

## LATHAM & WATKINS LLP

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January 25, 2021

### VIA ELECTRONIC MAIL

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

Re: **Omnicom Group Inc. Shareholder Proposal from  
The Nathan Cummings Foundation**

Ladies and Gentlemen:

This letter is submitted on behalf of Omnicom Group Inc., a New York corporation (“*Omnicom*” or the “*Company*”). On behalf of the Company, we hereby file with the staff of the Division of Corporation Finance (the “*Staff*”) the Company’s reasons for excluding from its proxy statement for the Company’s 2021 Annual Meeting of Shareholders (the “*Proxy Materials*”) a shareholder proposal (attached hereto as Exhibit A, the “*Proposal*”) and related supporting statement submitted by The Nathan Cummings Foundation (the “*Proponent*”).

The Company respectfully requests confirmation that the Staff will not recommend enforcement action to the Securities and Exchange Commission (the “*Commission*”) if the Company excludes the Proposal pursuant to Rule 14a-8(i)(7), on the basis that the Proposal relates to the Company’s ordinary business operations.

The Proposal is substantially similar to the proposal submitted to The Walt Disney Corporation on September 11, 2020 by Myra K. Young and for which the Staff granted no-action relief on January 8, 2021 pursuant to Rule 14a-8(i)(7) (the “*Walt Disney Proposal*”). Similar to the Walt Disney Proposal, the Proposal relates to the Company’s ordinary business operations, and therefore, the Company respectfully requests confirmation that the Staff will not recommend enforcement action to the Commission if the Proposal is excluded from the Company’s Proxy Materials pursuant to Rule 14a-8(i)(7).

By copy of this letter, we are advising the Proponent of the Company’s intention to exclude the Proposal. In accordance with Rule 14a-8(j)(2) and Staff Legal Bulletin No. 14D (November 7, 2008), we are submitting by electronic mail (i) this letter, which sets forth our reasons for excluding the Proposal; and (ii) the Proponent’s letter submitting the Proposal.

The Company intends to file its definitive proxy statement with the Commission on or about March 25, 2021. This letter is being sent to the Staff fewer than 80 calendar days before

such date and accordingly, as described below, the Company requests that the Staff waive the 80-day requirement with respect to this letter.

## **I. The Proposal.**

The Proposal, in material part, requests that the Company's shareholders approve the following:

**“Resolved**, shareholders request the Board commission an independent third-party report, at reasonable cost and omitting proprietary information, assessing how and whether Omnicom ensures its advertising policies are not contributing to violations of civil or human rights. The report should consider whether the policies contribute to the spread of hate speech, disinformation, white supremacist activity, or voter suppression efforts, and whether policies undermine efforts to defend civil and human rights, such as through the demonetization of content that seeks to advance and promote such rights.”

## **II. Basis for Exclusion — The Proposal May Be Excluded Pursuant to Rule 14a-8(i)(7).**

### **A. Background.**

Rule 14a-8(i)(7) permits a company to exclude a shareholder proposal if the proposal “deals with a matter relating to the company’s ordinary business operations.” 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.” *Release No. 34-40018* (May 21, 1998) (the “1998 Release”). As set out in the 1998 Release, there are two “central considerations” underlying the ordinary business exclusion. One consideration 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 other consideration is that a proposal should not “seek[] 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 Proposal implicates the first of these considerations.

### **B. The Proposal May Be Excluded Because the Subject Matter of the Proposal Directly Concerns the Company’s Ordinary Business Operations.**

The Proposal may be excluded in reliance on Rule 14a-8(i)(7) because it relates to the manner in which the Company advertises its products and services or advises its clients to advertise their products and services, each of which relates to the Company’s ordinary business operations. The Staff consistently has concurred that decisions regarding a company’s advertising of products

and services relate to a company's ordinary business operations and thus may be excluded under Rule 14a-8(i)(7).

