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

DIVISION OF
CORPORATION FINANCE

January 18, 2018

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

Re: Amazon.com, Inc.
Incoming letter dated December 27, 2017

Dear Mr. Mueller:

This letter is in response to your correspondence dated December 27, 2017 concerning the shareholder proposal (the "Proposal") submitted to Amazon.com, Inc. (the "Company") by Stephen Sacks (the "Proponent") for inclusion in the Company's proxy materials for its upcoming annual meeting of security holders. We also have received correspondence from the Proponent dated January 2, 2018. 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: Stephen Sacks
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*** FISMA & OMB Memorandum M-07-16

January 18, 2018

Response of the Office of Chief Counsel
Division of Corporation Finance

Re: Amazon.com, Inc.
Incoming letter dated December 27, 2017

The Proposal provides that the Company shall list WaterSense showerheads before the listing of other showerheads and provide a short description of the meaning of WaterSense showerheads.

There appears to be some basis for your view that the Company may exclude the Proposal under rule 14a-8(i)(7), as relating to the Company's ordinary business operations. In our view, the Proposal seeks to micromanage 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. Accordingly, we will not recommend enforcement action to the Commission if the Company omits the Proposal from its proxy materials in reliance on rule 14a-8(i)(7). In reaching this position, we have not found it necessary to address the alternative basis for omission upon which the Company relies.

Sincerely,

Evan S. Jacobson
Special Counsel

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 matters 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 proposal 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 and rules administered by the Commission, including arguments as to whether or not activities proposed to be taken would violate 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 adversarial procedure.

It is important to note that the staff'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 shareholder 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 company's management omit the proposal from the company's proxy materials.

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January 2, 2018

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 Stephen Sacks

Sent by email and conventional mail with a signature

This letter is to comment on the December 27 no-action request from Gibson Dunn to the SEC relative to the subject proposal.

Gibson Dunn begins their discussion with what they say the proposal states: "Amazon .com shall list watersense (sic) showerheads before…." Obviously (sic) was not in the original proposal. Using it here and elsewhere where watersense is mentioned is diversionary, pejorative, gratuitous and incorrect. WaterSense is a EPA-DOE coined term not in the dictionary. "sic' would usually be applied to a spelling problem with a real word. Via GOOGLE I note that WaterSense has been spelled other ways-first letter only capitalized or a space after water. I have seen it as watersense. Nevertheless WaterSense is the most often used EPA term-I am open to good ideas and therefore I will use WaterSense going forward. Note that my actual proposal submission is contained in Gibson Dunn Exhibit A.

This discussion focuses on several areas. The first is my 2013 proposal to Choice Hotels International which deals with low flow showerheads and is analogous to the one at hand. Gibson Dunn mentions this proposal but does not mention that I was the proponent. That proposal as well as this one are for low flow so that less hot water is needed resulting in less fossil fuel burned thereby positively impacting the global warming-climate change problem. The Hogan Lovells law firm filed a no action request for the Choice proposal which was rejected by the SEC. Hogan Lovells said the proposal was about showerheads. The SEC recognized that it was about global warming. As information, I presented the proposal. While it did not prevail I

believe it along with additional discussions with the hotel industry lead the industry to go in this direction. **The Choice proposal serves as a precedent to the one at hand**. The SEC wrote that the proposal "primarily focuses on the significant policy issue of global warming and does not seek to micromanage the company to such a degree that exclusion of the proposal would be appropriate." That proposal as well as this one addresses global warming.

Gibson Dunn indicates two objections. The first is that the proposal relates to a small percentage of the company's operations. Indeed it does with respect to sales.

When I researched my Choice Hotel International proposal I recall a proposal dealing with the use of real animal fur in I believe coat collars. The use of real animal fur was the policy issue. That was the issue whether or not it was a small percentage of total sales of all types of coats associated with the company. A hypothetical case of current social policy interest would be a toy company selling thousands of different type toys one of which is a doll that thru the included directions or thru a mechanism could sexually harass a doll of the opposite sex. Shareholders could well weigh in even though the product is a small percentage of sales. **It is the proponents understanding that significant public or social policy issues can trump other concerns.** Social or public policy issues can vary in importance. Many would argue that on a scale of 1 to 10 global warming would be off the chart and arguably the most significant public policy issue. This policy issues would clearly not apply to the vast majority of Amazon.com, Inc. sales.

The proponent who has a Ph.D. in mechanical engineering specializing in fluid mechanics has studied energy conservation issues and global warming for a long tim. Showerheads are special because they are relatively inexpensive and easily installed compared to say heavily advertised $20,000 windows. They deserve stand out consideration.

Gibson Dunn notes in their discussion that Amazon.com Inc sells millions of products. This is a tad of exaggeration. I think what they mean is that they sell millions of items which are grouped in subsets of categories one of which is showerheads. Most of these items and categories are not relevant to policy issues. Gibson Dunn indicates that there are 2000 WaterSense showerheads sold by Amazon.com, Inc. I have not counted; there would clearly be more that are not WaterSense. As my proposal indicates, these can be filtered in different ways, e.g. price or WaterSense. Unfortunately many customers don't filter—they simply go down the list until they find something. I suspect very few customers know the meaning of WaterSense. As you work down the listing WaterSense does not stand out. You may have to go through many write-ups, pages of listing and listing details in the text to see WaterSense.

