

# **SANFORD J. LEWIS, ATTORNEY**

February 22, 2021

Via electronic mail

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

Re: Shareholder Proposal to PayPal Holdings Inc. Regarding Assessing Inclusion in the Workplace on Behalf of NorthStar Asset Management Inc. Funded Pension Plan

Ladies and Gentlemen:

NorthStar Asset Management Inc. Funded Pension Plan (the “Proponent”) is beneficial owner of common stock of PayPal Holdings Inc. (the “Company”) and has submitted a shareholder proposal (the “Proposal”) to the Company. I have been asked by the Proponent to respond to the letter dated January 22, 2021 (“Company Letter”) sent to the Securities and Exchange Commission by Brian Y. Yamasaki. In that letter, the Company contends that the Proposal may be excluded from the Company’s 2021 proxy statement. A copy of this letter is being emailed concurrently to Brian Y. Yamasaki.

## **SUMMARY**

The Proposal (attached) requests that the Company prepare a report to shareholders on whether written policies or unwritten norms at the Company reinforce racism in company culture. The supporting statement suggests that the report should assess whether Company policies or unwritten norms yield inequitable outcomes for employees based on race and ethnicity in patterns of hiring and retention, promotion and upward mobility, disciplinary action, or employee usage of benefits; or establish a cultural hierarchy through perceived pressure to use “whitened” names rather than birth names, to adopt “white-centric” physical appearance standards in hair style, body art or modifications, and facial hair styles, or to avoid traditional attire and religious head coverings.

The Company Letter asserts that the Proposal is substantially implemented. The Company Letter cites laudable efforts to address diversity and inclusion that are heading in the right direction, but no evidence that the Company has conducted a review or published a report assessing systemic racism embedded in company culture, policies, and procedures. The Company has not conducted the review requested and thus, has not in any sense fulfilled the ask. Therefore, the Proposal is not excludable under Rule 14a-8(i)(10).

## BACKGROUND

Addressing systemic racism in companies requires more than diversity and inclusion programs or antiracism education. Laura Morgan Roberts, a University of Virginia Professor, states that racism “isn’t always obvious... It can manifest in policies, procedures, unspoken norms and routines that push people into different paths of opportunity, where some individuals have greater access and others have less, due to race.”<sup>1</sup>

A recent article in *The Atlantic* highlighted this issue: Being Black—but Not Too Black—in the Workplace: Being a person of color at a predominantly white workplace creates its own special kinds of stress. The article noted that many Black professionals face challenges “beyond outright discrimination” and that many of the challenges they face are brought on by the psychological effects of the “racial landscape” of their company.<sup>2</sup> A study in the article found that Black professionals had to avoid expressing negative emotions, anger, frustration, and annoyance and instead to “show feelings of conviviality and pleasantness” even—especially—in response to issues of racial conflict. The negative emotions were discouraged even in settings where these emotions were otherwise welcomed — for instance, “litigators interacting with opposing counsel, or financial analysts responding to a stressful day on Wall Street.”<sup>3</sup>

This form of emotional suppression even takes place in diversity trainings similar to those that the Company mentions in their Letter. In the *Atlantic* article, many Black professionals interviewed “found that diversity trainings—intended to improve the work environment for minorities—actually became a source of emotional stress, as they perceived that their white colleagues could use these trainings to express negative emotions about people of color, but that they were expected not to disclose their own honest emotional reactions to such statements.”

Furthermore, a Harvard Business Review article, “Why Diversity Programs Fail,” notes that “[i]t shouldn’t be surprising that most diversity programs aren’t increasing diversity. Despite a few new bells and whistles, courtesy of big data, companies are basically doubling down on the same approaches they’ve used since the 1960s—which often make things worse, not better.”<sup>4</sup>

Research indicates that other types of diversity work, such as engaging managers to solve the problem, increasing on-the-job contact with female and minority workers, and promote social accountability result in better outcomes than traditional diversity or anti-bias training.

