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January 14, 2020

Via Electronic Mail to shareholderproposals@sec.gov

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

Re: Withdrawal of No-Action Letter Request Regarding the Shareholder Proposal Submitted by Thomas Strobhar Pursuant to Rule 14a-8 Under the Securities Exchange Act of 1934, as Amended

Ladies and Gentlemen:

In a letter dated December 30, 2019 (the “**No-Action Request**”), we requested that the staff of the Division of Corporation Finance of the Securities and Exchange Commission concur that our client, MGM Resorts International (the “**Company**”), could exclude from the proxy materials for its 2020 Annual Meeting of Shareholders a shareholder proposal and statements in support thereof (the “**Proposal**”) received from Thomas Strobhar (the “**Proponent**”).

Enclosed is an email from the Proponent to the Company dated January 14, 2020, stating that the Proponent voluntarily withdraws the Proposal. *See Exhibit A.* In reliance on this letter, we hereby withdraw the No-Action Request relating to the Company’s ability to exclude the Proposal pursuant to Rule 14a-8 of the Securities Exchange Act of 1934. If we can be of any further assistance in this matter, please do not hesitate to call me at (212)-530-5022.

Sincerely,



Rod Miller
Partner
Milbank LLP

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Exhibit A

From: [Tom Strobhar](#)
To: [Salter, Lauren](#)
Subject: [EXT] Re: MGM - Shareholder Proposal No Action Letter Request
Date: Tuesday, January 14, 2020 8:41:04 AM

Dear Ms. Salter:

I am withdrawing my shareholder proposal regarding charitable contributions. Please acknowledge receipt of this email.

Regards,

Thomas Strobhar

On Mon, Dec 30, 2019 at 5:12 PM Salter, Lauren <LSalter@milbank.com> wrote:

Good Evening,

Attached please find a shareholder proposal no action request letter pursuant to Rule 14a-8. We have cc'd the proponent on this email and will be overnighting a hard copy of the letter to the address provided on the proposal in compliance with Rule 14a-8(j).

Kind Regards,
Lauren

Lauren Salter | [Milbank](#) | Associate

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December 30, 2019

Via Electronic Mail to shareholderproposals@sec.gov

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

Re: Shareholder Proposal Submitted by Thomas Strobhar Pursuant to Rule 14a-8 Under the Securities Exchange Act of 1934, as Amended

Ladies and Gentlemen:

This letter is to inform you that our client, MGM Resorts International (the “*Company*” or “*MGM*”), intends to omit from its proxy statement and form of proxy for its 2020 Annual Meeting of Shareholders (collectively, the “*2020 Proxy Materials*”) a shareholder proposal (the “*Proposal*”) and statements in support thereof received from Thomas Strobhar (the “*Proponent*”).

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

- submitted this letter to the Securities and Exchange Commission (the “*Commission*”) no later than eighty (80) calendar days before the Company intends to file its definitive 2020 Proxy Materials with the Commission; and
- concurrently sent copies of this correspondence to the Proponent.

Rule 14a-8(k) and SEC 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, the Company is taking this opportunity to inform the Proponent that if the Proponent elects to submit additional correspondence to the Commission or the Staff with

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respect to the Proposal, a copy of that correspondence should be furnished concurrently to the undersigned on behalf of the Company pursuant to Rule 14a-8(k) and SLB 14D.

MGM currently intends to file its definitive 2020 Proxy Materials with the Commission on or about March 20, 2020.

I. THE PROPOSAL

On November 14, 2019, the Company received a letter from the Proponent containing the Proposal for inclusion in MGM's 2020 Proxy Materials. The Proposal sets forth the following resolution and supporting statement:

Whereas, the Company's charitable contributions, properly managed, are likely to enhance the reputation of the Company;

Whereas, increased disclosure regarding appropriate charitable contributions is expected to create goodwill for our company;

Whereas, making the benefits of our Company's philanthropic programs broadly known is likely to promote the Company's interests;

Whereas, transparency and corresponding feedback from shareholders, the philanthropic community and others, could be useful in guiding the Company's future charitable decision making;

Resolved: The Proponent requests that the Board of Directors consider issuing a statement on the Company website, omitting proprietary information and at reasonable cost, disclosing the Company's standards for choosing which organization receive the Company's assets in the form of charitable contributions, and the rationale, if any, for such contributions. Also, it is requested that any recipient which receives \$1,000 or more of direct contributions, excluding employee matching gifts, be listed on the Company website.

