

February 25, 2021

Via e-mail

Office of Chief Counsel
Division of Corporation Finance
Securities and Exchange Commission
shareholderproposals@sec.gov

Re: SeaWorld Entertainment, Inc., 2021 Annual Meeting Shareholder Proposal Submitted by People for the Ethical Treatment of Animals

Dear Sir or Madam:

I am writing on behalf of People for the Ethical Treatment of Animals (PETA) and pursuant to Rule 14a-8(k) in response to SeaWorld Entertainment, Inc.'s ("SeaWorld") request that the Staff of the Division of Corporation Finance ("Staff") of the Securities and Exchange Commission ("Commission") concur with its view that it may properly exclude PETA's shareholder resolution and supporting statement ("Proposal") from the proxy materials to be distributed by SeaWorld in connection with its 2021 annual meeting of shareholders.

As discussed below, SeaWorld's request for a no-action letter should be denied because each ground the Company asserts for exclusion fails: the Proposal is clear and accurate, Rule 14a-8(i)(3); has not been substantially implemented by the Company in any way, Rule 14a-8(i)(10); is not related to a personal claim or grievance against the Company, but rather an issue of widespread public debate and condemnation directed at SeaWorld, Rule 14a-8(i)(4); transcends the Company's ordinary business operations by focusing on the significant social policy issue of animal welfare, and leaves the Company substantial discretion in effectuating the Proposal's request, Rule 14a-8(i)(7).

I. Background

PETA's resolution "urge[s] the board to conduct a study to determine how soon SeaWorld could feasibly eliminate animal-based programs, excluding legitimate animal rescue work."

The supporting statement then discusses public condemnation of confining animals to tanks for entertainment purposes—including private company and government decisions worldwide to ban cetacean captivity—and the Company's downsizing, loss of corporate partnerships, and revolving door of executive leadership. In light of the resolution's ask, the supporting statement also discusses how other forms of entertainment to which the public does not broadly object would "save a significant amount of money" for the Company.

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PETA FOUNDATION IS AN
OPERATING NAME OF FOUNDATION
TO SUPPORT ANIMAL PROTECTION.

AFFILIATES:

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- PETA Asia
- PETA India
- PETA France
- PETA Australia
- PETA Germany
- PETA Netherlands
- PETA Foundation (U.K.)

II. The Proposal May Not Be Excluded Pursuant to Rule 14a-8(i)(3)

Under Rule 14a-8(i)(3), exclusion or modification of a proposal “may be appropriate where ... the resolution contained in the proposal is so inherently vague or indefinite that neither the stockholders voting on the proposal, nor the company in implementing the proposal (if adopted), would be able to determine with any reasonable certainty exactly what actions or measures the proposal requires.” Staff Legal Bulletin (“SLB”) No. 14B (Sept. 15, 2004).

The Proposal urges the Company’s board to conduct a study to “determine how soon SeaWorld could feasibly eliminate animal-based programs, excluding legitimate animal rescue work.”

First, SeaWorld first argues that the Proposal is “vague and indefinite and thus inherently misleading” because “it is not at all clear whether the Proponent is referring to programs involving marine mammals, all marine animals, or all marine and terrestrial animals in SeaWorld’s care,” and that it could apply to “animal-themed offerings” such as its rollercoasters and restaurants. Letter from Amanda Weiss, Simpson Thacher & Bartlett LLP, to SEC Division of Corporation Finance, at 13 (Feb. 2, 2021) (“No-Action Request”).

Yet **the Company acknowledges elsewhere in its submission that this Proposal relates to SeaWorld “ceas[ing] to offer live animal displays and presentations in its parks” and “continuing to conduct its animal rescue programs.”** *No-Action Request*, at 4 (emphasis added). This acknowledgment is consistent with the Proposal’s unambiguous references to public “opposition to captive-animal displays” and the elimination of “animal-based programs,” and the supporting statement’s discussion of shifting to “animal-free entertainment.” Clearly, SeaWorld was “able to determine with ... reasonable certainty exactly what actions or measures the proposal requires.” *See* SLB No. 14B. The Company’s attempt to cherry-pick references to particular species in the supporting statement and argue a nonsensical interpretation of the Proposal (e.g., eliminating animal-themed rides) does not create ambiguity when there is none.

Second, similarly, SeaWorld attempts to create ambiguity by arguing that the supporting statement’s reference to “cutting-edge forms of animal-free entertainment” as examples of lower-cost and uncontroversial alternatives to live-animal displays may require the board’s feasibility study to specifically encompass replacing animal-based programs with these specific displays. The Proposal’s resolved clause asks for no such thing, nor does its supporting statement. The Proposal is unequivocal in its request for a study to “determine how soon SeaWorld could feasibly eliminate animal-based programs, excluding legitimate animal rescue work,” and it leaves the considerations to be set forth in that study to the discretion of the board.

Third, SeaWorld alleges that the Proposal is materially misleading because it “make[s] several allegations that, although phrased in the form of factual assertions, are actually the Proponent’s unsubstantiated opinions and lack any citation or support of any kind.” *No-Action Request*, at 15. While PETA can indeed offer support for these statements, the Staff has made clear that “it would not be appropriate for companies to exclude supporting statement language and/or an entire proposal in reliance on rule 14a-8(i)(3)” for these very reasons, and instead “it is appropriate under rule 14a-8 for companies to address these objections in their statements of opposition.” SLB No. 14B. Clearly, the Company’s bald assertions that it disagrees with these statements or the manner in which they are framed does not meet its burden to “demonstrate[] objectively that a factual statement is materially false or misleading.” *See* SLB 14B.

The resolution contained in the proposal is neither too vague nor too indefinite for the Company or shareholders to determine what it requires. Accordingly, the Proposal may not be excluded on the basis of Rule 14a-8(i)(3).

III. The Proposal May Not Be Excluded Pursuant to Rule 14a-8(i)(10)

Rule 14a-8(i)(10) permits a company to omit a shareholder proposal from its proxy materials if “the company has already substantially implemented the proposal.” This Rule was “designed to avoid the possibility of shareholders having to consider matters which already have been favorably acted upon by management.” *Exchange Act Release No. 34-12598* (July 7, 1976). According to the Staff, “[a] determination that the company has substantially implemented the proposal depends upon whether [the company’s] particular policies, practices and procedures compare favorably with the guidelines of the proposal.” *Texaco, Inc.* (March 28, 1991).

SeaWorld argues that the Proposal has been substantially implemented because in their own internal deliberations, the Company’s board of directors and management reportedly “study the products and services, including live animal displays and presentations, the Company offers in its parks and evaluate the feasibility of and potential implications for the Company’s business of phasing out particular offerings or adding new ones.” *No-Action Request*, at 16-17. Apparently acknowledging that its actual disclosures to shareholders must compare favorably to the Proposal’s request for a report on the feasibility of replacing animal-based programs in order to render it excludable, the Company points in a footnote to a brief filing on amending its existing credit facility to weather the pandemic. *Id.* It addresses virtually nothing in the Proposal, and provides none of the information that would be included in a report on the feasibility of replacing animal-based displays.

This is in *stark* contrast to the very matters the Company cites in purported support. In *Exelon Corp.* (Feb. 26, 2010), for example, the proposal requested a report on political contributions that would be updated semi-annually. The Staff found the proposal to be substantially implemented where the company, after receiving the proposal, did precisely what the proposal asked by publishing its Corporate Political Contributions Guidelines and issuing a report, to be updated semi-annually, disclosing its political contributions. In *Pfizer, Inc.* (Jan. 11, 2013), the proposal requested “a report to shareholders detailing all measures implemented to reduce the use of animals—especially in painful procedures—and specific plans to promote alternatives to animal use.” The Staff found the proposal to be substantially implemented where Pfizer *posted to its website* its “Pfizer Guidelines and Policy on Laboratory Animal Care,” which included—among other things—the company’s policies on “maintaining the highest standards of laboratory animal care and use,” described its commitment to the “3Rs” (replace and reduce the use of animals in experiments and refine procedures to minimize the potential for pain and distress), and measures it took to uphold the 3Rs, including an award issued to teams or individuals that have contributed to their development.

In contrast, in *Hanesbrands Inc.* (Jan. 13, 2012), the Staff informed the company that it could *not* exclude under Rule 14a-8(i)(10) a proposal that requested “a report describing the company’s vendor standards pertaining to reducing supply chain environmental impacts—particularly water use and related pollution.” The company alleged that it had made public disclosures that covered the topics that the proposal sought to address, as it set forth on its website “extensive disclosures regarding its efforts to reduce the environmental impacts of its supply chain through its own manufacturing and distribution activities” and information and goals on its “overall environmental policies and practices, most of which focus specifically on water use and related pollution.” The website also

included the following policies for vendors with respect to water use, pollution, and other environmental matters:

- HBI believes in doing business with suppliers who share the company’s commitment to protecting the quality of the environment around the world through sound environmental management.
- Suppliers will comply with all applicable environmental laws and regulations, and will promptly develop and implement plans or programs to correct any noncompliant practices.
- HBI will favor suppliers who seek to reduce waste and minimize the environmental impact of their operations.

The company argued that “[b]ecause of this robust disclosure, implementation of the Proposal would not result in any additional disclosure to be provided to shareholders” and that the proposal was therefore moot. The Staff disagreed, finding that “Hanesbrands’ public disclosures [did not] compare favorably with the guidelines of the proposal” and the company could not rely on Rule 14a-8(i)(10) for exclusion. The existence of a general company policy that failed to address the proponent’s concerns was an insufficient basis on which to exclude a proposal requesting a descriptive report on those same matters.

Here, SeaWorld has not even made such disclosures. SeaWorld does not point to a single publication that informs shareholders of its assessment of the feasibility of eliminating animal-based displays, or any similar considerations. The *only* reference to animal displays in the disclosure it cites merely states that its employees will continue to provide care to animals during the parks’ closures. The Company’s bald assertion that it considers the issues raised in the Proposal in its internal deliberations fails to substantially implement the Proposal, and it cannot be excluded on the basis of Rule 14a-8(i)(10).

IV. The Proposal May Not Be Excluded Pursuant to Rule 14a-8(i)(4)

Rule 14a-8(i)(4) permits a company to exclude a proposal where “the proposal relates to the redress of a personal claim or grievance against the company or any other person, or if it is designed to result in a benefit to you, or to further a personal interest, which is not shared by the other shareholders at large.”

