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February 8, 2021
Via electronic mail

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

Re: Marriott International, Inc.; Shareholder Proposal of Myra K. Young (John Chevedden)
Securities Exchange Act of 1934 ("Exchange Act")—Rule 14a-8

Ladies and Gentlemen:

Myra K. Young (the "Proponent") is beneficial owner of common stock of Marriott International, Inc. (the "Company") and has submitted a shareholder proposal (the "Proposal") to the Company. I have been asked by the Proponent to respond to the letter dated January 13, 2020 ("Company Letter") sent to the Securities and Exchange Commission (the "SEC") by Elizabeth Ising ("Company Counsel"). In that letter, the Company contends that the Proposal may be excluded from the Company's 2021 proxy statement. A copy of the Proposal is attached to this letter.

Based on the Proposal, as well as the letter sent by the Company, we respectfully submit that the Proposal must be included in the Company's 2021 proxy materials and that it is not excludable under Rule 14a-8. A copy of this letter is being emailed concurrently to Company Counsel.

## SUMMARY

The Proposal requests a study of the external social costs created by the Company's compensation policy, and the manner in which such costs affect the vast majority of its shareholders who rely on overall market returns. The Company asserts that the Proposal is excludable either as relating to ordinary business (Rule 14a-8(i)(7)), or for being vague and misleading (Rule 14a-8(i)(3)).

The Proposal is not excludable pursuant to Rule 14a-8(i)(7) because it is solely directed to a significant policy issue posed by the Company's ongoing business, namely *the question of how a corporation accounts for the costs it imposes on stakeholders when it prioritizes the interests of its shareholders*. The Company Letter fails to acknowledge that this policy issue is at the heart of the Proposal, and therefore fails to address the key question of whether that issue transcends the ordinary business question upon which the Proposal (like all proposals) touches.

The Company itself has recognized the importance of the question, recently signing on to the Business Roundtable's Statement of the Purpose of a Corporation (the "Statement"), which purports to make significant commitments to stakeholders.[1] This issue has been the focus of legislative action, policy debate, and the Company's own communications strategy. The Proposal relates solely to this critical policy issue and contains no specific direction with respect to particular products and services or any other ordinary business of the Company—the scope of the Proposal does not stray into ordinary business matters.

The Company asserts that the Proposal is vague, yet reading the language of the Proposal, neither the Company nor shareholders would have difficulty in ascertaining the core question at issue in the Proposal, even if the Board would have to exercise discretion and judgment in implementing it; thus, the Proposal is not vague within the meaning of Rule 14a-8(i)(3).

## ANALYSIS

### 1. The Proposal Is Not Excludable Under Rule 14a-8(i)(7)

*A. Background*

The Staff has indicated that a shareholder proposal that might otherwise be excludable as relating to ordinary business under Rule 14a-8(i)(7) may not be excludable if it raises significant social policy issues. Amendments to Rules on Shareholder Proposals, Exchange Act Release No. 34-40018, (May 21, 1998). In explaining ordinary business, the Release noted:

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[1] https://www.businessroundtable.org/business-roundtable-redefines-the-purpose-of-a-corporation-to-promote-an-economy-that-serves-all-americans.

> *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. Examples include the management of the workforce, such as the hiring, promotion, and termination of employees, decisions on production quality and quantity, and the retention of suppliers. However, proposals relating to such matters but focusing on sufficiently significant social policy issues (e.g., significant discrimination matters) generally would not be considered to be excludable, because the proposals would transcend the day-to-day business matters and raise policy issues so significant that it would be appropriate for a shareholder vote.*
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> *The determination as to whether a proposal deals with a matter relating to a company's ordinary business operations is made on a case-by-case basis, taking into account factors such as the nature of the proposal and the circumstances of the company to which it is directed.*

Shareholder proposals involve significant social policies if they involve issues that engender widespread debate, media attention, and legislative and regulatory initiatives. Staff Legal Bulletin 14E (October 27, 2009) addressed considerations relevant to the present matter as well, since the Proposal implicates certain risks to investors. Under the guidance of the bulletin, a proposal that requests analysis of risks to investors does not necessarily render the proposal excludable. Instead, the Staff suggested that a key question is whether the particular risk that is being analyzed involves a significant policy issue:

> *On a going-forward basis, rather than focusing on whether a proposal and supporting statement relate to the company engaging in an evaluation of risk, we will instead focus on the subject matter to which the risk pertains or that gives rise to the risk. The fact that a proposal would require an evaluation of risk will not be dispositive of whether the proposal may be excluded under Rule 14a-8(i)(7). Instead, similar to the way in which we analyze proposals asking for the preparation of a report, the formation of a committee or the inclusion of disclosure in a Commission-prescribed document — where we look to the underlying subject matter of the report, committee or disclosure to determine whether the proposal relates to ordinary business — we will consider whether the underlying subject matter of the risk evaluation involves a matter of ordinary business to the company. In those cases in which a proposal's underlying subject matter transcends the day-to-day business matters of the company and raises policy*

> *issues so significant that it would be appropriate for a shareholder vote, the proposal generally will not be excludable under Rule 14a-8(i)(7) as long as a sufficient nexus exists between the nature of the proposal and the company. Conversely, in those cases in which a proposal's underlying subject matter involves an ordinary business matter to the company, the proposal generally will be excludable under Rule 14a-8(i)(7). In determining whether the subject matter raises significant policy issues and has a sufficient nexus to the company, as described above, we will apply the same standards that we apply to other types of proposals under Rule 14a-8(i)(7).*

As we will discuss below, in the present matter, the reporting on risks and costs requested by the Proposal relates to an underlying significant policy issue: the appropriate manner of accounting for the divergent interests of shareholders and stakeholders when profitable activity creates external social costs.

*B. Significant policy issue: externalizing costs to stakeholders*

The Company's argument to exclude the Proposal under Rule 14a-8(i)(7) is based on a failure to acknowledge the underlying significant policy issue addressed by the Proposal, which is clear on its face: corporate financial returns to shareholders that cause harm to other stakeholders. The Proposal refers to the Statement, Delaware corporate law (the Company's domicile), and the conflict between the two; it cites a specific study that quantifies the social harm that corporate-induced inequality can cause, and even cites a famous investor for how that harm can reduce the return of most investors. Yet in arguing that that the Proposal does not address a transcendent policy issue, the Company Letter fails even to acknowledge this critical issue of the debate over shareholder primacy and stakeholder values. Below, we explain how this issue has become a central feature of the policy debate in the U.S. and beyond.

i. Corporate Law and Shareholder Primacy

The directors of U.S. corporations have long focused their efforts on improving the financial return of their corporations to their shareholders. While there has been a fierce, ongoing debate as to whether corporations should in fact be managed for the benefit of only shareholders or for a broader group of stakeholders,[2] the concept of shareholder primacy has dominated corporate law. This doctrine eschews consideration of the external costs of a business unless those costs affect the corporation's own financial return to its shareholders. A series of decisions by the Delaware courts cemented the place of shareholder primacy in the United States.[3]

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[2] Frederick Alexander, BENEFIT CORPORATION LAW AND GOVERNANCE: PURSUING PROFIT WITH PURPOSE (2018) at 21-26.