Ordinary business is a second concern mentioned by Gibson Dunn. The short reply to this is that global warming as a very important public policy issue (or the most important public

policy issue) trumps the ordinary business concerns. This was the main argument in my Choice Hotels International proposal which the SEC affirmed as well as that micromanagement aspects were within bounds. The SEC wrote that "the proposal does not seek to micromanage the company to such a degree that exclusion of the proposal would be appropriate." Clearly my current proposal does have elements of micromanagement. However my Choice Hotels International proposal was more specific than the present one and in that sense had more micromanagement aspects. I mentioned in the choice proposal a single specific showerhead flow rate and inclusion of a mechanical device to reduce flow when maximum flow was not needed. WaterSense showerheads can be at or below two gallons per minute (actually some below are better). Amazon.com, Inc could still sell at their option WaterSense or non WaterSense product placement and order products in whatever way they prefer. In the proponent's view point the same wording as in The Choice Hotels International decision applies here: "The Proposal does not seek to micromanage the company to such a degree that exclusion of the proposal would be appropriate." The Choice Hotels International proposal requested the writing of a report. I could be wrong on this but I believe a request to write a report has no less SEC scrutiny than a more action oriented request. It is interesting to note that Choice Hotels Board in their proxy mailing made no recommendation to shareholders as to how to vote on my proposal, neither for, against, or abstain. This is extremely unusual.

Gibson Dunn mentions a rejected proposal to Home Depot concerning policy options to reduce toxins in private label products. The SEC per the Gibson Dunn letter concurred with Home Depot that a significant policy issue was not involved. The present proposal focuses on a very significant policy issue. A minor point-- the official corporate name of Home Depot is "The Home Depot". What may be of interest is that I have had showerhead discussions with The Home Depot. They appreciated my thoughts and now have changed their showerhead displays to show more WaterSense products with the WaterSense ones better identified and they have included a small sign indicating what WaterSense is all about.

The present proposal is written with the goal of being neither too vague nor constraining yet still have meaning. If I were vague one could say that the issue is covered by the Amazon.com, Inc. WaterSense filter. The problem with this is that many people don't filter and far fewer know the meaning of WaterSense. I considered a proposal that all products that could impact global warming be grouped in one section like Amazon.com, Inc. does for gifts. This though which I believe to be a good would be a bit vague as to what products would be included. This proposal, which would require several hours of IT work, addresses one clearly defined product at the top of the public policy pyramid.

CONCLUSION

Based upon the forgoing discussion, the proponent respectively requests that the Staff allow shareholders to vote on the proposal in the 2018 Proxy Materials.

The proponent would be happy to provide you with any additional information and answer any questions. He can be reached by email at *** He can be reached by phone at *** He will be away from about January 14 to February 16. He will not receive mail, conventional or express, at his home mailing address. His home phone will be monitored often. His phone while away from about January 16 to February 14 will be ***

Sincerely,

Stephen Sacks

*** FISMA & OMB Memorandum M-07-16

GIBSON DUNN

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December 27, 2017

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 Stephen Sacks
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 2018 Annual Meeting of Shareholders (collectively, the "2018 Proxy Materials") a shareholder proposal (the "Proposal") and statements in support thereof received from Stephen Sacks (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 2018 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.

THE PROPOSAL

The Proposal states:

> Resolved: Amazon.com shall list watersense [sic] showerheads before the listing of other showerheads and provide a short description of the meaning of watersense [sic] showerheads.

The proposal refers to the voluntary WaterSense labeling program sponsored by the Environmental Protection Agency ("EPA"). Products that carry the WaterSense label have been certified by third parties to meet certain criteria for water efficiency and performance.[1] On the Company's U.S. website, customers searching for showerheads are able to refine their search to "WaterSense" labeled products by checking the "WaterSense" certification box.[2]

A copy of the Proposal and its supporting statement, as well as related correspondence with the Proponent, is attached to this letter as Exhibit A.

BASES FOR EXCLUSION

The Company is a retailer that offers hundreds of millions of products through its websites and physical stores. The Company is continuously innovating to enhance its customers' experience, and a wide range of factors affect how it displays and markets any particular product. Because the Company sells a wide range of products, sales of showerheads are not significant to the Company's business. Furthermore, decisions relating to the products sold by the Company, including decisions as to product placement and advertising, are integrally related to the Company's day-to-day operations. The Proposal seeks to address how the Company handles these operations and to impose specific standards on the Company. Accordingly, we respectfully request that the Staff concur in our view that the Proposal may be excluded from the 2018 Proxy Materials pursuant to:

- Rule 14a-8(i)(5) because the Proposal relates to operations which account for less than five percent of the Company's total assets at the end of its most recent fiscal

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[1] *See* https://www.epa.gov/watersense/about-watersense.