SeaWorld attempts to exclude the Proposal on this basis because, as an advocacy organization, the proponent is engaged in other advocacy activities aimed at accomplishing the purpose of the Proposal—encouraging the Company to transition its business away from the cruel confinement of animals—through other means. Yet its representation of PETA’s opposition to the conditions at SeaWorld as a “personal grievance” could hardly be further from the truth.

Since the release of the documentary *Blackfish* in 2013, public outrage has led SeaWorld to new lows. While SeaWorld argues in its no-action request that the elimination of 3,300 positions, the departure of four CEOs, and the loss of corporate partnerships referenced in the Proposal had no connection to the documentary, the Company has acknowledged that attendance and revenue declines since were “largely concentrated” at two of its three flagship animal parks and that it suffered from “public perception issues.” Julia Horowitz, *SeaWorld Is Laying off 350 Workers as Attendance Wanes*,

CNN Money (Oct. 18, 2017), <http://money.cnn.com/2017/10/18/news/seaworld-layoffs/index.html>. Just last year, after SeaWorld was accused of lying about the negative impact that *Blackfish* had on park attendance and revenue, a federal judge approved a \$65 million settlement to investors, noting that “social media reaction to *Blackfish* [had been] elevated,” “[c]onsumers contacted SeaWorld and vowed never to visit its parks because of *Blackfish*,” and “*Blackfish* publicity led partners and sponsors to end or table partnerships and promotions with SeaWorld.” *Baker v. SeaWorld Entm’t, Inc.*, No. 14-CV-02129-MMA-AGS, 2020 WL 4260712, at *2 (S.D. Cal. July 24, 2020). This, after SeaWorld and its former CEO “agreed to pay more than \$5 million to settle fraud charges for misleading investors about the impact the documentary film *Blackfish* had on the company’s reputation and business.” Press Release, SEC, *SeaWorld and Former CEO to Pay More Than \$5 Million to Settle Fraud Charges*, <https://www.sec.gov/news/press-release/2018-198>.

Public opposition to captivity at SeaWorld goes beyond *Blackfish*. When the California Coastal Commission granted SeaWorld approval to build new tanks but only under the condition that the company ends its orca breeding program at the San Diego park—before legislation passed to ban orca breeding state-wide—there was nationwide applause for the decision, including from a *San Diego Union-Tribune* columnist, who wrote, “Public opinion—and thus potential customers—are moving inexorably toward greater rights for animals and away from watching captives jump through hoops. The sooner SeaWorld accepts this market reality, the sooner one of San Diego’s great tourist attractions will stop sinking.” He noted, “Bolder managers might have shut down animal performances completely and built a new eco-brand based on environmental education.” Dan McSwain, *State Orca Decision Sends SeaWorld Valuable Message*, *San Diego Union-Tribune* (Oct. 10, 2015), <http://www.sandiegouniontribune.com/business/columnists/sdut-state-orca-decision-seaworld-business-survival-2015oct10-story.html>.

Indeed, the public has begun to turn away from captive animal exhibitions entirely. “The very concept of a place where families can visit and observe animals is being questioned like never before,” because “[s]tudy after study has shown that many animal species are far smarter and more feeling than previously understood, giving new insights into how they may suffer from anxiety and depression when they are removed from nature.” Justin Worland, *The Future of Zoos: Challenges Force Zoos to Change in Big Ways*, *Time* (Feb. 15, 2017), <http://time.com/4672990/the-future-of-zoos/>. As one celebrated zoo designer recognized, “Even the best zoos today are based on captivity and coercion,” which he described as “the fundamental flaw.” *Id.* (also quoting a long-time zoo exhibit designer and zoo director that “this conservation quilt that zoos are wearing is quite dubious attire” and “they are doing a disservice to conservation”). SeaWorld’s attempt to frame PETA’s Proposal to require the Company to prepare a report to determine whether it can transition its business to one that is not becoming increasingly controversial and subject to intense opposition simply cannot be considered a “personal claim or grievance.”¹

Finally, SeaWorld’s reasoning would effectively ban any investor who publicly expresses opposition against a harmful company practice from bringing a shareholder resolution to address that issue and attempt to improve corporate stewardship, whether it be with regard to the environment, discrimination, human rights, or animal welfare. Not only are these arguments entirely unfounded, but they have been rejected by the staff specifically with regard to PETA, *Wendy’s Int’l, Inc.* (Feb. 8, 2005) (not permitting reliance on this rule where PETA’s proposal involved exploring the feasibility of suppliers to phase-in controlled-atmosphere killing to result in less inhumane slaughter), and

¹ PETA further notes that SeaWorld’s reference to its “long history of litigation” with PETA is simply false. The entities were involved in a *single* lawsuit that was resolved on a motion to dismiss *nine years ago*.

others, e.g., *Gen. Elec. Co.* (Jan. 11, 2008) (not permitting reliance on this rule where the proponent had previously submitted similar proposals and spoke at the annual meetings of this and other companies regarding the same issue, chronicled its efforts on its website, and made allegedly disparaging comments in the media).

V. The Proposal May Not Be Excluded Pursuant to Rule 14a-8(i)(7)

Rule 14a-8(i)(7) provides that a company may exclude a proposal “[i]f the proposal deals with a matter relating to the company’s ordinary business operations.” Only “business matters that are mundane in nature and do not involve any substantial policy” considerations may be omitted under this exemption. *Adoption of Amendments Relating to Proposals by Security Holders*, 41 Fed. Reg. 52,994, 52,998 (1976). The Commission has explained that the policy underlying this rule rests on two central considerations. The first consideration “relates to the degree to which the proposal seeks to ‘micro-manage’ the company by probing too deeply into matters of a complex nature upon which stockholders, as a group, would not be in a position to make an informed judgment.” Release No. 34-40018 (May 21, 1998).

Second, “certain 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.” *Id.* The Commission has stated and repeatedly found since that “proposals relating to such matters but focusing on sufficiently significant social policy issues ... generally would not be considered to be excludable, because the proposals would transcend the day-to-day business matters and raise policy issues so significant that it would be appropriate for a shareholder vote.” *Id.* In Staff Legal Bulletin No. 14H, the agency provided further guidance on the significant policy exception, reasoning:

[P]roposals focusing on a significant policy issue are not excludable under the ordinary business exception “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.” Thus, a proposal may transcend a company’s ordinary business operations even if the significant policy issue relates to the “nitty-gritty of its core business.”

SLB No. 14H (citing Release No. 34-40018). Pursuant to this exception, “[t]he Division has noted many times that the presence of widespread public debate regarding an issue is among the factors to be considered in determining whether proposals concerning that issue ‘transcend the day-to-day business matters.’” SLB No. 14A.

PETA’s Proposal does not implicate a day-to-day operation that is “mundane in nature” and does not seek to “‘micro-manage’ the company by probing too deeply into matters of a complex nature,” but rather focuses on a substantial policy issue.

A. The Proposal does not seek to micro-manage the company.

SeaWorld argues that it may exclude the Proposal pursuant to Rule 14a-8(i)(7) because it micromanages the Company, in light of “the myriad factors that the Company’s board and management consider when assessing each decision regarding zoological management and the complexity in these decisions.” *No-Action Request*, at 4. The Company rests this argument entirely on a strawman of its own creation.

The Proposal’s clear ask is that the Company’s board conduct a study to “determine how soon SeaWorld could feasibly eliminate animal-based programs, excluding legitimate animal rescue work.” Despite this limited request, SeaWorld manufactures that the study requires the Company to specifically assess that it retire its marine mammals to sanctuaries and offer animatronic dolphins and digital aquariums in lieu of all animal displays. SeaWorld bases its argument solely on the fact that the Proposal *references* these issues in the supporting statement as *support* for the proposition that continuing the animal displays at issue in the resolution is antiquated and against widespread international public sentiment. The supporting statement does not “modify or re-focus[] the intent of the resolved clause, or effectively require [these] action[s] in order to achieve the proposals central purpose as set forth in the resolved clause” and *the resolution is expressly repeated* at the end of the supporting statement. It does not require that the Company retire marine mammals to sanctuaries any more than it requires SeaWorld to add back the more than 3,300 jobs it eliminated or re-hire the four CEOs who recently left the Company—which is to say, it does not at all.

Furthermore, the Company’s assertion that this is effectively the same proposal as one that specifically urged the Company’s board to retire orcas to seaside sanctuaries and replace the captive-orca exhibits with innovative virtual and augmented reality or other types of non-animal experiences clearly demonstrates the absurdity of this position. See *No-Action Request*, at 6. While the Proposal’s *underlying concern* is the same—the welfare of the animals confined in unnatural environments at its facilities—there can be no colorable and good faith argument that the Proposal requires the same specific steps and “afford[s] management no flexibility or discretion.” *Id.*

In fact, the distinction between the Proposal and the 2017 proposal is consistent with the Staff’s guidance on the scope of Rule 14a-8(i)(7). In Staff Legal Bulletin No. 14K, the Staff advised that “a proposal framed as a request that the company consider, discuss the feasibility of, or evaluate the potential for a particular issue”—as the Proposal does here—“generally would not be viewed as micromanaging matters of a complex nature.” It further noted, “Notwithstanding the precatory nature of a proposal, if the method or strategy for implementing the action requested by the proposal is overly prescriptive, thereby potentially limiting the judgment and discretion of the board and management, the proposal may be viewed as micromanaging the company.” In providing an example for guidance, the Staff advised:

[W]e did not concur with the excludability of a proposal seeking a report “describing if, and how, [a company] plans to reduce its total contribution to climate change and align its operations and investments with the Paris [Climate] Agreement’s goal of maintaining global temperatures well below 2 degrees Celsius.” The proposal was not excludable because the proposal transcended ordinary business matters and did not seek to micromanage the company to such a degree that exclusion would be appropriate. In our view, the proposal did not seek to micromanage the company because it deferred to management’s discretion to consider if and how the company plans to reduce its carbon footprint and asked the company to consider the relative benefits and drawbacks of several actions.