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<sup>1</sup> Jennifer Liu, “Companies are speaking out against racism, but here’s what it really looks like to lead an anti-racist organization,” CNBC, June 15, 2020, <https://www.cnbc.com/2020/06/15/what-it-means-to-be-an-anti-racist-company.html>

<sup>2</sup> Adia Harvey Wingfeld, “Being Black- but Not Too Black- in the Workplace,” *The Atlantic*, October 14, 2015, <https://www.theatlantic.com/business/archive/2015/10/being-black-work/409990/>

<sup>3</sup> Adia Harvey Wingfeld, “Being Black- but Not Too Black- in the Workplace,” *The Atlantic*, October 14, 2015, <https://www.theatlantic.com/business/archive/2015/10/being-black-work/409990/>

<sup>4</sup> <https://hbr.org/2016/07/why-diversity-programs-fail>

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Another resource, an article in *Anthropology Now* entitled “Why Doesn’t Diversity Training Work?”<sup>5</sup> reinforces the view that diversity training is “likely the most expensive, and least effective, diversity program around.” In fact, the article states that “hundreds of studies dating back to the 1930s suggest that anti-bias training doesn’t reduce bias, alter behavior, or change the workplace.” The authors indicate that the key to improving the effect of diversity training is to make that training part of a wider program of change. The Proposal’s request relates to this “wider program of change”; the Proponent believes that evaluating the possibilities of racism in company culture is an essential feature of an effective company strategy on this issue.

The *Stanford Social Innovation Review*<sup>6</sup> has highlighted “The Bias of ‘Professionalism’ Standards” noting that “[p]rofessionalism has become coded language for white favoritism in workplace practices that more often than not privilege the values of white and Western employees and leave behind people of color.” These pressures include repudiation of stereotypes, where the study featured in *The Atlantic* noted “black men may feel compelled to work longer hours as a way to repudiate stereotypes of a poor work ethic among blacks.”<sup>7</sup> Thus, what may appear on paper to be positive steps towards addressing systemic racism may not only fail to effectively address unwritten norms, but may actually further harm Black professionals in the workplace.

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<sup>5</sup> <https://scholar.harvard.edu/files/dobbin/files/an2018.pdf>

<sup>6</sup> [https://ssir.org/articles/entry/the\\_bias\\_of\\_professionalism\\_standards](https://ssir.org/articles/entry/the_bias_of_professionalism_standards)

<sup>7</sup> Adia Harvey Wingfeld, “Being Black- but Not Too Black- in the Workplace,” *The Atlantic*, October 14, 2015, <https://www.theatlantic.com/business/archive/2015/10/being-black-work/409990/>

Regarding workplace dress codes, though a dress code may appear inclusive, minority professionals still tend to “tread cautiously to avoid upsetting the majority group’s sensibilities. Put simply, they can be visibly black, but don’t want to be perceived as stereotypically black.”<sup>8</sup> This can involve feeling pressured to wear “white-centric” fashion trends or styling their hair in a certain way to conform more with their work environment and white coworkers. As the *Atlantic* article notes, unwritten norms and pressures faced by minority professionals highlight a need to rethink previous diversity and inclusion efforts in the workplace. “Do diversity and inclusion initiatives take into consideration how minorities placed in those environments feel? How can policies create not just more equitable hiring processes, but address the emotional toll of being a racial minority in a professional work setting?”<sup>9</sup>

This is the focus of the current Proposal. While PayPal has undertaken important diversity and inclusion initiatives, the focus of the proposal remains unaddressed.

## ANALYSIS

### **Rule 14a-8(i)(10)**

The Company Letter asserts that the Proposal is substantially implemented; however, the Company’s disclosures do not substantially implement the Proposal because they do not address full objective of the proposal, specifically as outlined in the supporting statements.

In the Staff’s view, a determination that the Company has substantially implemented the proposal depends upon whether its particular policies, practices, and procedures compare favorably with the guidelines of the proposal. *Texaco, Inc.* (Mar. 28, 1991). Substantial implementation under Rule 14a-8(i)(10) requires a company’s actions to have satisfactorily addressed both the proposal’s guidelines and its essential objective. See, e.g., *Exelon Corp.* (Feb. 26, 2010). The Commission stated in 1976 that the predecessor to Rule 14a-8(i)(10) was “designed to avoid the possibility of shareholders having to consider matters which already have been favorably acted upon by the management.” [Exchange Act Release No. 12598 \(July 7, 1976\)](https://www.sec.gov/Archives/edgar/data/12598/1259801.htm). Substantial implementation under Rule 14a-8(i)(10) requires a company’s actions to have satisfactorily addressed both the proposal’s underlying concerns and its essential objective. In the present instance, the Company’s reporting has done neither.