[2] A recent search on the www.Amazon.com showed more than 2,000 results for WaterSense-labeled showerheads. Customers are also able to search other types of products for WaterSense-labeled products.

year, and for less than five percent of its net earnings and gross sales for its most recent fiscal year, and is not otherwise significantly related to the Company's business; and

- Rule 14a-8(i)(7) because the Proposal relates to the Company's ordinary business operations.

ANALYSIS

I. The Proposal May Be Excluded Under Rule 14a-8(i)(5) Because It Relates To Operations That Are Not Economically Significant To The Company And Is Not Otherwise Significantly Related To The Company's Business.

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

Rule 14a-8(i)(5) permits the exclusion of a shareholder proposal relating to operations which account for less than five percent of a company's (i) total assets at the end of its most recent fiscal year, (ii) net earnings for the most recent fiscal year, and (iii) gross sales for the most recent fiscal year, and that is not otherwise significantly related to the company's business.

Prior to adoption of the current version of the exclusion in Rule 14a-8(i)(5), the rule permitted companies to omit any proposal that "deals with a matter that is not significantly related to the issuer's business." In proposing changes to that version of the rule in 1982, the Commission noted that the Staff's practice had been to agree with exclusion of proposals that bore no economic relationship to a company's business, but that "where the proposal has reflected social or ethical issues, rather than economic concerns, raised by the issuer's business, and the issuer conducts any such business, no matter how small, the [S]taff has not issued a no-action letter with respect to the omission of the proposal." Exchange Act Release No. 19135 (Oct. 14, 1982). The Commission stated that this interpretation of the rule may have "unduly limit[ed] the exclusion," and proposed adopting the economic tests that appear in the rule today. *Id.* In adopting the rule, the Commission characterized it as relating "to proposals concerning the functioning of the economic business of an issuer and not to such matters as shareholders' rights, e.g., cumulative voting." Exchange Act Release No. 20091 (Aug. 16, 1983).

In the years following the decision in *Lovenheim v. Iroquois Brands, Ltd.*, 618 F. Supp. 554 (D.D.C. 1985), the Staff did not agree with exclusion under Rule 14a-8(i)(5), even where a proposal has related to operations that accounted for less than 5% of total assets, net earnings and gross sales, when the company conducted business, no matter how small, related to the issue raised in the proposal. In Staff Legal Bulletin No. 14I (Nov. 1, 2017) ("SLB 14I"), the Staff reexamined its historic approach to interpreting Rule 14a-8(i)(5) and determined that the "application of Rule 14a-8(i)(5) has unduly limited the exclusion's availability because it has not fully considered the second prong of the rule as amended in 1982 – the question of whether the proposal 'deals with a matter that is not significantly related to the issuer's business' and is therefore excludable." *Id.* Accordingly, the Staff noted that, going forward, it "will focus, as the rule directs, on a proposal's significance to the company's business when it otherwise relates to operations that account for less than 5% of total assets, net earnings and gross sales." *Id.* Under this framework, the analysis is "dependent upon the particular circumstances of the company to which the proposal is submitted." *Id.* A proponent can continue to raise social or ethical issues in its arguments, but it would need to tie those to a significant effect on the company's business.

B. The Proposal Is Not Significantly Related To The Company's Business Operations

The Company has confirmed that its inventory of "tub and shower faucets and accessories," which includes showerheads, accounted for significantly less than one percent of the Company's total assets as of the end of fiscal year 2016 and that its revenue and earnings from such products accounted for less than one percent of the Company's gross sales and net earnings for fiscal year 2016. The Company has confirmed that it does not expect these percentages to increase meaningfully in 2017 or 2018. The quantitative importance of the Company's showerhead sales is clearly well beneath the thresholds specified in Rule 14a-8(i)(5).

Similarly, the Proposal is not otherwise significant to the Company's business. The Proposal relates to how the Company presents and markets WaterSense-labeled products on its websites. The supporting statements to the Proposal address the "climate change and global warming" from "household energy consumption." The social policy issue referenced in the Proposal, therefore, focuses on the energy consumption of the Company's customers, not the Company. While this may be a significant social or ethical issue in the abstract, it is not significantly related to the Company's business, which takes many factors into consideration in determining how best to present and market products through its websites. Due to the insignificance of showerhead sales to the Company's business, any specific Company activity or decision relating to the website placement and marketing of WaterSense-labeled

showerheads would have a *de minimis* impact on the Company's operations. In this respect, the Proposal is comparable to the Proposal considered in *AT&T Co.* (avail. Jan. 19, 1990), where the Staff concurred that the company could exclude a proposal addressing its expansion and resulting relocation of workers and jobs. There, any specific activity by AT&T would have a *de minimis* impact on the company's operations, and the impact of its activities on general housing costs in affected areas was too remote.

For the foregoing reasons, the Proposal addresses aspects of the Company's operations that are not economically or otherwise significant to the Company. Accordingly, the Proposal is excludable under Rule 14a-8(i)(5).

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

A. Background On The Ordinary Business Standard Under Rule 14a-8(i)(7)

Rule 14a-8(i)(7) permits a company to omit from its proxy materials a shareholder proposal that relates to the company's "ordinary business" operations. 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 two central considerations that underlie this policy. The first is 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 second consideration is related to "the degree to which the proposal seeks to 'micro-manage' the company by probing too deeply into matters of a complex nature upon which shareholders, as a group, would not be in a position to make an informed judgment." *Id*. (citing Exchange Act Release No. 12999 (Nov. 22, 1976)).