Supporting Statement

Absent a system of accountability and transparency, some charitable contributions may be handled unwisely, potentially harming the Company's reputation and shareholder value. Corporate charitable contributions should be given as much exposure as possible, lest their intended impact on goodwill is diminished. For example, if we gave to the American Cancer Society potentially thousands of our stakeholders might approve of our interest in challenging this disease. Likewise, our support of Planned Parenthood could win the praise of millions of Americans who have had an abortion at one of their facilities. Educational organizations, like the Southern Poverty Law Center, have seen an increase in their funding since they included several conservative Christian organizations on their list of hate groups. Our stakeholders and customers might be similarly enthused if we supported them. Be it the Girl Scouts, American Heart Association, Boys and Girls Club of America, Red Cross or countless other possible recipients; our support should be publicly noted. Those who might disagree with our decisions can play a valuable role also.

Fuller disclosure would provide enhanced feedback opportunities from which our Company could make more fruitful decisions. Decisions regarding corporate philanthropy should be transparent to serve the interests of shareholders better.

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

II. EXCLUSION OF THE PROPOSAL

a. Bases for Excluding the Proposal

The Company's primary business is the ownership and operation of casino resorts which offer gaming, hotel, convention, dining, entertainment, retail and other resort amenities across the United States and in Macau. As a leader in entertainment and hospitality, the Company believes that a commitment to community development, philanthropy, environmental stewardship and sustainability is integral to its long term competitiveness because these initiatives sustain and grow value for the Company's business, stakeholders, employees and host communities. As a result, the Company's management invests a significant amount of time, energy and effort on a daily basis to determine how the Company will distribute its charitable contributions to best support local communities and its own business goals. Management's efforts in this area are also overseen by the Corporate Social Responsibility Committee of the Company's Board of Directors. As part of its commitment to corporate social responsibility, the Company provides corporate cash contributions and has established the MGM Resorts Foundation, a nonprofit organization almost entirely funded by MGM Resorts employees. Foundation giving includes direct designations by employees to charities of their choice, donations to the employee emergency grant and grants to programs in the Company's host communities. Giving is a core part of community engagement and, as a result, the Company endeavors to give through a variety of channels as part of its ordinary course business operations, including grants to specific focus areas and sponsorship of charitable events. As such, the Company believes it may omit the Proposal from its 2020 Proxy Materials in reliance on the following:

- Rule 14a-8(i)(7), as the Proposal deals with matters related to the Company's ordinary business operations; and
- Rule 14a-8(i)(4), as the Proposal is designed to result in a benefit to the Proponent or further a personal interest not shared by the other shareholders at large.

b. The Proposal Is Excludable Under Rule 14a-8(i)(7) Because the Proposal Deals with a Matter Relating to the Company's Ordinary Business Operations.

Rule 14a-8(i)(7) allows a proposal dealing with a matter relating to a company's ordinary business operations to be excluded from the company's proxy materials. According to the Commission's Release No. 34-40018 (May 21, 1998) (the "**1998 Release**") accompanying the 1998 amendments to Rule 14a-8, the underlying purpose 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." The Commission further noted that the policy underlying the ordinary business exclusion rests on two central considerations: (1) "[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” and (2) “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.”¹

The Proposal may be excluded under 14a-8(i)(7) because the Proposal implicates the Company’s ordinary business operations, as it (i) impedes upon the ability of the Company to make day-to-day decisions as to how it manages and publicizes its charitable giving, (ii) does not focus upon a significant social policy issue and (iii) micromanages the Company as to how it publicizes its charitable giving, which the Company believes is part of the Proponent’s ultimate purpose of targeting or excluding contributions to certain organizations.

i. The Proposal May Be Omitted Because the Subject Matter of the Proposal is in Regards to Day-to-Day Decision Making.

The Proposal may be excluded pursuant to Rule 14a-8(i)(7) because it seeks to hinder the Company’s ability to make day-to-day decisions with regards to managing and publicizing its charitable giving, both in relation to the Company’s decision whether and to whom to provide charitable contributions, as well as the manner in which the Company decides to publicize any such contributions, each an activity that clearly fits within the Company’s ordinary business operations. The Proposal requests both a statement disclosing the Company’s standards for choosing which organizations receive the Company’s assets in the form of charitable contributions, as well as the publication of a list of any recipient that receives \$1,000 or more of direct contributions, excluding employee matching gifts, on the Company’s website.