Staff Legal Bulletin 14K and numerous no action decisions have made it clear that the Staff looks to the entirety of a proposal, including its supporting statement and whereas clauses, to discern the underlying concerns. The motivating concern and essential purpose of the Proposal is demonstrated by the text in the Proposal’s whereas clauses and supporting statement which highlight the need to evaluate and confront racism more deeply than the Company’s existing disclosures currently delve:

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<sup>8</sup> Adia Harvey Wingfeld, “Being Black- but Not Too Black- in the Workplace,” *The Atlantic*, October 14, 2015, <https://www.theatlantic.com/business/archive/2015/10/being-black-work/409990/>

<sup>9</sup> <https://www.theatlantic.com/business/archive/2015/10/being-black-work/409990/>

- The Harvard Business Review explains that “[c]ompanies must confront racism at a systemic level – addressing everything from the structural and social mechanics of their own organizations to the role they place in the economy at large”;
- Tema Okun, a veteran racial justice facilitator, illustrates the insidious nature of white supremacist culture by explaining that “[c]ulture is powerful precisely because it is so present and at the same time so very difficult to name or identify.” Cultural racism can manifest as people of color being ignored, overly criticized, undermined, or assumed as inferior. Other manifestations can be strict cultural norms or criticisms of certain hairstyles, manners of speech, or other physical appearances;
- Cultural racism can do long-term emotional and psychological damage, and research shows that employees who bring their authentic selves to work perform better and report greater job satisfaction. Recently, a Fortune 500 company announced that it will allow natural black hairstyles and facial hair because the company wants all “employees feel comfortable, genuine and authentic”;
- Proponents believe that our company can advance long-term value creation through an analysis of whether and how systemic racism is embedded in company culture, policies and procedures.

It is clear from these statements that the Proposal’s essential purpose is not simply reporting on existing diversity, equity, and inclusion (DEI) programs – which experts described above have warned may be inadvertently harmful to employees of color – but rather the examination of the possibility of systemic racism embedded in company culture.

These are two distinct assessments – the former is related to common DEI practices such as diversity training; the latter seeks to uncover the manifestations of systemic racism at the Company. These manifestations are unlikely to be captured in traditional DEI examinations but which are likely reasons that a company struggles to succeed in its DEI goals such as increased hiring or retention and promotion of Black employees. For example, the Company’s own data illustrate that the PayPal workforce is only 8% Black and 6% Hispanic. Those numbers dwindle further at the VP level (4% and 5% respectively). The Proponent believes that examining the potential for cultural racism within company culture – as requested in the Proposal – would allow the Company to identify reasons these rates of diversity remain suppressed.

In numerous instances in the past, where companies disclose abundant information or actions without fulfilling the guidelines of the proposal has been seen as not excludable under Rule 14a-8(i)(10). See, for example, *EOG Resources, Inc.* (January 30, 2015), where there was abundant data disclosure but nothing equivalent to the “review” sought by the proposal.

### **Reviewing the Company’s Existing Actions**

The Company Letter notes that the Company maintains a diversity and inclusion website, where it discusses the methods through which it promotes a diverse and inclusive workplace. The Company also writes that it highlights the progress it has made in advancing an inclusive and diverse workforce through its 2019 Global Impact Report, cites its Code of Conduct discussing dress code and workplace inclusivity, discusses its community contributions towards black-owned businesses, and points to various diversity and inclusion awards it has been presented.

While important steps, these actions do not address what is requested by the proposal. First, looking to the Company's citation of its diversity and inclusion website, the Company states they have Diversity and Inclusion Communities, which create a support system for employees of different races, genders, and cultural backgrounds. While the Company says these groups "promote a sense of belonging" and facilitate "mentoring relationships," the Company does not report, as the Proposal asks, whether the members of these groups see outcomes equal to that of their white counterparts in hiring and retention, promotion and upward mobility, disciplinary action, or employee usage of benefits. It also does not address the possibility of a cultural hierarchy.