In this case, the Proposal requests a report on “how soon Sea World could feasibly eliminate animal-based programs, excluding legitimate animal rescue work,” given the indisputable evidence of public opposition to the animals’ confinement. The Proposal does “not seek to micromanage the company to such a degree that exclusion would be appropriate” because “it defer[s] to management’s discretion to consider if and how the company plans to” eliminate animal-based programs, and the feasibility report requested provides no specific prescriptions, and thereby only “ask[s] the company

to consider the relative benefits and drawbacks of” doing so. *See* Staff Legal Bulletin No. 14K. The Proposal falls squarely within the Staff’s example and outside of the micromanagement ground for exclusion.

If SeaWorld would like to take the position it is not feasible or advisable to eliminate animal-based programs, excluding legitimate animal rescue work, it may do so in its opposition statement and, if the Proposal passes, the requested report. The Proposal does not preclude any such determination by the board, and allows it complete flexibility and discretion in conducting the study.

B. The Proposal raises a significant policy issue that transcends day-to-day business matters.

Even assuming that the Staff deems the Proposal to deal with the sale of a product or service, it is well established that a proposal is not excludable merely because it deals with the sale of a company’s products or services where significant social policy issues are implicated—as they are here.

The Staff has long recognized that shareholder proposals may properly address business decisions regarding the sale of products or services where significant policy issues are at issue. *See e.g., Kimberly-Clark Corp.* (Jan. 12, 1988); *Texaco, Inc.* (February 28, 1984); *American Telephone and Telegraph Co.* (December 12, 1985); *Harsco Corp.* (January 4, 1993); *Firststar Corp.* (February 25, 1993). In Staff Legal Bulletin No. 14C, the Division considered proposals related to the environment and public health, which it had previously found to be significant policy considerations, and advised that “[t]o the extent that a proposal and supporting statement focus on the company minimizing or eliminating operations that may adversely affect the environment or the public’s health, we do not concur with the company’s view that there is a basis for it to exclude the proposal under rule 14a-8(i)(7).” SLB No. 14C. The Staff has similarly concluded that animal welfare is a significant policy consideration and proposals relating to minimizing or eliminating operations that may result in certain poor animal welfare may not be excluded on this basis.

SeaWorld acknowledges that the Staff has declined to issue no-action relief on several occasions where the proposal related to the significant policy issue of animal welfare. *See, e.g., Coach, Inc.* (Aug. 19, 2010) (“although the proposal relates to the acquisition and sale of fur products, it focuses on the significant policy issue of the humane treatment of animals, and it does not seek to micromanage the company to such a degree that we believe exclusion of the proposal would be appropriate”); *Revlon, Inc.* (Mar. 18, 2014) (finding that a proposal regarding disclosure of, among other things, animal testing, “focuses on the significant policy issue of the humane treatment of animals”); *Bob Evans Farms, Inc.* (June 6, 2011) (finding that a proposal to encourage the board to phase-in the use of “cage-free” eggs so that they represent at least five percent of the company’s total egg usage “focuses on the significant policy issue of the humane treatment of animals”).

As discussed in Section IV, *supra*, **the captivity of animals at SeaWorld specifically has been subject to widespread debate.** The Company attempts to distinguish the Proposal on the ground that previous decisions by Staff involved activities that were harmful to animals, and “SeaWorld [does] not harm any animals.” *No-Action Request* at 9. The evidence belies this self-serving assertion, and the Company’s continued insistence that its captivity of highly intelligent and complex animals causes them no harm despite evidence to the contrary from **independent experts and its own**

former employees,² which has impacted the Company substantially as described above, only highlights the need for the Proposal.

That SeaWorld’s animal exhibition is regulated and that it obtains industry accreditations has not prevented this demonstrated harm to the animals, nor does it distinguish SeaWorld from most other companies who use animals as part of their business. In *Coach*, for example, the Staff found that the company could not exclude a proposal calling on the board “to enact a policy that will ensure that no fur products are acquired or sold by [Coach]” on the basis of Rule 14a8-(i)(7). It reached this decision because the proposal focused on the significant policy issue of the humane treatment of animals, although it addressed the sale of a product (fur) that is widely subject to public debate, and despite the company’s assertion of strict oversight and certification. *See Coach, Inc.* (Aug. 19, 2010) (“The Scandinavian farmers are bound by some of the strictest regulations in the world. These farmers follow farm certification criteria set by the Finnish Fur Breeders’ Association, requiring close and careful monitoring of animal health and welfare, housing conditions, feeding, breeding, and hygiene.”).

As noted above, a company may rely on Rule 14a-8(i)(7) to exclude a proposal only where that proposal relates to the company’s ordinary business operations—those matters that are “mundane in nature and do not involve any substantial policy” considerations. 41 Fed. Reg. at 52,998. Where such proposals focus on significant social policy issues—determined, in part, by widespread public debate—they transcend day-to-day business matters and would be appropriate for a shareholder vote. *See also* SLB No. 14K

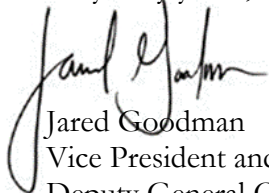
Accordingly, even if the Staff finds that the Proposal relates to SeaWorld’s ordinary business operations, it focuses on the significant social policy issue of animal welfare and transcends day-to-day business matters, and is appropriate for a shareholder vote.

VI. Conclusion

We respectfully request that the Staff decline to issue no-action relief to SeaWorld and inform the company that it may not omit the Proposal from its proxy materials.

Thank you.

Very truly yours,



Jared Goodman
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² *See, e.g.*, Expert Report of Dr. Pedro Javier Gallego, Anderson v. SeaWorld, No.: 3:15-cv-02172-JSW-JCS (N.D. Cal. Sept. 13, 2019), available at <https://www.earthisland.org/immp/assets/Public-Redacted-Gallego-Report.pdf>; Expert Report of Dr. Ingrid N. Visser, Anderson v. SeaWorld, No.: 3:15-cv-02172-JSW-JCS (N.D. Cal. Sept. 13, 2019), available at <https://www.earthisland.org/immp/assets/Visser-Opening-Report-REDACTED.pdf>; Expert Report of E.C.M. Parsons, Ph.D., Anderson v. SeaWorld, No.: 3:15-cv-02172-JSW-JCS (N.D. Cal. Sept. 6, 2019), available at <https://www.earthisland.org/immp/assets/PARSONS-REPORT-2019-09-06.pdf>; BLACKFISH (CNN Films 2013); John Hargrove, *Beneath the Surface: Killer Whales, SeaWorld, and the Truth Beyond Blackfish* (2016).

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February 2, 2021

Re: SeaWorld Entertainment, Inc. – Omission of Shareholder Proposal from Proxy Material Pursuant to Rule 14a-8

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

Ladies and Gentlemen:

We are filing this letter on behalf of SeaWorld Entertainment, Inc. (“SeaWorld” or the “Company”) with respect to the shareholder proposal and supporting statement (collectively, the “Proposal”) submitted by People for the Ethical Treatment of Animals (the “Proponent”) for inclusion in the proxy statement and form of proxy to be distributed by the Company in connection with its 2021 Annual Meeting of Stockholders (collectively, the “Proxy Materials”). A copy of the Proposal and accompanying correspondence from the Proponent is attached as Exhibit A. For the reasons stated below, we respectfully request that the Staff (the “Staff”) of the Division of Corporation Finance of the Securities and Exchange Commission (the “Commission”) not recommend any enforcement action against SeaWorld if SeaWorld omits the Proposal in its entirety from the Proxy Materials.

Pursuant to Staff Legal Bulletin No. 14D (November 7, 2008) (“SLB 14D”), we are submitting this request for no-action relief to the Staff via e-mail at shareholderproposals@sec.gov in lieu of providing six additional copies of this letter pursuant to Rule 14a-8(j), and the undersigned has included her name and telephone number both in this letter and in the cover e-mail accompanying this letter. Pursuant to Rule 14a-8(j) under the Securities and Exchange Act of 1934, as amended (the “Exchange Act”), we are:

1. filing this letter with the Commission no later than 80 calendar days before the date on which the Company plans to file its definitive Proxy Materials with the Commission; and

2. simultaneously providing the Proponent with a copy of this submission.

Rule 14a-8(k) and SLB 14D provide that a shareholder proponent is required to send the Company a copy of any correspondence that the proponent elects to submit to the Commission or the Staff. Accordingly, we hereby inform the Proponent that if the Proponent elects to submit additional correspondence to the Commission or the Staff relating to the Proposal, the Proponent must concurrently furnish a copy of that correspondence to the Company. Similarly, the Company will promptly forward to the Proponent any response received from the Staff to this request that the Staff transmits by email or fax only to the Company.

I. The Proposal

The Proposal reads as follows:

“2021 Shareholder Resolution to Conduct a Feasibility Study to Determine How Soon SeaWorld Could Eliminate Animal-Based Programs, Excluding Legitimate Rescue Work

RESOLVED:

In order to address the most pressing issues that SeaWorld faces today—specifically, the public’s continued opposition to captive-animal displays and the consequential impact of the COVID-19 pandemic—the shareholders urge the board to conduct a study to determine how soon SeaWorld could feasibly eliminate animal-based programs, excluding legitimate animal rescue work.”

II. Bases for Exclusion

The Company respectfully requests the Staff’s concurrence that the Company may exclude the Proposal from its Proxy Materials in reliance on:

- Rule 14a-8(i)(7) because the Proposal deals with a matter relating to the Company’s ordinary business operations;
- Rule 14a-8(i)(3) because the Proposal is vague and misleading in violation of Rule 14a-9;
- Rule 14a-8(i)(10) because the Company has already substantially implemented the Proposal; and
- Rule 14a-8(i)(4) because the Proposal relates to the redress of a personal claim or grievance against the Company.