The Company considers its charitable giving decisions and the publication of these decisions as a part of its community and public relations efforts and takes into consideration the business objectives of its non-profit partners. The Company has dedicated a significant amount of time and resources to develop a giving strategy and communications platform to build and protect its brand reputation, including a corporate communications strategy that highlights corporate social responsibility milestones across the Company’s four focus areas: fostering diversity and inclusion, investing in community, caring for one another and protecting the planet. In order to communicate achievements, the Company provides a dedicated site, the “Social Impact Newsroom,” to highlight the impact it has in the communities in which it operates. The Staff has consistently concurred that decisions regarding a company’s public relations are part of a company’s ordinary business operations and the Company clearly views charitable giving as part of its public relations activities. For example, in *Johnson & Johnson* (avail. Feb. 23, 2017) (“**Johnson & Johnson 2017**”), the Staff concurred with the exclusion under Rule 14a-8(i)(7) of a shareholder proposal asking that the Company detail the risks and costs to the company caused by pressure campaigns to, among other things, oppose religious freedom or public accommodations laws, because the proposal relates to the company’s ordinary business operations (i.e., communications and public relations).

In *Johnson & Johnson* (avail. Jan. 12, 2004) (“**Johnson & Johnson 2004**”), the Staff concurred with the exclusion under Rule 14a-8(i)(7) of a shareholder proposal asking the Company to issue a report disclosing how the Company intended “to respond to . . . public pressure to reduce

¹ 1998 Release.

prescription drug pricing,” because the proposal “relat[es] to [the company’s] ordinary business operations (i.e., marketing and public relations).” The Staff has also concurred with the exclusion of shareholder proposals on the basis of Rule 14a-8(i)(7) in numerous other similar instances, including in *FedEx Corp.* (avail. July 14, 2009) (permitting exclusion of a proposal requesting a report “addressing issues related to American Indian peoples, including [the company’s] efforts to identify and disassociate from any names, symbols and imagery which disparage American Indian peoples in products, advertising, endorsements, sponsorships and proportions,” because the proposal related to the company’s ordinary business operations) and *Tootsie Roll Indus. Inc.* (avail. Jan. 31, 2002) (concurring with exclusion under Rule 14a-8(i)(7) of a proposal asking the company to identify and disassociate from any offensive imagery to the American Indian community in product marketing and advertising, because the proposal related to “the manner in which a company advertises its products”).

Similar to *Johnson & Johnson 2017* and the other precedents discussed above in which the proposal dealt with marketing and public relations activities, the Proposal in this instance also deals with the Company’s marketing and public relations as they relate to charitable contributions. It is evident from the Proposal itself that the Proposal pertains to the Company’s public relations as noted in the third recital which states, “[w]hereas, making the benefits of our Company’s philanthropic programs broadly known is likely to promote the Company’s interests.” The Proposal’s requirement that the Company disclose specific charitable actions at a granular level and issue a statement disclosing the Company’s standards for determining charitable contributions would result in inappropriate shareholder involvement with some of the Company’s most basic public relations decisions. Thus, given that the Staff has consistently found marketing and public relations to fall within the day-to-day operations of companies, and the Company’s charitable contributions are part of the Company’s day-to-day business operations as they relate to its community and public relations, it follows that the Proposal may be excluded under Rule 14a-8(i)(7) as it relates to the Company’s ordinary business operations.

In addition, the Proposal requests that the Company publish a statement on its website “disclosing the Company’s standards for choosing which organization receive the Company’s assets in the form of charitable contributions, and the rationale, if any, for such contributions” (sic). The Commission has long held that the Staff evaluates proposals requesting dissemination of a report by considering the underlying subject matter of the proposal when applying Rule 14a-8(i)(7), and that such proposals are excludable when the substance is within the ordinary business of the company. *See* Commission Release No. 34-20091 (Aug. 16, 1983) (the “**1983 Release**”); *see also Rite Aid Corp.* (avail. April 17, 2018) (permitting exclusion under Rule 14a-8(i)(7) of a proposal requesting a report on the feasibility of adopting company-wide goals for increasing energy efficiency and use of renewable energy, in which the Staff determined that the proposal focused “primarily on matters relating to the Company’s ordinary business operations”); and *Netflix, Inc.* (avail. Mar. 14, 2016) (permitting exclusion under Rule 14a-8(i)(7) of a proposal that requested a report relating to the company’s assessment and screening of “inaccurate portrayals of Native Americans, American Indians and other indigenous peoples,” in which the Staff determined that the proposal related to the ordinary business matter of the “nature, presentation and content of programming and film production”).