The Company then goes on to discuss its 2019 Global Impact Report which highlights progress the Company has made towards becoming a more inclusive and diverse workplace. The Company cites that 83% of surveyed employees believe PayPal is a diverse place to work. That 83% figure is notable, but without a breakdown as to the perspectives of people of color, we don't know whether the perception of diversity is universally shared, or whether there is a significantly divided perspective on how diverse the company is as between people of color than white co-workers. Given that we know that only 14% of the company's global workforce is Black or Hispanic, the 83% positive answer to this question could mathematically represent only the majority ethnic groups in the company workforce.

Nor does the Company include any analysis of whether such employees may feel pressure to embrace a more "white-centric" identity, or information regarding equitable hiring, promotion, or disciplinary outcomes.

The Company's citation of its financial and volunteer commitments to support black-owned businesses is commendable but only tangentially related to the Proposal. The Proposal is focused on examination of internal policies and practices and how they may impact its employees.

The Company further notes in its letter that they embrace an inclusive workplace culture and dress code, encouraging employees be "comfortable in what they wear." Such a statement on paper sounds positive, but it's unclear whether, in practice, such cultural norms are contradicted with a bias toward "white-centric" physical appearance standards in hair style, body art or modifications, and facial hair styles, or to avoid traditional attire and religious head coverings. A "comfortable" work dress code does not address the potential for unspoken or unwritten pressure to use "whitened" names or "white-centric" appearance standards.

**A key part of the Proposal asks for the report on the influence of unwritten norms. None of the Company's achievements or policies outlined in the Letter address this.** While the Company has provided numerous examples of its donations, inclusivity efforts, and policies, the actions cited by the Company are unresponsive to the request of the Proposal which requires a different examination – one which looks more particularly at the degree to which written and unwritten norms may be reinforcing systemic racism. The Stanford Social Innovation Review article notes that white-centric values, "established over time as history and fact, have been used to create the narrative of white supremacy that underpins professionalism today, playing out in the hiring, firing, and day-to-day management of workplaces around the world."<sup>10</sup> Thus, without an analysis of the existence of these values in company policies or unwritten norms, the Proposal

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<sup>10</sup> [https://ssir.org/articles/entry/the\\_bias\\_of\\_professionalism\\_standards#](https://ssir.org/articles/entry/the_bias_of_professionalism_standards#)

cannot be implemented.

We note in particular that the formation of “diversity communities” within the company are an important first step, but may also be an important tool in the evaluation requested in the report.

The Company Letter notes that the company has established employee resource groups, including one for Black employees, geared toward “promoting a sense of ‘belonging’ and an inclusive and respectful workplace; facilitating strong mentoring relationships and personal development; and providing inspiration and motivation from role models and subject matter experts.” The Proponent believes that such communities are a good place to start in developing the requested analysis, which involves an examination of where written policies or unwritten norms continue to stand in the way of a genuine sense of emotional safety and inclusion of Black employees.

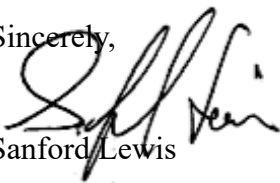
In short, the Company’s existing disclosures are unresponsive to the request for a report that reviews questions of systemic racism and cultural hierarchy raised by the proposal.

A vote of shareholders on the Proposal is quite appropriate in the present context, as it is not excludable under Rule 14a-8(i)(10). Rule 14a-8(i)(10) was intended, according to the Commission, to prevent shareholders from deliberating on matters already acted upon favorably by the Company. The Proposal has not been acted upon favorably. Thus, the Proposal provides an opportunity for shareholders to vote as to whether the Company should go further than it has, specifically either to make the commitment, or explain that it will not do so.

### CONCLUSION

We believe that the Company has provided no basis for the conclusion that the Proposal is excludable from the 2021 proxy statement pursuant to Rule 14a-8. As such, we respectfully request that the Staff inform the company that it is denying the no action letter request.