As discussed below, the Proposal is excludable under Rule 14a-8(i)(7) because it relates to the products the Company sells and the manner in which it advertises and markets those products, and also because it seeks to micro-manage the Company by replacing management's judgment with shareholders' judgment.

B. The Proposal May Be Excluded Under Rule 14a-8(i)(7) Because It Relates To The Sale And Distribution Of Particular Products And The Manner In Which The Company Advertises Its Products And Communicates With Its Customers

As noted above, the Company is a retailer that serves consumers through its retail websites and physical stores and focuses on selection, price, and convenience. The Staff has consistently recognized that proposals concerning the sale or distribution of particular products relate to a retailer's ordinary business operations and thus may be excluded under Rule 14a-8(i)(7). For example, in *Walgreens Boots Alliance, Inc.* (avail. Nov. 7, 2016, *recon. denied* Nov. 22, 2016), the Staff concurred in the exclusion under Rule 14a-8(i)(7) of a proposal that requested the company's board of directors to prepare a report assessing the financial risk facing the company based on its continued sales of tobacco products because the proposal "relat[ed] to [the company's] ordinary business operations." *See also Amazon.com, Inc.* (avail. Mar. 27, 2015) (concurring in the exclusion under Rule 14a-8(i)(7) of a proposal requesting that the Company report on risks that it may face as a result of certain products it sells); *Rite Aid Corp.* (avail. Mar. 24, 2015) (concurring in the exclusion under Rule 14a-8(i)(7) of a proposal requesting that a committee of the company's board "[p]rovide oversight concerning the formulation, implementation and public reporting of policies and standards that determine whether or not the [c]ompany should sell a product that (1) [e]specially endangers public health and well-being[,] (2) [h]as substantial potential to impair the reputation of the [c]ompany and/or (3) [w]ould reasonably be considered by many to be offensive to the values integral to the [c]ompany's promotion of its brand"); *Wal-Mart Stores, Inc.* (avail. Mar. 20, 2014) (concurring in exclusion under Rule 14a-8(i)(7) of a proposal requesting board oversight of determinations whether selling certain products that endanger public safety and well-being could impair the reputation of the company and/or would be offensive to family and community values, on the basis that the proposal related to "the products and services offered for sale by the company"), *aff'd and cited in Trinity Wall Street v. Wal-Mart Stores, Inc.*, 792 F.3d 323, 327 (3d Cir. 2015); *Wal-Mart Stores, Inc. (Albert)* (avail. Mar. 30, 2010) (concurring in the exclusion under Rule 14a-8(i)(7) of a proposal requiring that all company stores stock certain amounts of locally produced and packaged food as concerning "the sale of particular products"); *Wal-Mart Stores, Inc. (Porter)* (avail. Mar. 26, 2010) (concurring in the exclusion under Rule 14a-8(i)(7) of a proposal "to adopt a policy requiring all products and services offered for sale in the United States of America by Wal-Mart and Sam's Club stores shall be manufactured or produced in the United States of America," and noting that "the proposal relates to the products and services offered for sale by the company").

The Staff also has recognized that decisions regarding a company's advertising of products and communications with customers relate to a company's ordinary business operations and

thus may be excluded under Rule 14a-8(i)(7). For example, in *J.C. Penney Co., Inc.* (avail. Mar. 30, 2000), the Staff concurred in the exclusion of a proposal recommending the company include in its print advertisements certain information, including phone numbers, store addresses, and web addresses, noting that the proposal related to "the manner in which a company advertises its products and the procedures for communicating with customers." *See also PepsiCo, Inc.* (avail. Jan. 10, 2014) (concurring in the exclusion under Rule 14a-8(i)(7) of a proposal requesting the issuance of a public statement regarding the "poor taste" of the company's advertising as relating to the way the company advertises its products); *FedEx Corp.* (avail. Jul. 14, 2009) (concurring in the exclusion under Rule 14a-8(i)(7) of a proposal requesting the company prepare a report addressing, among other things, efforts to disassociate the company from imagery which disparages American Indians as relating to the way the company advertises its products).

Furthermore, the Staff has concurred in the exclusion of proposals that seek to force companies to educate consumers about the company's products. In *Campbell Soup Co.* (avail. Aug. 21, 2009), the proposal requested that the company "launch a campaign" to "educat[e] people on [a] healthy diet." The Staff concurred that the proposal could be excluded under Rule 14a-8(i)(7) because it addressed "the manner in which a company advertises its products." As in *Campbell Soup Co.*, the Proposal here requires the Company to affirmatively provide specific information to prospective customers in order to advance the Proponent's agenda.