[3] Joan MacLeod Heminway, *Corporate Purpose and Litigation Risk in Publicly Held U.S. Benefit Corporations*, 40 Seattle Univ. L. Rev. 611, 613 (2017) ("Delaware decisional law is arguably particularly unfriendly to for-profit corporate boards that fail to place shareholder financial wealth maximization first in every decision they make.")

The most important of these was the famous *Revlon* case decided by the Delaware Supreme Court in 1985.[4] Other Delaware authority has established that corporations exist primarily to generate shareholder value.[5] *eBay Domestic Holdings, Inc. v. Newmark*[6] is a more recent example of the focus on shareholder wealth maximization, even outside the sale context. The court embraced shareholder primacy, finding that it was a violation of the directors' fiduciary duties to make decisions primarily for the benefit of users of the corporation's platform:

> *Having chosen a for-profit corporate form, the craigslist directors are bound by the fiduciary duties and standards that accompany that form. Those standards include acting to promote the value of the corporation for the benefit of its stockholders. The "Inc." after the company name has to mean at least that. Thus, I cannot accept as valid . . . a corporate policy that specifically, clearly, and admittedly seeks not to maximize the economic value of a for-profit Delaware corporation for the benefit of its stockholders.*[7]

The former Chief Justice of the Delaware Supreme Court has explained that the law clearly favors shareholders, stating that "a clear-eyed look at the law of corporations in Delaware reveals that, within the limits of their discretion, directors must make stockholder welfare their sole end, and that other interests may be taken into consideration only as a means of promoting stockholder welfare."[8] Toward the end of the twentieth century, many jurisdictions in the United States adopted "constituency statutes," fully or partially opting out of shareholder primacy.[9] None of those states mandates consideration of stakeholder interests, however.[10] North Carolina has not adopted a constituency statute.

Shareholder primacy has caused great consternation regarding the harm that it poses to stakeholders and the public.[11] In response, the benefit corporation option was created to provide

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[4] *Revlon, Inc. v. MacAndrews & Forbes Holdings, Inc*., 506 A.2d 173 (Del. 1986) (holding that when a corporation is to be sold in a cash-out merger, the directors' duty is to maximize the cash value to shareholders, regardless of the interests of other constituencies, because there is no long term for the shareholders).

[5] *See Katz v. Oak Indus. Inc*., 508 A.2d 873, 879 (Del. Ch. 1986) ("It is the obligation of directors to attempt, within the law, to maximize the long-run interests of the corporation's stockholders; that they may sometimes do so 'at the expense' of others [*e.g*., debtholders] . . . does not . . . constitute a breach of duty."); Leo E. Strine, Jr., *The Social Responsibility of Boards of Directors and Stockholders in Change of Control Transactions: Is There Any "There" There?*, 75 S. Cal. L. Rev. 1169, 1170 (2002) ("The predominant academic answer is that corporations exist primarily to generate stockholder wealth, and that the interests of other constituencies are incidental and subordinate to that primary concern.")

[6] 16 A.3d 1 (Del. Ch. 2010).

[7] *Id*. at 34-35 (referring to corporate justification for shareholder rights plan meant to forestall a change in control that might threaten platform users' interests).

[8] Leo Strine, *The Dangers of Denial: The Need for a Clear-Eyed Understanding of the Power and Accountability Structure Established by the Delaware General Corporation Law* 50 WAKE FOREST LAW REVIEW 761 (2015).

[9] Alexander, *supra* n.2, at 135–148.

[10] *Id.*

[11] *See generally,* Lynn Stout, THE SHAREHOLDER VALUE MYTH: HOW PUTTING SHAREHOLDERS FIRST HARMS INVESTORS, CORPORATIONS AND THE PUBLIC (2012).

a corporate form where directors could prioritize interests other than those of shareholders. Beginning in 2010, U.S. jurisdictions began to adopt benefit corporation provisions, which created a corporate form that required directors to consider other stakeholder interests.

As the Chief Justice of the Supreme Court of Delaware has said:

> *[T]he benefit corporation movement represents a refreshing and substantial step forward for those who believe that corporations—and all business entities—not only can, but should both do well by their investors, but also their workers and the societies in which they operate.*[12]

The clearest signal of the significance of the policy issue is legislative action to address the issue around the nation and the world. Legislatures have acted in 39 U.S. jurisdictions, the Canadian province of British Columbia, and the countries of Italy, Colombia, and Ecuador over the last decade to make this new form available. In addition, legislation was introduced in the last U.S. Congress in both houses that would have imposed benefit corporation duties on the directors of all billion-dollar companies.[13] The issue even surfaced in the most recent U.S. presidential election, as one candidate decried "the era of shareholder capitalism."[14] In response, critics argued that favoring shareholders was the best recipe for a successful economy:

> *In reality, corporations do enormous social good precisely by seeking to generate returns for shareholders.*[15]

ii. Trust Law

This policy issue has also appeared in recent regulatory and legislative activity relating to trustees for retirement plans and other investment advisors. The Department of Labor recently proposed a Rule that would have made it more difficult for trustees to account for environmental and social costs, but, after receiving public comments, revised the final rule in a manner that gives trustees the ability to address corporate activity that imposes the type of social costs described in the Proposal when the trustees believed that those costs would affect their diversified portfolios—exactly the type of costs on which the Proposal seeks a report:

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[12] Leo Strine, *Forward,* in Alexander, *supra,* n.2.
[13] Copies of the legislation are available here: https://www.congress.gov/bill/116th-congress/senate-bill/3215?q=%7B%22search%22%3A%5B%22accountable+capitalism+act%22%5D%7D&s=1&r=1 (Senate) and here: House: https://www.congress.gov/bill/116th-congress/house-bill/6056?q=%7B%22search%22%3A%5B%22accountable+capitalism+act%22%5D%7D&s=2&r=2 (House)
[14] *Biden says investors 'don't need me,' calls for end of 'era of shareholder capitalism',* (CNBC) (July 9, 2020), available at https://www.cnbc.com/2020/07/09/biden-says-investors-dont-need-me-calls-for-end-of-era-of-shareholder-capitalism.html.
[15] Andy Pudzer, *Biden's Assault on 'Shareholder Capitalism,'* (Wall Street Journal) (August 17, 2020), available at https://www.wsj.com/articles/bidens-assault-on-shareholder-capitalism-11597705153.