Sincerely,



Sanford Lewis

cc: Brian Y. Yamasaki

## Assessing Inclusion in the Workplace

### WHEREAS:

According to the National Museum of African American History and Culture, “[s]tructural racism is the overarching system of racial bias across institutions and society. These systems give privileges to white people resulting in disadvantages to people of color,” thereby imposing a cultural hierarchy among racial groups;

The Harvard Business Review explains that “[c]ompanies must confront racism at a systemic level – addressing everything from the structural and social mechanics of their own organizations to the role they place in the economy at large”;

A 2020 Citigroup study found that since 2000 the U.S. gross domestic product (GDP) has lost \$16 trillion as a result of discrimination against African Americans, including \$2.7 trillion lost due to pay disparities. The study also found that reversing discriminatory practices could boost U.S. GDP by \$5 trillion in the next five years;

Tema Okun, a veteran racial justice facilitator, illustrates the insidious nature of white supremacist culture by explaining that “[c]ulture is powerful precisely because it is so present and at the same time so very difficult to name or identify.” Cultural racism can manifest as people of color being ignored, overly criticized, undermined, or assumed as inferior. Other manifestations can be strict cultural norms or criticisms of certain hairstyles, manners of speech, or other physical appearances;

Cultural racism can do long-term emotional and psychological damage, and research shows that employees who bring their authentic selves to work perform better and report greater job satisfaction. Recently, a Fortune 500 company announced that it will allow natural black hairstyles and facial hair because the company wants all “employees feel comfortable, genuine and authentic”;

Proponents believe that our company can advance long-term value creation through an analysis of whether and how systemic racism is embedded in company culture, policies and procedures.

**RESOLVED:** Shareholders urge the Board of Directors to prepare a report to shareholders on whether written policies or unwritten norms at the Company reinforce racism in company culture.

**SUPPORTING STATEMENT:** The report should be prepared within one year, at reasonable cost and excluding proprietary and privileged information. The Board is encouraged to assess whether Company policies or unwritten norms:

1. Yield inequitable outcomes for employees based on race and ethnicity in patterns of hiring and retention, promotion and upward mobility, disciplinary action, or employee usage of benefits;
2. Establish a cultural hierarchy through perceived pressure to use “whitened” names rather than birth names, to adopt “white-centric” physical appearance standards in hair style, body art or modifications, and facial hair styles, or to avoid traditional attire and religious head coverings.





**PayPal**

2211 North First Street  
San Jose, CA 95131

January 22, 2021

VIA EMAIL ([shareholderproposals@sec.gov](mailto:shareholderproposals@sec.gov))

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

Re: *PayPal Holdings, Inc.*  
*Stockholder Proposal of NorthStar Asset Management, Inc. Funded Pension Plan*

Ladies and Gentlemen:

This letter is submitted by PayPal Holdings, Inc., a Delaware corporation (“PayPal” or the “Company”), pursuant to Rule 14a-8(j) under the Securities Exchange Act of 1934 (the “Exchange Act”), to notify the Securities and Exchange Commission (the “Commission”) of the Company’s intention to exclude from its proxy materials for its 2021 Annual Meeting of Stockholders (the “2021 Proxy Materials”) a stockholder proposal (the “Proposal”) and statements in support thereof from NorthStar Asset Management, Inc. Funded Pension Plan (the “Proponent”). The Company requests confirmation that the staff of the Division of Corporation Finance (the “Staff”) will not recommend an enforcement action to the Commission if the Company excludes the Proposal from its 2021 Proxy Materials in reliance on Rule 14a-8.

Pursuant to Rule 14a-8(j) and Staff Legal Bulletin No. 14D (November 7, 2008) (“SLB 14D”), we have (i) submitted this letter and its exhibit to the Commission within the time period required under Rule 14a-8(j) and (ii) concurrently sent copies of this correspondence to the Proponent as notification of the Company’s intention to exclude the Proposal from its 2021 Proxy Materials.

Rule 14a-8(k) and SLB 14D provide that stockholder proponents are required to send companies a copy of any correspondence that the proponents elect to submit to the Commission or Staff. Accordingly, we are taking this opportunity to inform the Proponent that if the Proponent elects to submit additional correspondence to the Commission or the Staff with respect to the Proposal, a copy of that correspondence should be furnished concurrently to the undersigned on behalf of the Company pursuant to Rule 14a-8(k) and SLB 14D.

## **The Submission**

The Company received the Proposal on November 30, 2020. A full copy of the Proposal is attached hereto as Exhibit A. The Proposal includes the following:

RESOLVED: Shareholders urge the Board of Directors to prepare a report to shareholders on whether written policies or unwritten norms at the Company reinforce racism in company culture.

