**Supporting statement:** The proponent believes such a report should consider, but not necessarily be limited to, support for internal or external strategies to facilitate effective management of consumers' electronic wastes and to prevent improper export of hazardous electronic wastes

The background sections of the Proposal spell out the substantial pollution and public health problems associated with the disposal of electronic products sold by the Company.

A copy of the full Proposal is attached to this letter as Exhibit A.

## BACKGROUND

A number of recent scientific studies have linked improper management of the disposal of consumer electronics products ("e-waste") with severe public health effects. The EPA estimates that the U.S. generates 3 million tons of e-waste annually but only 40% of the total is collected for recycling. The remainder goes to landfills and incinerators, despite the fact that hazardous chemicals in electronics can leach out of landfills into groundwater and streams, or that burning the plastics in electronics can emit highly poisonous dioxins.

Of the 40% estimated to be collected for recycling, the majority is believed to be exported to developing countries where it is "processed" under primitive and sometimes horrific conditions by hundreds of thousands of desperately poor people in a manner that threatens human health and the environment. This means that men, women and often children are exposed to high amounts of lead.

Much of the electronic waste from the US makes its way via recycling companies back to the country where many of the products are produced, China. A 2010 study of children in Guiyu, the "e-waste capital" of China, showed that a shocking 88 percent of the 167 children tested (all younger than 6 years old) had lead poisoning. A study just released in January 2013 concluded residents living near an e-waste recycling site in China face elevated risks of lung cancer. Other risky procedures routinely used in developing countries include:

- Smashing cathode ray tubes with hammers, exposing the toxic phosphor dust inside.

- Cooking circuit boards in woks over open fires to melt lead solder, exposing toxic lead fumes.
- Burning wires in open piles to melt away plastics to get at the copper inside, creating dioxins.
- Burning plastic casings, creating dioxins and furans.
- Throwing unwanted but very hazardous leaded glass into former irrigation ditches
- Dumping pure acids and dissolved heavy metals directly into rivers.

When it comes to generating all of this electronic waste, Amazon.com is one of the leading sources of electronics products sold in the US economy. According to the National Retail Federation, Amazon.com is third largest electronics and entertainment retailer by sales.

Most of the electronic products sold by Amazon.com and other companies will eventually end up in the environment. Among the three largest sellers of electronic products in the US economy, there is emerging a competition for who will exercise leadership in resolving this electronic products disposal problem. Currently, in the opinion of the Proponent, Amazon.com is losing the contest by a long shot, arguably it has barely even entered the race.

Best Buy, the largest US electronics retailer, has adopted a takeback policy for all the electronics at all stores in 2009. It has become the retail world's largest collector and handler of electronic waste. And that company believes that its sustainability programs are delivering competitive advantage.

Similarly, Dell Inc., a top online electronics retailer, prioritizes free, convenient electronic waste take back. Dell provides a mail back service with free shipping to consumers for the return of any Dell product.

## ANALYSIS

### I. The Proposal is not excludable under the ordinary business exclusion of Rule 14a-8(i)(7).

The Company asserts that the resolution is excludable because its subject matter relates to the Company's ordinary business operations. However, because the resolution relates to substantial social policy issues facing the Company, the Proposal transcends excludable ordinary business under Rule 14a-8(i)(7). SEC Release 34-40,018 (May 21, 1998).

#### a. **The subject matter of the present proposal is a non-excludable social policy issue.**

While Rule 14a-8(i)(7) permits companies to exclude from their proxy materials shareholder proposals that relate to the company's ordinary business matters, the Commission recognizes that "proposals relating to such matters but focusing on sufficiently significant social policy issues . . . generally would not be considered 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. Exchange Act Release 34-40018 (May 21, 1998). Notably, "since at least 1990," the SEC Staff "has consistently and

uniformly held that shareholder proposals pertaining to **environmental pollution** . . . raise such a significant policy issue that they transcend day-to-day business matters.”

In Staff Legal Bulletin 14H the Staff embraced the notion that a properly scoped proposal, focused only on a significant policy issue, will not be found to be excludable as relating to ordinary business, even if it addresses the “nitty-gritty” business practices of a company. The present proposal is a clear application of that well articulated decision-making principle.

Once a proposal focuses exclusively on a significant policy issue it makes no difference whether the subject matter requires action in how a company produces a product, or in other parts of the investment, proxy voting, customer relations, etc. None of these “nitty-gritty” business practices of a company are off-limits for shareholder proposals. As long as the Proposal is properly directed to a significant policy issue with a nexus to the company, and the proposal does not micromanage, then it must not be excluded under the ordinary business rule.

**The issue of safe disposal of electronic waste is a significant social policy issue.**

The safe management of electronic waste (e-waste) is a significant policy issue. This is demonstrated by recent congressional interest and governmental action, attention in the media, as well as recent activities by leaders in the recycling industry. The issue has been covered by the New York Times, 60 minutes, BusinessWeek and many other prominent publications. State-level legislation has been very active over the last 7 to 8 years with 24 states passing legislation.

The existence of harmful exports of electronic waste from the US to China was highlighted in recent news stories indicating incredibly harmful conditions being created by US wastes. A story on TV news program, 60 Minutes introduced America to the extraordinary and harmful fate of our electronic waste. The story began, “**60 Minutes** is going to take you to one of the most toxic places on Earth -- a place that government officials and gangsters don't want you to see. It's a town in China where you can't breathe the air or drink the water, a town where the blood of the children is laced with lead.”<sup>1</sup>

Businessweek also addressed the issue in a cover story on “The Dirty Secret of Recycling Electronics.” Lax rules and weak enforcement allow scrap companies to profit by sending junked computers, printers, and TVs overseas. As the e-waste industry proliferates—some 1,200 mostly tiny companies generated revenue of more than \$3 billion last year—it has also become enmeshed in questionable practices that undercut its environmentally friendly image<sup>2</sup>

More recently, in 2012 the issue has made its way to the courts. For instance, executives in Colorado were recently found guilty of wire and mail fraud and smuggling in their operation that involved exporting e-waste to China.<sup>3</sup>

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<sup>1</sup> <http://www.cbsnews.com/stories/2008/11/06/60minutes/main4579229.shtml>

<sup>2</sup> <http://www.businessweek.com/stories/2008-10-14/e-waste-the-dirty-secret-of-recycling-electronics>

<sup>3</sup> [http://www.denverpost.com/breakingnews/ci\\_22240497/colorado-recycling-firm-and-two-officers-found-guilty?IADID=Search-www.denverpost.com-www.denverpost.com](http://www.denverpost.com/breakingnews/ci_22240497/colorado-recycling-firm-and-two-officers-found-guilty?IADID=Search-www.denverpost.com-www.denverpost.com)

Congress has been actively deliberating solutions to this issue, as well as the states. “U.S. EPA and members of Congress are moving ahead with their own efforts aimed at combating the growing problem of handling waste from devices such as cellphones and computers.”<sup>4</sup>

### New York Times:

Activity in Congress has not yet resulted in a new federal law, but action at the states has gained momentum. “Twenty-four other states have since followed suit, mostly in the past few years, but California’s law stands out because it charges a consumer fee on certain electronics.”<sup>5</sup>

“The U.S. has been asleep at the switch,” said Jim Puckett, the executive director of the Basel Action Network, which takes its name from the Basel Convention, an international agreement governing the handling and trade of hazardous waste, including discarded electronics. More than 165 countries have ratified the convention, but the United States has not.<sup>6</sup>

[T]he Mexican government trained more than 200 of its border agents on better detection of illegal shipments of batteries and other **electronic waste**.<sup>7</sup>

BackTalk, a project of M.I.T.’s [Senseable City Lab](#) that is now on display at the Museum of Modern Art in Manhattan, seeks to better understand what becomes of the three million tons of **electronic waste** disposed of annually in the United States.<sup>8</sup>

### Governmental Initiatives:

Attention to the issue of e-waste has come from a range of departments and bodies in the federal government. This attention has come within the context of President Obama’s October 2009 issuance of Executive Order 13514, which called for GSA, the White House Council on Environmental Quality, and the Environmental Protection Agency to create the National Strategy on Electronic Stewardship.<sup>9</sup>

The Environmental Protection Agency estimates that in 2009 alone, the U.S. generated over 3.1 million TONS of e-waste.<sup>10</sup> Responding to the growing amount of e-waste produced in the U.S. and the growing amount that the U.S. exports to other countries, the EPA cited “Cleaning Up E-Waste” as one of its top 6 international priorities: “The electronics that provide us with convenience often end up discarded in developing countries where improper disposal can threaten local people and the

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<sup>4</sup> <http://www.nytimes.com/gwire/2011/05/02/02greenwire-hill-agencies-forge-ahead-on-e-waste-efforts-99832.html>

<sup>5</sup> <http://www.nytimes.com/gwire/2011/04/22/22climatewire-regulators-recyclers-and-retailers-build-urb-62592.html?pagewanted=all>

<sup>6</sup> [http://www.nytimes.com/2010/04/15/business/energy-environment/15ewaste.html?\\_r=0](http://www.nytimes.com/2010/04/15/business/energy-environment/15ewaste.html?_r=0)

<sup>7</sup> <http://www.nytimes.com/2011/12/09/science/earth/recycled-battery-lead-puts-mexicans-in-danger.html?pagewanted=all>

<sup>8</sup> <http://green.blogs.nytimes.com/2011/07/25/a-global-pinball-game-tracking-e-waste>

<sup>9</sup> “GSA Announces New E-Waste Policy for Federal Government,” U.S. General Services Administration, March 1, 2012. (<http://www.gsa.gov/portal/content/127503>)

<sup>10</sup> Text of H.R. 2284, The Responsible Electronics Recycling Act. (<http://green.house.gov/sites/green.house.gov/files/documents/112thEWasteExportBill.pdf>)

environment. EPA recognizes this urgent concern and will work with international partners to address the issues of E-waste.”<sup>11</sup>

Additionally, in 2011, the EPA along with other agencies and technology industry leaders released ‘the Obama Administration’s “National Strategy for Electronics Stewardship’ – a strategy for the responsible electronic design, purchasing, management and recycling that will promote the burgeoning electronics recycling market and jobs of the future here at home.” The announcement included the first voluntary commitments made by Dell, Sprint, and Sony to the EPA’s industry partnership aimed at promoting “environmentally sound management of used electronics.”<sup>12</sup> Peers such as Dell and Sony see e-waste management as a significant federal policy issue and have taken concrete steps to soundly manage their e-waste. Other electronics retailers including Best Buy and Staples also offer take back policies.<sup>13</sup> Amazon.com, by contrast, has only a meager program addressing a very tiny fraction of products sold, a single product line.