III. Analysis

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

Rule 14a-8(i)(7) permits the exclusion of shareholder proposals dealing with matters relating to a company's "ordinary business operations." The Commission has explained that the underlying policy of the ordinary business exclusion is "to confine the resolution of ordinary business problems to management and the board of directors, since it is impracticable for shareholders to decide how to solve such problems at an annual shareholders meeting." Exchange Act Release No. 40018 (May 21, 1998). As explained by the Commission, the term "ordinary business" in this context refers to "matters that are not necessarily 'ordinary' in the common meaning of the word, and is rooted in the corporate law concept providing management with flexibility in directing certain core matters involving the company's business and operations." *Id.*

According to the Commission, two central considerations underlie the ordinary business exclusion. First, "[c]ertain tasks are so fundamental to management's ability to run a company on a day-to-day basis" that they are not proper subjects for shareholder proposals. *Id.* "The second consideration relates to the degree to which the proposal seeks to 'micro-manage' the company by probing too deeply into matters of a complex nature upon which shareholders, as a group, would not be in a position to make an informed judgment." *Id.*

As explained more fully directly below, the Proposal, together with the Proponent's supporting statement, implicates both considerations underlying the ordinary business exclusion and is thus excludable as pertaining to the Company's ordinary business operations.

1. The Proposal Seeks to Micro-Manage the Company.

SeaWorld is a leading theme park and entertainment company as well as an accredited and licensed zoological organization providing its guests with experiences that matter and inspiring them to protect animals and the wild wonders of our world. The Company's decisions regarding the attractions, rides, presentations and exhibits it will feature at its parks are, therefore, central to SeaWorld's ability to run its business on a day-to-day basis. SeaWorld's management and board invest a significant amount of time, energy and effort on a regular basis in determining which experiences to offer guests of the Company's parks that will be meaningful and inspirational, with the objective of generating an attractive return to the Company's shareholders. The Company has a dedicated team focused on assessing and planning new presentations, events, rides, animal habitats and other attractions that will execute the Company's mission of "inspiring guests with experiences that matter."

Each of SeaWorld's decisions regarding its events, attractions and animal presentations requires deep knowledge of the Company's business and operations – information to which the Company's shareholders do not have access. Determining which presentations, events and attractions to feature requires analysis of numerous factors, including the degree to which the presentation, event or attraction will inspire guests and create enjoyable, memorable and educational experiences, the ability to drive increased attendance and revenue, and the impact on operating efficiency, among others. Given the myriad factors that the Company's board and management consider when assessing each decision regarding zoological management and the complexity involved in these decisions, the Company's shareholders, as a group, are not in a position to make an informed judgment regarding such issues.

In Staff Legal Bulletin 14K (October 16, 2019) (“SLB 14K”), the Staff explained that:

When analyzing a proposal to determine the underlying concern or central purpose of any proposal, we look not only to the resolved clause but to the proposal in its entirety. Thus, if a supporting statement modifies or re-focuses the intent of the resolved clause, or effectively requires some action in order to achieve the proposal's central purpose as set forth in the resolved clause, we take that into account in determining whether the proposal seeks to micromanage the company.

The Proponent's resolved clause calls for the board to conduct a feasibility study to determine how soon the Company could eliminate its “animal-based programs”, excluding animal rescue work. The Proponent's supporting statement re-focuses the intent of the proposal almost entirely away from the resolved clause. In noting that “the COVID-19 pandemic has caused the Company's attendance and revenue to plummet” while “cutting-edge forms of animal-free entertainment save a significant amount of money while allowing ticket holders to feel as if they're interacting with real animals,” it appears that the intent of the resolved clause is for the board to study replacing its live animal displays and presentations with such “cutting-edge forms of animal-free entertainment” as “animatronic dolphins” and “digital aquariums.” Similarly, the Proponent's supporting statement alleges that “[t]he public's condemnation of the confinement of complex, intelligent, far ranging animals to cramped concrete tanks for human entertainment continues to grow” and then mentions “seaside sanctuary” projects involving marine mammals that are under development. From this, it appears that the intent of the resolved clause might be that, in connection with the elimination of the live animal displays and presentations in its parks, the board study retiring its marine mammals to “seaside sanctuaries”.

The Proponent, beneath the fig leaf of a “study”, attempts to dictate that the Company (1) retire its marine mammals to “seaside sanctuaries”, (2) cease to offer live animal displays and presentations in its parks, (3) offer in their stead “animatronic dolphins” and “digital aquariums” all while (4) continuing to conduct its animal rescue programs, which require the involvement of highly-trained animal care and veterinary professionals

and maintenance of specialized animal hospital facilities. Given the myriad factors that the Company's board and management consider on a regular basis when assessing each potential new attraction or exhibit as well as the maintenance of specialized personnel and facilities and the complexity involved in their decisions, the Company's shareholders, as a group, are not in a position to make an informed judgment regarding such issues.

The Staff has consistently concurred that shareholder proposals attempting to micro-manage a company by substituting the judgment of shareholders for that of management with respect to complex day-to-day business operations are excludable under Rule 14a-8(i)(7). In Staff Legal Bulletin 14J (October 23, 2018), the Staff explained that this framework also applies to proposals that call for a study or report. The Staff further stated that with respect to proposals that call for a study or report it would, "consistent with Commission guidance, consider the underlying substance of the matters addressed by the study or report." *Id.* Here, the underlying substance of the study relates to the imposition of specific methods for implementing complex policies, essentially requiring the Company to replace the products and services it currently offers to customers of its parks with the products and services suggested in the supporting statement. In 2018, the Staff concurred in the Company's exclusion of a proposal seeking to ban all captive breeding in SeaWorld parks as micromanaging the Company "by seeking to impose specific methods for implementing complex policies." *SeaWorld Entertainment, Inc. (avail. April 30, 2018)*. Moreover, the underlying substance of the study identified in the Proposal, as modified by the supporting statement, is nearly identical to a proposal the Company received from the Proponent in connection with the Company's 2017 annual meeting of stockholders (the "2017 Proposal") which urged the Company's board to retire the resident orcas to seaside sanctuaries and replace the captive-orca exhibits with innovative virtual and augmented reality or other types of non-animal experiences. Both the 2017 Proposal and this Proposal purport to dictate the offerings in the Company's parks. The Staff concurred in the Company's exclusion of the 2017 Proposal, noting that in the Staff's view, "the proposal seeks to micromanage the company by probing too deeply into matters of a complex nature upon which shareholders, as a group, would not be in a position to make an informed judgment." *SeaWorld Entertainment, Inc. (avail. March 30, 2017, recon. denied April 17, 2017)*.

In SLB 14K, the Staff stated that micromanagement depends on the level of prescriptiveness of a proposal. When a proposal describes specific actions that a company's management or the board must undertake without affording them sufficient flexibility or discretion, the proposal may micromanage the company to such a degree that exclusion of the proposal would be warranted. Moreover, "the precatory nature of a proposal does not bear on the degree to which a proposal micromanages." *Id.* This Proposal is even more prescriptive than the 2017 Proposal as it would require the board to study not only how soon the Company could retire its marine mammals to seaside sanctuaries and replace its live animal displays and presentations (which involve hundreds of species of marine and terrestrial animals at eight parks) with animatronic and digital programs, but would also require the Company to continue its animal rescue programs (which would, in turn, require

the Company to retain its highly-trained animal care and veterinary professionals and hospital facilities, notwithstanding the fact that it would no longer be offering zoological displays in its parks). The Proposal does not give the board the flexibility to study whether the Company should cease its animal-based programming at all, or, if it should determine to do so, what, if anything, it would replace such programming with, what it should do with the animals currently in its care and if it should retain its zoological staff and facilities once it ceased to function as a zoological organization.

Meanwhile, as discussed above, the underlying substance of the matters addressed by the study in the Proposal would impose highly specific actions – retiring the Company’s marine mammals to “seaside sanctuaries” and replacing the Company’s live animal displays and presentations (which, as noted above, involve hundreds of species of marine and terrestrial animals at eight parks) with animatronic and digital programs while continuing its animal rescue programs – that afford management no flexibility or discretion, thereby completely supplanting the judgment of management. Here, the Proponent has essentially re-packaged the 2017 Proposal as a “study” but has submitted, in substance, the same proposal. By attempting to impose upon the Company specific decisions with respect to the experiences it offers in its parks as well as its activities outside its parks (which require the Company to maintain highly-trained staff and specialized facilities), the Proposal, like the Proponent’s past proposals, again seeks to micro-manage the Company’s operations, interfering with complex decisions upon which the Company’s shareholders, as a group, are not in a position to make an informed judgment. The Company’s decisions regarding its presentations, events and attractions, activities outside its parks, and, ultimately, the scope of its staffing and facilities may not be properly delegated to, and should not be micro-managed by, the Company’s shareholders. Accordingly, the Proposal may be excluded under Rule 14a-8(i)(7) as relating to the Company’s ordinary business operations.

2. *The Subject Matter of the Proposal is Fundamental to Management’s Ability to Run the Company’s Day-to-Day Business, as it Relates to the Company’s Decision to Sell a Product or Service.*

At the core of SeaWorld’s business is its delivery of personal, interactive and educational experiences that allow guests to experience and connect with marine and terrestrial animals, which in turn benefits animal conservation. An integral part of SeaWorld’s business, therefore, is selecting and designing rides, exhibits, presentations and attractions for its theme parks that achieve this mission. Indeed, one of the hallmark services SeaWorld provides its customers is the ability to encounter and engage with various live animals in its one-of-a-kind zoological displays and presentations, inspiring guests to protect animals and conserve their habitats.

Decisions regarding whether and how to feature the animals in its care are fundamental to the Company’s day-to-day operations. These decisions inherently involve complex issues that require deep knowledge of the Company’s business and operations. The Proposal’s request that the Company conduct a study to determine how soon SeaWorld

could feasibly eliminate animal-based programs is, in essence, an attempt to direct the Company to eliminate or prohibit a particular service – i.e., the opportunity to view and experience its carefully developed live animal displays and presentations. Indeed, it is well known that PETA’s goal is for SeaWorld to cease featuring animals in its parks.¹ Asking shareholders to dictate which services the Company provides its customers, however, would inappropriately delegate to shareholders management’s role in directing the day-to-day business of the Company.