Most recently, in *The Walt Disney Company* (January 8, 2021), the Staff concurred without comment that Walt Disney could omit a proposal that is nearly identical to the Proposal, where Walt Disney had argued that the proposal could be omitted because it relates to the manner in which the company advertises its products and services. In *Amazon.com, Inc.* (March 23, 2018), the Staff also concurred in exclusion of a proposal requesting that “the board take the steps necessary to establish a policy that will ensure that the Company does not place promotional or other marketing material on online sites or platforms that produce and disseminate content that expresses hatred or intolerance for people on the basis of actual or perceived race, ethnicity, national origin, religious affiliation, sex, gender, gender identity, sexual orientation, age or disability” as relating to the company's ordinary business operations. In this regard, the Staff noted that the Proposal “relates to the manner in which the Company advertises its products and services.” See also *Ford Motor Company* (February 2, 2017) (concurring in exclusion of a proposal requesting that the company assess the political activity resulting from its advertising and any resulting exposure to risk because the proposal related to Ford's ordinary business operations); *FedEx Corp.* (July 11, 2014) (concurring in exclusion of a proposal relating to the company's sponsorship of the Washington DC NFL franchise team given controversy over the team's name because the proposal “relate[d] to the manner in which FedEx advertise[d] its products and services”); *Tootsie Roll Industries Inc.* (January 31, 2002) (concurring in exclusion 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”); *The Quaker Oats Company* (March 16, 1999) (concurring in exclusion of a proposal requesting the formation of an employee committee to review advertising for content slandering people based on race, ethnicity, or religion because the proposal related to “the manner in which a company advertises its products”); *PepsiCo, Inc.* (February 23, 1998) (concurring in exclusion of a proposal requesting that the Board of Directors prepare a report regarding the use of nonracist portrayals by the company because the proposal related to “the manner in which a company advertises its products”); and *General Mills, Inc.* (July 14, 1992) (concurring in exclusion of a proposal to establish a policy of not advertising on Geraldo Rivera's show and other “trash TV” programs because the proposal related to “the manner in which a company advertises its products”).

The allocation of advertising resources to best promote a company's products and services is a key management function. At Omnicom, which is a strategic holding company providing advertising, marketing and corporate communications services to clients through its branded networks and agencies around the world, advising clients where to allocate their advertising resources is a key part of the Company's day-to-day ordinary business operations. The Company's advertising professionals devote significant time, energy and resources to making decisions relating to both the advertising of the Company's products and services as well as the advertisements for clients of the Company, including determining the appropriate channels for advertising, such as social media platforms.

Further, the Company operates in a highly competitive industry, and marketing effectiveness is among the competitive factors that affect the sales of its products and services. By requesting a report on the assessment of “how and whether Omnicom ensures the Company’s advertising policies are not contributing to violations of civil or human rights,” the Proposal reflects the Proponent’s attempt to impose on the Company the Proponent’s own views on advertising strategies and standards. However, as in the precedents discussed above, the manner or context in which a company advertises its products and services, or in the case of Omnicom, advises its clients to advertise their products or services, addresses tasks that are so fundamental to management’s ability to run the Company on a day-to-day basis that they could not possibly be subject to direct shareholder oversight, and thus are excludable under Rule 14a-8(i)(7).

To the extent that the Proponent might argue that a request for a report to shareholders regarding an assessment of whether the Company’s advertising policies are contributing to civil or human rights violations is not the same as dictating advertising, the Staff has rejected similar attempts to put form over substance. Framing a shareholder proposal in the form of a request for a report does not change the underlying nature of the proposal. The SEC 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 *Release No. 34-20091* (August 16, 1983) (“[T]he staff will consider whether the subject matter of the special report or the committee involves a matter of ordinary business; where it does, the proposal will be excludable”). See also *Rite Aid Corp.* (April 17, 2018) (concurring in exclusion 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.* (March 14, 2016) (concurring in exclusion 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”). Accordingly, even though the Proposal is in the form of a request for a report, it is excludable because the underlying subject matter bears on the ordinary business topic of the manner in which the Company advertises its products and services, as well as the manner in which it advises its clients to advertise their products and services.

**C. The Significant Social Policy Issue Raised by the Proposal does not Transcend the Company’s Ordinary Business Operations.**

The Proponent seeks to cast the Proposal as relating to a significant policy issue by asserting that the Company’s decision to advertise on certain social media platforms “contribute[s] to the spread of racism, hate speech, and disinformation online”; however, the mere reference to a significant policy issue does not alter the fundamentally ordinary business focus of the Proposal with regard to the Company in particular.

The significant policy issue that is at the heart of the Proposal is the extent to which “*platforms like Google and Facebook* [emphasis added] may be failing to protect civil and human rights by supporting government censorship, facilitating white supremacist activity, and enabling

voter suppression.” That policy issue is *not* the subject of the requested report, which would address the Company’s advertising policies. Because there is an insufficient nexus between the policy issue at the heart of the Proposal and the Company, the Proposal may be properly excluded pursuant to Rule 14a-8(i)(7).