In March of 2012, the U.S. General Services Administration (GSA) announced new federal guidelines banning all federal agencies from disposing of electronic waste in landfills. The GSA stated that it would “lead by example” and that its guidelines would protect “human health and the environment.”<sup>14</sup>

Additionally, legislation barring the export of e-waste was introduced in the last Congress and will be introduced again in 2013. The Responsible Electronics Recycling Act (H.R. 2284) would restrict the export of untested, shredded, and not-fully-functional used electronics, as well as electronics containing specific toxic chemicals. The text of the resolution states:

“The management of used electronics presents a number of significant environmental, health, and national security concerns. Much of the e-waste collected in the U.S. for alleged “recycling” or “reuse” is actually exported to developing nations such as China, Ghana, India, Nigeria, Pakistan, and Thailand for unsafe salvage and metals recovery. The GAO recently determined that most of these receiving countries lack the capacity to safely recycle and dispose of these discarded and used electronics.”<sup>15</sup>

Action has also been taken on this issue to a significant degree on the state level and in the waste/recycling industry. 25 States have passed laws mandating statewide e-waste recycling. All but two currently use the Producer Responsibility approach, where manufacturers must pay for recycling.<sup>16</sup> Waste Management and 85 other recycling companies are members of the Coalition for America

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11 “2010 News Releases: Administrator Jackson Announces EPA’s International Priorities / Agency to work with other countries to curb pollution at home and abroad,” United States Environmental Protection Agency (EPA), August 17, 2010.

(<http://yosemite.epa.gov/opa/admpress.nsf/c77fdd4f5afd88a3852576b3005a604f/c94f5f47e03ecc668525778200642318!OpenDocument>)

12 “News Releases from Headquarters: Obama Administration Officials and Industry Leaders Unveil Federal Strategy to Promote U.S.-Based Electronics Recycling Market and Jobs / Dell Inc., Sprint and Sony Electronics sign agreement with EPA to encourage certified recycling, protect public health, and support best practices in electronics stewardship,” United States Environmental Protection Agency. July 20, 2011. Accessed February 15, 2013.

(<http://yosemite.epa.gov/opa/admpress.nsf/bd4379a92ceceec8525735900400c27/030075aab3c88984852578d300566b3b!OpenDocument>)

13 “Retail E-waste Drop Off Locations,” Campaign for Recycling. Accessed February 15, 2013.

([http://www.campaignforrecycling.org/issues/ewaste/where\\_to\\_recycle/retail\\_locations](http://www.campaignforrecycling.org/issues/ewaste/where_to_recycle/retail_locations))

14 “GSA Announces New E-Waste Policy for Federal Government,” U.S. General Services Administration, March 1, 2012. (<http://www.gsa.gov/portal/content/127503>)

15 Text of H.R. 2284, The Responsible Electronics Recycling Act. (<http://green.house.gov/sites/green.house.gov/files/documents/112thEWasteExportBill.pdf>)

16 “State Legislation,” Electronic Takeback Coalition. Accessed February 15, 2013. (<http://www.electronicstakeback.com/promote-good-laws/state-legislation/>)

Electronics Recycling, which seeks to bar improper e-waste exports and supports the Responsible Electronics Recycling Act, mentioned above.<sup>17</sup> The Coalition issued a report in January 2013 showing that the Responsible Electronics Recycling Act could generate tens of thousands of newly created domestic recycling jobs and \$1 billion in payroll.<sup>18</sup>

Important initiatives have also been implemented on the international level. The Waste Electrical and Electronic Equipment Directive (WEEE Directive) became European Law in 2003 and has required e-waste take back for 10 years. The overall aim is for the EU to recycle at least 85% of electrical and electronics waste equipment by 2016.<sup>19</sup>

### **Health impacts:**

A number of recent scientific studies have linked improper management of exported e-waste with severe health effects. A 2010 study of children in Guiyu, the “e-waste capital” of China, shows that a shocking 88 percent of the 167 children tested (all younger than 6 years old) had lead poisoning. The study was conducted by the Shantou University Medical College, which has been measuring blood lead levels in children in Guiyu since 2004.<sup>20</sup> A second report<sup>21</sup> just released by the Danish journalistic watchdog DanWatch and the Make It Fair campaign that e-waste exports to Ghana, the primary e-waste dumping ground in Africa, is causing similar harm to children in that country. A third more recent study published in the journal *Environmental Science and Technology* and conducted by Oregon State University researchers concluded that even living near and (not working in) an e-waste recycling site can cause health problems. The study found that residents living near an e-waste recycling site in China face elevated risks of lung cancer. A co-author of the study said, “There was likely exposure through breathing, skin and food -- including an intimate connection between e-waste and the growing of vegetables, raising of chickens and catching of fish.”<sup>22</sup>

**b. The issue has a clear nexus to the Company, as the third largest seller of electronics goods with major gaps in coverage of its environmental protection policies.**

The Company currently has a limited e-waste recycling program only for Amazon’s Kindle e-reader and tablet product series and their batteries. The Kindle series represents a handful of electronics products among thousands available on Amazon.

The recycling program for the Kindle series and batteries recovered through the ewaste program has questionable assurances regarding the plight of recycling of these materials, including lack of

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17 Coalition for American Electronics Recycling. Accessed February 15, 2013. (<http://www.americanerecycling.org/>)

18 “Jobs Through Electronics Recycling.” Coalition for American Electronics Recycling, January 2013, page 9. ([http://www.americanerecycling.org/images/CAER\\_Jobs\\_Study\\_Report\\_-\\_January\\_2013.pdf](http://www.americanerecycling.org/images/CAER_Jobs_Study_Report_-_January_2013.pdf))

19 “Waste Electrical and Electronic Equipment Directive,” Wikipedia. Accessed February 15, 2013. ([http://en.wikipedia.org/wiki/Waste\\_Electrical\\_and\\_Electronic\\_Equipment\\_Directive](http://en.wikipedia.org/wiki/Waste_Electrical_and_Electronic_Equipment_Directive))

20 “[New studies show e-waste exports still harming children in China, Ghana.](#)” Electronics Takeback Coalition, November 30, 2011. Accessed February 15, 2013. (<http://www.electronicstakeback.com/2011/11/30/new-studies-show-e-waste-exports-still-harming-children-in-china-ghana/>)

21 “What a waste: how your computer causes health problems in Ghana,” Make it Fair, November 2011. (Available at <http://makeitfair.org/en/the-facts/reports/what-a-waste/view>)

22 “Residents Near Chinese E-Waste Site Face Greater Cancer Risk,” ScienceDaily, January 22, 2013. Accessed on February 15, 2013. (<http://www.sciencedaily.com/releases/2013/01/130123101615.htm>)

assurances that these materials will not be exported or disposed in a harmful way. Amazon's reputation will suffer if it is discovered that its Amazon branded Kindles are part of an environmental disaster site in Ghana or China.

Amazon uses the company Re-Teck (Li Tong Group) to handle the recycling of its Kindle products, a group certified to the R2 standard, one of two main e-waste recycling standards developed in the U.S. The other standard is known as e-Stewards. Both standards require recyclers to adhere to a set of policies and practices they assert will ensure responsible reuse or recycling.<sup>23</sup> According to an analysis by the Electronics Take Back Coalition (ETBC), the R2 standards fall short of responsible recycling in two main ways. First, an R2 certified exporter may send non-working hazardous equipment from the U.S. to an R2 certified company in a developing nation, according to ETBC. R2's policies may allow improper export even though the import of this material is likely illegal in the receiving country, it said. Improperly exported devices frequently end up being processed by untrained workers under primitive conditions like those described above.

In contrast to the company's current R2 program, under the e-Stewards standard only tested and working equipment without hazardous components may be exported to developing nations.

In addition the Electronics Take Back Coalition notes that the Company's R2 compliant program allows environmentally inferior disposal strategies -- landfilling and incineration of certain devices - - while the e-Stewards standard specifically bans disposal in solid waste landfills and incinerators. These gaps pose a risk to the Company's reputation.

In addition, the Company is under increasing public pressure from organizations like the Electronics Takeback Coalition to assume responsibility for the ensuring proper disposal of consumer products sold through its website. The Company is under pressure to live up to the environmental responsibility standards and practices of its peers.

**3. Customer relations are "nitty gritty" aspects of business that a significant policy issue transcends, therefore the Proposal not excludable under Rule 14a-8(i)(7).**

In *AT&T Inc.* (February 27, 2013) the proposal request a report on options for policies and practices AT&T can adopt to reduce the occupational and community health hazards from manufacturing and recycling lead batteries in the company's supply chain. Similar to the present proposal, the company objected that the proposal delved into issues of company management, down to the level of the batteries utilized in its data farms. Because the issue of lead batteries disposal is a known health hazard, the fact that the proposal addressed the company's supply chain management, in this instance as in the present proposal, questions regarding downstream handling of the batteries after use and disposal was not sufficient to yield exclusion. As with supply chains, customer relations are merely one of the nitty gritty aspects of business that sometimes is transcended by a properly framed proposal as the present one, focused on a clearly articulated significant policy concern.

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<sup>23</sup> [http://www.electronicstakeback.com/wp-content/uploads/Chart\\_Comparing\\_R2\\_eStewards1.pdf](http://www.electronicstakeback.com/wp-content/uploads/Chart_Comparing_R2_eStewards1.pdf)

Numerous prior staff decisions have found proposals that necessarily addressed customer relations were not excludable under Rule 14a-8(i)(7) because they addressed a significant policy issue. A few examples include *PNC Financial Services Group* (February 13, 2013) finding a climate change proposal not excludable despite its focus on customer relations through lending investing and financing activities; *Bank of America Corporation* (March 29, 2006) higher standards for securitization of loans to preclude predatory practices, not excludable despite customer relations objection. *Bank One Corporation* (January 19, 1999) fair lending policy; *Boeing Company* (February 5, 2016) sale of weapons related products and services to Israel.