The Staff has consistently taken the position that proposals seeking to dictate management’s decisions regarding the selection of products or services a company offers for sale implicate the company’s ordinary business operations and are thus excludable under Rule 14a-8(i)(7). *See, e.g., The TJX Companies, Inc. (avail. April 16, 2018)* (concurring in the exclusion of a shareholder proposal requesting that the board develop and disclose a new universal and comprehensive animal welfare policy applying to all the company’s stores, merchandise and suppliers, noting that the proposal relates to products and services offered by the company), *The Home Depot, Inc. (avail. Mar. 21, 2018)* (permitting the exclusion of a shareholder proposal requesting that the company end its sale of glue traps and noting that “the proposal relates to the products and services offered for sale by the company”); *Amazon.com, Inc. (avail. Mar. 11, 2016)* (concurring in the exclusion of a shareholder proposal requesting that the company “issue a report addressing animal cruelty in the supply chain,” since “the proposal relates to the products and services offered for sale by the company” and noting that “[p]roposals concerning the sale of particular products and services are generally excludable under rule 14a-8(i)(7)”); *Amazon.com, Inc. (avail. Mar. 27, 2015)* (permitting the exclusion of a shareholder proposal requesting the disclosure of any reputational and financial risks the company may face as a result of negative public opinion pertaining to the treatment of animals used to produce products it sells and noting that “[p]roposals concerning the sale of particular products and services are generally excludable under rule 14a-8(i)(7)”); *Papa John’s International, Inc. (avail. Feb. 13, 2015)* (granting no-action relief under Rule 14a-8(i)(7) because the proposal related to the choice of products offered for sale); *Lowe’s Companies, Inc. (avail. Mar. 18, 2010)* (granting no-action relief under Rule 14a-8(i)(7) with regard to a proposal encouraging the company to place warning labels on the glue traps sold in its stores, explicitly noting that “the proposal relates to the manner in which [the company] sells particular products” and that “[p]roposals concerning the sale of particular products are generally excludable under rule 14a-8(i)(7)”); *PetSmart, Inc. (avail. Apr. 8, 2009)* (concurring that a proposal requesting that the board of directors “produce a report on the feasibility of [the company] phasing out its sale of live animals by 2014” may be excluded under Rule 14a-8(i)(7), as it relates to the “sale of particular goods”); *Lowe’s Companies, Inc. (avail. Feb. 1, 2008)* (permitting the exclusion of a

¹ *See, e.g.,* PETA website, <https://www.seaworldofhurt.com/about/> (urging SeaWorld to relocate its animals to seaside sanctuaries).

proposal encouraging the company end its sale of glue traps, as it relates to “the sale of a particular product”); *The Home Depot, Inc.* (avail. Jan. 24, 2008) (same).

The Staff has made clear that proposals relating to the sale of services are equally excludable under Rule 14a-8(i)(7) as those relating to the sale of goods. *See, e.g., JPMorgan Chase & Co.* (avail. Mar. 7, 2013) (concurring in the exclusion of a proposal requesting that the board “adopt public policy principles for national and international reforms to prevent illicit financial flows. . .” based upon principles specified in the proposal, expressly noting that “the proposal relates to principles regarding the products and services that the company offers”); *Wells Fargo & Co.* (avail. Jan. 28, 2013, recon. denied Mar. 4, 2013) (granting no-action relief under Rule 14a-8(i)(7) where the proposal requested that the company prepare a report discussing the adequacy of the company’s policies in addressing the social and financial impacts of the company’s direct deposit advance lending service, noting in particular that “the proposal relates to the products and services offered for sale by the company” and that “[p]roposals concerning the sale of particular products and services are generally excludable under rule 14a-8(i)(7)”); *General Electric Co.* (avail. Jan. 7, 2011) (permitting the exclusion of a proposal focused on the scope of the financial services offered by the company, explicitly stating that “the proposal appears to relate to the emphasis that the company places on the various products and services it offers for sale” and that “[p]roposals concerning the sale of particular products and services are generally excludable under rule 14a-8(i)(7)”).

Because the Proposal constrains the ability of SeaWorld’s management to determine which services – in this case, experiences of encountering animals – to provide its customers, the Proposal is similarly excludable under Rule 14a-8(i)(7).

3. *The Proposal Does Not Raise a Significant Social Policy Issue That Transcends the Company’s Ordinary Business Operations.*

The Commission has indicated that proposals that relate to ordinary business matters but that focus on “sufficiently significant social policy issues . . . 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.” Exchange Act Release No. 40018. Similar to the Proponent’s shareholder proposal from 2018 requesting that the Company ban all captive breeding in SeaWorld parks and the 2017 Proposal, each of which the Staff determined was excludable under Rule 14a-8(i)(7), the Proposal purports to relate to the humane treatment of animals but does not actually raise any significant social policy issue that transcends the Company’s ordinary business operations.

The Company is aware that the Staff has previously declined to grant no-action relief under Rule 14a-8(i)(7) in specific circumstances in which the proposal raised the issue of alleged inhumane treatment of animals. The Staff has found, for example, that a “significant social policy issue” is raised by: (i) animal testing (*see Revlon, Inc.* (avail. Mar. 18, 2014)); (ii) killing animals for their fur (*see Coach, Inc.* (avail. Aug. 19, 2010)); (iii) performing

medically unnecessary surgeries on animals (*see DeVry Inc. (avail. Sept. 25, 2009)*); and (iv) the inhumane killing of animals (*see Wendy's International, Inc. (avail. Feb. 8, 2005)*; *Hormel Foods Corp. (avail. Nov. 10, 2005)*). The Proposal, however, is clearly distinguishable from these cases; not only does SeaWorld not harm any animals – through testing, abuse, or otherwise – but its mission is to inspire guests through education and up-close encounters with animals and to care for and protect animals. The Company is a licensed and regulated zoological and conservation organization that employs veterinarians and zoological staff members, including marine animal trainers, that have been caring for animals for more than five decades, and its experience in animal care, research, rescue and rehabilitation is a resource for zoos, aquariums, government agencies and conservation organizations worldwide. Additionally, by allowing its guests to experience the animals in its care, SeaWorld aims to inspire its guests to get involved in conservation efforts. In essence, SeaWorld is also an accredited and Humane Certified zoological and conservation organization whose “product” is the interactive experience with the animals themselves for the primary purpose of advancing conservation, which distinguishes SeaWorld from a company whose products are derived from animals or necessitate animal experimentation.

Animal care, welfare and display at SeaWorld, including with respect to public animal presentations, are highly regulated by the federal government, through a complex set of laws and regulations, frequent inspections by federal Animal and Plant Health Inspection Service (APHIS) veterinary and other officials, as well as strict licensing requirements which SeaWorld maintains every year. The National Oceanic and Atmospheric Administration (NOAA), the U.S. Fish and Wildlife Service and APHIS each exercise some degree of jurisdiction over marine mammals. The public display of marine mammals is regulated by APHIS, which conducts frequent inspections of the Company’s parks. The Company works closely with APHIS and has never had any unresolved issues with respect to the animals its care. Further, key statutes and treaties relating to the display, possession and care of the Company’s animals include, among others, the Marine Mammal Protection Act, Animal Welfare Act, Convention on International Trade in Endangered Species and Fauna Protection Act and the Lacey Act, and the Company believes it is in substantial compliance with all applicable laws, regulations and ordinances. In order to comply with federal regulations, licensing requirements and accreditation standards, SeaWorld has detailed animal care policies and procedures and follows all applicable government regulations regarding the animals in its care. The states in which the Company operates also regulate zoological activity involving the import and export of exotic and native wildlife, endangered and/or otherwise protected species, zoological display and anti-cruelty statutes.

Additionally, SeaWorld is accredited by the Association of Zoos and Aquariums (the “AZA”), an independent accrediting organization that evaluates zoos and aquariums to make sure they meet the AZA’s high standards for animal management and care, including with

respect to living environments, social groupings, health, and nutrition.² The Company's three SeaWorld parks and Discovery Cove are also accredited by the Alliance of Marine Mammal Parks and Aquariums ("AMMPA"), an association specifically focused on the care of marine mammals. SeaWorld's facilities have also received accreditation from the International Marine Animal Trainers' Association ("IMATA"), whose Animal Trainer Development Program was developed to recognize those facilities that have exceptional systems for training animal care givers in the science and art of animal training, while utilizing positive reinforcement. Lastly, the Company's parks are Humane Certified as part of Humane Conservation, an animal welfare certification standard developed by the independent third party organization American Humane ("AHA").³

The Company would not be able to maintain its AZA, AMMPA and AHA certifications if it did not apply the highest standards of care and utilize humane methods in its displays and during demonstrations involving the marine animals in the Company's care. The welfare of the animals in the Company's care is critical to its business operations, and its policies with respect to zoological displays are a fundamental management function and evolve constantly based on a complex set of factors involving animal well-being and safety, among other factors. The Proposal therefore does not raise a policy issue that transcends the Company's ordinary business operations.

In addition, the Staff has long maintained that a proposal's relation to a social policy issue does not necessarily permit shareholders to interfere with the ordinary business matters of the company; rather, the significance of the social policy issue and the extent of the potential interference are considered together. *See* Staff Legal Bulletin No. 14H (Oct. 22, 2015) (concurring that that "the Commission 'treats the significance and transcendence concepts as interrelated, rather than independent'"). Accordingly, the Staff has determined in several instances that shareholder proposals raising the issue of alleged inhumane treatment of animals in connection with the sale of products are nonetheless excludable under Rule 14a-8(i)(7). *See, e.g., Amazon.com, Inc. (avail. Mar. 11, 2016)* (granting no-action relief under Rule 14a-8(i)(7) with regard to a shareholder proposal requesting that the company "issue a report addressing animal cruelty in the supply chain"); *Amazon.com, Inc. (avail. Mar. 27, 2015)* (permitting the exclusion of a proposal requesting that the company disclose any reputational and financial risks it may face as a result of negative public opinion pertaining to the treatment of animals used to produce products it sells); *Lowe's Companies, Inc. (avail. Mar. 18, 2010)* (permitting the exclusion of a proposal encouraging the company to place warning labels on the glue traps sold in its stores); *The Home Depot,*

² *See* website of AZA, *Becoming Accredited*, available at <https://www.aza.org/becoming-accredited>.

³ *See* website of AHA, *Humane Conservation*, available at <http://humaneconservation.org/about/> for additional detail regarding the certification standards.