## **Basis for Exclusion**

We hereby respectfully request the Staff concur in our view that the Proposal may be excluded from the 2021 Proxy Materials pursuant to Rule 14a-8(i)(10) because the Company has substantially implemented the Proposal.

## **Analysis**

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

#### *a. Background to Rule 14a-8(i)(10)*

Rule 14a-8(i)(10) permits a company to exclude a shareholder proposal if the company has already substantially implemented the proposal. The Commission adopted the “substantially implemented” standard in 1983 after determining that the “previous formalistic application” of the rule defeated its purpose, which is to “avoid the possibility of shareholders having to consider matters which already have been favorably acted upon by the management.” *See* Exchange Act Release No. 34-20091 (Aug. 16, 1983) (the “1983 Release”); Exchange Act Release No. 34-12598 (July 7, 1976). Accordingly, the actions requested by a proposal need not be “fully effected” provided that they have been “substantially implemented” by the company. *See* 1983 Release.

Applying this standard, the Staff has consistently permitted the exclusion of a proposal when it has determined that the company’s policies, practices and procedures or public disclosures compare favorably with the guidelines of the proposal. *See, e.g., The Allstate Corp.* (Mar. 15, 2019); *United Cont’l Holdings, Inc.* (Apr. 13, 2018); *eBay Inc.* (Mar. 29, 2018); *Wal-Mart Stores, Inc.* (Mar. 16, 2017).

In addition, the Staff has permitted exclusion under Rule 14a-8(i)(10) where the company already addressed the underlying concerns and satisfied the essential objectives of the proposal, even if the proposal had not been implemented exactly as proposed by the proponent. For example, in *Wal-Mart Stores, Inc.* (Mar. 30, 2010), the proposal requested that the company adopt six principles for national and international action to stop global warming. The company argued that its Global Sustainability Report, which was available on the company’s website, substantially implemented the proposal. Although the Global Sustainability Report set forth only four principles that covered most, but not all, of the issues raised by the proposal, the Staff concluded that the company’s “policies, practices and procedures compare[d] favorably with the guidelines of the

proposal and that [the company] has, therefore, substantially implemented the proposal.” *See also Visa Inc.* (Oct. 11, 2019) (permitting exclusion of a proposal recommending that the compensation committee reform the company’s executive compensation philosophy to include social factors to enhance the company’s social responsibility where the company’s “policies, practices and procedures compare[d] favorably with the guidelines of the [p]roposal”); *Applied Materials, Inc.* (Jan. 17, 2018) (permitting exclusion under Rule 14a-8(i)(10) of a proposal requesting that the company “improve the method to disclose the Company’s executive compensation information with their actual information,” on the basis that the company’s “public disclosures compare[d] favorably with the guidelines of the [p]roposal,” where the company argued that its current disclosures follow requirements under applicable securities laws for disclosing executive compensation); *Oshkosh Corp.* (Nov. 4, 2016) (permitting exclusion under Rule 14a-8(i)(10) of a proposal requesting six changes to the company’s proxy access bylaw, on the basis that the company’s “policies, practices and procedures compare favorably with the guidelines of the proposal,” where the company amended its proxy access bylaw to implement three of six requested changes); *Alcoa Inc.* (Feb. 3, 2009) (permitting exclusion under Rule 14a-8(i)(10) of a proposal requesting a report describing how the company’s actions to reduce its impact on global climate change may have altered the current and future global climate, where the company published general reports on climate change, sustainability and emissions data on its website that did not discuss all topics requested in the proposal).

*b. The Company’s Policies, Practices and Initiatives Promoting a Diverse and Inclusive Culture Substantially Implement the Essential Objective of the Proposal*

In this instance, the Company has substantially implemented the Proposal, the essential objective of which is to foster a racially equitable corporate culture. Specifically, the Company takes great pride in the diverse and inclusive workplace culture it provides to its employees and consistently promotes diversity, equity and inclusion in its practices and policies, which is a core aspect of the Company’s corporate culture and a focus of the Proposal’s supporting statement. Additionally, the Company publishes information on its assessment of its programs and initiatives to promote diversity and inclusion, both within and outside of the Company, including the promotion of racial and social justice in communities, as summarized below.