> *In addition, Final Rules should also permit stewardship that discourages portfolio companies from engaging in behaviour that harms society and the environment, and consequently the value of shareholders' diversified portfolios (For example, plan fiduciaries might vote to encourage all companies to lower their carbon footprint, not because it will necessarily increase return at each and every company, but because it will promote a strong economy and thus increase the return of their diversified portfolio).*[16]

Moreover, in 2020, a bill was introduced in the U.S. House of Representatives that included an express finding that plan fiduciaries should consider the costs that corporations in their portfolios impose on the financial system:

> *The Congress finds the following:*
>
> *(1) Fiduciaries for retirement plans should*
> . . . .
> *(D) consider the impact of plan investments on the stability and resilience of the financial* system; . . .[17]

While the bill related to costs to the financial system, rather than public health, it was clearly focused on the same policy concern: costs that a company's profit-seeking activities impose on stakeholders.[18]

iii. The Statement

In addition to the activity noted in the prior section regarding political and legislative activity around the issue of external costs to stakeholders, the business community, including the Company itself, has noted the importance of the consideration of stakeholder interests other than those of shareholders. Here we quote the Statement, as its eloquence is perhaps the best evidence for the critical nature of the policy issue raised by the Proposal:

> *Americans deserve an economy that allows each person to succeed through hard work and creativity and to lead a life of meaning and dignity. We believe the free-market system is the best means of generating good jobs, a strong and sustainable economy, innovation, a healthy environment and economic opportunity for all. . . .*

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[16] Frederick Alexander, *The Final DOL Rules Confirm That Fiduciary Duty Includes 'Beta Activism,'* RESPONSIBLE INVESTOR (December 15, 2020) available at https://www.responsible-investor.com/articles/the-final-dol-rules-confirm-that-fiduciary-duty-includes-beta-activism.

[17] H.R. 8959 (116th): Retirees Sustainable Investment Policies Act of 2020

[18] *See also* Frederick Alexander, Holly Ensign-Barstow, Lenore Palladino, and Andrew Kassoy, *From Shareholder Primacy to Stakeholder Capitalism: A Policy Agenda for Systems Change* (arguing that fiduciary duties of trustees should incorporate external costs of individual companies that harm portfolios).

> *While each of our individual companies serves its own corporate purpose, we share a fundamental commitment to all of our stakeholders. We commit to:*
>
> - *Delivering value to our customers. We will further the tradition of American companies leading the way in meeting or exceeding customer expectations. . . .*
> - *Supporting the communities in which we work. We respect the people in our communities and protect the environment by embracing sustainable practices across our businesses. . . .*
> - *Each of our stakeholders is essential. We commit to deliver value to all of them, for the future success of our companies, our communities and our country.*[19]

Thus, the Statement, *onto which the Company itself signed,* explains exactly why the Proposal is a critical policy question: it asks the Company to report on public health costs of its business, which fall upon "Americans," "customers," "people in our community," and "our country," the very stakeholders to whom the Company publicly committed less than two years ago.

The importance of the issue to the Company was highlighted when an article in the New York Times featured it as an example of the tension between the Statement and the Company's actions as it laid off employees while the CEO pursued increased compensation for himself:

> *Take, for example, Marriott International, the world's largest hotel chain, which last year earned $1.2 billion. It has begun furloughing most of its American workers, jeopardizing their access to health care, even as the company paid out more than $160 million in quarterly dividends and pursued a raise for its chief executive, Arne M. Sorenson.*[20]

The reaction to the Statement's issuance (as well as the number of companies signing on) in August 2019 demonstrated the policy significance of addressing external costs. One dubious commentator noted that "For many of the BRT signatories, truly internalizing the meaning of their words would require rethinking their whole business."[21] Others noted the importance of the change, but also that it was meaningless without ending shareholder primacy:

> *Ensuring that our capitalist system is designed to create a shared*

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[19] *Supra,* n. 1 (emphasis added).
[20] *Big Business Pledged Gentler Capitalism. It's Not Happening in a Pandemic,* NEW YORK TIMES (April 13, 2020).
[21] Andrew Winston, *Is the Business Roundtable Statement Just Empty Rhetoric?* HARVARD BUSINESS REVIEW (August 30, 2019).

> *and durable prosperity for all requires this culture shift. But it also requires corporations, and the investors who own them, to go beyond words and take action to upend the self-defeating doctrine of shareholder primacy.*[22]

Other commentators were worried not that the Statement did not go far enough, but rather that it went too far:

> *Asking corporate managers to focus more on improving society and less on making profits may sound like a good strategy. But it's a blueprint for ineffective and counterproductive public policy on the one hand, and blame-shifting and lack of accountability on the other. This is a truth Milton Friedman recognized nearly five decades ago — and one that all corporate stakeholders ignore today at their peril.*[23]

Another writer agreed, linking the issue to the same essay by Milton Friedman:

> *The issue of which constituency – or "stakeholder" – has the highest priority has long been a classic corporate governance conundrum. Still, the prevailing consensus, as espoused by Milton Friedman in his September 13, 1970 New York Times Magazine article, has been corporate executives work for their owners (i.e., shareholders) and have a responsibility to do what those owners desire, which is to make as much money as (legally) possible. That all changed on August 19, 2019.*[24]

While exploring the commitments to corporate social responsibility, the authors of the latter two articles each returned to Friedman's famous article, which stated that:

> *[T]he doctrine of 'social responsibility' taken seriously would extend the scope of the political mechanism to every human activity. It does not differ in philosophy from the most explicitly collectivist doctrine. It differs only by professing to believe that collectivist ends can be attained without collectivist means. That is why, in my book Capitalism and Freedom, I have called it a 'fundamentally subversive doctrine' in a free society, and have said that in such a society, 'there is one and only one social responsibility of business—to use its resources and engage in activities designed to increase its profits so long as it stays within the rules of the game, which is to say, engages in open and free*

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[22] Jay Coen-Gilbert, Andrew Kassoy and Bart Houlihan, *Don't Believe the Business Roundtable Until It's CEO's Actions Match Their Words,* FAST COMPANY (August 22, 2019).

[23] Karl Smith *Corporations Can Shun Shareholders, But Not Profits,* BLOOMBERG OPINION (August 27, 2019).