Inc. (avail. Mar. 12, 2010) (same); *PetSmart, Inc.* (avail. Apr. 8, 2009) (permitting the exclusion of a proposal requesting a feasibility report on phasing out the sale of live animals); *Wal-Mart Stores, Inc.* (avail. Mar. 24, 2008) (permitting the exclusion of a proposal requesting a report on the “viability of the UK cage-free egg policy, discussing any issues raised that would affect a similar move forward in the US; what the company is doing in the domestic market and what further steps can be taken to forward its position on this important animal welfare issue”); *Lowe’s Companies, Inc.* (avail. Feb. 1, 2008) (permitting the exclusion of a proposal requesting that the company end the sale of glue traps in its stores); *The Home Depot, Inc.* (avail. Jan. 24, 2008) (same); *PetSmart, Inc.* (avail. Apr. 14, 2006) (permitting the exclusion of a proposal requesting that the board issue a report on whether the company will end all bird sales). As in each of the letters cited above, the Proposal directly relates to the products or services offered by the Company, as discussed in Section III.A.2 above, and is therefore excludable, even assuming that it relates to animal welfare.

4. Board Analysis.

In Staff Legal Bulletins No. 14I (Nov. 1, 2017) and No. 14J (Oct. 23, 2018), the Staff explained that the evaluation of whether a policy issue was sufficiently significant in the context of a particular company involved “difficult judgment calls” which, in the first instance, a company’s board of directors was “generally in a better position to determine.” The Staff further noted that a well-informed board, in terms of knowledge of the company’s business and the implications of a particular proposal on that business, acting consistent with its fiduciary duties, 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.” *Id.* In Staff Legal Bulletin No. 14K (Oct. 16, 2019), the Staff reiterated that it “continue[s] to believe that a well-developed discussion of the board’s analysis of whether the particular policy issue raised by the proposal is sufficiently significant in relation to the company can assist the staff in evaluating a company’s no-action request and, in turn, assist the company in demonstrating that it may exclude the proposal.”

Here, the Proposal was referred to the board for its consideration. The discussions of the board focused on, but were not limited to, the following substantive factors:

- ***The Proposal seeks to micro-manage the Company.*** As discussed above, the ability of SeaWorld to make decisions regarding the products and services it offers in its parks is fundamental to the operation of its business. By attempting to impose upon the Company a highly specific decision with respect to the products and services the Company offers, the Proposal seeks to micro-manage the Company’s operations, interfering with complex business, regulatory and animal well-being decisions that the Company’s management is best suited to make.

- ***The Company has already addressed the issue raised by the Proposal.*** As part of its ongoing evaluation of the Company's business, the Company's board of directors and management regularly study the products and services, including its live animal displays and presentations, the Company offers in its theme parks and evaluate the feasibility of and potential implications for the Company's business of phasing out particular offerings or adding new ones. Here, the proponent asks the Company's board of directors to study a potential timeframe for the elimination of a portion of the Company's current offerings at its parks. In the board's view the timeline for the implementation of a specific business strategy would not become a significant issue until the Company had decided such strategy was in the best interests of the Company and its stockholders and the Company was therefore going to take action to pursue such strategy.
- ***The Company's shareholders other than the Proponent have not requested the type of action sought by the Proposal and the Company expects that shareholder support for the Proposal will be very low.*** The Company maintains proactive and ongoing engagement with its institutional investors, regularly meeting with larger unaffiliated shareholders. The Company has invested substantial time, resources and effort to develop and promote the highest possible standards of care, which in turn allows the Company to engage in its ongoing display, conservation, education and rescue programs. The Company believes its shareholders are aware of this commitment through its public filings and shareholder engagement. Shareholders and other stakeholders regularly submit comments and questions to the Company, but other than the Proponent, the Company is not aware of any that have sought the type of action similar to that contemplated by the Proposal. Consequently, the Company's shareholders have not previously voted on a proposal addressing a study with respect to the Company's live animal displays and presentations or other attractions more broadly. As a result of the foregoing, the Company expects that shareholder support for the Proposal will be very low.
- ***The display of the animals in the Company's care is conducted in compliance with the applicable laws and regulations.*** As discussed above, SeaWorld is a highly regulated, licensed and professionally accredited zoological organization. In order to comply with federal regulations, licensing requirements and accreditation standards, SeaWorld follows detailed animal care policies and procedures and follows all applicable government regulations regarding the animals in its care. The Company would not be able to maintain its compliance with such regulations, or its accreditations with the AZA, AAMPA and AHA, if it did not adhere to the highest standards of care with respect to its animals. SeaWorld has a complex internal reporting structure in place to make assessments regarding animal welfare, including (i) regular health checkups for each animal; (ii) an animal welfare assessment team that reviews the welfare of all the animals in the Company's care at least once every six months and provides reports for review by an Animal Welfare Committee; and

(iii) an anonymous reporting system for employees to report any animal welfare concerns to a corporate-level committee tasked with reviewing and resolving any animal welfare issues.

B. The Proposal is Excludable Under Rule 14a-8(i)(3) Because it is Misleading in Violation of Rule 14a-9.

Rule 14a-8(i)(3) provides that a shareholder proposal may be excluded from a company's proxy materials "[i]f the proposal or supporting statement is contrary to any of the Commission's proxy rules, including Rule 14a-9, which prohibits materially false or misleading statements in proxy soliciting materials."

1. *The Proposal is Excludable under Rule 14a-8(i)(3) Because it is Vague and Indefinite and Thus Inherently Misleading.*

The Commission has explained that exclusion of a proposal may be appropriate where "the resolution contained in the proposal is so inherently vague or indefinite that neither the stockholders voting on the proposal, nor the company in implementing the proposal (if adopted), would be able to determine with any reasonable certainty exactly what actions or measures the proposal requires." Staff Legal Bulletin No. 14B (Sept. 15, 2004). See also *Dyer v. Securities and Exchange Commission*, 287 F.2d 773, 781 (8th Cir. 1961) ("It appears to us that the proposal, as drafted and submitted to the company, is so vague and indefinite as to make it impossible for either the board of directors or the stockholders at large to comprehend precisely what the proposal would entail."). The Commission has recognized that ambiguity creates the risk that "any action ultimately taken by the [c]ompany upon implementation could be significantly different from the actions envisioned by shareholders voting on the proposal." *Fuqua Industries, Inc.* (avail. Mar. 12, 1991).

The Proposal to urge the board to conduct a study to "determine how soon SeaWorld could feasibly eliminate animal-based programs, excluding legitimate animal rescue work" is subject to multiple potentially conflicting interpretations and does not provide sufficient guidance to enable the Company to implement it without making significant assumptions regarding what the Proponent is actually contemplating. The resolution refers to "animal-based programs" but it is not at all clear whether the Proponent is referring to programs involving marine mammals, all marine animals, or all marine and terrestrial animals in SeaWorld's care. While the proposed resolution refers to "animal-based programs," the supporting statement references only certain marine mammals (orcas, dolphins, belugas, cetaceans and whales) and uses the phrase "concrete tank", which is frequently used by the Proponent to describe the habitats of marine animals. SeaWorld's zoological collection consists of hundreds of species of marine and terrestrial animals. Moreover, the Company's business involves numerous animal-themed offerings (such as roller coasters and restaurants) and educational programs not involving live animals. Differences in the interpretation of "animal-based programs" would result in a vast difference in the scope of

the Proposal. Similarly, the Proposal refers to “legitimate rescue work,” without elaborating on what would be considered “legitimate” or “illegitimate” rescue work.

Moreover, the supporting statement strongly suggests that the intent of the Proposal could go beyond studying the feasibility of simply eliminating SeaWorld’s current “animal-based” programs. The supporting statement refers to “cutting-edge forms of animal-free entertainment” and gives as examples “animatronic dolphins” and “interactive digital aquariums.” Should the study also encompass the feasibility of replacing the Company’s current “animal-based programs” with interactive displays of animatronic animals and digital aquariums?

Finally, it is not clear what the primary goal of the study is intended to be. Is it to address the treatment of the animals in the Company’s care, as may have been implied by the reference to COVID-19 in the resolved clause and some of the assertions in the supporting statement, or is it the Company’s return to profitability?

All of the foregoing is unclear and the substantial likelihood that the Company’s shareholders may have differing interpretations while voting on the Proposal renders the Proposal vague and indefinite. See e.g., *General Motors Corporation* (avail. Mar. 26, 2009) (proposal excluded where the meaning or application of terms or standards used in it may be subject to differing interpretations); *Yahoo! Inc.* (avail. Mar. 26, 2008) (a proposal is misleading if an action ultimately taken upon implementation could be significantly different from the actions envisioned by the shareholders while voting); *Wendy’s International, Inc.* (avail. Feb. 24, 2006) (proposal may be excluded where it will involve subjective determinations concerning what certain terms mean or how they will be applied); *Wal-Mart Stores, Inc.* (avail. Apr. 2, 2001) (proposal vague and misleading because it was unclear as to which products it was intended to apply).

2. *The Proposal and the Supporting Statement are Excludable under Rule 14a-8(i)(3) Because They Contain Factual Statements that are Materially False and/or Misleading.*

In Staff Legal Bulletin No. 14B (Sept. 15, 2004), the Staff confirmed that Rule 14a-8(i)(3) allows for the modification or exclusion of a proposal or supporting statement if the company “demonstrates objectively that a factual statement is materially false or misleading.” The Staff has consistently concurred in the exclusion of excerpts from shareholder proposals that are materially false or misleading. See, e.g., *Rite Aid Corp.* (avail. Mar. 13, 2015) (permitting exclusion under Rule 14a-8(i)(3) of a sentence included in the supporting statement falsely claiming, among other things, that the Commission supported the proposal); *Bob Evans Farms, Inc.* (avail. June 26, 2006) (permitting exclusion under Rule 14a-8(i)(3) of a paragraph included in the supporting statement falsely claiming that the proposal has received “tremendous shareholder support”); *Piper Jaffray Cos.* (avail. Feb. 24, 2006) (permitting exclusion under Rule 14a-8(i)(3) of a paragraph included in the

supporting statement falsely claiming that management had demonstrated a disregard for shareholders' interests).