Similarly, the statement requested by the Proposal – which relates to Company decisions involving complex, day-to-day operational determinations of management that are dependent on

management’s underlying expertise and regional knowledge, and which would therefore entail detailing the dozens, if not hundreds, of considerations that go into the Company’s charitable giving decisions – focuses on matters involving ordinary business operations of the Company. The statement requested by the Proposal is a de facto request for a report on ordinary business matters of the Company, i.e., matters relating to the Company’s conduct of its community and public relations through its charitable contributions, and the Company submits that the Proposal is accordingly also excludable under Rule 14a-8(i)(7) on this basis.

ii. Even if the Proposal Touches upon a Significant Policy Issue, it May Be Excluded under Rule 14a-8(i)(7) Because the Proposal Does Not Transcend The Company’s Ordinary Business Operations.

In the 1998 Release, the Staff explained “proposals relating to ordinary business matters but focusing on sufficiently significant social policy issues (e.g., significant discrimination matters) generally would not be considered to be excludable, because the proposals would transcend the day-to-day business matters and raise public issues so significant that [any such proposal] would be appropriate for a shareholder vote.”² However, 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). Accordingly, even if a proposal touches upon a significant policy issue, the proposal may be excludable on ordinary business grounds if there is not a sufficient connection to the company’s business.

While the Company contends that the Proposal does not focus on any “sufficiently significant social policy issue” such that shareholders should be afforded the opportunity to express their views, even if the Proposal were deemed to touch on a significant policy issue, it should still be excluded because any such issue raised by the Proposal does not have a sufficient nexus to the Company’s business.

In Staff Legal Bulletin 14I (Nov. 1, 2017) (“*SLB 14I*”), the Staff explained that the applicability of the significant policy exception “depends, in part, on the connection between the significant policy issue and the company’s business operations.” The Staff noted further that a well-informed board, exercising its fiduciary duties in overseeing management and the strategic direction of the company, “is well situated to analyze, determine and explain whether a particular issue is sufficiently significant because the matter transcends ordinary business and would be appropriate for a shareholder vote.”

The Proposal was discussed with the Chair of the Nominating and Corporate Governance Committee of the Company’s board of directors (the “*Committee*”) and reviewed by the Committee members and the lead independent director of the Board of Directors. Upon discussion and review of the Proposal, the Committee chair agreed with management’s view that it would be

² SEC Release 34-40018 (May 21, 1998).

appropriate to seek to exclude the Proposal from the Company's 2020 Proxy Materials, as the Proposal did not transcend ordinary business matters or raise significant policy issues.

In summary, the Committee chair agreed with management's view that the Proposal deals with matters relating to the Company's ordinary business operations and any policy issues raised by the Proposal do not transcend the Company's ordinary business operations. Accordingly, the Company is of the view that it may exclude the Proposal from its 2020 Proxy Materials in reliance on Rule 14a-8(i)(7).

iii. The Proposal May be Omitted Because it Seeks to Micromanage the Company by Hindering Charitable Contributions to Specific Types of Organizations.

It is also the Company's view that the Proposal may be omitted in reliance on Rule 14a-8(i)(7) because the Staff has repeatedly recognized that a proposal that seeks to micromanage the day-to-day decisions of a company's management is excludable under Rule 14a-8(i)(7) as a component of "ordinary business." As described above, the Company's charitable giving is a component of its public relations strategy, social and philanthropic programs and overall business operations on a global, national and local level and it is the Company's view that the intent of the Proposal is to micromanage the Company's charitable giving decisions by targeting specific organizations, thereby effectively subjecting management to potential micro-management by shareholders with respect to its charitable activities.