As with the precedents cited above, the Proposal here may be excluded under Rule 14a-8(i)(7) because it relates to the sale and distribution of particular products, product placement, and the manner in which the Company communicates with its customers regarding a specific line of products. The Proposal's supporting statement notes that the Company "sells many watersense [sic] showerheads," calls for "product placement to be used" to increase the sales of such products vis-à-vis other showerheads, and mandates that the Company "provide a short description of the meaning of watersense [sic] showerheads." One of the ways that the Company enhances its customers' experience is to allow customers to filter and sort their product searches in numerous different ways, such as by brand, price, or customer reviews.[3] The Proposal would require the Company to override and halt that website functionality, and instead give preference to presenting WaterSense-labeled products over any other feature. While the Company, as noted in the supporting statement and

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[3] Notably, the Company's website already allows customers to filter showerheads by WaterSense certification.

discussed above, allows customers to refine their product searches to identify WaterSense-labeled products, the decision on whether and how to present such products involves many complex considerations that are inherent in the Company's day-to-day operations, and are not appropriate for shareholder determination. As in the precedents cited above, decisions regarding the types of products the Company markets, the ways in which the Company advertises those products, and the descriptions the Company provides for the products sold through its websites are inherently a part of the Company's ordinary business operations, and the Proposal may therefore be excluded under Rule 14a-8(i)(7).

C. The Proposal Does Not Raise A Significant Policy Issue That Transcends The Company's Ordinary 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." 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 "climate change and global warming" could touch upon significant policy considerations in some contexts, the Proposal remains excludable under Rule 14a-8(i)(7) because it is focused on what products the Company sells, how it markets those products, and how it communicates with its customers about those products, and therefore the Proposal does not transcend the day-to-day business matters of the Company.

The Staff consistently has drawn a distinction between proposals that address the manufacturing or use of a product and proposals that address a retailer's sale of the same product, concurring that significant policy issues raised by a product, if any, are not sufficient to transcend a retailer's day-to-day business. For example, proposals relating to additional disclosures in the packaging of tobacco products directed at tobacco companies have generally not been excludable under Rule 14a-8(i)(7). *See, e.g.*, *R.J. Reynolds Tobacco Holdings, Inc.* (avail. Mar. 7, 2002) (denying exclusion of a proposal requesting the company provide additional information in the packaging of its tobacco products). In contrast, proposals addressing the sale of those same tobacco products by retailers have generally been excludable. *See, e.g.*, *Walgreens Boots Alliance, Inc.* (avail. Nov. 7, 2016, *recon. denied* Nov. 22, 2016) (concurring in the exclusion under Rule 14a-8(i)(7) of a proposal requesting a report assessing the financial risk of tobacco sales in the company's stores because the proposal "relat[es] to [the company's] ordinary business operations"); *Rite Aid Corp.* (avail. Mar. 24, 2015) (concurring in the exclusion under Rule 14a-8(i)(7) of a proposal requesting

the development of policies regarding the company's sale of tobacco products because "the proposal relates to the products and services offered for sale by the company").

Similarly, in *Home Depot, Inc.* (avail. Mar. 4, 2009), a proposal recommended that the company issue a report "on policy options to reduce consumer exposure and increase consumer awareness regarding mercury and any other toxins contained in its private label . . . products." The company argued that the proposal did not focus on a significant policy issue. As the "world's largest home improvement retailer," the company argued, "[d]ecisions concerning product selection and the packaging and marketing of products" were "ordinary business concerns." The Staff concurred in the exclusion of the proposal. As in *Home Depot*, the Proposal here directly implicates the ordinary business operations of the Company. Showerheads are merely one line of products sold by the Company through its website, among hundreds of millions of products. The Proposal's directions regarding the marketing decisions as to one line of products do not transcend the day-to-day business operations of the Company.

Like the proposals in the precedents cited above, even if the Proposal touches upon a significant policy issue, it does not raise a significant policy issue *as to the Company*. The Company does not manufacture showerheads, and it is not a significant end user of shower heads, but instead is a retailer. Decisions regarding product placement on the Company's online retail website do not transcend the Company's day-to-day operations. Accordingly, the Proposal may be excluded pursuant to Rule 14a-8(i)(7) as relating to the Company's ordinary business operations.

D. The Proposal May Be Excluded Under Rule 14a-8(i)(7) Because It Seeks To Micro-Manage The Company

As explained above, the Commission stated in the 1998 Release that one of the considerations underlying the ordinary business exclusion is "the degree to which the proposal seeks to 'micro-manage' the company by probing too deeply into matters of a complex nature upon which shareholders, as a group, would not be in a position to make an informed judgment." The 1998 Release further states that "[t]his consideration may come into play in a number of circumstances, such as where the proposal involves intricate detail, or seeks to impose specific time-frames or methods for implementing complex policies." The Proposal requests that the Company "list watersense [sic] showerheads before the listing of other showerheads and provide a short description of the meaning of watersense [sic] showerheads." Because the Proposal would require the Company to list the products it sells in a specific order on its website and to include a specific additional disclosure about certain products, the Proposal seeks to micro-manage the Company and for this reasons as well may be excluded under Rule 14a-8(i)(7).