[24] Christopher Carosa *Did Business Roundtable Just Break A Fiduciary Oath?*, FiduciaryNews.com. August 27, 2019 available at http://fiduciarynews.com/2019/08/did-business-roundtable-just-break-a-fiduciary-oath/.

*competition without deception or fraud.*[25]

Showing that the controversy is long-lived, the 50th anniversary of the essay in 2020 set off another round of commentary.[26]

*C. The Proposal Addresses the Policy Issue of Stakeholder Interests*

The outpouring of legislative activity around benefit corporations, regulatory and legislative activity around trustee obligations to consider external corporate costs, and commentary around the Statement raise two related but distinct significant policy issues: first, should corporations focus more on stakeholders interests and if so, how? The Proposal addresses these issues. As a conventional corporation, the Company must subordinate stakeholders' interests to those of shareholders—the board of directors or management can consider stakeholder interests only to the degree that they serve shareholder interests. As shown above, however, many commentators believe the Statement is necessary but insufficient on its own because attaining a fair and durable prosperity will sometimes demand that companies put the interests of stakeholders above those of shareholders.

Shareholder primacy is clearly an issue of great policy significance being addressed in legislatures around the country and the world, and even in the latest race for the U.S. presidency. Moreover, Company actions that prioritize shareholders matter deeply to all of us. In a recent study (the "Schroders Report"), a leading asset manager determined that publicly listed companies imposed social and environmental costs on the economy with a value of $2.2 trillion annually—more than 2.5% of global GDP and more than half of the profits those companies earned.[27] These costs have many sources, including pollution, water withdrawal, climate change, and employee stress. The study shows exactly the areas where corporations are likely to ignore stakeholder interests, to the detriment of the global economy. The travel and leisure industry creates negative social value equal to more than 15% of its market capitalization, meaning that the industry destroys the amount of value its shareholders attribute to it more than once every seven years.[28] This is a horrific statistic that represents a burning problem that far transcends the Company's ordinary business.

By participating in this common corporate practice of prioritizing the financial return to its shareholders above all stakeholder concerns, corporations harm those very shareholders, the vast majority of whom are diversified.[29] Such shareholders and beneficial owners suffer when companies follow the shareholder primacy model and impose costs on the economy that lower GDP, which reduces overall equity value.[30] Thus, while corporations may increase their isolated

[25] Milton Friedman, *The Social Responsibility of Business Is to Increase Its Profits* N.Y. TIMES, Sept. 13, 1970 (magazine).
[26] See, e.g., *Friedman 50 Years later,* PROMARKET (collecting 27 essays about Friedman's article and its legacy) (Stigler Center for the Study of the Economy and the State).
[27] https://www.schroders.com/en/sysglobalassets/digital/insights/2019/pdfs/sustainability/sustainex/sustainex-short.pdf
[28] *Id.* at Figure 1.
[29] Indeed, the top three holders of Company shares are mutual fund companies Vanguard, State Street, and BlackRock, whose clients are generally indexed or otherwise broadly diversified investors.
[30] See, e.g., https://www.advisorperspectives.com/dshort/updates/2020/11/05/market-cap-to-gdp-an-updated-look-at-the-buffett-

return to shareholders under the rule of shareholder primacy by ignoring the costs they externalize to stakeholders, their diversified shareholders will ultimately pay these costs. Such shareholders (along with the world's population and economy) would benefit from corporate governance that enabled corporations to prioritize the stakeholders to whom the Statement refers.

The Proposal will address this issue by asking the Company to describe certain external costs that it imposes on stakeholders, providing context to its shareholders, and permitting them to understand whether the value proposition of the Company is truly sustainable, or whether its profits rely on the exploitation of common resources and vulnerable populations. The Company itself has repeatedly recognized the critical nature of the relationship between corporations and stakeholders, including by executing the Statement along with another 180 large corporations. But while the Company recognized the issue, it also sidestepped it, because under the doctrine of shareholder primacy, the commitment expressed in the Statement is an empty promise. As one commentator on the Statement put it:

> *About shareholder primacy, the less said, the better. The concept has been distorted beyond all reality and has been often used to justify actions that hurt people, communities, and the environment and to enable lobbying that prioritizes short-term benefits over lasting investments needed for businesses to succeed and for a competitive economy.*[31]

Thus, the Proposal's request for a report on how the Company externalizes social costs addresses the significant policy issue of whether corporations should account for stakeholder interests and is therefore not excludable for purposes of Rule 14a-8(i)(7).

D. *The Proposal concerns a significant policy issue and should not be excluded because it touches on products and services*

The Company Letter argues for an exclusion under Rule 14a-8(i)(7) because the Proposal relates to products and services offered to customers. Where the focus of the Proposal is clearly on a significant policy issue, the fact that it may touch on issues related to products and services does not cause it to be excludable. This was made clear in the Staff Legal Bulletin 14H, October 22, 2015:

> *[T]he Commission has stated that proposals 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*

valuation-indicator (total market capitalization to GDP "is probably the best single measure of where valuations stand at any given moment") (quoting Warren Buffet).

[31] *Business Roundtable Aims High, But Misses,* BSR Blog (August 22, 2019) available at https://www.bsr.org/en/our-insights/blog-view/business-roundtable-aims-high-but-misses.

> *that it would be appropriate for a shareholder vote." [Release No. 34-40018] 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**." (emphasis added)*

The Company Letter cites prior Staff decisions where, generally, the proposal focused on products and services and lacked an overriding significant policy issue, or where the proposal sought to dictate outcomes at the company in the offering of particular products or services. This is not an instance in which the proposal focuses on attempting to limit or prescribe the sale of particular products or services. Instead, it asks the company to study the impacts that it has already acknowledged in a manner that will allow its investors to understand the true costs of its entire business more clearly.

In this instance, the distinction comes down to two key factors: first, the focus of the Proposal is on a significant policy issue rather than merely on particular modes of business, and second, it does not actually require any changes to products or services sold, but only an assessment relative to the significant policy issue. This distinction is illustrated by *Merrill Lynch & Co.* (February 25, 2000), where the proposal requested that the board issue a report reviewing the underwriting, investing, and lending criteria of Merrill Lynch with a view to incorporating criteria related to a transaction's impact on the environment, human rights, and risk to the company's reputation. The proposal was found not excludable under Rule 14a-8(i)(7).