Numerous recent no-action letters have supported the position that a proposal relating to charitable contributions to specific types of organizations is excludable under Rule 14a-8(i)(7) as a component of "ordinary business." In *JPMorgan Chase & Co.* (avail. Feb. 28, 2018) ("*JPMorgan 2018*"), the Staff agreed that the company could exclude a proposal requesting that the board issue a report disclosing the company's standards for choosing organizations that receive charitable contributions under Rule 14a-8(i)(7), where the supporting statement focused on the company's contributions to Planned Parenthood and the Southern Poverty Law Center (such as those in the Proposal); the company contended that the proposal "target[ed] the Company's decisions to direct its charitable contributions to specific organizations," and Staff agreed that there was basis for excluding the proposal under Rule 14a-8(i)(7), noting in particular that "the Proposal relates to contributions to specific types of organizations." Under very similar circumstances in *Starbucks Corp.* (avail. Nov. 7, 2017) ("*Starbucks*"), the Staff concurred that the company could exclude a similar proposal requesting that the board issue a report disclosing the company's standards for choosing organizations that receive charitable contributions under Rule 14a-8(i)(7), where the supporting statement also focused on the company's relationship with Planned Parenthood and the Southern Poverty Law Center, as the supporting statement made clear that the proposal was directed at contributions to specific types of organizations. Additionally, in *The Home Depot* (avail. Mar. 18, 2011) ("*Home Depot*"), the Staff concurred that a proposal to list on the company website certain recipients of charitable contributions or merchandise vouchers of \$5,000 or more may be excluded where the supporting statement focused on the company's relationship with LGBT groups, related events, or same-sex marriage under rule 14a-8(i)(7) for the same reason set forth in *Starbucks*. As evidenced by *JPMorgan 2018*, *Starbucks* and *Home*

Depot, in addition to numerous earlier precedents,³ it is well established that an otherwise facially neutral proposal, because of the content of the preamble or supporting statement, may in substance be an attempt to alter a company's contributions to specific kinds of organizations. The Staff has consistently found proposals that target contributions to specific organizations constitute an attempt to micromanage the day-to-day decisions for a part of the Company's ordinary business, and has permitted the exclusion of such proposals under Rule 14a-8(i)(7).

In the instant case, while the Proposal itself appears to be facially neutral in the sense that the resolution does not directly attempt to micro-manage the Company's operations, when read with the Proponent's supporting statement, and with relevant additional context of the Proponent's public and self-described objective to oppose corporate support of certain types of organizations, and his history of making similar proposals to further this objective, it is evident that the Proposal is simply a veiled effort to pressure the Company to prevent charitable contributions made to specific organizations including Planned Parenthood and the Southern Poverty Law Center.

The Supporting Statement includes the following language:

- "...our support of Planned Parenthood could win the praise of millions of Americans who have had an abortion at one of their facilities."
- "...the Southern Poverty Law Center, ha[s] seen an increase in their funding since they included several conservative Christian organizations on their list of hate groups."

The above excerpts illustrate one-sided characterizations of the two organizations. The Proponent characterizes Planned Parenthood solely as an abortion clinic, while in fact Planned Parenthood offers Pregnancy Testing & Services, Men's Health Services, STD Testing, Treatment & Vaccines, HIV Services, in addition to countless other health services. The Southern Poverty Law Center does not target conservative Christian organizations on their list of hate groups, but rather is a public interest law firm civil rights advocacy organization focused on fighting hate, teaching tolerance and seeking justice. Their list of hate groups includes organizations with beliefs or practices that attack or malign an entire class of people, typically for their immutable characteristics.⁴ The Proponent's supporting statement does not attempt to describe differing viewpoints or to balance his concern over the identified organizations.

To date, the Proponent has submitted to, in his own words, "scores of resolutions—at least one a year,"⁵ in which he promotes a non-neutral agenda. *See, e.g., Starbucks* (resolution targeting organizations which support abortion and same-sex marriage); and *Warner Lambert Company* (avail. Dec. 1, 1997) (resolution asking management to take steps to accomplish a separation of the Corporation's contraceptive business from all its non-contraceptive business and free itself of

³ *See e.g., Johnson & Johnson* (avail. Feb. 12, 2007) ("*Johnson & Johnson 2007*") (Staff concurred with the exclusion of a facially neutral resolution where the majority of the proposal's preamble and supporting statement referred to abortion and same-sex marriage); and *Wells Fargo & Co.* (avail. Feb. 12, 2007) ("*Wells Fargo*") (Staff concurred with the exclusion of a facially neutral resolution where the preamble contained numerous references to homosexuality and Planned Parenthood).

⁴ <https://www.splcenter.org/hate-map>

⁵ Thomas Strobhar, "A Vow of Silence: Catholic Religious Ignore Corporate Ties to Abortion," THE HUMAN LIFE REVIEW, Winter 2018, at 41, available at <http://corporatemorality.org/wp-content/uploads/2019/06/abortionties.pdf> (last accessed December 5, 2019).

its involvement in the manufacture of contraceptives). In the instant case, the Supporting Statement's focus on the two specifically mentioned organizations is consistent with the Proponent's various professional affiliations and his years-long efforts to end corporate support for organizations defending abortion rights through the use of shareholder resolutions.