Numerous cases have shown that environmental and social concerns may be an overriding and transcendent policy issue even where the proposal seeks company attention to matters of the supply chain or the seemingly off limits topics of customer or employee relations. For example, numerous companies have faced a proposal requesting that they amend their policies to adopt and enforce fundamental International Labor Organization Conventions which addresses how the company ensures that its supply chain is managed without inflicting human rights abuses. *Family Dollar Stores* (October 23, 2012). *Abercrombie & Fitch and Company* (April 12, 2010). That proposal asked the Board of Directors to adopt and disclose a code of vendor conduct, based on ILO standards; establish an independent monitoring process that assesses adherence to the standards and prepare and annual report on adherence to the code.

Most of the cases cited by the Company are inapplicable. For example, in *General Electric Co. (St. Joseph Health System)* (avail. Jan. 10, 2005), And *The Walt Disney Co. (St. Joseph Health System)* (avail. Dec. 15, 2004) the proposals allowed to be excluded by the staff seemed to principally relate to the underlying focus of the proposal on the issue of the link between teen smoking and the depiction of smoking in movies. The company argued that the supporting statement evidenced the proponents' intent to "obtain a forum for the [p]roponents to set forth their concerns about an alleged link between teen smoking and the depiction of smoking in movies," a matter implicating the company's ordinary business operations. The Staff permitted exclusion of the proposal under Rule 14a-8(i)(7), noting that "although the proposal mentions executive compensation, the thrust and focus of the proposal is on the ordinary business matter of the nature, presentation and content of programming and film production."

#### **4. The Proposal does not micromanage the Company's customer relations.**

As the Commission indicated in Exchange Act Release No. 34-40018 (May 21, 1998) shareholders, as a group, will not be in a position to make an informed judgment if 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." Such micro-management may occur where the proposal "seeks intricate detail, or seeks specific time-frames or methods for implementing complex policies." However, "timing questions, for instance, could involve significant policy where large differences are at stake, and proposals may seek a reasonable level of detail without running afoul of these considerations."

Clearly, the Proposal does not fall within the scope of those criteria. It does not seek any intricate details of the company's relationships with customers, nor impose any specific methods for implementing such a policy. In fact, it plainly leaves those details within the discretion of management and the Board.

## II. The Proposal is not substantially implemented.

The Company notes that SEC Staff have held that “a determination that the company has substantially implemented the proposal depends upon whether [the company's] particular policies, practices and procedures compare favorably with the guidelines of the proposal.” *Texaco Inc.* (Mar. 28, 1991). However, Amazon's activities fail this test. The Resolved clause requests a report “on the company's policy options to reduce potential pollution and public health problems from electronic waste generated as a result of its sales to consumers, and to increase the safe recycling of such wastes.”

In contrast, the Company's Letter highlights its existing policies with relation to electronic waste, but does not report on new “policy options” requested by the Proposal. As described in detail in the whereas clauses of the proposal, the Proposal originates precisely because those existing Company policies are inadequate. They consist of (a) recycling program that does not cover the vast majority of electronics sold via Amazon, (b) a trade-in program focused on resale, not recycling.

The Company's letter, page 13, bases its assertion of substantial implementation on two main points; first, the fact that it offers recycling services for *Amazon-branded devices* and, second; that it operates a trade-in program.

On the first point, the proposal recognizes the fact that the company offers recycling for its Kindle tablet brand, but notes that it does not provide recycling for myriad other kinds of electronics it sells.

<sup>24</sup>

This existing program does not constitute substantial implementation because sales of its branded devices constitute only a small part of the electronics it sells. Forbes has estimated that Amazon's branded electronics such as Kindle tablets comprise less than 5% of the company's value. In 2013, the company earned an estimated \$3.9 billion in revenue<sup>25</sup> from sales of its Kindle devices -- only 19% of the company's total \$20 billion<sup>26</sup> in electronics sales that year.

As the Company provides no electronics recycling services for customers who purchase non-Amazon branded electronics, this means that more than 80% of electronics purchased through Amazon cannot be recycled by the Company. In contrast, peer retailers Best Buy<sup>27</sup> and Staples<sup>28</sup> offer in-store recycling as important components of their environmental stewardship policies for all brands they sell, even ones where they are not the manufacturer. This is the problem the proposal is directed toward solving, and the company's existing actions provide no response to this problem.

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<sup>24</sup> The company also neglects to mention that this is not necessarily a policy it chose to establish but that many of the 25 U.S. state e-waste laws require the company to take responsibility for devices it manufactures.)]

<sup>25</sup> <http://www.forbes.com/sites/greatspeculations/2014/03/11/estimating-the-value-of-kindle-hardware-sales-for-amazon/#70ccdb6b5ca6>

<sup>26</sup> [http://network.napco.com/dealerscope/wp-content/uploads/sites/5/2015/03/DS0315\\_Top101.pdf](http://network.napco.com/dealerscope/wp-content/uploads/sites/5/2015/03/DS0315_Top101.pdf)

<sup>27</sup> <http://www.bestbuy.com/site/Global-Promotions/Recycling-Electronics/pcmcat149900050025.c?id=pcmcat149900050025>

<sup>28</sup> [http://www.staples.com/sbd/cre/marketing/about\\_us/recycling-solutions.html](http://www.staples.com/sbd/cre/marketing/about_us/recycling-solutions.html)

On the second point, the company argues that it achieves substantial compliance through its used electronics trade-in program, “which promotes reuse of working equipment.” This trade-in program is limited to a small number relatively new devices that retain sufficient value to be resold. The program therefore is designed to accept only devices with market value for resale — not recycling of products at the end of their useful life.

Proponent’s proposal makes clear it is asking for the company to address end-of-life policies for equipment unlikely to be resold and destined for recycling such as those already adopted by Dell and Best Buy. The Proposal notes that Dell Inc., like Amazon, is an online retailer without retail store locations, but offers free shipping for all end-of-life electronics it sells as well as providing physical location drop off options through a partnership with thousands of Goodwill stores. This is the kind of policy response the proposal asks Amazon to address, but to which it fails to respond.

Next, the company argues that placing electronic links to third party recyclers on a web page should constitute substantial implementation. It describes how it lists links to third party recyclers, and federal and state websites with information on take back programs for electronic waste. The message seems to be that its customers, who the company has famously said are its highest priority,<sup>29</sup> are apparently on their own when it comes to e-waste recycling and should start hunting for other parties who will recycle end-of-life electronics. Viewed in contrast to peers like Best Buy, Dell and Staples, who have clearly defined policies in which they operate take back services specifically for their customers, Amazon’s list of third party recycler links does not constitute substantial implementation (or good customer service).

More fundamentally, the mere listing of external websites of programs over which the company has no influence or regulation as to quality control **fails to address the request for external strategies that can prevent improper export of hazardous electronic wastes requested in the supporting statement.** An example of a genuine external strategy would be for Amazon to partner with an external group like Goodwill to help finance its existing infrastructure of take back as Dell has done. Not only does that represent a genuine investment in recycling, but this system is monitored and audited for adherence to Dell’s recycling standards to prevent illegal export. Merely providing a list of online links to other recycling services with no awareness or responsibility on the part of the company as to the credibility of those programs or where materials recycled through those programs end up does not constitute a responsible policy option.

Finally, the Company argues on page 15 of its letter that it describes policies for “the safe recycling of electronic waste.” It describes the association of the company it uses to recycle its Kindle products with the R2 electronic waste certification standard. R2 and e-stewards are the two dominant industry standards. The supporting statement of the Proposal asks that the requested report consider strategies to prevent improper export of hazardous waste. An analysis<sup>30</sup> of R2’s policies by the Electronics Take Back Coalition concluded that “An R2 certified exporter may send non-working hazardous equipment from the U.S. to an R2 certified company in a developing nation. The R2 export language will not prevent this even though the import of this material is likely illegal in the receiving country.” Such

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<sup>29</sup> In a 2013 60 Minutes interview, Amazon CEO Jeff Bezos said customers come first, even before investors or innovation. “I would define Amazon by our big ideas, which are customer centricity, putting the customer at the center of everything we do...” <http://www.cbsnews.com/news/amazons-jeff-bezos-looks-to-the-future/>

<sup>30</sup> [http://www.electronicstakeback.com/wp-content/uploads/Chart\\_Comparing\\_R2\\_eStewards1.pdf](http://www.electronicstakeback.com/wp-content/uploads/Chart_Comparing_R2_eStewards1.pdf)

exported devices may end up being processed by untrained workers under primitive conditions, exposing them to toxic substances that could endanger their health. Therefore, it is an open question as to whether Amazon's recycler provides safe recycling of electronic waste.

The Company's existing reporting meets neither the guidelines nor the essential purpose of the Proposal. Accordingly, the company does not address policy options to the problems raised in the proposal, it merely recites existing policies, whose inadequacy led to development and filing of the proposal. The inadequacies stem from the fact that the current recycling program covers only a few Amazon-branded products, but not thousands of other electronics sold via Amazon, and its trade-in program is focused on resale, not recycling. To "compare favorably with the guidelines of the proposal," the company would need to have discussed new and expanded policy options to cover a majority of electronics sold by the company. It has not done so, and thus the proposal is not substantially implemented within the meaning of Rule 14a-8(i)(10).

### CONCLUSION

As demonstrated above, the Proposal is not excludable under Rule 14a-8(i)(7) or Rule 14a-8(i)(10). Therefore, we request the Staff to inform the Company that the SEC proxy rules require denial of the Company's no-action request. In the event that the Staff should decide to concur with the Company, we respectfully request an opportunity to confer with the Staff.

Please call me at (413) 549-7333 with respect to any questions in connection with this matter, or if the Staff wishes any further information.

Sincerely,

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

Sanford Lewis

cc:

Conrad Mackerron, As You Sow  
Samajak, LP  
Ronald Mueller

## APPENDIX 1 THE PROPOSAL

### ELECTRONICS RECYCLING

**WHEREAS** Amazon.com Inc. is one of the largest retailers of consumer electronics with annual sales of \$25 billion, and such devices contain toxic materials such as lead, mercury, cadmium, brominated flame retardants, polyvinyl chloride, and are difficult to recycle.