As set out in the 1998 Release, proposals “focusing on sufficiently significant social policy issues (e.g., significant discrimination matters) generally would not be considered to be excludable [under Rule 14a-8(i)(7)], because the proposals would transcend the day-to-day business matters and raise policy issues so significant that it would be appropriate for a shareholder vote.” As the Staff has since made clear, the extent to which a proposal has a nexus to the business of a company is relevant in assessing whether a proposal may be excluded on the basis that it relates to the ordinary business of the company, notwithstanding a reference to a significant policy issue. The Staff indicated in *Staff Legal Bulletin 14E* (October 27, 2009) that a shareholder proposal focusing on a significant policy issue “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.” In *Staff Legal Bulletin 14H* (October 22, 2015) the Staff further explained that “[w]hether the significant policy exception applies depends, in part, on the connection between the significant policy issue and the company’s business operations.” Finally, in *Staff Legal Bulletin 14K* (October 16, 2019), the Staff reiterated its view 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 also clarified that the focus of this analysis is not on “the overall significance of the policy issue raised by the proposal,” but rather on “whether the proposal raises a policy issue that transcends the particular company’s ordinary business operations.” Thus, “a policy issue that is significant to one company may not be significant to another.”

Consistent with this position, when a proposal does not have a sufficient nexus to a company’s business, the Staff has concurred that the proposal is excludable under Rule 14-8(i)(7) even if it touches upon a significant policy issue. For example, in *PayPal Holdings Inc.* (March 6, 2018), the Staff concurred in exclusion of a proposal addressing climate change that was submitted to a technology and digital payment company and in *Viacom Inc.* (December 18, 2015), the Staff concurred in exclusion of a proposal requesting that the company issue a report assessing the company’s policy responses to public concerns regarding linkages of food and beverage advertising to impacts on children’s health, despite the proponent’s assertion that the company, by virtue of licensing popular characters to manufacturers of certain food products, was in a position similar to the food manufacturers. See also *Amazon.com, Inc.* (discussed above); *Wal-Mart Stores, Inc.* (March 9, 2011) (concurring in exclusion of a proposal addressing gun violence that was submitted to a multiproduct retailer); and *Rite Aid Corp.* (March 5, 1997) (concurring in exclusion of a proposal regarding the health effects of cigarette smoking that was submitted to a multiproduct retailer). In comparison, in *AmerisourceBergen Corp.* (January 11, 2018), the Staff declined to concur in exclusion of a proposal addressing the opioid crisis that was submitted to a pharmaceutical products distributor engaged in the distribution of opioids.

Here, and as in the letters cited above, to the extent the Proposal references a significant policy issue generally, it does not raise a significant policy issue as to the Company because it does not have a sufficient nexus to the business of the Company. The policy issue which the Proposal



seeks to address is “that platforms like Google and Facebook may be failing to protect civil and human rights by supporting government censorship, facilitating white supremacist activity, and enabling voter suppression.” This does not have a sufficient nexus to the Company because it is the policy of platforms such as Google and Facebook that the Proponent apparently seeks to change, not the advertising policies of the Company.

Similar to The Walt Disney Company in the Walt Disney Proposal, which received no-action relief from the Staff pursuant to Rule 14a-8(i)(7) on a substantially similar proposal, the business of the Company is not acting as a social media platform like Google or Facebook. The business of the Company is providing advertising, marketing and corporate communications services to its clients, including, as noted in the Proposal, The Walt Disney Company. Accordingly, the Proposal is excludable as it relates to the Company’s ordinary business pursuant to Rule 14a-8(i)(7) because it does not raise a policy issue that has a sufficient nexus to the Company as to transcend the Company’s day-to-day business matters.

### **III. Request for Waiver under Rule 14a-8(j)(1).**

The Company further requests that the Staff waive the 80-day filing requirement set forth in Rule 14a-8(j) for good cause. Rule 14a-8(j)(1) requires that, if a company “intends to exclude a proposal from its proxy materials, it must file its reasons with the Commission no later than 80 calendar days before it files its definitive proxy statement and form of proxy with the Commission.” However, Rule 14a-8(j)(1) allows the Staff, in its discretion, to permit a company to make its submission later than 80 days before the filing of its definitive proxy statement if the company demonstrates good cause for missing the deadline.