Although the Proponent continues to modify the content of his shareholder proposals in an effort to cloak their intended purpose, it is evident that there is only a single goal of such proposals, to attempt to control the types of organizations to which companies make contributions to, specifically those that are consistent with the Proponent's views and beliefs. The Proposal represents the latest in a series of the Proponent's actions to further a personal agenda to micro-manage companies' operations by inducing them to cease support of specific types of organizations. In addition to submitting the current Proposal to the Company, the Proponent has previously presented numerous similar proposals, singling out corporate support of organizations defending abortion rights to various other corporations, and founded or otherwise affiliated himself with numerous organizations dedicated to the anti-abortion and other conservative movements, including several organizations specifically devoted to ending corporate support of organizations defending abortion rights through the shareholder resolution process and organized boycotts.

According to the Proponent's biography on his company's website (www.strobharfinancial.org), the Proponent describes himself as the "[a]uthor of the first shareholder resolution against ... fetal tissue research, abortifacient drugs and domestic partner benefits." The website further indicates that the Proponent is the Chairman of Life Decisions International, an organization whose website describes its program "focusing on the education of corporate officials about the agenda of Planned Parenthood in an effort to convince them to deny support to this dangerous group," that advocates "a boycott of corporations that support Planned Parenthood" and that publishes "a list of boycott targets that is updated at least twice per year ... [including] corporate names, subsidiaries, products, services and how to contact each company."⁶ The Proponent's biography on his company's website also indicates the Proponent's affiliation with organizations that oppose the corporate provision of domestic partner benefits (Pro Vita Advisors) and abortion and same-sex marriage (Corporate Morality Action Center).

In contrast with the Proposal's disingenuous suggestion that "support of Planned Parenthood could win the praise of millions of Americans who have had an abortion at one of their facilities," materials on the websites of organizations led or founded by the Proponent characterize Planned Parenthood as a "dangerous group" and "deadly empire,"⁷ and detail previous shareholder proposals by the Proponent that specifically "challenged corporate charitable gifts to America's largest abortion-performing organization: Planned Parenthood," portraying such shareholder proposals as "resolutions against Planned Parenthood" and characterizing shareholder resolutions generally as "the single most effective tool to defund Planned Parenthood."⁸

⁶ See Life Decisions International, "Corporate Funding Project (Boycott)," available at <http://fightpp.org/projects/cfp-boycott> (last accessed December 5, 2019).

⁷ *Id.*

⁸ Thomas Strobhar, "A Vow of Silence: Catholic Religious Ignore Corporate Ties to Abortion," THE HUMAN LIFE REVIEW, Winter 2018, at 48, available at <http://corporatemorality.org/wp-content/uploads/2019/06/abortionties.pdf> (last accessed December 5, 2019).

In sum, the Proposal, while drafted to appear unbiased on its face, is in fact is directed at contributions to specific types of charitable organizations that the Proponent disfavors, and accordingly, is ultimately part of an attempt to micro-manage the Company by inducing it prevent support of certain organizations. Therefore, the Proposal is comparable and, based on all facts and circumstances, indistinguishable from the proposals at issue in *Starbucks* and *Home Depot* discussed above, in which the Staff concurred that the proposals were excludable because they were attempts to micromanage the Company's decisions to give to certain organizations and, accordingly, the Company submits that the Proposal is similarly excludable pursuant to Rule 14a-8(i)(7).

c. The Proposal May Be Excluded Under Rule 14a-8(i)(4) Because It Is Designed To Result In A Benefit To The Proponent Or Further A Personal Interest Not Shared By The Other Shareholders At Large.

The Company also believes that it may omit the Proposal from the 2020 Proxy Materials under Rule 14a-8(i)(4), which permits the exclusion of shareholder proposals that are “designed to result in a benefit to [the shareholder], or to further a personal interest, which is not shared by the other shareholders at large.” The Commission stated in the 1983 Release that Rule 14a-8(i)(4) is designed to “insure that the security holder proposal process [is] not abused by proponents attempting to achieve personal ends that are not necessarily in the common interest of the issuer’s shareholders generally”⁹ as the Staff does not believe that an issuer’s proxy materials are a proper forum for airing personal claims or grievances.