- *Diversity and Inclusion Website.* The Company maintains a website<sup>1</sup> devoted to “Diversity and Inclusion at PayPal” that discusses methods through which the Company promotes diversity and inclusion within and outside of its workplace, including the following examples:
  - Confirmation that PayPal “strive[s] for a diverse workforce that includes people of different ethnic and cultural backgrounds, gender and sexual orientation, veteran status, abilities, and those who bring diverse thoughts, opinions, experience, and leadership styles – and all other characteristics that make people unique.”
  - Active support of PayPal employees through the Company’s Diversity & Inclusion Communities, which serve as (i) a support mechanism for creating an inclusive environment for Company employees, (ii) a collective voice around shared issues or concerns specific to a particular community to promote a sense of belonging and an inclusive and respectful workplace and (iii) a resource for opportunities related

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<sup>1</sup> <https://www.paypal.com/us/webapps/mpp/jobs/culture>

to employment, education, training, retention and business outreach and development. The Company supports eight employee resource groups, including communities to support its Hispanic, Interfaith, Asian, Black and women employees and their allies. Among the objectives and accomplishments of these communities are:

- promoting a sense of “belonging” and an inclusive and respectful workplace;
  - facilitating strong mentoring relationships and personal development; and
  - providing inspiration and motivation from role models and subject matter experts.
- *2019 Global Impact Report highlights.* The Company’s 2019 Global Impact Report, available on the Company’s website<sup>2</sup>, highlights progress the Company has made to date in advancing, among other things, an inclusive and diverse workforce. For example, in 2019:
    - 87% of its global employees completed the Company’s *Engage* survey. Of those surveyed, 83% responded that they believe PayPal is a diverse place to work.
    - The Company opened a customer service location in Manila, Philippines, where the Company received the RAD Award for the most effective and inclusive candidate experience.
    - The Company developed the Women Luminaries Program in Singapore to help address the gender diversity gap in technology, through which PayPal partnered with local universities to provide scholarships, mentoring, internships, and other opportunities to women studying either computer science, computer engineering or related fields.
    - The Company maintained 100% gender pay equity and US ethnic pay equity for the fourth year in a row.
    - Over 90% of all global employees completed Conscious Inclusion training through in-person or virtual training at 15 global sites, in nine languages.
    - The Company became one of the first in-house legal departments to support the Mansfield Rule, which targets candidate slates that are at least 50% composed of lawyers from underrepresented groups for at least 70% of all new U.S. legal roles and matters.
    - The Company concluded the first full year of its Supplier Diversity Program, with Tier 1 diverse suppliers reaching 9% of total spend.
    - The Company worked with partners in Sao Paolo, Sitel to hire Venezuelan refugees at PayPal’s Brazilian site.
  - *Workplace culture.* PayPal’s Code of Business Conduct and Ethics (the “Code of Conduct”), also available on the Company’s website<sup>3</sup>, confirms the Company’s policy of “respecting and embracing” diversity, and that “all employees are expected to treat each other with mutual respect and foster a culture of inclusion.” The Code of Conduct goes beyond prescriptive actions expected by the Company’s employees and speaks to the

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<sup>2</sup> <https://www.paypal.com/us/webapps/mpp/globalimpact>

<sup>3</sup> <https://www.paypal.com/nz/webapps/mpp/about/responsible-practices>

broader inclusive workforce culture that is expected from all PayPal employees as a collective.

- *Appropriate dress for the workplace.* As outlined in the Code of Conduct, the Company openly “encourage[s] and foster[s] a workplace where employees are comfortable in what they wear,” so long as it continues to engender a respectful work environment for others.
- *Community contributions.* In June 2020, the Company announced a \$530 million commitment to support Black-owned and other minority-owned businesses in the U.S. and a commitment to further bolster its internal programs to promote diversity, equity and inclusion within the PayPal community. This financial commitment is coupled with other efforts such as an initiative led by the Company’s Social Innovation team to identify opportunities for the Company’s employees to volunteer their time to support Black-owned businesses as part of a #MakeTheCommitment campaign. Under this campaign, Company employees have contributed hundreds of hours sharing their expertise to support Black-owned businesses through pro bono work, coaching, mentoring, and additional volunteer opportunities.
- *Recognitions and awards for diversity and inclusion.* In honor and recognition of PayPal’s work toward creating a diverse and inclusive workforce, the Company has been awarded, among others, Bloomberg’s Gender-Equality Index award in 2020, HRC’s Best Places to Work for LGBTQ Equality award in 2019, and Forbes The Best Employers for Diversity award in 2019.