Similarly, proposals addressing climate change have been found not excludable under Rule 14a-8(i)(7) despite addressing a financial company's lending and investment portfolio, i.e., its products and services. The Staff has long determined that proposals addressing climate risk are appropriate for financial services companies so long as such proposals do not delve into the individual application of such policies to customers. For instance, in *PNC Financial Services Group, Inc.* (February 13, 2013) the Proposal requested that the Board report to shareholders PNC's assessment of the greenhouse gas emissions resulting from its lending portfolio and its exposure to climate change risk in lending, investing, and financing activities. The Staff determined that the Proposal was not excludable because it addressed the significant policy issue of climate change. PNC had argued, as the Company does here, that the Proposal micromanaged the business. The Staff rejected the claim. The present proposal is analogous, because it looks to specific impacts on the economy and investors of the Company's compensation policy, much as the PNC Financial Services proposal looked to quantify the greenhouse gas impact.

In short, there is no basis for an assertion that a proposal is excludable simply because it touches upon the Company's products. The key question demonstrated by prior Staff decisions is whether the subject matter requiring a focus on the business is limited to a significant policy issue and whether the proposal is written in a manner that does not micromanage. The Proposal is compliant and not excludable under Rule 14a-8(i)(7).

Far from addressing ordinary business—focusing on any particular activity or operation—the disclosure asks the Company to describe a critical consequence of its

compensation policy in light of the fact that the Company has publicly committed to stakeholders under the Statement but is bound by shareholder primacy under Delaware law.

Moreover, the Company letter argues that because the report of external costs relates to the broad compensation issues, it is excludable as ordinary business. This misconceives the purpose of the exception. As the Staff has explained, "The purpose of the exception is 'to confine the resolution of ordinary business problems to the management and the board of directors, since it is impracticable for shareholders to decide how to solve such problems at an annual shareholders meeting.'"[32] Here, the Proposal clearly transcends ordinary business by going to the heart of a public policy issue: how does the business account for the harms it passes on to stakeholders through the social costs of its compensation policy, such as leaving employees unable to pay rent, despite seeking a pay raise for its CEO?

> *"They just say: 'We don't need you. You are on your own,'" said William Gonzalez, 47, who was laid off last month from his job at an employee cafeteria at a Marriott hotel in San Francisco, leaving his family unable to pay rent.*[33]

Effecting the Proposal will leave problem-solving firmly in the hands of the board and management—it does not address any particular product, service, or decision. Instead, it asks the Company, through disclosure, to address a significant policy issue by providing its shareholders with sufficient context to understand how the Company's business fits into the policy debate around corporate responsibility to stakeholders. As the 1998 Release quoted above says:

> *However, proposals relating to such [day-to-day] matters but focusing on sufficiently significant social policy issues (e.g., significant discrimination matters) generally would not be considered to be excludable, because the proposals would transcend the day-to-day business matters and raise policy issues so significant that it would be appropriate for a shareholder vote.*

The Company's business sits squarely in the center of that debate, as the media covers matters such as its furloughs in the pandemic,[34] the treatment of employees by its credit union,[35] questions over severance pay promises,[36] and the ways in which all of its compensation policies converge to extend racial injustice.[37] The controversy over responsibility for such social costs of

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[32] Staff Legal Bulletin No. 14I (2017) (citing Release No. 34-40018(May 21, 1998).
[33] *Supra,* n.20.
[34] *Id.*
[35] *Marriott Workers Struggle to Pay Bills, and Credit Union Fees,* NEW YORK TIMES (October 11, 2018) available at https://www.nytimes.com/2018/10/11/business/marriott-credit-union-employee-strike.html.
[36] *Terminated Marriott workers protest job loss, low severance as hotel industry continues to suffer,* Boston 25 News (November 20, 2020) available at https://www.boston25news.com/news/health/terminated-marriott-workers-protest-job-loss-low-severance-hotel-industry-continues-suffer/UTYJSAYRRBCLBBNSB4ZJUATEHI/.
[37] *How Marriott's Corporate Practices Fuel Growing Racial Inequality in America,* DEMOS (October 17, 2018) available at https://www.demos.org/research/how-marriotts-corporate-practices-fuel-growing-racial-inequality-america.

business activity[38] surely transcends the Company's ordinary business and is not excludable under Rule 14a-8(i)(7).

**2. <u>The Proposal is not excludable pursuant to Rule 14a-8(i)(3)</u>**

The Company's argument that the Proposal is vague grasps at straws to try to find vagueness in a clearly written proposal. As the Company Letter correctly states: "The Staff consistently has taken the position that vague and indefinite shareholder proposals are inherently misleading and therefore excludable under Rule 14a-8(i)(3) because 'neither the [share]holders 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.'"

The Proposal easily meets that test. "External social costs" are a fairly simple idea, even if the underlying calculation is complex. Indeed, the Proposal cites a recent economic study on the economic costs of inequality.[39] Indeed, the Schroders Report,[40] a recent study from a leading asset manager that uses a methodology to assign social costs externalized by publicly traded companies around the world, including many costs associated with the travel and leisure industry, found a significant negative social cost associated with the business overall.[41] That study determined that publicly listed companies imposed social and environmental costs on the economy with a value of $2.2 trillion annually—more than 2.5% of global GDP and more than half of the profits those companies earned. It calculated costs for issues that imposed social (i.e., external) costs, including obesity, water withdrawal, and antimicrobial resistance, all costs that might result from the Company's supply chain or products. Overall, the Schroders Report shows that the travel and leisure industry has negative social impact. Thus, the Company could use a methodology like the one used in the Schroders Report to calculate external costs, although it could of course exercise its discretion to use other methodologies.

Nor should it be difficult to explain the manner in which those costs affect diversified shareholders. As the literature cited in the margin shows, economic studies reveal how the social costs of inequality lower GDP, and there is a vast economic literature explaining how lowered GDP affects overall stock market value.[42] Finally, it is no mystery how that overall market return

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[38] *See, e.g., Dana Peterson and Catherine Mann, Closing the Racial Inequality Gaps: The Economic Cost of Black Inequality in the U.S.* (2020) (closing racial gaps could lead to $5 trillion in additional GDP over next five years) available at https://ir.citi.com/%2FPRxPvgNWu319AU1ajGf%2BsKbjJjBJSaTOSdw2DF4xynPwFB8a2jV1FaA3Idy7vY59bOtN2lxVQM%3D; *Inequality is Slowing U.S. Economic Growth,* Economic Policy Institute (December 12, 2017) (Inequality reduces den=mand by 2-4% annually) available at https://www.epi.org/publication/secular-stagnation/.

[39] *Supra,* n.38; *see also* Heather Boushey, UNBOUND: HOW INEQUALITY CONSTRICTS OUR ECONOMY AND WHAT WE CAN DO ABOUT IT (2019).

[40] *Supra,* n.27.

[41] https://www.schroders.com/en/sysglobalassets/digital/insights/2019/pdfs/sustainability/sustainex/sustainex-short.pdf.