A proponent’s particular objectives need not be apparent from a proposal’s plain language in order to be excludable under Rule 14a-8(i)(4), thus proposals phrased in broad terms that “might relate to matters which may be of general interest to all security holders” may be omitted from proxy materials “if it is clear from the facts . . . that the proponent is using the proposal as a tactic designed to . . . further a personal interest.” Exchange Act Release No. 19135 (Oct. 14, 1982). Therefore, where the context, as discerned from a proponent’s history with the company, public statements, and outside activities, makes clear the proponent’s true intent is to advance a personal interest not shared by all shareholders, notwithstanding that the proposal is framed as being for the benefit of the Company, it may be excluded.

In *International Business Machines Corp.* (avail. Jan. 31, 1994) (“*IBM Corp.*”), a proposal requesting the company provide shareholders with a “complete list of all groups and parties that receive corporate donations” in excess of \$5,000 in any one fiscal year was found to be excludable under Rule 14a-8(i)(4)’s predecessor, Rule 14a-8(c)(4), when submitted by a proponent who had been engaged in a year-long “campaign to stop the Company from making donations to two Hispanic self-help charities” he believed supported illegal immigration. Although the proposal made no direct mention of these organizations, the proponent’s true intent was clear from his correspondence with the company. Because of the proponent’s true intentions in introducing the proposal, the company argued—and the Staff concurred—that any benefit from the proposal’s passage would run solely to the proponent, and the proposal could therefore be excluded from the proxy materials.

⁹ 1983 Release.

Similarly, in *MGM Mirage* (avail. Mar. 19, 2001) (“*MGM Mirage*”), a proposal that would have required the company to adopt a written policy regarding political contributions and furnish a list of its political contributions was found to be excludable under Rule 14a-8(i)(4) when submitted by a proponent who had filed a number of lawsuits against the company based on its decisions to deny the proponent credit at the company’s casino and, subsequently, to bar the proponent from the company’s casinos, as the proposal “related to the redress of a personal claim or grievance...not shared with the other security holders at large.”

As previously detailed in paragraph 2(b)(iii) above, the Proposal represents the latest in a series of actions that the Proponent has taken in repeated efforts to further a personal agenda. While the Supporting Statement contends that disclosure of charitable contributions would “create goodwill for our company,” the Proponent’s true intent in submitting the Proposal—to pressure the Company to cease its financial support of organizations that defend abortion rights—is apparent from his activities over the past several years and his affiliation with numerous anti-abortion rights and conservative organizations, as evidenced particularly by the Proponent’s publicly stated intention to identify companies that contribute to Planned Parenthood as part of an attempt to initiate boycotts of such companies and to defund Planned Parenthood. These activities make clear that the Proposal is an attempt not to benefit the Company’s shareholders at large, but rather an effort to further the Proponent’s own personal interest in advancing his ideological views.

Not only is the Proposal “an abuse of the security holder proposal process” because it is designed to further the Proponent’s personal ideological beliefs without producing any benefit for the Company’s other shareholders, but “[t]he cost and time involved in dealing with [the Proposal is therefore] a disservice to the interests of the issuer and its security holders at large.” Exchange Act Release No. 19135 (Oct. 14, 1982).

The Company acknowledges that when a proposal that is of personal interest to the proponent also furthers an interest shared by the shareholders at large, the Staff has, in the past, declined to exclude the proposal. For example, in *JPMorgan Chase & Co.* (avail. March 6, 2007) (“*JPMorgan 2007*”), the Staff declined to concur that a proposal requesting the Company to report “initiatives instituted by management to address the Company’s alleged links to slavery” could be excluded under Rule 14a-8(i)(4) despite the Company’s contention that the proposal was clearly of personal interest to the proponent, because the proposal raised an issue that was also of general interest—the Company’s “possible legal liability” due to its policies. Thus, Rule 14a-8(i)(4) is not intended to permit exclusion of a shareholder proposal *solely* because it relates to an issue in which the proponent is “personally committed or intellectually and emotionally interested.” Exchange Act Release No. 20091 (Aug. 16, 1983).

The current Proposal, however, does not allege that the Company’s charitable contributions policy exposes the Company to liability or other financial harm. Insofar as the Proposal takes issue only with the specific recipients of the Company’s charitable support, and not with charitable contributions generally, it can be distinguished from the proposal in *JPMorgan 2007*, which expressly alleged that the company’s activities created potential liability, a concern presumably shared by all shareholders.