Less than half of discarded electronics are collected for recycling, according to the U.S. Environmental Protection Agency. E-waste is the fastest growing and most hazardous component of the municipal waste stream, with more than two million tons ready for end-of-life management annually.

Improper disposal of electronics can result in serious public health and environmental impacts. Analog TV sets and monitors with cathode ray tubes contain large amounts of lead, flat screen monitors contain mercury switches, and computer batteries contain cadmium, which can be harmful to human health if released to the environment.

The company offers recycling for its Kindle and Fire brands, but not for myriad other kinds of electronics it sells. The company website says “we're constantly looking for ways to further reduce our environmental impact,” but provides no option for consumers who have end-of-life electronics to safely and conveniently recycle them through Amazon.com.

By contrast Dell Inc., another large online electronics retailer, provides shipping labels and offers free recycling for all products it sells. Also, anyone may also drop off any brand of computer equipment at more than 2,000 Goodwill stores. Electronics retailer Best Buy takes back a wide variety of electronics for free. Best Buy, Dell and other responsible electronics retailers are collecting trash generated by Amazon and others and absorbing the processing cost. Best Buy has recycled 300 million pounds of electronics in the last three years. The proponent believes that since the company is one of the U.S. largest retailers of consumer electronics, it should provide a take back program as well.

Once collected, electronics are often shipped to developing countries where they can endanger human health and the environment. News reports from China and parts of Africa have revealed that thousands of workers break apart and process old electronic equipment under appalling conditions. The proponent believes electronics collected by our company should be recycled or refurbished by responsible electronics recyclers who are independently verified to meet a leading certification standard such as the e-Stewards standard. Better recycling and reclamation of metals could also take pressure off of conflict mineral zones where mining takes place under inhumane and forced labor conditions.

**RESOLVED** that Amazon.com’s board of directors prepare a report, at reasonable cost and excluding confidential information, on the company's policy options to reduce potential pollution and public health problems from electronic waste generated as a result of its sales to consumers, and to increase the safe recycling of such wastes.

Supporting statement: The proponent believes such a report should consider, but not necessarily be limited to, support for internal or external strategies to facilitate effective management of consumers' electronic wastes and to prevent improper export of hazardous e-waste.

January 17, 2016

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 As You Sow on behalf of Samajak LP*  
*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 2016 Annual Meeting of Shareholders (collectively, the “2016 Proxy Materials”) a shareholder proposal (the “Proposal”) and statements in support thereof (the “Supporting Statement”) received from As You Sow on behalf of Samajak LP (the “Proponent”).

Pursuant to Rule 14a-8(j), we have:

- filed this letter with the Securities and Exchange Commission (the “Commission”) no later than eighty (80) calendar days before the Company intends to file its definitive 2016 Proxy Materials with the Commission; and
- concurrently sent copies of this correspondence to the Proponent.

Rule 14a-8(k) and Staff Legal Bulletin No. 14D (Nov. 7, 2008) (“SLB 14D”) provide that shareholder proponents are required to send companies a copy of any correspondence that the proponents elect to submit to the Commission or the staff of the Division of Corporation Finance (the “Staff”). Accordingly, we are taking this opportunity to inform the Proponent that if the Proponent elects to submit additional correspondence to the Commission or the Staff with respect to this 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 SLB 14D.

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## THE PROPOSAL

The Proposal states:

**RESOLVED:** Shareholders request that Amazon.com’s Board of Directors prepare a report, at reasonable cost and excluding confidential information, on the company’s policy options to reduce potential pollution and public health problems from electronic waste generated as a result of its sales to consumers, and to increase the safe recycling of such wastes.

The Supporting Statement states:

**Supporting statement:** The proponent believes such a report should consider, but not necessarily be limited to, support for internal or external strategies to facilitate effective management of consumers’ electronic wastes and to prevent improper export of hazardous electronic waste.

The “Whereas” paragraphs preceding the Proposal assert that “[e]lectronic waste is the fastest growing and most hazardous component of the municipal waste stream,” that “[t]he proponent believes that since the company is one of the U.S. [*sic*] largest retailers of consumer electronics, it should provide a take back program,” that electronic products are “often shipped to developing countries,” where “workers break apart and process [them] under appalling conditions,” and that the Company should only use electronics recyclers “who are independently verified to meet a leading certification standard such as the e-Stewards standard.” A copy of the Proposal, as well as related correspondence with the Proponent, is attached to this letter as Exhibit A.

## BASES FOR EXCLUSION

We believe that the Proposal may properly be excluded from the 2016 Proxy Materials pursuant to:

- Rule 14a-8(i)(7) because the Proposal deals with matters relating to the Company’s ordinary business operations; and
- Rule 14a-8(i)(10) because the Company has substantially implemented the Proposal.

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## ANALYSIS

### **I. The Proposal May Be Excluded Under Rule 14a-8(i)(7) Because The Proposal Deals With Matters Relating To The Company's Ordinary Business Operations.**

#### *A. Background*

Pursuant to Rule 14a-8(i)(7), a shareholder proposal may be excluded if it “deals with a matter relating to the company’s ordinary business operations.” Under well-established precedent, the Proposal is excludable under Rule 14a-8(i)(7) because it relates to the Company’s ordinary business activities, namely, the products and services that the Company sells and the Company’s policies regarding those products and services. Moreover, the Proposal is excludable under Rule 14a-8(i)(7) because it relates to the Company’s customer relations, which the Staff has recognized to implicate a company’s ordinary business operations. Finally, while the Proposal addresses a subject that may raise significant policy considerations for other companies, it is excludable under Rule 14a-8(i)(7) because there is not a sufficient nexus between the focus of the Proposal and the Company.

According to the Commission’s release accompanying the 1998 amendments to Rule 14a-8, the term “ordinary business” “refers to matters that are not necessarily ‘ordinary’ in the common meaning of the word,” but instead the term “is rooted in the corporate law concept providing management with flexibility in directing certain core matters involving the company’s business and operations.” Exchange Act Release No. 40018 (May 21, 1998) (the “1998 Release”). In the 1998 Release, the Commission stated that the underlying policy of the ordinary business exclusion is “to confine the resolution of ordinary business problems to management and the board of directors, since it is impracticable for shareholders to decide how to solve such problems at an annual shareholders meeting,” and identified one of the central considerations underlying the rule to be that “[c]ertain tasks are so fundamental to management’s ability to run a company on a day-to-day basis that they could not, as a practical matter, be subject to direct shareholder oversight.”

The 1998 Release further distinguishes proposals pertaining to ordinary business matters from those involving “significant social policy issues,” the latter of which are not excludable under Rule 14a-8(i)(7) because they “transcend the day-to-day business matters and raise policy issues so significant that it would be appropriate for a shareholder vote.” *Id.* (citing Exchange Act Release No. 12999 (Nov. 22, 1976)). In this regard, 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 (“SLB 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.”)

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A shareholder proposal being framed in the form of a request for a report does not change the nature of the proposal. The Commission has stated that a proposal requesting the dissemination of a report may be excludable under Rule 14a-8(i)(7) if the subject matter of the report is within the ordinary business of the issuer. *See* Exchange Act Release No. 20091 (Aug. 16, 1983). In addition, the Staff has indicated that “[where] the subject matter of the additional disclosure sought in a particular proposal involves a matter of ordinary business . . . it may be excluded under [R]ule 14a-8(i)(7).” *Johnson Controls, Inc.* (avail. Oct. 26, 1999).

*B. The Proposal May Be Excluded Under Rule 14a-8(i)(7) Because It Relates To The Services That The Company Offers To Its Customers, And To The Company’s Related Policies.*

The Proposal requests that the Company prepare a report on the company’s policy options “to reduce potential pollution and public health problems from electronic waste generated as a result of its sales to consumers, and to increase the safe recycling of such wastes.” In assessing the Proposal under Rule 14a-8(i)(7), it is important to consider the Proposal in the context of the Company’s operations. The Company is an internet retailer that both sells products through its website and enables millions of third parties to sell products to the public through the Company’s retail websites. While the Proposal refers to “electronic waste generated as a result of [the Company’s] sales to consumers,” the recitals and Supporting Statement demonstrate that the Proposal is actually focused on electronic waste generated by the Company’s customers, who may discard existing electronics when they purchase new products through the Company’s websites, or who may eventually discard electronics purchased through the Company’s websites. For example, the Supporting Statement requests that the report should consider “support for internal or external strategies to facilitate effective management of consumers’ electronic wastes” (emphasis added). In addition, the recitals assert that the Company “provides no option for consumers who have end-of-life electronics to safely and conveniently recycle them through Amazon.com,” and state, “The proponent believes that since the company is one of the U.S. [*sic*] largest retailers of consumer electronics, it should provide a take back program as well.”

Thus, the principal focus of the Proposal is not any electronic waste that the Company may generate from its own operations, but instead the Proposal focuses on electronic waste that may be generated by the Company’s customers. The Proposal in essence is requesting that the Company offer its customers an additional service by enhancing the Company’s existing programs that allow customers to recycle their unwanted consumer electronics.<sup>1</sup>

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<sup>1</sup> The Company manufactures and sells a limited number of electronic devices, including Kindle e-readers, Fire tablets, Fire TVs, and Echo, but is a pure retailer with respect to

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The Staff consistently has recognized that decisions relating to the services offered by a company are part of a company's ordinary business operations and has concurred in their exclusion. For example, in *Pepco Holdings, Inc.* (avail. Feb. 18, 2011), a shareholder proposal recommended that the company "study, implement and pursue the solar market as [a] means of increasing earnings and profits . . . including the following initiatives: marketing solar providers on their Pepco website, developing a finance plan to allow customers to install solar systems and make payments on their Pepco bills and buying [solar renewable energy credits] directly from customers." The proposal also requested that the board of directors issue a report describing how the company would implement "market opportunities for non-commercial renewable solar power." In its no-action request, the company argued that "[d]ecisions regarding the business activities in which a company chooses to engage are strategic decisions that are considered in the context of the company's long-term plans and objectives." The Staff concurred that the Proposal could be excluded and, in doing so, noted that "[p]roposals concerning the sale of particular products and services are generally excludable under rule 14a-8(i)(7)." See also *Dominion Resources, Inc.* (avail. Feb. 3, 2011) (concurring in the exclusion of a proposal that would require the company to "provide financing to home and small business owners for installation of rooftop solar or wind power renewable generation," noting that "the proposal relates to the products and services offered for sale by the company"); *BellSouth Corp.* (avail. Jan. 25, 1999) (concurring in the exclusion of a proposal recommending terms for new cellular phone contracts that would be available to customers upon completion of their existing contract terms, noting that the proposal related to the company's "product terms and prices").