[42] *See, e.g.,* <u>See</u> *Universal Ownership: Why Environmental Externalities Matter to Institutional Investors,* Appendix IV (demonstrating linear relationship between GDP and a diversified portfolio) available at https://www.unepfi.org/fileadmin/documents/universal_ownership_full.pdf; <u>cf.</u> https://www.advisorperspectives.com/dshort/updates/2020/11/05/market-cap-to-gdp-an-updated-look-at-the-buffett-valuation-indicator (total market capitalization to GDP "is probably the best single measure of where valuations stand at any given moment") (quoting Warren Buffet).

affects a diversified investor, for whom the most important factor determining return will not be how the companies in that portfolio perform relative to other companies ("alpha"), but rather how the market performs as a whole ("beta"). As one work describes this, "According to widely accepted research, alpha is about one-tenth as important as beta, [, which] drives some 91 percent of the average portfolio's return."[43]

Given the relatively straightforward nature of the request, the attempts to describe it as vague are not credible. For instance, the Company Letter asserts that the Proposal fails to define "shareholders who rely on overall stock market return," as if either the shareholders or board would have difficulty understanding such a self-defining concept. Indeed, the Proposal provides examples in the form of the Company's three largest shareholders.

The No-Action Request poses a series of rhetorical questions purporting to show that the Proposal is unclear with respect to "the scope" of the requested study:

> *The final phrase of the Resolved clause also renders the Proposal inherently vague. The Proposal requests that the report address "the manner in which such [external social] costs affect the vast majority of its shareholders who rely on overall market returns" (emphasis added). However, the Proposal fails to define the term "shareholders who rely on overall market returns" and neither the Proposal nor the supporting statements provide sufficient context to explain the scope of the requested assessment. For example, does the Proposal require the Company to assume that all of its stockholders "rely on overall market returns" and assess how these external social costs "affect" (whether positive, negative, tangible, or otherwise) the "vast majority" of them? Or, alternatively, is the Company required to first identify those stockholders who rely on overall market returns and then assess the "affect" of "external social costs" on the "vast majority" of that subset of stockholders? In either case, such vague and unexplained distinctions among the Company's stockholders are complicated by the fact that as a publicly-traded company, the Company's stockholders can change every day. Accordingly, without further explanation or context, it is unclear what stockholders are the focus of the requested report.*

The answer is obvious within the four corners and logic of the Proposal: No, the Company does not have to assume all of its shareholders are reliant on overall stock market return, just as it does not have to assume that every item it discloses is important to every Company shareholder. Nor does the Company have to identify which shareholders rely on overall market return, although, as the Proposal highlights, the top three shareholders of the Company are mutual or index funds, as are many others.

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[43] Steven Davis, Jon Lukmonik and David Pitt-Watson, WHAT THEY DO WITH YOUR MONEY, p. 50 (2016).

But what the Proposal clearly <u>does</u> request is that the Company provide a report on how costs that are external to the Company affect the performance of the diversified portfolios of the owners of the Company. Thus, there is nothing "vague" or "unexplained;" indeed, the Proposal cites Warren Buffet, widely regarded as one of the world's most successful investors,[44] as to why those diversified shareholders would care about GDP.

Another imaginary instance of vagueness asserted in the Company Letter is that it is susceptible to "multiple and conflicting interpretations":

> *In the absence of further guidance regarding the scope and nature of the requested report, stockholders would inevitably be left to grapple with multiple and conflicting interpretations about the central ask of the Proposal. The Proposal could be interpreted as requiring the commissioning of a broad macro-economic report analyzing all manner of societal impacts, direct and indirect, whether financial, reputational, political, emotional, environmental, and otherwise, that the Company's compensation policies could conceivably create. Alternatively, the Proposal could be interpreted as narrowly focusing on the content and structure of the Company's compensation policies and their impacts on employees' overall budgets and spending (leading them to contribute more or less to the broader economy).*

There is literally nothing in the Proposal that suggests either reading of the Proposal as reasonable. While the Proposal certainly could be broadly read, it does not request specified thoroughness, and one would expect the Board to exercise its reasonable business judgment in commissioning the work. Contrariwise, the extremely narrow reading might also satisfy the letter of the proposal, but again, one would expect the board, with the assistance of management, to develop an appropriate level of detail. A proposal does not become vague simply because a company could apply an unreasonable interpretation to its execution.

There is no question that compilation of the report described in the Proposal will require discretion and business judgment on the part of the Company because it will have to make decisions as to the best methodologies to follow. But that does not make the request vague. The Proposal represents a fairly simple request: that the Company undertake to explain the cost of externalities created by the Company's compensation policies on the economy and diversified shareholders. Being asked to report on these issues may be uncomfortable for the Company's management, but it there is nothing vague about it.

## CONCLUSION

Based on the foregoing, we believe it is clear that the Company has provided no basis for the conclusion that the Proposal is excludable from the 2021 proxy statement pursuant to Rule

[44] *Forbes* online profile ("Known as the "Oracle of Omaha," Warren Buffett is one of the most successful investors of all time") available at https://www.forbes.com/profile/warren-buffett/?sh=3d8a1a146398.

14a-8. As such, we respectfully request that the Staff inform the Company that it is denying the no-action letter request. If you have any questions, please contact me at rick@theshareholdercommons.com or 302-593-0917.

Sincerely,

*Frederick Alexander*

Frederick Alexander

cc: Elizabeth Ising
Myra K. Young

## PROPOSAL

**RESOLVED, shareholders ask that the board commission and disclose a report on the external social costs created by the compensation policy of our company (the "Company") and the manner in which such costs affect the vast majority of its shareholders who rely on overall market returns.**

Our company recently signed the Business Roundtable Statement of the Purpose of a Corporation (the "Statement"), which reads, "we share a fundamental commitment to all of our stakeholders. . . . We commit to deliver value to all of them, for the future success of our companies, our communities and our country."

However, the Company is a conventional Delaware corporation, so that directors' duties emphasize the Company and its shareholders, but no one else (except to the extent they create value for shareholders). Accordingly, when the financial return of the Company to its shareholders and the interests of stakeholders such as workers or customers clash, the directors must choose shareholder return. (The Company could become a public benefit corporation[1] to prevent this.)

It has been estimated that inequality has reduced demand by 2-4% of GDP.[2] This cost devastates economic growth and productivity.[3] Yet the Company does not disclose any methodology to address the economic and social costs of a business model that relies on inequality, with its CEO receiving compensation equal to 346 times that of the Company's median compensated employee, while workers must strike in order to receive a "one job is enough" wage.[4]

Thus, shareholders have no guidance as to costs the Company externalizes through compounding inequality and consequent economic harm. This information is essential to shareholders, the majority of whom are beneficial owners with broadly diversified interests. As of September 2020, the Company's top three holders were Vanguard, BlackRock, and Price (T.Rowe) Associates, whose clients are generally indexed or otherwise broadly diversified.