Here, the Proposal and supporting statement make several allegations that, although phrased in the form of factual assertions, are actually the Proponent's unsubstantiated opinions and lack any citation or support of any kind. Such statements render the Proposal materially misleading. For example:

- The Proposal asserts that the proposed study would address “the most pressing issues that SeaWorld faces today—specifically, the public’s continued opposition to captive-animal displays and the consequential impact of the COVID-19 pandemic,” without offering any proof of the impact on the Company’s business operations of said public opposition. In fact, the Company’s board and management do not view opposition to captive-animal displays as one of the two most pressing issues the Company faces. Nor would the proposed study in any way address the impact of the COVID-19 pandemic on the Company’s business.
- The Proposal’s assertions that “[t]he public’s condemnation of the practice of confining complex, intelligent, far-ranging animals to cramped concrete tanks for human entertainment continues to grow” and “[n]ow, hundreds of thousands of people steer clear of our company’s facilities,” are uncorroborated opinions and run contrary to SeaWorld’s mission of conservation and its ability to maintain its permits and accreditations. The Company’s guests enjoy and support the Company’s presentations and mission, which led to the Company recording record net income in 2019.
- The Proposal’s assertion (repeated almost verbatim from the Proponent’s past proposals) that “SeaWorld has eliminated 3,300 positions, four CEOs have left the company, and dozens of corporate partners have severed ties since the release of *Blackfish*” is misleading because it implies a connection between the release of *Blackfish* and (i) the elimination of certain positions within the Company; (ii) certain senior management transitions; and (iii) the termination of certain corporate partnerships, when this is patently false and again, based entirely on the Proponent’s opinion and conjecture.

C. The Proposal is Excludable Under Rule 14a-8(i)(10) because the Company has substantially implemented the Proposal.

Rule 14a-8(i)(10) permits a company to exclude a shareholder proposal from its proxy materials if the company has already “substantially implemented” the proposal. The Staff has stated that the purpose of the predecessor provision to Rule 14a-8(i)(10) was “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. 12598 (Jul. 7,

1976). The Commission later stated that a formalistic application of the rule requiring full implementation “defeated [the rule’s] purpose,” and then adopted a revised interpretation of the rule to permit the omission of proposals that had been “substantially implemented.” See Exchange Act Release No. 20091 (Aug. 16, 1983) and Exchange Act Release No. 40018 (May 21, 1998).

A “determination that the company has substantially implemented the proposal depends upon whether [the company’s] particular policies, practices and procedures compare favorably with the guidelines of the proposal.” *Texaco, Inc.* (avail. Mar. 28, 1991). When a company has satisfied the proposal’s underlying concerns and essential objectives, the proposal has been “substantially implemented” and may be excluded under Rule 14a-8(i)(10). *Pfizer Inc.* (avail. Jan. 11, 2013, recon. denied Mar. 1, 2013) (where the company’s prior public disclosures compared favorably with the guidelines of a proposal requesting a report to shareholders detailing all measures implemented to reduce the use of animals, the proposal was excludable as having been substantially implemented); *Exelon Corporation* (avail. Feb. 26, 2010) (the company was permitted to exclude a proposal requesting a semi-annual report regarding policies and procedures for political contributions and detailing actual contributions when it had taken actions to make such disclosures in a substantially similar manner); *PPG Industries, Inc.* (avail. January 19, 2004) (where the company had publicly issued an animal welfare policy committing the company to use alternatives to animal testing, proposal requesting that the board issue statement regarding similar issues was held excludable on basis of having been substantially implemented); *Nordstrom, Inc.* (avail. February 8, 1995) (where company had previously provided information to general public via press release, request by proponent to prepare a report to its shareholders describing similar information was excludable as moot). A company need not implement a proposal in exactly the manner set forth by the proponent in order to exclude the proposal under Rule 14a-8(i)(10). See Exchange Act Release No. 34-40018 (May 21, 1998).

Here, SeaWorld has substantially implemented the Proposal and it may therefore be excluded pursuant to Rule 14a-8(i)(10). Assuming that the Proposal can be characterized as requesting that the Board of Directors study the feasibility of phasing out the Company’s animal-based programs, the actions that the Company takes in the ordinary course of its business with respect to the subject matter of the Proposal “compare favorably,” if not identically, with the Proposal for the following reasons.

As part of its ongoing evaluation of the Company’s business, the Company’s board of directors and management regularly study the products and services, including live animal displays and presentations, the Company offers in its parks and evaluate the feasibility of and potential implications for the Company’s business of phasing out particular offerings or adding new ones. As part of its evaluation of the feasibility of maintaining or phasing out particular products and services, the Company’s board of directors regularly reviews surveys of guests, profitability reports prepared by the Company’s management, the impact on attendance of different offerings in the Company’s parks, consumer perception studies and projected returns on investments in the business, including in its live animal

displays and presentations and changes or improvements to such displays and presentations. Notably, the COVID-19 pandemic has caused the Company and its board of directors to closely evaluate all of its costs and revenues, including those related to its live animal displays and presentations, with a view toward promoting the health and safety of the guests of its parks and the welfare of the animals in its care. Some of the resulting decisions have been highlighted in the Company's public communications.⁴ These actions should serve to substantially address Proponent's underlying concerns and objectives. Given that the Proposal relates to a study regarding the feasibility of phasing out live animal displays and presentations, the Company respectfully submits that the Proposal has been substantially implemented because the Board regularly studies such matters as part of the ordinary course of its business, and that it should be excludable under Rule 14a-8(i)(10).

D. The Proposal is Excludable Under Rule 14a-8(i)(4) because it relates to the redress of a personal claim or grievance against the Company.

Under Rule 14a-8(i)(4), a company may exclude a shareholder proposal from its proxy materials if the proposal relates to the redress of a personal claim or grievance against the company or any other person, or if it is designed to result in a benefit to the proponent, or to further a personal interest, which is not shared by other shareholders at large. As the Commission has repeatedly advised, an issuer's proxy materials are not the proper forum for airing personal claims or grievances. See Exchange Act Release No. 34-12999 (Nov. 22, 1976); see also Exchange Act Release No. 34-20091 (Aug. 16, 1983); Exchange Act Release No. 34-19135 (Oct. 14, 1982). Even where the proposal is presented in general terms that "might relate to matters which may be of general interest to all security holders," a company may omit the proposal where "it is clear from the facts presented by the issuer that the proponent is using the proposal as a tactic designed to redress a personal grievance or further a personal interest." Release No. 34-19135.

Following these principles, the Staff has permitted exclusion of proposals like the one here, even when those proposals were facially neutral and nominally related to matters of general interest. See, e.g., *General Electric Co.* (avail. Jan. 12, 2017, recon. denied Jan. 31, 2017) (concurring in exclusion of proposal to permit shareholders to act by written consent where the underlying facts showed the proponents were using the shareholder proposal process to press a former employee's personal, employment-related grievances with the company); *State Street Corp.* (avail. Jan. 5, 2007) (concurring in exclusion of a proposal requesting an independent chairman where the proponent was a former employee with a history of litigation and harassment of the company and its CEO); *American Express Co.* (avail. Jan. 6, 2017) (concurring in exclusion of proposal to include mandatory non-

⁴ See, e.g., the Company's press release, dated April 21, 2020, furnished as Exhibit 99.1 to the Company's Current Report on Form 8-K filed with the Commission on April 21, 2020, detailing the measures the Company had taken as of that date to manage costs and expenditures and ensure liquidity in response to the COVID-19 pandemic.

compliance penalties in the company's code of conduct where the proponent was a former employee with a personal dispute over the company's enforcement of its disciplinary codes).

Here, the Proponent has a long history of litigation and harassment of the Company. The Proponent manages a website entitled "SeaWorld of Hurt: Where Happiness Tanks" featuring a logo of a bottlenose dolphin in chains and containing pages of inflammatory, biased articles and false and misleading statements regarding SeaWorld's treatment of the animals in its care.⁵ On the website, the Proponent asserts that it employs a variety of tactics to "help" the animals at SeaWorld's parks, "including demonstrations, complaints to law-enforcement officials, corporate negotiations, shareholder activism, litigation and celebrity engagement." Moreover, the Proponent has highlighted the actions it has taken with respect to the Company in its fundraising initiatives. The Proponent thus has a significant personal interest in negative publicity or changes in public perception of the Company, which could negatively impact its business operations and thus hurt other shareholders, rather than benefitting them. On its website, the Proponent also repeats several of the false and misleading statements described above under "*The Proposal is Excludable Under Rule 14a-8(i)(3) Because it is Misleading in Violation of Rule 14a-9*" and urges readers to "please never buy a ticket to the parks or support the business in any other way," which again, cuts against the interests of other shareholders. In one interview, the Proponent's founder, Ingrid Newkirk, went so far as to say "We are outside SeaWorld [parks] every day of the week . . . we've bought stock and we are harassing them in that way until they let the orcas and the dolphins and all the marine animals go, and they *will* close down. There's no question in my mind."⁶ These types of statements make it clear that the Proponent is not looking out for the best interests of the Company's stockholders but, rather, has a vendetta against the Company, and that its goal is to see the Company shut down its operations. This cannot logically be a goal supported by other shareholders. Indeed, read broadly, the Proposal urges the Company's board of directors to study how soon the Company could feasibly wind down its entire revenue-generating business and become an animal rescue organization. In short, the Proponent's unrealistic, vague, and irresponsible proposal has more to do with advancing their agenda to shut down the Company than doing what is best for the Company's shareholders and for the thousands of animals that receive world-class care at SeaWorld thanks to its dedicated animal experts.

Thus, the Company believes that the Proposal is excludable under Rule 14a-8(i)(4).

⁵ See PETA website, <https://www.seaworldofhurt.com/>

⁶ See Plant Based News website, <https://www.plantbasednews.org/lifestyle/peta-founder-ingrid-newkirk-euthanasia-seaworld-vegan-activism>

Conclusion

On behalf of the Company, we hereby respectfully request that the Staff express its intention not to recommend enforcement action if the Proposal is excluded from the Company's Proxy Materials for the reasons set forth above.

If the Staff disagrees with the Company's conclusions regarding omission of the Proposal, or if any additional submissions are desired in support of the Company's position, we would appreciate an opportunity to speak with you by telephone prior to the issuance of the Staff's Rule 14a-8(j) response.

If you have any questions regarding this request, or need any additional information, please do not hesitate to contact the undersigned at (212) 455-3937 or amanda.weiss@stblaw.com or Igor Fert at (212) 455-2255 or ifert@stblaw.com.