The Staff also has consistently concurred in the exclusion of shareholder proposals that relate not only to a company's products and services themselves but also to company policies regarding those products and services and the use of those products by third parties. For example, in *FMC Corp.* (avail. Feb. 25, 2011, *recon. denied* Mar. 16, 2011) a shareholder proposal recommended that the company establish a "product stewardship program" for certain of its pesticides that were "suspected to have been misused by third parties to harm wildlife or humans." In its no-action request, the company pointed out that the Staff "has taken the position that decisions regarding the sale, content or presentation of a particular product, whether considered controversial or not, are part of a company's ordinary business operations and thus may be excluded under Rule 14a-8(i)(7)." The Staff concurred in the

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many other electronics products sold through the Company's websites. In addition, many electronics are sold through the Company's websites by third-party sellers. In those transactions, the Company is not the seller of record of the products, but instead provides e-commerce services to the third-party seller. The Proposal does not recognize these distinctions but instead focuses on the Company's role as a retailer of consumer electronics.

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exclusion of the proposal, noting that the proposal related to “products offered for sale by the company.” In response to the proponent’s request for reconsideration, the company emphasized that the proposal dealt with the use of its products by third parties. Specifically, the company stated:

[T]he [p]roposal is concerned with the alleged third party criminal misuse of legal, regulated products to poison wildlife and third party “contamination of the soil and groundwater from the unregulated dumping of these chemicals.” These are not acts carried out or sanctioned by the [c]ompany or anyone acting on behalf of or at the direction of the [c]ompany. To the contrary, the sale and distribution of the [c]ompany’s products is highly regulated and is carried out by the [c]ompany in compliance with all environmental laws. Furthermore, the [c]ompany’s product literature and employee, handler and user training materials provide instruction for the proper use and disposal of the [c]ompany’s products so as not to harm wildlife or the environment.

The Staff reaffirmed its prior view that the company could exclude the proposal from its proxy materials under Rule 14a-8(i)(7). Similarly, in *Wal-Mart Stores, Inc. (Green Century)* (avail. Mar. 24, 2006) a shareholder proposal requested that the board of directors issue a report “evaluating [c]ompany policies and procedures for systematically minimizing customers’ exposure to toxic substances in products” the company sells. The Staff concurred in the exclusion of the proposal under Rule 14a-8(i)(7), noting that the proposal related to the “sale of particular products.” In *General Electric Co. (Balch)* (avail. Jan. 28, 1997) a shareholder proposal recommended that the company adopt a policy of recalling and refunding defective products. The Staff concurred in the exclusion of the proposal under Rule 14a-8(i)(7), noting that the proposal related to the company’s “recall and refund procedures.” See also *The Walt Disney Co.* (avail. Dec. 22, 2010) (concurring in the exclusion of a proposal that would require the company to implement a policy preventing children from entering designated smoking areas at the company’s theme parks, noting that the proposal related to “the policies and procedures regarding the products and services that the company offers”).

The Proposal likewise both requests that the Company offer a specific service (to assist in recycling customers’ discarded electronics) and that the Company revise its policies regarding products it sells, and may therefore be excluded pursuant to Rule 14a-8(i)(7). First, like the proposal in *Pepco Holdings*, the Proposal encourages the Company to offer a specific service. As explained through the Proposal’s recitals, the “[P]roponent believes that since the [C]ompany is one of the U.S. [sic] largest retailers of consumer electronics, it should provide a take back program.” As the company argued in *Pepco Holdings*, “[d]ecisions regarding the business activities in which a company chooses to engage are

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strategic decisions that are considered in the context of the company's long-term plans and objectives." As discussed in Section II of this letter, the Company already has carefully assessed its electronics recycling services and, in fact, has already implemented services related to the "take back" of Amazon devices and their batteries, as well as certain accessories. Further decisions regarding the continuation or expansion of these services require a careful analysis of many factors, including:

- the types of electronics products to be accepted;
- whether to charge customers for take-back or recycling services and, if so, the timing and amount of such charges;
- the cost and availability of storage facilities for electronics products after they are returned;
- the various methods available for recycling electronics products;
- the costs of purchasing the equipment necessary for processing electronic waste;
- compliance with applicable environmental laws and regulations; and
- the expense of maintaining the program and expanding the workforce.

This analysis far exceeds the scope of shareholder expertise. This is exactly the type of analysis that Rule 14a-8(i)(7) recognizes as a proper function for management, who have the requisite knowledge and resources on these topics to appropriately analyze and weigh these factors in light of the Company's business operations. The Proposal may therefore be excluded as relating to decisions regarding the services the Company offers.

Second, like the product stewardship program requested in *FMC* and the programs requested in *Wal-Mart Stores (Green Century)*, the Proposal directly addresses the policies regarding products the Company sells. The Proposal asks the Board to report on "policy options" relating to "reduc[ing] potential pollution and public health problems from electronic waste generated as a result of [the Company's] sales to consumers and increase[ing] the safe recycling of such wastes." These topics are analogous to those advocated in *General Electric*, where the proposal requested that the company recall and refund any of its products that were "defective and not repairable." Like the *General Electric* proposal, the Proposal would require the Company to provide policy options that would govern the products it sells and services related to those products after the point of sale. The Proposal also is akin to the *Walt Disney* proposal, which sought to prohibit children from entering designated smoking areas of the company's theme parks, thereby, as the company argued in its no-action request,

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“remov[ing] from management the flexibility needed to effectively manage the [c]ompany’s products and services.” If the Proposal were adopted, the result would impose the same impermissible restrictions. The Proposal seeks to intervene in decisions regarding the policies the Company adopts with respect to offering to recycle products sold through the Company’s websites. The Proposal’s “Whereas” paragraphs suggest that this should be accomplished through the adoption of a “take back program.” By requesting a report on these policy decisions, the Proposal would interfere with management’s ability to manage the Company’s products and services. Thus, because the Proposal relates to the policies regarding the Company’s products and services, it may be excluded under Rule 14a-8(i)(7), consistent with the precedents discussed above.

C. *The Proposal May Be Excluded Under Rule 14a-8(i)(7) Because It Relates To The Company’s Customer Relations.*

The Staff has recognized that proposals pertaining to a company’s customer relations practices are excludable under Rule 14a-8(i)(7). For example, in *Coca-Cola Co.* (avail. Feb. 17, 2010), a proposal recommended that the company issue a report “discussing policy options to respond to the public concerns . . . regarding bottled water, including . . . the options of providing additional information to consumers.” In its no-action request, the company argued that the proposal “[sought] to regulate the scope and content of publicly available information concerning [its] products”—a task which was “outside the knowledge and expertise of shareholders.” The Staff concurred, noting that “[p]roposals that concern customer relations and decisions relating to product quality are generally excludable under rule 14a-8(i)(7).” See also *McDonald’s Corp.* (avail. Mar. 19, 1990) (concurring in the exclusion of a proposal recommending that the company adopt policies governing, among other issues, the company’s interactions with its customers and noting that the proposal concerned “the [c]ompany’s customer and business policies,” which “involve decisions dealing with the [c]ompany’s business operations”).

Here, the Proposal addresses both the content and the nature of the Company’s interactions with its customers. The types of policy options contemplated by the Proposal are core to the interactions and relationships between a retailer such as the Company and its customers. The policies and programs that would be contained in such a report could potentially extend the length of the relationships between the Company and its customers and would certainly alter the nature and economics of these relationships. Allowing shareholders to weigh in on these fundamental changes in how the Company interacts with its customers would impede management’s ability to run the ordinary business operations of the Company. Like decisions regarding the products and services offered by a company, decisions related to customer relations involve an analysis of many factors. In addition to the factors discussed above, a company must also consider such factors as the extent and nature of interaction with

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customers and whether it can provide an intended level of customer service in the context of such interactions. These decisions necessitate a reasoned analysis by the Company's management. Moreover, it is crucial that management maintain the flexibility to adjust the Company's customer relations policies in light of changes in customer needs and demands, and the exigencies of the business. Because the Proposal relates to the Company's customer relations efforts, it may be excluded pursuant to Rule 14a-8(i)(7).

*D. Regardless Of Whether The Proposal Touches Upon A Policy Issue Deemed Significant For Other Companies, The Proposal Is Excludable Under Rule 14a-8(i)(7) Because There Is Not A Sufficient Nexus Between The Proposal And The Company's Business Operations.*

Note 4 of Staff Legal Bulletin 14E (Oct. 27, 2009), states that “[i]n those cases in which a proposal's underlying subject matter transcends the day-to-day business matters of the company and raises policy issues so significant that it would be appropriate for a shareholder vote, the proposal generally will not be excludable under Rule 14a-8(i)(7) as long as a sufficient nexus exists between the nature of the proposal and the company” (emphasis added). The Staff reaffirmed this position in Note 32 of Staff Legal Bulletin 14H (Oct. 22, 2015), explaining “[w]hether the significant policy exception applies depends, in part, on the connection between the significant policy issue and the company's business operations.” Here, although the proposal's reference to “pollution” and “public health problems” caused by electronic waste may raise significant policy considerations for other companies whose operations directly result in electronic waste, there is not a sufficient nexus between these issues and the Company, an online retailer. Accordingly, the Proposal remains excludable under Rule 14a-8(i)(7) notwithstanding that it addresses a subject that would raise significant policy considerations for other companies.