The Company has historically held its annual meeting at the end of May, and held its 2020 annual meeting on June 9. In 2021, however, the Company anticipates moving its annual meeting date to May 4, more than 30 days prior to the 2020 annual meeting. So whereas the date of this letter would have been within 80 days of its historical proxy filing date, that is not the case because of the accelerated annual meeting timeline in 2021.

As noted above, the Proposal is substantially similar to the proposal submitted to The Walt Disney Corporation on September 11, 2020 by Myra K. Young and for which the Staff granted no-action relief on January 8, 2021. As the Staff has recently considered the Walt Disney Proposal and its excludability under Rule 14a-8(i)(7), the time required for the Staff to consider our request should be minimal. Based on these facts, the Company believes that it has good cause for its inability to meet the 80-day requirement. Accordingly, the Company respectfully requests that the Staff waive the 80-day requirement with respect to this letter.

### **IV. Conclusion.**

For all of the reasons stated above, it is our view that the Company may exclude the Proposal from its Proxy Materials pursuant to Rule 14a-8(i)(7). We request that the Staff concur in our view or, alternatively, confirm that the Staff will not recommend any enforcement action to the Commission if the Company so excludes the Proposal.

**LATHAM & WATKINS** LLP

If the Staff does not concur with the Company's position, we would appreciate an opportunity to confer with the Staff concerning this matter prior to the determination of the Staff's final position. In addition, the Company requests that the Proponent copy the undersigned on any response he may choose to make to the Staff, pursuant to Rule 14a-8(k).

Please contact the undersigned at (202) 637-2332 to discuss any questions you may have regarding this matter.

Sincerely,



Brian D. Miller  
of LATHAM & WATKINS LLP

Enclosures

cc: Michael J. O'Brien, Omnicom Group Inc.  
Laura Campos, The Nathan Cummings Foundation

**Exhibit A**



November 11, 2020

Michael J. O'Brien  
Attn: Corporate Secretary  
Omnicom Group Inc.  
437 Madison Avenue  
New York, New York 10022

Dear Mr. O'Brien,

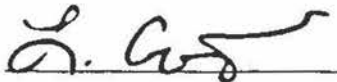
The Nathan Cummings Foundation is an endowed institution with approximately \$425 million of investments. As an institutional investor, the Foundation believes that the way in which a company approaches environmental, social and governance issues has important implications for long-term shareholder value.

It is with these considerations in mind that we submit this resolution for inclusion in Omnicom Group Inc.'s proxy statement under Rule 14a-8 of the general rules and regulations of the Securities Exchange Act of 1934. The Nathan Cummings Foundation is the primary sponsor of this proposal.

The Nathan Cummings Foundation is the beneficial owner of over \$2,000 worth of shares of Omnicom Group Inc. stock. Verification of this ownership, provided by our custodian, Amalgamated Bank, is included herewith. We have continuously held over \$2,000 worth of these shares of Omnicom Group Inc. stock for more than one year and will continue to hold these shares through the shareholder meeting.

If you have any questions or concerns about the Foundation's submission of this resolution, please contact me at (917) 691-9015. Please note that the Foundation's offices are closed and we are not accepting mail until further notice. We ask that any written correspondence about this proposal be sent by email to [laura.campos@nathancummings.org](mailto:laura.campos@nathancummings.org). If it is necessary to send hard copies of materials, please contact me for a mailing address.

Sincerely,



Laura Campos  
Director, Corporate & Political Accountability

## Advertising Policy and Social Media

Omnicom is the world's second largest advertising holding company, managing \$38 billion in annual client marketing expenditures. Omnicom's clients include Disney, Facebook's top U.S. advertiser from January to June 2020<sup>1</sup>, and Apple, which spent more than \$100 million at YouTube in 2020.<sup>2</sup> Omnicom itself is part of Facebook's client council, which advises on issues including content moderation.<sup>3</sup>

There is widespread concern that platforms like Google and Facebook may be failing to protect civil and human rights by supporting government censorship,<sup>4</sup> facilitating white supremacist activity,<sup>5</sup> and enabling voter suppression.<sup>6</sup> Facebook has noted that, "One of the biggest issues social networks face is that, when left unchecked, people will engage disproportionately with more sensationalist and provocative content."<sup>7</sup>

Omnicom could face reputational and business risk if it is perceived to be contributing to the spread of racism, hate speech, and disinformation by facilitating advertising on social media platforms. Inadvertent promotion of harmful content by advertisers threatens user safety and brand value. Seventy percent of millennials and Gen Xers "will not like, recommend, or purchase from a brand whose ads appear next to offensive, hateful, or derogatory content."<sup>8</sup>