The Staff consistently has concurred that shareholder proposals attempting to micro-manage a company by providing specific details for implementing a proposal as a substitute for the judgment of management are excludable under Rule 14a-8(i)(7). In *Marriott International, Inc.* (avail. Mar. 17, 2010, *recon. denied* Apr. 19, 2010), the Staff concurred in the exclusion of a proposal requiring the installation of low-flow showerheads at certain of the company's hotels because "although the proposal raises concerns with global warming, the proposal seeks to micromanage the company to such a degree that exclusion of the proposal is appropriate." In particular, the Staff in *Marriott International* noted that the proposal required the use of "specific technologies." *See also SeaWorld Entertainment, Inc.* (avail. Mar. 30, 2017, *recon. denied* Apr. 17, 2017) (concurring in the exclusion under Rule 14a-8(i)(7) of a proposal requesting the replacement of live orca exhibits with virtual reality experiences as "seek[ing] to micromanage the company by probing too deeply into matters of a complex nature upon which shareholders, as a group, would not be in a position to make an informed judgment").

As in *Marriott International* and *SeaWorld Entertainment*, the Proposal provides specific details for implementation as a substitute for the judgment of management. The Proposal does not merely request that ecological concerns be considered, it mandates a specific reordering of products and requires specific additional disclosures. The extent to which the detailed requirements of the Proposal seek to micro-manage the Company are comparable to the "specific technologies" mandated in *Marriott International* and the virtual reality experiences proposed in *SeaWorld Entertainment*. The shareholder proposal process is not intended to provide an avenue for shareholders to impose detailed requirements of this sort in areas where they, as a group, are not in the best position to make an informed decision. The Company has gone to great lengths to develop search functions and filters specifically calibrated to enhance the customer experience. In fact, as noted in the supporting statement accompanying the Proposal, the Company already permits customers to filter and search for WaterSense-labeled products on its website. By mandating a specific reordering of products and requiring specific additional disclosures, the Proposal would subvert the Company's efforts to best serve its customers and enhance long-term shareholder value. The Proposal seeks to micro-manage the Company, and thus may be excluded under Rule 14a-8(i)(7).

We recognize that in *Choice Hotels International, Inc.* (avail. Feb. 25, 2013), the Staff did not concur in the exclusion of a proposal requesting a report on the water flow of showerheads, noting that the proposal "primarily focuses on the significant policy issue of global warming and does not seek to micromanage the company to such a degree that exclusion of the proposal would be appropriate." In *Choice Hotels*, the proposal required that certain topics be considered in drafting the company's report, but otherwise provided flexibility to the company in determining how to implement the general subject addressed in

the proposal. Unlike in *Choice Hotels*, the Proposal here offers no flexibility to the Company in its implementation. The Proposal mandates a particular order in which a line of products offered for sale on the Company's website are to appear, without regard for the business judgment of management, and requires specific additional disclosures to customers. The Proposal would require the Company to modify its product placement algorithm, which is at the heart of its online retail operations, based on the specific order mandated by the Proponent. Thus, like the proposal in *Marriott International* and unlike the proposal in *Choice Hotels*, the Proposal here seeks to micro-manage the Company by providing specific, detailed requirements as a substitute for the judgment of management, and therefore is properly excludable under Rule 14a-8(i)(7).

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 2018 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. 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.

Sincerely,

Ronald O. Mueller

Enclosures

cc: Mark Hoffman, Amazon.com, Inc.
Stephen Sacks

EXHIBIT A

***

October 5 , 2017

Corporate Secretary of Amazon.com, Inc.

410 Terry Avenue North

Seattle Washington 98109

Dear Corporate Secretary:

Please find attached my shareholder proposal to be voted at the 2018 annual meeting. Also attached is a letter showing ownership of over $2,000 of Amazon.com stock and that I have owned the shares for over a year without additional purchases or sales. I will attend the annual meeting to present the proposal and will not buy or sell shares before I present the proposal.

As you know these type proposals are usually not allowed by the SEC because of ordinary business concerns. Note however I presented a low flow showerhead proposal to Choice Hotels a few years ago—Choice objected to the SEC –the SEC allowed it. As necessary this will be a precedent that I will point out to the SEC. Also with respect to the SEC, important public or social policy issues such as climate change can trump other issues such as ordinary business. This is an argument I made to the SEC in the Choice case and as necessary I would make with respect to this proposal. I am reasonably confident that the SEC would not disallow my proposal.

My broader hope is that Amazon.com will conclude that this is a good idea and will institute it without the need for a shareholder proposal. This would be the right thing to do and would no doubt have PR value—but I myself would not publicize this. Note that I had discussions with The Home Depot concerning a proposal of this nature—they thought the overall concept to be worthwhile so they significantly changed their showerhead display to emphasize watersense showerheads with the blue watersense logo next to each.

I have discussed the subject with your legal staff (but not the specific proposal as I had not yet formulated it). I will be pleased to discuss it further with you or anyone at Amazon.com. I would be very appreciative if you could let me know that the proposal was received *** ***.Thank you.

Sincerely yours,

Stephen Sacks

Stephen Sacks, Ph.D.

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*** FISMA & OMB Memorandum M-07-16

Stephen Sacks, Ph.D. Fairfax County, VA, Beneficial of over $2,000 of Amazon.com Inc. stock

Resolved: Amazon.com shall list watersense showerheads before the listing of other showerheads and provide a short description of the meaning of watersense showerheads.