In this respect, the Staff's response in *Danaher Corp.* (avail. Mar. 8, 2013, *recon. denied*. Mar. 20, 2013) is particularly relevant. There, the proposal asserted that mercury from dental amalgam, a product Danaher manufactures, could pollute the environment if mishandled by dentists or their patients. The proposal requested that Danaher report on its policies and plans for eliminating releases into the environment of mercury from its products. Although the proposal addressed potential environmental pollution by Danaher's customers as a result of their mishandling a Danaher product, there was not a sufficient nexus between that issue and Danaher. Accordingly, the Staff concurred that Danaher could exclude the proposal under Rule 14a-8(i)(7), noting that the proposal related to Danaher's product development and that “[p]roposals concerning product development are generally excludable under rule 14a-8(i)(7).” Like the proposal in *Danaher*, the Proposal does not focus upon a policy issue significant to the Company's operations and instead implicates the Company only in ways that affect its ordinary business decisions. As an online retailer, the services that the

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Company decides to offer in conjunction with online sales (e.g., take back programs) constitute ordinary business matters for the Company. Even to the extent that the Company manufactures some electronics, as in *Danaher* the Proposal is not focused on the Company's own operations but instead the Proposal relates to what the Company's customers do with electronics after they have been purchased from the Company. The Company is not in the business of electronic waste disposal and the "safe recycling of such wastes" bears no relation to the Company's operations. Thus, even if "potential pollution and public health problems from electronic waste" are significant policy issues for some companies, they are not significant policy issues with respect to the Company's business operations.

Likewise, to the extent that the Supporting Statement's reference to "prevent[ing] improper export of hazardous electronic waste" could be read to address how the Company handles any electronics that it determines to accept for recycling, that reference does not prevent the Proposal from being excludable under Rule 14a-8(i)(7). First, the issue of whether recycled electronic products are exported arises only if and to the extent that the Company determines to offer recycling services to its customers, which as addressed above involves ordinary business considerations. Thus, the issue of how recycled electronics are handled does not transcend the day-to-day business issues implicated by the Proposal. In addition, it is well established that a proposal may be excluded under Rule 14a-8(i)(7) if it implicates a company's ordinary business, notwithstanding that some aspect of the proposal may touch upon a significant policy issue. For example, in *Union Pacific Corp.* (avail. Feb. 25, 2008), the Staff concurred with the exclusion of a proposal requesting disclosure of the company's efforts to safeguard the company's operations from terrorist attacks and other homeland security incidents. The company argued that the proposal was excludable because it related to securing the company's operations from both extraordinary incidents, such as terrorism, and ordinary incidents, such as earthquakes, floods, and counterfeit merchandise. The Staff concurred that the proposal was excludable because it implicated matters relating to the company's ordinary business operations. Here as well, even if the Proposal in some respect addresses the issue of how the Company handles those consumer electronics that it determines to accept for recycling, the Proposal also implicates the Company's ordinary business as discussed above.

The Proposal's recommendations focus on the Company's decisions regarding the products and services it offers, the policies regarding those products and services, and the Company's customer relations practices. Such decisions fall within the Company's ordinary business operations, are fundamental to management's ability to run the Company's operations, and are not an appropriate matter for shareholder oversight. The Proposal is therefore excludable under Rule 14a-8(i)(7).

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## **II. The Proposal May Be Excluded Under Rule 14a-8(i)(10) Because The Company Has Substantially Implemented The Proposal.**

### *A. Background*

Rule 14a-8(i)(10) permits a company to exclude a shareholder proposal from its proxy materials if the company has substantially implemented the proposal. The Commission stated in 1976 that the predecessor to Rule 14a-8(i)(10) was “designed to avoid the possibility of shareholders having to consider matters which already have been favorably acted upon by the management.” Exchange Act Release No. 12598 (July 7, 1976). Originally, the Staff narrowly interpreted this predecessor rule and granted no-action relief only when proposals were “‘fully’ effected” by the company. *See* Exchange Act Release No. 19135 (Oct. 14, 1982). By 1983, the Commission recognized that the “previous formalistic application of [the Rule] defeated its purpose” because proponents were successfully convincing the Staff to deny no-action relief by submitting proposals that differed from existing company policy by only a few words. Exchange Act Release No. 20091, at § II.E.6. (Aug. 16, 1983) (the “1983 Release”). Therefore, in 1983, the Commission adopted a revised interpretation of the rule to permit the omission of proposals that had been “substantially implemented.” 1983 Release. The 1998 amendments to the proxy rules codified this position. *See* 1998 Release, at n.30 and accompanying text.

Under this standard, when a company can demonstrate that it already has taken actions to address the underlying concerns and essential objectives of a shareholder proposal, the Staff has concurred that the proposal has been “substantially implemented” and may be excluded as moot. *See, e.g., Exelon Corp.* (avail. Feb. 26, 2010); *Exxon Mobil Corp. (Burt)* (avail. Mar. 23, 2009); *Anheuser-Busch Companies, Inc.* (avail. Jan. 17, 2007); *ConAgra Foods, Inc.* (avail. July 3, 2006); *Johnson & Johnson* (avail. Feb. 17, 2006); *Talbots Inc.* (avail. Apr. 5, 2002); *Exxon Mobil Corp.* (avail. Jan. 24, 2001); *Masco Corp.* (avail. Mar. 29, 1999); *The Gap, Inc.* (avail. Mar. 8, 1996). The Staff has noted that “a determination that the company has substantially implemented the proposal depends upon whether [the company’s] particular policies, practices and procedures compare favorably with the guidelines of the proposal.” *Texaco, Inc.* (avail. Mar. 28, 1991). In applying Rule 14a-8(i)(10), the Staff consistently has concurred with the exclusion of shareholder proposals that, like the Proposal, request a report containing information that the company has already publicly disclosed.

The Staff has concurred in the exclusion of proposals requesting that a company’s board of directors prepare a report on a particular corporate initiative when the company has published information about that initiative on its website. *See Gap, Inc.* (avail. Mar. 16, 2001) (concurring that a proposal requesting that the board of directors prepare a report on the child labor practices of the company’s suppliers was substantially implemented when the

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company had published information on its website with respect to its vendor code and monitoring programs). *See also Honeywell International, Inc.* (avail. Feb. 21, 2007) (concurring that a proposal requesting that the board of directors prepare a sustainability report was substantially implemented when the company had disclosed its sustainability policies on its website); *Raytheon Co.* (avail. Jan. 25, 2006) (concurring that a proposal requesting that the board of directors prepare a sustainability report was substantially implemented when the company had published a stewardship report on its website).

At the same time, a company need not implement a proposal in exactly the manner set forth by the proponent. *See* 1998 Release, at n.30 and accompanying text. *See, e.g., Hewlett-Packard Co. (Steiner)* (avail. Dec. 11, 2007) (proposal requesting that the board permit shareholders to call special meetings was substantially implemented by a proposed bylaw amendment to permit shareholders to call a special meeting unless the board determined that the specific business to be addressed had been addressed recently or would soon be addressed at an annual meeting). Differences between a company's actions and a shareholder proposal are permitted as long as the company's actions satisfactorily address the proposal's essential objectives. Thus, in the context of evaluating whether a company has substantially implemented a proposal that requests a review and report, the Staff has taken into account a company's existing disclosures, even if not issued in the form of a report in response to a proposal. For example, in *The Coca-Cola Co.* (avail. Jan. 25, 2012, *recon. denied* Feb. 29, 2012), in which the proposal requested that the board prepare a report "updating investors on how the company is responding to the public policy challenges associated with [Bisphenol A, or BPA]." The company asserted that its website already disclosed "information about the use of BPA in aluminum can liners and the [c]ompany's priority of ensuring the safety and quality of its products and packaging." Although the disclosures referenced by the company were scattered across multiple pages of the company's website, the Staff concurred in the exclusion of the proposal under Rule 14a-8(i)(10), noting that the company's "public disclosures compare favorably with the guidelines of the proposal and that [the company] has, therefore, substantially implemented the proposal." *See also Wal-Mart Stores, Inc.* (avail. Mar. 10, 2008); *PG&E Corp.* (avail. Mar. 6, 2008); *The Dow Chemical Co.* (avail. Mar. 5, 2008); *Johnson & Johnson* (avail. Feb. 22, 2008) (in each case, concurring in the exclusion, under Rule 14a-8(i)(10), of a proposal requesting that the company issue a report based upon the company having already publicly disclosed the subject matter of the requested report).

The Proposal requests that the Company's Board prepare a report on policy options (1) "to reduce potential pollution and public health problems from electronic waste generated as a result of its sales to consumers," and (2) "to increase the safe recycling of such wastes." As discussed below, the Company's website already provides information on both of these items.

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*B. The Company's Website Provides Mechanisms For The Take Back Of Electronics And Promotes The Reuse Of Working Equipment In An Effort To Reduce Potential Pollution And Public Health Problems From Electronic Waste As A Result Of Its Sales To Consumers.*

The Proposal requests that the Board prepare a report on policy options “to reduce potential pollution and public health problems from electronic waste generated as a result of its sales to consumers.” The Company’s website demonstrates that the Company has already assessed policy options for, and as a result offers services for, the recycling and reuse of electronics products it sells. First, the Company offers recycling services for Amazon devices and their batteries, as well as certain accessories. To encourage consumers to recycle their Amazon products, the Company offers free shipping and covers all other costs associated with recycling. Once received, “[a]ll Amazon devices and batteries sent for recycling will undergo material reclamation by a licensed recycling facility.”<sup>2</sup>

Second, the Company runs the Amazon Trade-In Program, which promotes the reuse of working equipment.<sup>3</sup> While the Proposal refers to take back programs of retailers such as Best Buy, it completely ignores the Amazon Trade-In Program despite the fact that it achieves substantially similar objectives. The Amazon Trade-In Program “allows customers to receive an Amazon Gift Card in exchange for hundreds of thousands of eligible items including . . . electronics.”<sup>4</sup> As with the recycling program for Amazon products, the Company offers free shipping to further incentivize customers to dispose of their electronics responsibly. The Company also provides a platform for third-party merchants to bid on trade-in products. Once the Company receives an electronics product from a customer that meets the trade-in condition criteria, it processes the item, and the Company or the third-party merchant that purchased the item offers it for sale to other customers in reusable condition. Thus, the Amazon Trade-In Program substantially implements the Proposal’s recommendation that the Board develop policy options for the promotion of reuse of working equipment.

In addition to the above programs relating to Company-coordinated mechanisms for take back of electronics and the promotion of the reuse of working equipment, the Company’s

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<sup>2</sup> See Recycling Our Products, <http://www.amazon.com/gp/help/customer/display.html?nodeId=200197550> (last visited Jan. 16, 2016).