Very truly yours,



Amanda Weiss

Enclosures

cc: G. Anthony Taylor, SeaWorld Entertainment, Inc.
Harold Herman, SeaWorld Entertainment, Inc.
Laurie Beechner, SeaWorld Entertainment, Inc.
Igor Fert, Simpson Thacher & Bartlett LLP
Jared S. Goodman, PETA Foundation

Exhibit A

Copy of the Proposal and Accompanying Correspondence



PEOPLE FOR
THE ETHICAL
TREATMENT
OF ANIMALS

December 2, 2020

G. Anthony Taylor
Corporate Secretary
SeaWorld Entertainment, Inc.
6240 Sea Harbor Drive
Orlando, FL 32821

Via UPS Next Day Air Saver

Dear Mr. Taylor:

Attached to this letter is a shareholder proposal submitted for inclusion in the proxy statement for the 2021 annual meeting. Also enclosed is a letter from People for the Ethical Treatment of Animals' (PETA) brokerage firm, RBC Wealth Management, confirming ownership of 353 shares of SeaWorld Entertainment, Inc. common stock, which were acquired at least one year ago. PETA has held at least \$2,000 worth of common stock continuously and intends to hold at least this amount through and including the date of the 2021 shareholders meeting.

If there are any issues with this proposal being included in the proxy statement or if you need any further information, please contact PETA's authorized representative Jared Goodman at 2154 W. Sunset Blvd., Los Angeles, CA 90026, (516) 319-5906, or JaredG@PetaF.org.

Sincerely,

Carrie Edwards, Executive Assistant
PETA Corporate Responsibility

Enclosures: 2021 Shareholder Resolution
RBC Wealth Management letter

Washington, D.C.
1536 16th St. N.W.
Washington, DC 20036
202-483-PETA

Los Angeles
2154 W. Sunset Blvd.
Los Angeles, CA 90026
323-644-PETA

Norfolk
501 Front St.
Norfolk, VA 23510
757-622-PETA

Berkeley
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Ste. 301
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510-763-PETA

Info@peta.org
PETA.org

Affiliates

- PETA Asia
- PETA India
- PETA France
- PETA Australia
- PETA Germany
- PETA Netherlands
- PETA Foundation (U.K.)

**2021 Shareholder Resolution to Conduct a Feasibility Study to Determine
How Soon SeaWorld Could Eliminate Animal-Based Programs,
Excluding Legitimate Rescue Work**

RESOLVED:

In order to address the most pressing issues that SeaWorld faces today—specifically, the public’s continued opposition to captive-animal displays and the consequential impact of the COVID-19 pandemic—the shareholders urge the board to conduct a study to determine how soon SeaWorld could feasibly eliminate animal-based programs, excluding legitimate animal rescue work.

SUPPORTING STATEMENT:

The public’s condemnation of the confinement of complex, intelligent, far-ranging animals to cramped concrete tanks for human entertainment continues to grow. Now, hundreds of thousands of people steer clear of our company’s facilities. SeaWorld has eliminated more than 3,300 positions, four CEOs have left the company, and dozens of corporate partners have severed ties since the release of *Blackfish*.

Additionally, the COVID-19 pandemic has caused SeaWorld’s attendance and revenue to plummet. Meanwhile, cutting-edge forms of animal-free entertainment save a significant amount of money while allowing ticket holders to feel as if they’re interacting with real animals. New animatronic dolphins look, feel, and act just like real ones, and interactive digital aquariums have been called the way of the future.

The National Aquarium in Baltimore is building a seaside sanctuary for the dolphins in its care, two whales were moved from a marine park in China to a sanctuary in Iceland, and The Whale Sanctuary Project is planning a seaside sanctuary for rescued orcas and belugas in Nova Scotia. Canada has banned keeping cetaceans in captivity, and France has announced that it’s banning marine parks from breeding or acquiring new orcas and other dolphins and that it intends to move the existing captive ones to sea sanctuaries.

SeaWorld’s decisions to end its orca-breeding program as well as to stop trainers from standing on dolphins’ faces and surfing on their backs in demeaning circus-style shows—along with its increased focus on non-animal rides and entertainment—show that it knows the public doesn’t support this cruelty.

Accordingly, we urge all shareholders to support a feasibility study to determine how soon SeaWorld could eliminate animal-based programs, excluding legitimate animal rescue work.



**Wealth
Management**

99 Almaden Boulevard
Suite 300
San Jose, CA 95113-1603

Office: 408.292.2442
Fax: 408.298.8295

December 2, 2020

Tracy Reiman
Executive Vice President
People for the Ethical Treatment of Animals
501 Front Street
Norfolk, VA 23510

Re: Verification of Shareholder Ownership in SeaWorld Entertainment, Inc.

Dear Ms. Reiman,

This letter verifies that People for the Ethical Treatment of Animals (PETA) is the beneficial owner of 353 shares of SeaWorld Entertainment, Inc. common stock and that PETA has continuously held at least \$2,000.00 in market value for at least one year prior to and including the date of this letter.

Should you have any questions or require additional information, please contact me at (408) 947-3322.

Sincerely,

Thach Nguyen
Senior Registered Client Associate to Joshua Levine
Senior Vice President – Financial Advisor
RBC Wealth Management

Investment and insurance products: • Not insured by the FDIC or any other federal government agency
• Not a deposit of, or guaranteed by, the bank or an affiliate of the bank • May lose value

VIA OVERNIGHT MAIL [AND E-MAIL]

December 10, 2020

Re: Stockholder Proposal

Jared S. Goodman
PETA Foundation
2154 W. Sunset Blvd.
Los Angeles, CA 90026

Dear Mr. Goodman:

We are writing in response to a stockholder proposal that you submitted on December 2, 2020 on behalf of People for the Ethical Treatment of Animals (“PETA”) to be included in the 2021 proxy statement of SeaWorld Entertainment, Inc. (the “Company”).

Rule 14a-8(b)(1) under the Securities Exchange Act of 1934, as amended (the “Exchange Act”), provides that “[i]n order to be eligible to submit a proposal, you must have continuously held at least \$2,000 in market value, or 1%, of the company’s securities entitled to be voted on the proposal at the meeting for at least one year by the date you submit the proposal.” While your letter affixes correspondence from RBC Wealth Management certifying PETA’s current stock ownership, we are unable to determine whether PETA has held the requisite amount of stock in the Company for at least one year by the date on which PETA submitted its proposal.

On December 10, 2019, in a letter accompanying the stockholder proposal PETA submitted to the Company for inclusion in its 2020 proxy statement, PETA indicated that it owned 163 shares of the Company’s common stock. This was submitted within less than a year of PETA’s current proposal. Given that, it appears that the 353 shares of the Company’s common stock PETA asserts it now owns may not have been acquired at least one year ago as of the date on which PETA submitted its current proposal. Because it is not clear how many shares PETA held continuously for one year as of December 2, 2020 – the date PETA submitted its current proposal – it is not clear that PETA was eligible to submit such proposal. So that the Company may assess PETA’s eligibility to submit a shareholder proposal, please provide the number of shares PETA owned continuously for one year through and including December 2,

2020 as well as a letter from RBC Wealth Management verifying that PETA has owned such number of shares continuously for one year through and including December 2, 2020.

Pursuant to Rule 14a-8(f) under the Exchange Act, the Company hereby notifies PETA that to the extent PETA can remedy the eligibility deficiency described above, it has 14 days from the date it receives this notification to respond to the Company with an adequate correction of the deficiency. If PETA cannot remedy the deficiency in its submission, please consider withdrawing the submission in order to preserve the time and resources of both the Company and the Commission.

We appreciate your interest in the Company. Please rest assured that the Company remains committed to world-class standards of animal care and welfare, which have earned our parks recognition as global leaders in the zoological community.

Sincerely,



G. Anthony (Tony) Taylor
Chief Legal Officer, General
Counsel and Corporate Secretary

cc: Carrie Edwards (PETA Corporate Responsibility)



PEOPLE FOR
THE ETHICAL
TREATMENT
OF ANIMALS

December 15, 2020

G. Anthony Taylor
Corporate Secretary
SeaWorld Entertainment, Inc.
6240 Sea Harbor Drive
Orlando, FL 32821

Dear Mr. Taylor:

Pursuant to your correspondence of December 11, enclosed please find a letter from PETA's brokerage firm, RBC Wealth Management, confirming PETA's requisite level of ownership for submission of its shareholder proposal. PETA is the beneficial owner of 353 shares of SeaWorld Entertainment, Inc. common stock, 163 of which were acquired at least one year before the December 2, 2020, submission of PETA's shareholder proposal. PETA had held at least \$2,000 worth of common stock continuously for at least one year at the time of submission and intends to hold at least this amount through and including the date of the 2021 shareholders meeting.

If there are any issues with this proposal being included in the proxy statement or if you need any further information, please contact PETA's authorized representative Jared Goodman at 2154 W. Sunset Blvd., Los Angeles, CA 90026, (516) 319-5906, or JaredG@PetaF.org.

Sincerely,

Carrie Edwards, Executive Assistant
PETA Corporate Responsibility

Enclosures: 2021 Shareholder Resolution
RBC Wealth Management letter

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1536 16th St. N.W.
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Affiliates

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- PETA India
- PETA France
- PETA Australia
- PETA Germany
- PETA Netherlands
- PETA Foundation (U.K.)



**Wealth
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San Jose, CA 95113-1603

Office: 408.292.2442
Fax: 408.298.8295

December 15, 2020

Tracy Reiman
Executive Vice President
People for the Ethical Treatment of Animals
501 Front Street
Norfolk, VA 23510

Re: Verification of Shareholder Ownership in Sea World Entertainment, Inc.

Dear Ms. Reiman,

This letter verifies that People for the Ethical Treatment of Animals (PETA) is the beneficial owner of 353 shares of Sea World Entertainment, Inc. common stock and that PETA has continuously held 163 shares for at least one year prior to December 2, 2020, and through the date of this letter.

Should you have any questions or require additional information, please contact me at (408) 947-3344.

Sincerely,

James Nielsen
Senior Vice President – Branch Director
RBC Wealth Management

Investment and insurance products: • Not insured by the FDIC or any other federal government agency
• Not a deposit of, or guaranteed by, the bank or an affiliate of the bank • May lose value