Discussion: A significant fraction of household energy consumption is devoted to heating water for showers. Burning fossil fuels to heat the water contributes to climate change and global warming. Watersense showerheads, made by diverse manufacturers using careful design, can reduce shower consumption of hot water while still providing a fine shower. Amazon sells many watersense showerheads but it is a challenge to find them if you simply go page by page in the listings and perhaps not getting past the first few pages. One could apply a filter for watersense but you first have to know the meaning of watersense. Undoubtedly many consumers do not use filters.

Product placement is used by retailers usually for economic reasons. The resolution calls for product placement to be used for environmental sustainability reasons. All Amazon showerhead products could still be sold. Manufacturers identify their products as watersense. Placing them upfront would involve a few hours of IT work.

A major big box retailer recently went in the direction of highlighting watersense showerheads. Their current display has many clearly identified watersense products with the blue watersense seal. Off to one side is a sign with large letters that describes the benefits of watersene. Watersense showerheads are one of several products sold by Amazon.com that alone or in aggregate with other low cost easily installed products could make a big dent in the quantity of climate change gases spewed into the atmosphere. Please consider voting in favor of this resolution which would make a positive impact on sustainability for the benefit of all of us.

Personal Investing

P.O. Box 770001
Cincinnati, OH 45277-0045

October 5, 2017

Stephen Sacks
***

Dear Mr. Sacks:

Thank you for contacting Fidelity Investments. This letter is in response to your request for Fidelity to verify all purchases and sales of Amazon.Com Inc. (AMZN) in your Brokerage account ending in *** . I appreciate the opportunity to assist you with this matter.

Please see the following tables for information on Amazon.Com Inc. (AMZN):

Number of shares owned as of close of trading on October 4, 2017	10.000

Event Date	*Transaction*	*Event Qty.*	*Event Amt.*	*Price*
12/02/2015	Buy	10.000	$6,842.95	$683.50
02/05/2016	Sell	10.000	$4,997.55	$500.56
08/05/2016	Buy	10.000	$7,686.84	$767.89

These tables contain information as of October 4, 2017 and may be subject to change, pending any new and subsequent transactions in the same securities. They may not reflect impact from any previous corporate actions. This information is unaudited and is not intended to replace your monthly statement or official tax documents.

Please note that National Financial Services LLC* is a Fidelity Investments subsidiary responsible for the execution, reporting, and clearing of listed equity, option, and non-Fidelity mutual fund orders.

* A DTC participant

Cost Basis, Gain/Loss, and Holding Period Information: NFS will report gross proceeds and certain cost basis and holding period information to you and the IRS on your annual Form 1099-B as required or allowed by law, but such information may not reflect adjustments required for your tax reporting purposes. Taxpayers should verify such information when calculating reportable gain or loss. Fidelity and NFS specifically disclaim any liability arising out of a customer's use of, or any tax position taken in reliance upon, such information. Unless otherwise specified, NFS determines cost basis at the time of sale based on the average cost-single category (ACSC) method for open-end mutual funds and on the first-in, first-out (FIFO) method for all other securities. Consult your tax advisor for further information.

*** FISMA & OMB Memorandum M-07-16

Personal Investing

P.O. Box 770001
Cincinnati, OH 45277-0045

I hope you find this information helpful. If you have any questions regarding this issue or general inquiries regarding your account, please contact the Fidelity Private Client Group at 800-544-5704 for assistance.

Sincerely,

Chad R. Dunaway
Personal Investing Operations

Our File: W855295-04OCT17

UNITED STATES POSTAL SERVICE®

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CERTIFIED MAIL

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10/10/17 10:45 AM PDT

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US Postal Service
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Priority: Standard
Business

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SEA40.10
Legal

Doppler

Doppler Floor 10
SEA40.10.220.A2

331957

Corporate Secretary of Amazon.com, Inc.
410 Terry Avenue North
Seattle, Washington 98109

*** FISMA & OMB Memorandum M-07-16

GIBSON DUNN

Gibson, Dunn & Crutcher LLP

1050 Connecticut Avenue, N.W.
Washington, DC 20036-5306
Tel 202.955.8500
www.gibsondunn.com

Ronald O. Mueller
Direct: +1 202.955.8671
Fax: +1 202.530.9569
RMueller@gibsondunn.com

October 13, 2017

VIA OVERNIGHT MAIL

Stephen Sacks
***

Dear Mr. Sacks:

I am writing on behalf of Amazon.com, Inc. (the "Company"), which received on October 10, 2017, your shareholder proposal regarding watersense showerheads submitted pursuant to Securities and Exchange Commission ("SEC") Rule 14a-8 for inclusion in the proxy statement for the Company's 2018 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 you are the record owner of sufficient shares to satisfy this requirement. In addition, to date we have not received adequate proof that you have satisfied Rule 14a-8's ownership requirements as of the date that the Proposal was submitted to the Company. The October 5, 2017 letter from Fidelity Investments that you provided is insufficient because (1) it states the number of shares you held as of October 4, 2017 but does not cover the full one-year period preceding and including October 6, 2017, the date the Proposal was submitted to the Company, and (2) it does not state that the shares were held *continuously* during the required one-year period, instead only addressing the date of purchases and sales.