In sum, over the course of several years, and in his own published writings, the Proponent has made clear his goal of pressuring companies into ending their support of organizations that


defend abortion rights or support other non-conservative agendas through his activities in a variety of organizations and the submission of numerous shareholder proposals. As there is nothing to indicate that the Company's other shareholders generally share the Proponent's own ideological opposition to such organizations or causes, the Proposal simply represents the Proponent's latest attempt to further his personal interest. Because the Proposal "attempt[s] to achieve personal ends that are not necessarily in the common interest of [the Company's] shareholders generally," it may be excluded under Rule 14a-8(i)(4). Exchange Act Release No. 20091 (Aug. 16, 1983).

III. CONCLUSION

Based upon the foregoing analysis, the Company respectfully requests that the Staff concur that it will take no action if the Company excludes the Proposal from its 2020 Proxy Materials pursuant to Rule 14a-8(i)(7) and Rule 14a-8(i)(4).

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 rdmiller@milbank.com. If we can be of any further assistance in this matter, please do not hesitate to call me at (212)-530-5022.

Sincerely,



Rod Miller
Partner
Milbank LLP

Enclosures

cc: Thomas Strobhar

Exhibit A

Proposal

Thomas Strobhar

November 14, 2019

John McManus
General Counsel and Secretary
MGM Resorts International
3600 Las Vegas Boulevard South
Las Vegas, NV 89109

Dear Mr. McManus:

I am the owner of 1400 shares of MGM Resorts International. I have owned them continuously for over a year and intend to hold them through the time of our next annual meeting. At that meeting I will make the following proposal:

Whereas, the Company's charitable contributions, properly managed, are likely to enhance the reputation of the Company:

Whereas, increased disclosure regarding appropriate charitable contributions is expected to create goodwill for our company.

Whereas, making the benefits of our Company's philanthropic programs broadly known is likely to promote the Company's interests:

Whereas, transparency and corresponding feedback from shareholders, the philanthropic community and others, could be useful in guiding the Company's future charitable decision making:

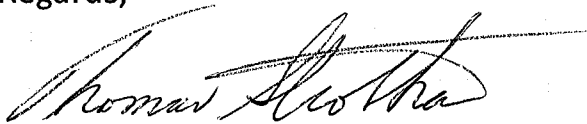
Resolved: The Proponent requests that the Board of Directors consider issuing a statement on the Company website, omitting proprietary information and at reasonable cost, disclosing the Company's standards for choosing which organization receive the Company's assets in the form of charitable contributions, and the rational, if any, for such contributions. Also, it is requested that any recipient which receives \$1,000 or more of direct contributions, excluding employee matching gifts, be listed on the Company website.

Supporting Statement

Absent a system of accountability and transparency, some charitable contributions may be handled unwisely, potentially harming the Company's reputation and shareholder value. Corporate charitable contributions should be given as much exposure as possible, lest their intended impact on goodwill is diminished. For example, if we gave to the American Cancer Society potentially thousands of our stakeholders might approve of our interest in challenging this disease. Likewise, our support of Planned Parenthood could win the praise of millions of Americans who have had an abortion at one of their facilities. Educational organizations, like the Southern Poverty Law Center, have seen an increase in their funding since they included several conservative Christian organizations on their list of hate groups. Our stakeholders and customers might be similarly enthused if we supported them. Be it the Girl Scouts, American Heart Association, Boys and Girls Club of America, Red Cross or countless other possible recipients; our support should be publicly noted. Those who might disagree with our decisions can play a valuable role also.

Fuller disclosure would provide enhanced feedback opportunities from which our Company could make more fruitful decisions. Decisions regarding corporate philanthropy should be transparent to serve the interests of shareholders better.

Regards,

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

Thomas Strobhar

P

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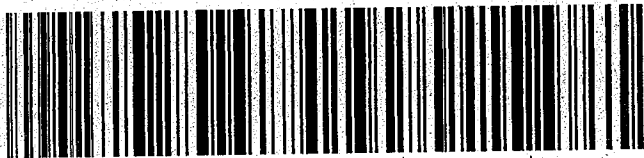
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BEAVERCREEK OH 45434

TO:

John McManus
General Counsel and Secretary
MGM Resorts International
3600 Las Vegas Boulevard South
Las Vegas, NV 89109

Label 228, March 2016

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