Such shareholders pay a price when companies impose costs on the economy that lower GDP, which reduces equity value.[5] While the Company may profit by ignoring such costs, its diversified shareholders will ultimately pay them, and they have a right to ask what they are.

The Company's prior disclosures and prior shareholder proposals do not address this issue, because they do not address *the social costs that an inequality-heavy business model imposes on diversified investors who must fund retirement, education, and other critical needs.* This is a separate social issue of great importance. A study would help shareholders determine whether to seek a change in corporate direction, domicile, structure, or form in order to better serve their interests and to match the commitment made in the Statement.

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[1] 8 Del. Code Section 361.
[2] https://www.epi.org/publication/secular-stagnation/
[3] Id.
[4] https://onejob.org/updates/?fwp_campaigns=marriott
[5] See, e.g., https://www.advisorperspectives.com/dshort/updates/2020/11/05/market-cap-to-gdp-an-updated-look-at-the-buffett-valuation-indicator (total market capitalization to GDP "is probably the best single measure of where valuations stand at any given moment") (quoting Warren Buffet).

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January 13, 2021

***VIA E-MAIL***

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

Re: *Marriott International, Inc.*
*Stockholder Proposal of Myra K. Young (John Chevedden)*
*Securities Exchange Act of 1934 ("Exchange Act")—Rule 14a-8*

Ladies and Gentlemen:

This letter is to inform you that our client, Marriott International, Inc. (the "Company"), intends to omit from its proxy statement and form of proxy for its 2021 Annual Meeting of Stockholders (collectively, the "2021 Proxy Materials") a stockholder proposal (the "Proposal") and statements in support thereof received from John Chevedden on behalf of Myra K. Young (the "Proponent").

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

- filed this letter with the Securities and Exchange Commission (the "Commission") no later than eighty (80) calendar days before the Company intends to file its definitive 2021 Proxy Materials with the Commission; and

- concurrently sent a copy of this correspondence to the Proponent.

Rule 14a-8(k) and Staff Legal Bulletin No. 14D (Nov. 7, 2008) ("SLB 14D") provide that stockholder proponents are required to send companies a copy of any correspondence that the proponent elects to submit to the Commission or the staff of the Division of Corporation Finance (the "Staff"). Accordingly, we are taking this opportunity to inform the Proponent that if the Proponent elects to submit additional correspondence to the Commission or the Staff with respect to the Proposal, a copy of that correspondence should be furnished concurrently to the undersigned on behalf of the Company pursuant to Rule 14a-8(k) and SLB 14D.



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

**THE PROPOSAL**

The Proposal states:

> RESOLVED, shareholders ask that the board commission and disclose a report on the external social costs created by the compensation policy of our company (the "Company") and the manner in which such costs affect the vast majority of its shareholders who rely on overall market returns.

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

**BASES FOR EXCLUSION**

We hereby respectfully request that the Staff concur in our view that the Proposal may be excluded from the 2021 Proxy Materials pursuant to:

- Rule 14a-8(i)(7) because the Proposal deals with matters relating to the Company's ordinary business operations; and

- Rule 14a-8(i)(3) because the Proposal is impermissibly vague and indefinite so as to be inherently misleading.

**ANALYSIS**

**I. The Proposal May Be Excluded Pursuant To Rule 14a-8(i)(7) Because It Involves Matters Related To The Company's Ordinary Business Operations.**

*A. Background.*

Rule 14a-8(i)(7) permits a company to omit from its proxy materials a stockholder proposal that relates to the company's "ordinary business operations." According to the Commission's release accompanying the 1998 amendments to Rule 14a-8, the term "ordinary business" "refers to matters that are not necessarily 'ordinary' in the common meaning of the word," but instead the term "is rooted in the corporate law concept [of] providing management with flexibility in directing certain core matters involving the company's business and operations." Exchange Act Release No. 40018 (May 21, 1998) (the "1998 Release").

In the 1998 Release, the Commission stated that the underlying policy of the ordinary business exclusion is "to confine the resolution of ordinary business problems to

management and the board of directors, since it is impracticable for shareholders to decide how to solve such problems at an annual shareholders meeting," and identified two central considerations that underlie this policy. As relevant here, one of these considerations was that "[c]ertain tasks are so fundamental to management's ability to run a company on a day-to-day basis that they could not, as a practical matter, be subject to direct shareholder oversight." Examples of the tasks cited by the Commission include "*management of the workforce*, such as the hiring, promotion, and termination of employees, decisions on production quality and quantity, and the retention of suppliers" (emphasis added). 1998 Release.

Finally, framing a stockholder proposal in the form of a request for a report does not change the nature of the proposal. The Commission has stated that a proposal requesting the dissemination of a report may be excludable under Rule 14a-8(i)(7) if the subject matter of the report is within the ordinary business of the issuer. *See* Exchange Act Release No. 20091 (Aug. 16, 1983); *Johnson Controls, Inc.* (avail. Oct. 26, 1999) ("[Where] the subject matter of the additional disclosure sought in a particular proposal involves a matter of ordinary business . . . it may be excluded under [R]ule 14a-8(i)(7)."); *see also Ford Motor Co.* (avail. Mar. 2, 2004) (concurring with the exclusion of a proposal requesting that the company publish a report about global warming/cooling, where the report was required to include details of indirect environmental consequences of its primary automobile manufacturing business).

Similar to the well-established precedents and consistent with the Commission and Staff guidance cited above, the Proposal requests a report involving subject matters that address the Company's ordinary business operations, and therefore may be excluded under Rule 14a-8(i)(7).

*B. The Proposal May Be Excluded Because Its Subject Matter Relates To General Employee Compensation.*

The Proposal is excludable pursuant to Rule 14a-8(i)(7) because it relates to the Company's ordinary business operations, in that it directly relates to the Company's general employee compensation policies and practices, a core component of the Company's ordinary business as the employer of a global workforce. In analyzing stockholder proposals relating to compensation, the Staff has distinguished between proposals that relate to general employee compensation and proposals that concern executive officer and director compensation, indicating that the former implicate a company's ordinary business operations and are thus excludable. *See* Staff Legal Bulletin No. 14A (July 12, 2002) (indicating that under the Staff's "bright-line analysis" for compensation proposals, companies "may exclude proposals that relate to general employee compensation matters in reliance on rule 14a-8(i)(7)" but "may [not] exclude proposals that concern only senior executive and director compensation"); *Xerox Corp.*

(avail. Mar. 25, 1993). In Staff Legal Bulletin No. 14J (Oct. 23, 2018) ("SLB 14J"), the Staff reiterated this distinction, noting that companies generally may rely on Rule 14a-8(i)(7) to omit proposals from their proxy materials where the focus is on aspects of compensation that are available or apply to senior executive officers, directors, and the general workforce. *See infra* discussion in Section I, Part D.