To remedy this defect, you must obtain a new proof of ownership letter verifying your continuous ownership of the required number or amount of Company shares for the one-year period preceding and including October 6, 2017, 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 your shares (usually a broker or a bank) verifying that you continuously held the required number or amount of Company shares for the one-year period preceding and including October 6, 2017; or

(2) if you have 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 your 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 you continuously held the required number or amount of Company shares for the one-year period.

If you intend to demonstrate ownership by submitting a written statement from the "record" holder of your 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. You can confirm whether your broker or bank is a DTC participant by asking your 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 your broker or bank is a DTC participant, then you need to submit a written statement from your broker or bank verifying that you continuously held the required number or amount of Company shares for the one-year period preceding and including October 6, 2017.

(2) If your broker or bank is not a DTC participant, then you need to submit proof of ownership from the DTC participant through which the shares are held verifying that you continuously held the required number or amount of Company shares for the one-year period preceding and including October 6, 2017. You should be able to find out the identity of the DTC participant by asking your broker or bank. If your broker is an introducing broker, you may also be able to learn the identity and telephone number of the DTC participant through your account statements, because the clearing broker identified on your account statements will generally be a DTC participant. If the DTC participant that holds your shares is not able to

confirm your individual holdings but is able to confirm the holdings of your broker or bank, then you need to satisfy the proof of ownership requirements by obtaining and submitting two proof of ownership statements verifying that, for the one-year period preceding and including October 6, 2017, the required number or amount of Company shares were continuously held: (i) one from your broker or bank confirming your ownership, and (ii) the other from the DTC participant confirming the broker or bank's ownership.

The SEC's rules require that any 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, DC 20036. Alternatively, you may transmit any response by email to me at rmueller@gibsondunn.com.

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: Mark Hoffman, Amazon.com, Inc.
Gavin McCraley, Amazon.com, Inc.

***

October 28, 2017

Robert O Mueller

Gibson Dunn

Washington, DC

Dear Mr. Mueller:

This is in reply to your October 13 letter concerning Amazon.com. You will note in the enclosed letter from Fidelity that I owned the shares through October 20, 2017 which is inclusive of earlier October dates. The letter also indicates that the referenced shares are registered in the name of National Financial Services LLC, a DTC participant number 0226 and Fidelity Investments subsidiary. Fidelity Investments owns National Financial Services and as the parent company writes letters of this nature which is apparently their prerogative. Try as I might I could not do anything directly with National Financial. If this information is not adequate and you initiate a no action filing with the SEC I will provide the SEC more details. But I hope the information is adequate.

A request: We live a bit in the country. Documents like UPS letters can be left in our driveway or worse. Also we travel. I would be appreciative if additional communication could be sent by UPS or similar as well as to my email address *** . Thank you.

Sincerely,

Stephen Sacks

Stephen sacks

*** FISMA & OMB Memorandum M-07-16

Personal Investing

P.O. Box 770001
Cincinnati, OH 45277-0045

October 23, 2017

Stephen Sacks
***

Dear Mr. Sacks:

Thank you for contacting Fidelity Investments. This letter is in response to your request for Fidelity to verify all purchases and sales of Amazon.Com Inc. (AMZN) in your Brokerage account ending in *** I appreciate the opportunity to assist you with this matter.

Please see the following tables for the requested information regarding your shares of Amazon.Com Inc. (AMZN). Note that these shares have been continuously held within the above referenced account during the timeframe of August 05, 2016 through October 20, 2017:

Number of shares owned as of close of trading on October 20, 2017	10.000

Trade Date	Transaction Type	Event Quantity	Event Amount	Price
12/02/2015	Buy	10.000	$6,842.95	$683.50
02/05/2016	Sell	10.000	$4,997.55	$500.56
08/05/2016	Buy	10.000	$7,686.84	$767.89

Please note that these tables contain information as of October 20, 2017 and may be subject to change pending any new and subsequent transactions in the same securities. They may not reflect impact from any previous corporate actions. This information is unaudited and is not intended to replace your monthly statement or official tax documents.

The securities referenced in the preceding table are registered in the name of National Financial Services LLC, a DTC participant (DTC number: 0226) and Fidelity Investments subsidiary.

I hope you find this information helpful. If you have any questions regarding this issue or general inquiries for your account, please contact your Private Client Group team at 800-544-5704 for assistance.

Sincerely,

Frances Bricker
Personal Investing Operations
Our File: W115767-20OCT17

Cost Basis, Gain/Loss, and Holding Period Information: NFS will report gross proceeds and certain cost basis and holding period information to you and the IRS on your annual Form 1099-B as required or allowed by law, but such information may not reflect adjustments required for your tax reporting purposes. Taxpayers should verify such information when calculating reportable gain or loss. Fidelity and NFS specifically disclaim any liability arising out of a customer's use of, or any tax position taken in reliance upon, such information. Unless otherwise specified, NFS determines cost basis at the time of sale based on the average cost-single category (ACSC) method for open-end mutual funds and on the first-in, first-out (FIFO) method for all other securities. Consult your tax advisor for further information.

*** FISMA & OMB Memorandum M-07-16