<sup>3</sup> See Electronics Trade-In, <http://www.amazon.com/Electronics-Trade-in/b?ie=UTF8&node=2226766011> (last visited Jan. 16, 2016).

<sup>4</sup> *Id.*

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website also describes other approaches to encourage consumers to dispose of and recycle their electronics equipment responsibly. The Company's website states that the Company "supports the responsible disposal and recycling of electronics products."<sup>5</sup> In keeping with this position, the Company has developed a webpage entitled "Recycling Electronics for Fun and Profit."<sup>6</sup> This webpage directs consumers to a number of resources providing information about electronics recycling, and summarizes their contents so that users may determine which resources are most relevant to their needs. These resources offer information about a variety of manufacturer-specific recycling programs, locations that accept donations of used electronics and government recycling initiatives.<sup>7</sup> In addition to these general resources, the Company's website also provides links to federal and state-specific websites with electronics recycling resources. These resources contain detailed information on applicable regulations and guidance on take back programs for consumer-generated electronic waste.<sup>8</sup> The Company's website also provides a link to the Environmental Protection Agency (the "EPA") webpage entitled "Certified Electronics Recyclers," which offers information on reducing and recycling electronics, and also on accredited certification programs for electronics recyclers. These programs ensure that certified electronics recyclers "continually meet specific high environmental standards and safely manage used electronics."<sup>9</sup>

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<sup>5</sup> See Recycling Electronics, [http://www.amazon.com/gp/feature.html/ref=amb\\_link\\_83226511\\_3?ie=UTF8&docId=1000325501&pf\\_rd\\_m=ATVPDKIKX0DER&pf\\_rd\\_s=right-1&pf\\_rd\\_r=1CHY4WE6YDR6N7Q71R4M&pf\\_rd\\_t=1401&pf\\_rd\\_p=466755611&pf\\_rd\\_i=1000255201](http://www.amazon.com/gp/feature.html/ref=amb_link_83226511_3?ie=UTF8&docId=1000325501&pf_rd_m=ATVPDKIKX0DER&pf_rd_s=right-1&pf_rd_r=1CHY4WE6YDR6N7Q71R4M&pf_rd_t=1401&pf_rd_p=466755611&pf_rd_i=1000255201) (last visited Jan. 16, 2016).

<sup>6</sup> See Recycling Electronics for Fun and Profit, <http://www.amazon.com/gp/feature.html?ie=UTF8&docId=1000255201> (last visited Jan. 16, 2016).

<sup>7</sup> See, e.g., Recycling Guide, <http://www.earth911.com/recycling-center-search-guides> (last visited Jan. 16, 2016).

<sup>8</sup> See Amazon.com, Recycling Electronics, [http://www.amazon.com/gp/feature.html/ref=amb\\_link\\_83226511\\_3?ie=UTF8&docId=1000325501&pf\\_rd\\_m=ATVPDKIKX0DER&pf\\_rd\\_s=right-1&pf\\_rd\\_r=06ZRTJSTB0MS69CMD4X0&pf\\_rd\\_t=1401&pf\\_rd\\_p=466755611&pf\\_rd\\_i=1000255201](http://www.amazon.com/gp/feature.html/ref=amb_link_83226511_3?ie=UTF8&docId=1000325501&pf_rd_m=ATVPDKIKX0DER&pf_rd_s=right-1&pf_rd_r=06ZRTJSTB0MS69CMD4X0&pf_rd_t=1401&pf_rd_p=466755611&pf_rd_i=1000255201) (last visited Jan. 16, 2016).

<sup>9</sup> See Certified Electronics Recyclers, <http://www.epa.gov/smm-electronics/certified-electronics-recyclers> (last visited Jan. 16, 2016).

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C. *The Company's Website Describes Policies For The Safe Recycling of Electronic Waste.*

The Proposal recommends that the Board report on policy options “to increase the safe recycling” of electronic waste. The “Whereas” paragraphs explain the rationale for this request: that electronic products are “often shipped to developing countries,” where “workers break apart and process [them] under primitive conditions.” The Supporting Statement explains that the report should consider “support for internal or external strategies to facilitate effective management of consumers’ electronic wastes and to prevent improper export of hazardous electronic waste.”

The Company has addressed this concern as it applies to the recycling services the Company undertakes for Amazon devices by making Re-Teck its certified recycler. Re-Teck holds ISO 9001:2008, ISO 14001:2004, OHSAS 18001:2007, and Responsible Recycling (R2) Rev. 7/2013 certifications in purchasing, warehousing, sorting, testing, data eradication, dismantling, and reselling used electronic components.<sup>10</sup> The Responsible Recycling (R2) standard “is designed to help ensure the quality, transparency, and environmental and social responsibility, of R2 Certified electronics recycling facilities.”<sup>11</sup> The standard is meant to provide prospective purchasers of the services of electronics recyclers with “increased confidence that used and end-of-life electronic equipment are managed in an environmentally responsible manner, protective of the health and safety of workers and the public.”<sup>12</sup> The standard specifies that certified electronics recyclers “shall comply with all applicable environmental, health and safety, and data security legal requirements and shall only import and export equipment and components . . . in full compliance with all applicable importing, transit, and exporting countries’ laws.”<sup>13</sup>

The Company has further addressed this concern by providing information on its website about proper disposal of electronic products and by providing a hyperlinked list of other available resources, discussed above. For example, the Company’s website<sup>14</sup> contains a link

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<sup>10</sup> See Re-Teck Certifications, <http://www.re-teckusa.com/certifications> (last visited Jan 16, 2016).

<sup>11</sup> See R2 Standard, <https://sustainableelectronics.org/r2-standard> (last visited Jan 16, 2016).

<sup>12</sup> See The Responsible Recycling (“R2”) Standard for Electronics Recyclers, <https://sustainableelectronics.org/sites/default/files/R2-2013%20Standard%20%5BENGLISH%5D.pdf> (last visited Jan. 16, 2016).

<sup>13</sup> *Id.*

<sup>14</sup> See Recycling Electronics, [http://www.amazon.com/gp/feature.html/ref=amb\\_link\\_83226511\\_3?ie=UTF8&docId=1000325501&pf\\_rd\\_m=ATVPDKIKX0DER&pf\\_rd\\_s=right-](http://www.amazon.com/gp/feature.html/ref=amb_link_83226511_3?ie=UTF8&docId=1000325501&pf_rd_m=ATVPDKIKX0DER&pf_rd_s=right-)

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to the e-Stewards webpage which describes how recyclers can become certified by e-Stewards and contains a search function to find certified e-Steward recyclers.<sup>15</sup> The e-Stewards webpage explains the e-Stewards Initiative, which “states that no hazardous, illegal e-waste will be exported to developing nations, be disposed into landfills[,] or recycled using forced or child labor.”<sup>16</sup>

Thus, the Company has partnered with a certified electronics recycler that is certified to recycle in a legal and socially responsible manner and has published a variety of resources that will assist consumers in recycling used electronics products, thereby helping to ensure that they do not contribute to the unsafe disposal or the improper export of electronic waste and equipment.

As discussed above, the information that the Company provides on its website, including information about the Amazon products recycling program, the Amazon Trade-In Program, and extensive information about the responsible use and disposal of electronics products, “compare[s] favorably with the guidelines of the [P]roposal.” *Texaco, Inc.* (avail. Mar. 28, 1991). Thus, we believe that the Company has substantially implemented the Proposal and may exclude it from the Company’s 2016 Proxy Materials under Rule 14a-8(i)(10).

## CONCLUSION

Based upon the foregoing analysis, we respectfully request that the Staff concur that it will take no action if the Company excludes the Proposal from its 2016 Proxy Materials.

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](mailto: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 Assistant Secretary, at (206) 266-2132.

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1&pf\_rd\_r=17JM6V4RQRWSRCTWYAMQ&pf\_rd\_t=1401&pf\_rd\_p=466755611&pf\_rd\_i=1000255201 (last visited Jan. 16, 2016).

<sup>15</sup> See e-Stewards for Recyclers, <http://e-stewards.org/learn-more/for-recyclers> (last visited Jan 16, 2016); Find a Recycler, <http://e-stewards.org/find-a-recycler> (last visited Jan. 16, 2016).

<sup>16</sup> See Frequently Asked Questions, <http://e-stewards.org/faq/?choice=recycler> (last visited Jan 16, 2016).

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Sincerely,

A handwritten signature in blue ink, appearing to read "Ronald O. Mueller", is written over a light blue horizontal line.

Ronald O. Mueller

Enclosures

cc: Mark Hoffman, Amazon.com, Inc.  
Conrad B. MacKerron, As You Sow  
Margaret Kaplan, Samajak LP

**EXHIBIT A**



1611 Telegraph Ave, Suite 1450  
Oakland, CA 94612

www.asyousow.org  
BUILDING A SAFE, JUST, AND SUSTAINABLE WORLD SINCE 1992

December 22, 2015

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

Dear Mr. Zapolsky:

Improper disposal of electronics can result in serious public health and environmental impacts. Amazon.com is a major retailer of electronics but lacks safe, convenient options for customers to take back end-of-life electronics for safe processing and recycling.

Two years of sporadic dialogue with the company has not resulted in a serious good faith effort to develop credible take back options for electronics.

Therefore, As You Sow is filing a shareholder proposal on behalf of Samajak LP ("Proponent"), a shareholder of Amazon.com stock, in order to protect the shareholder's right to raise this issue in the proxy statement. The Proponent is submitting the enclosed shareholder proposal for inclusion in the 2016 proxy statement, in accordance with Rule 14a-8 of the General Rules and Regulations of the Securities Exchange Act of 1934.

A letter from Samajak LP authorizing As You Sow to act on its behalf is enclosed. A representative of the Proponent will attend the stockholders' meeting to move the resolution as required.

We sincerely hope a renewed and more credible dialogue can result in withdrawal of the proposal.

Sincerely,

Conrad B. MacKerron  
Senior Vice President

Enclosures

- Shareholder Proposal
- Samajak LP Authorization

**WHEREAS:** Amazon.com Inc. is one of the largest retailers of consumer electronics with annual sales of \$25 billion, and such devices contain toxic materials such as lead, mercury, cadmium, brominated flame retardants, polyvinyl chloride, and are difficult to recycle.