In 2018, after CNN found YouTube ran ads from major brands on extremist channels, one analyst said, "If brands want to make sure this stops, the only way for that to happen is for them to stop spending [on YouTube] until it's fixed." Advertisers are not passive bystanders when they inadvertently finance harm. Their spending influences what content appears online. For instance, Omnicom found some advertisers excluding content like "News and Current Events" from ad buys;<sup>9</sup> journalism groups have asked that advertisers not block ads from financing credible journalism.<sup>10</sup>

According to House Speaker Nancy Pelosi, advertisers "have power to discourage platforms from amplifying dangerous and even life-threatening disinformation." However, steps taken to date appear to be insufficient. For instance, the Global Alliance for Responsible Media announced shared recommendations

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<sup>1</sup><https://www.bloomberg.com/news/articles/2020-07-18/facebook-s-top-advertiser-disney-cuts-ad-spending-wsj>;  
says#:~:text=Disney%20was%20Facebook's%20top%20U.S.,t%20clear%2C%20the%20newspaper%20rep  
orted

<sup>2</sup> <https://www.pathmatics.com/hubfs/Pathmatics%20Digital%20Video%20Report.pdf>

<sup>3</sup> <https://www.mediapost.com/publications/article/352987/zuckerberg-and-facebook-team-concede-trust-defici.html>

<sup>4</sup> <https://impactpolicies.org/en/news/30>

<sup>5</sup> <https://www.techtransparencyproject.org/sites/default/files/Facebook-White-Supremacy-Report.pdf>

<sup>6</sup> <https://int.nyt.com/data/documenthelper/533-read-report-internet-research-agency/7871ea6d5b7bedafb19/optimized/full.pdf#page=1>

<sup>7</sup> <https://www.facebook.com/notes/mark-zuckerberg/a-blueprint-for-content-governance-and-enforcement/10156443129621634/>

<sup>8</sup> <https://venturebeat.com/2018/07/25/adcolony-brands-are-worried-about-unsafe-content-and-fake-news-on-facebook-social-media/>

<sup>9</sup> [https://www.omnicommediagroup.com/wp-content/uploads/2020/05/OMG\\_COVID-19\\_SocialMediaPricingPOV\\_22April20.pdf](https://www.omnicommediagroup.com/wp-content/uploads/2020/05/OMG_COVID-19_SocialMediaPricingPOV_22April20.pdf)

<sup>10</sup> <https://qfmd.info/emergency-appeal-for-journalism-and-media-support-2/>

between social media platforms and advertisers, including common definitions for hate speech. Critics question its efficacy. As WIRED magazine observed: "It's fair to wonder whether a consortium that includes Facebook and Google—the two dominant digital advertising companies—will produce any meaningful change to the status quo."<sup>11</sup> The president of Color Of Change called the recommendations, "another reminder that the incentives are broken and government regulation is still needed."

**Resolved,** shareholders request the Board commission an independent third-party report, at reasonable cost and omitting proprietary information, assessing how and whether Omnicom ensures its advertising policies are not contributing to violations of civil or human rights. The report should consider whether the policies contribute to the spread of hate speech, disinformation, white supremacist activity, or voter suppression efforts, and whether policies undermine efforts to defend civil and human rights, such as through the demonetization of content that seeks to advance and promote such rights.

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<sup>11</sup> <https://www.wired.com/story/she-helped-wreck-the-news-business-heres-her-plan-to-fix-it/>



HOWARD N. HANDWERKER  
First Vice President

OFFICE (626) 432-9907  
CELL (626) 437-4819  
howardhandwerker@amalgamatedbank.com

November 11, 2020

Michael J. O'Brien  
Attn: Corporate Secretary  
Omnicom Group Inc.  
437 Madison Avenue  
New York, New York 10022

Dear Mr. O'Brien,

This letter will verify that as of November 11, 2020, the Nathan Cummings Foundation held 181 shares of Omnicom Group Inc. common stock. It has continuously held more than \$2,000.00 worth of these shares for at least one year and intends to continue to hold at least \$2,000.00 worth of these shares at the time of your next annual meeting.

The Amalgamated Bank serves as custodian and record holder for the Nathan Cummings Foundation. The above-mentioned shares are registered in a nominee name of the Amalgamated Bank. The shares are held by the Bank through DTC Account #2352.

Sincerely,

A handwritten signature in cursive script that reads "Howard N. Handwerker".