The written policies and practices discussed above, including the Code of Conduct and information provided on the Company’s diversity and inclusion website, are clear examples of written policies designed to ensure that the Company’s corporate culture embraces respect for racial and ethnic diversity and cultivates an inclusive workplace. The employee survey, ethnic pay equity data and numerous recognitions provide evidence of how these policies, practices, and unwritten norms promote a corporate culture which embraces inclusion. The Company’s policies and practices regarding diversity, inclusion, equity and belonging are reviewed and overseen by the Compensation Committee of the Company’s Board of Directors. The Company’s progress resulting from its policies, practices and culture is reported annually in the Company’s global impact report, demonstrating the Company’s commitment to transparency and accountability for its mission of creating a more inclusive world. Accordingly, the Company has satisfied the Proposal’s essential objective of assessing whether the Company’s policies and culture promote equity and inclusion, as opposed to reinforcing systemic racism.

As a result, the Proposal has been substantially implemented and may be excluded pursuant to Rule 14a-8(i)(10).

**Conclusion**

Based upon the foregoing analysis, we respectfully request that the Staff confirm that it will not recommend any enforcement action to the Commission if the Company excludes the Proposal from its 2021 Proxy Materials pursuant to Rule 14a-8. We would be happy to provide any additional information and answer any questions regarding this matter.

Should you have any questions, please contact me at [byamasaki@paypal.com](mailto:byamasaki@paypal.com) or (408) 967-1000.

Thank you for your consideration.

Sincerely,



Brian Y. Yamasaki  
Vice President, Corporate Legal and  
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**EXHIBIT A**

## Assessing Inclusion in the Workplace

### WHEREAS:

According to the National Museum of African American History and Culture, “[s]tructural racism is the overarching system of racial bias across institutions and society. These systems give privileges to white people resulting in disadvantages to people of color,” thereby imposing a cultural hierarchy among racial groups;

The Harvard Business Review explains that “[c]ompanies must confront racism at a systemic level – addressing everything from the structural and social mechanics of their own organizations to the role they place in the economy at large”;

A 2020 Citigroup study found that since 2000 the U.S. gross domestic product (GDP) has lost \$16 trillion as a result of discrimination against African Americans, including \$2.7 trillion lost due to pay disparities. The study also found that reversing discriminatory practices could boost U.S. GDP by \$5 trillion in the next five years;

Tema Okun, a veteran racial justice facilitator, illustrates the insidious nature of white supremacist culture by explaining that “[c]ulture is powerful precisely because it is so present and at the same time so very difficult to name or identify.” Cultural racism can manifest as people of color being ignored, overly criticized, undermined, or assumed as inferior. Other manifestations can be strict cultural norms or criticisms of certain hairstyles, manners of speech, or other physical appearances;

Cultural racism can do long-term emotional and psychological damage, and research shows that employees who bring their authentic selves to work perform better and report greater job satisfaction. Recently, a Fortune 500 company announced that it will allow natural black hairstyles and facial hair because the company wants all “employees feel comfortable, genuine and authentic”;

Proponents believe that our company can advance long-term value creation through an analysis of whether and how systemic racism is embedded in company culture, policies and procedures.

**RESOLVED:** Shareholders urge the Board of Directors to prepare a report to shareholders on whether written policies or unwritten norms at the Company reinforce racism in company culture.

**SUPPORTING STATEMENT:** The report should be prepared within one year, at reasonable cost and excluding proprietary and privileged information. The Board is encouraged to assess whether Company policies or unwritten norms:

1. Yield inequitable outcomes for employees based on race and ethnicity in patterns of hiring and retention, promotion and upward mobility, disciplinary action, or employee usage of benefits;
2. Establish a cultural hierarchy through perceived pressure to use “whitened” names rather than birth names, to adopt “white-centric” physical appearance standards in hair style, body art or modifications, and facial hair styles, or to avoid traditional attire and religious head coverings.