Less than half of discarded electronics are collected for recycling, according to the U.S. Environmental Protection Agency. Electronic waste is the fastest growing and most hazardous component of the municipal waste stream, with more than two million tons ready for end-of-life management annually.

Improper disposal of electronics can result in serious public health and environmental impacts. Analog TV sets and monitors with cathode ray tubes contain large amounts of lead, flat screen monitors contain mercury switches, and computer batteries contain cadmium, which can be harmful to human health if released to the environment.

The company offers recycling for its Kindle and Fire brands, but not for myriad other kinds of electronics it sells. The company website says "we're constantly looking for ways to further reduce our environmental impact," but provides no option for consumers who have end-of-life electronics to safely and conveniently recycle them through Amazon.com.

By contrast Dell Inc., another large online electronics retailer, provides shipping labels and offers free recycling for all products it sells. Also, anyone may also drop off any brand of computer equipment at more than 2,000 Goodwill stores. Electronics retailer Best Buy takes back a wide variety of electronics for free. Best Buy, Dell and other responsible electronics retailers are collecting trash generated by Amazon and others and absorbing the processing cost. Best Buy has recycled 300 million pounds of electronics in the last three years. The proponent believes that since the company is one of the U.S. largest retailers of consumer electronics, it should provide a take back program as well.

Once collected, electronics are often shipped to developing countries where they can endanger human health and the environment. News reports from China and parts of Africa have revealed that thousands of workers break apart and process old electronic equipment under appalling conditions. The proponent believes electronics collected by our company should be recycled or refurbished by responsible electronics recyclers who are independently verified to meet a leading certification standard such as the e-Stewards standard. Better recycling and reclamation of metals could also take pressure off of conflict mineral zones where mining takes place under inhumane and forced labor conditions.

**RESOLVED:** Shareholders request that Amazon.com's Board of Directors prepare a report, at reasonable cost and excluding confidential information, on the company's policy options to reduce potential pollution and public health problems from electronic waste generated as a result of its sales to consumers, and to increase the safe recycling of such wastes.

**Supporting statement:** The proponent believes such a report should consider, but not necessarily be limited to, support for internal or external strategies to facilitate effective management of consumers' electronic wastes and to prevent improper export of hazardous electronic waste.

November 9, 2015

Andrew Behar  
CEO  
As You Sow Foundation  
1611 Telegraph Ave., Ste. 1450  
Oakland, CA 94612

**Re: Authorization to File Shareholder Resolution**

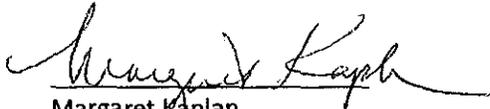
Dear Andrew Behar,

As of October 12, 2015, the undersigned, Samajak LP (the "Stockholder") authorizes As You Sow to file or cofile a shareholder resolution on Stockholder's behalf with Amazon, and that it be included in the 2016 proxy statement, in accordance with Rule 14-a8 of the General Rules and Regulations of the Securities and Exchange Act of 1934.

The Stockholder has continuously owned over \$2,000 worth of Amazon stock, with voting rights, for over a year. The Stockholder intends to hold the stock through the date of the company's annual meeting in 2016.

The Stockholder gives As You Sow the authority to deal on the Stockholder's behalf with any and all aspects of the shareholder resolution. The Stockholder understands that the company may send the Stockholder information about this resolution, and that the media may mention the Stockholder's name related to the resolution; the Stockholder will alert As You Sow in either case. The Stockholder understands that the Stockholder's name may appear on the company's proxy statement as the filer of the aforementioned resolution.

Sincerely,



Margaret Kaplan  
Managing Partner  
Samajak LP

December 24, 2015

**VIA OVERNIGHT MAIL**

Conrad B. MacKerron  
Senior Vice President  
As You Sow  
1611 Telegraph Ave, Suite 1450  
Oakland, CA 94612

Dear Mr. MacKerron:

I am writing on behalf of Amazon.com, Inc. (the “Company”), which received on December 23, 2015 the shareholder proposal you submitted on behalf of Samajak LP (the “Proponent”) regarding electronic waste pursuant to Securities and Exchange Commission (“SEC”) Rule 14a-8 for inclusion in the proxy statement for the Company’s 2016 Annual Meeting of Shareholders (the “Proposal”).

The Proposal contains certain procedural deficiencies, which SEC regulations require us to bring to your attention. Rule 14a-8(b) under the Securities Exchange Act of 1934, as amended, provides that shareholder proponents must submit sufficient proof of their continuous ownership of at least \$2,000 in market value, or 1%, of a company’s shares entitled to vote on the proposal for at least one year as of the date the shareholder proposal was submitted. The Company’s stock records do not indicate that the Proponent is the record owner of sufficient shares to satisfy this requirement. In addition, to date we have not received proof that the Proponent has satisfied Rule 14a-8’s ownership requirements as of the date that the Proposal was submitted to the Company.

To remedy this defect, the Proponent must submit sufficient proof of his continuous ownership of the required number or amount of Company shares for the one-year period preceding and including December 22, 2015, the date the Proposal was submitted to the Company. As explained in Rule 14a-8(b) and in SEC staff guidance, sufficient proof must be in the form of:

- (1) a written statement from the “record” holder of the Proponent’s shares (usually a broker or a bank) verifying that the Proponent continuously held the required number or amount of Company shares for the one-year period preceding and including December 22, 2015; or

Conrad B. MacKerron  
December 24, 2015  
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- (2) if the Proponent has filed with the SEC a Schedule 13D, Schedule 13G, Form 3, Form 4 or Form 5, or amendments to those documents or updated forms, reflecting his ownership of the required number or amount of Company shares as of or before the date on which the one-year eligibility period begins, a copy of the schedule and/or form, and any subsequent amendments reporting a change in the ownership level and a written statement that the Proponent continuously held the required number or amount of Company shares for the one-year period.

If the Proponent intends to demonstrate ownership by submitting a written statement from the “record” holder of his shares as set forth in (1) above, please note that most large U.S. brokers and banks deposit their customers’ securities with, and hold those securities through, the Depository Trust Company (“DTC”), a registered clearing agency that acts as a securities depository (DTC is also known through the account name of Cede & Co.). Under SEC Staff Legal Bulletin No. 14F, only DTC participants are viewed as record holders of securities that are deposited at DTC. The Proponent can confirm whether his broker or bank is a DTC participant by asking his broker or bank or by checking DTC’s participant list, which is available at <http://www.dtcc.com/~media/Files/Downloads/client-center/DTC/alpha.ashx>. In these situations, shareholders need to obtain proof of ownership from the DTC participant through which the securities are held, as follows:

- (1) If the Proponent’s broker or bank is a DTC participant, then the Proponent needs to submit a written statement from his broker or bank verifying that he continuously held the required number or amount of Company shares for the one-year period preceding and including December 22, 2015.
- (2) If the Proponent’s broker or bank is not a DTC participant, then the Proponent needs to submit proof of ownership from the DTC participant through which the shares are held verifying that he continuously held the required number or amount of Company shares for the one-year period preceding and including December 22, 2015. The Proponent should be able to find out the identity of the DTC participant by asking his broker or bank. If the Proponent’s broker is an introducing broker, the Proponent may also be able to learn the identity and telephone number of the DTC participant through his account statements, because the clearing broker identified on the account statements will generally be a DTC participant. If the DTC participant that holds the Proponent’s shares is not able to confirm the Proponent’s individual holdings but is able to confirm the holdings of the Proponent’s broker or bank, then the Proponent needs to satisfy the proof of ownership requirements by obtaining and submitting two proof of ownership statements verifying that, for the one-year

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Conrad B. MacKerron  
December 24, 2015  
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period preceding and including December 22, 2015, the required number or amount of Company shares were continuously held: (i) one from the Proponent's broker or bank confirming the Proponent's ownership, and (ii) the other from the DTC participant confirming the broker or bank's ownership.

The SEC's rules require that the Proponent's response to this letter be postmarked or transmitted electronically no later than 14 calendar days from the date you receive this letter. Please address any response to me at Gibson, Dunn & Crutcher LLP, 1050 Connecticut Ave., N.W., Washington, D.C. 20036. Alternatively, you may transmit any response by facsimile to me at (202) 530-9569.

If you have any questions with respect to the foregoing, please contact me at (202) 955-8671. For your reference, I enclose a copy of Rule 14a-8 and Staff Legal Bulletin No. 14F.

Sincerely,



Ronald O. Mueller

ROM/kp  
Enclosures

cc: Margaret Kaplan, Samajak LP, c/o As You Sow  
Mark Hoffman, Amazon.com, Inc.  
Gavin McCraley, Amazon.com, Inc.



December 30, 2015

Ronald O. Mueller  
Gibson, Dunn & Crutcher LLP  
1050 Connecticut Ave., N.W.  
Washington, D.C. 20036

Transmitted by facsimile to (202) 530-9569.

Dear Mr. Mueller:

We are in receipt of your letter dated December 24, 2015, regarding deficiencies in the shareholder proposal filed by As You Sow on behalf of Samajak LP for inclusion in the 2016 proxy statement.

Please find enclosed proof of share ownership for Samajak LP.

SEC Rule 14a-8(f) requires notice of specific deficiencies in our proof of eligibility to submit a proposal, therefore we request that you notify us if you identify any deficiencies in the enclosed documentation.

Sincerely,

Conrad B. MacKerron  
Senior Vice President

Enclosure

- Samajak LP Proof of Share Ownership



Advisor Services

PO BOX 982603  
EL PASO, TX 79998

December 23, 2015

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

Dear Mr. Zapolsky:

The Charles Schwab & Co. Inc., a DTC participant, acts as the custodian Samajak LP. As of and including December 22, 2015, Charles Schwab & Co. Inc. has held 94 shares of Amazon.com stock with voting rights continuously for over one year on behalf of Samajak LP.

Best Regards,

A handwritten signature in black ink that reads "Julie Stoddard". The signature is written in a cursive, flowing style.

Julie Stoddard  
Senior Relationship Specialist  
Charles Schwab & Co. Inc.