In this regard, the Staff has consistently concurred with the exclusion of stockholder proposals under Rule 14a-8(i)(7) that address both executive compensation and non-executive (*i.e.*, general employee) compensation. For example, in *Yum! Brands, Inc.* (avail. Feb. 24, 2015) ("*Yum! Brands 2015*"), the proposal requested that the compensation committee of the company's board of directors prepare a report on the company's executive compensation policies and suggested that the report include a comparison of senior executive compensation and "our store employees' median wage." Accordingly, the Staff concurred that the company could "exclude the proposal under [R]ule 14a-8(i)(7), as relating to Yum's ordinary business operations," noting "that the proposal relates to compensation that may be paid to employees and is not limited to compensation that may be paid to senior executive officers and directors." *See also Microsoft Corp.* (avail. Sept. 17, 2013) (concurring with the exclusion of a proposal that sought to limit the average total compensation of senior management, executives, and other employees for whom the board set compensation to 100 times the average compensation paid to the remaining full-time, non-contract employees of the company, noting that "the proposal relates to compensation that may be paid to employees generally and is not limited to compensation that may be paid to senior executive officers and directors"); *ENGlobal Corp.* (avail. Mar. 28, 2012) (concurring with the exclusion of a proposal that sought to amend the company's equity incentive plan, noting that "the proposal relates to compensation that may be paid to employees generally and is not limited to compensation that may be paid to senior executive officers and directors"); *International Business Machines Corp. (Boulain)* (avail. Jan. 22, 2009) (concurring with the exclusion of a proposal requesting that no employee above a certain management level receive a salary raise in any year in which at least two thirds of all company employees did not receive a three percent salary raise); *Ford Motor Co.* (avail. Jan. 9, 2008) (concurring with the exclusion of a proposal requesting that the company stop awarding all stock options where the proposal did not limit the applicability of this ban on stock option awards to senior executive officers and directors, but instead applied the ban generally to all company employees, as relating to "ordinary business operations (*i.e.*, general compensation matters)").

Further, the Staff has consistently concurred with the exclusion of stockholder proposals under Rule 14a-8(i)(7) relating to minimum wages and wage reform. *See, e.g.*, *The Home Depot, Inc.* (avail. Mar. 1, 2017) (concurring with the exclusion of a proposal requesting adoption and publication of principles for minimum wage reform, noting that "the proposal

relates to general compensation matters, and does not otherwise transcend day-to-day business matters," despite the proponent's asserting that minimum wage was a significant policy issue); *The TJX Companies, Inc. (Trillium Asset Mgmt., LLC)* (avail. Mar. 8, 2016) (concurring with the exclusion of a proposal requesting that the company adopt minimum wage reform principles and publish them by October 2016, noting that the proposal "relates to general compensation matters"); *Apple, Inc. (Zhao)* (avail. Nov. 16, 2015) (concurring with the exclusion of a proposal requesting that the company's compensation committee "adopt new compensation principles responsive to America's general economy, such as unemployment, working hour[s] and wage inequality"); *McDonald's Corp.* (avail. Mar. 18, 2015) (concurring with the exclusion of a proposal that urged the board to encourage the company's franchises to pay employees a minimum wage of $11 per hour); *Microsoft Corp.* (avail. Sept. 13, 2013) (concurring with the exclusion of a proposal asking the board to limit the average individual total compensation for senior management, executives, and "all other employees the board is charged with determining compensation for" to one hundred times the average individual total compensation paid to the remaining full-time, non-contract employees of the company); *Wal-Mart Stores, Inc.* (avail. Mar. 15, 1999) (concurring with the exclusion of a proposal requesting a report that was to include, among other things, a description of "[p]olicies to implement wage adjustments to ensure adequate purchasing power and a sustainable living wage" and noting the proposal was excludable under Rule 14a-8(i)(7) because the quoted language "relate[d] to ordinary business operations"). Here, there is a reference in the supporting statements to workers seeking "a 'one job is enough' wage" (*i.e.*, a minimum wage). As in the foregoing precedent, minimum wage concerns are an ordinary business matter. As such, the Proposal is likewise excludable.

As discussed in *Yum! Brands 2015* and *Microsoft* and reiterated in SLB 14J, when a proposal relates, as the Proposal does, to both executive and general employee compensation, it is excludable under Rule 14a-8(i)(7). Here, the Proposal requests a report on the "external social costs" of the Company's "compensation policy" and how such costs may impact certain investors. By referring broadly to the Company's compensation policy, without reference to any particular compensation program or policy, the Proposal goes well beyond the Company's named executive officers and directors and encompasses the Company's employees generally. The references in the supporting statements to the compensation and wages of "workers" and the "median compensated employee" make clear that the Proposal focuses on more than simply elements of executive compensation, but instead applies to any compensation offered by the Company under its "compensation policy." Further, the supporting statement includes two footnotes linking to an article that discusses "the failure of pay for typical American workers" and focuses on wages of low- and middle-wage workers when describing the inequality referenced with respect to the

Company's business,[1] reinforcing that the Proposal concerns the compensation of Company employees. The Company is responsible for the compensation of tens of thousands of employees across multiple countries. Compensation of this wide-ranging employee group varies according to numerous factors, including job duties, skill, effort, working conditions, location and experience. The request would thus require the Company to review, collect data, and assess the pay practices relating to all Company employees, executives and directors, and determine the resulting "external social costs" of such practices, thus implicating the Company's ordinary business operations. Therefore, in accordance with the precedents discussed above, the Proposal relates to compensation that may be paid to employees generally and is thus excludable under Rule 14a-8(i)(7) as relating to the Company's ordinary business operations.

*C. The Proposal May Be Excluded Because Its Subject Matter Relates To Management Of The Company's Workforce.*

The Commission and Staff also have long held that stockholder proposals may be excluded under Rule 14a-8(i)(7) when they relate to the Company's management of its workforce. Notably, in *United Technologies Corp.* (avail. Feb. 19, 1993), the Staff provided the following examples of excludable ordinary business categories: "employee health benefits, *general compensation issues not focused on senior executives*, *management of the workplace*, employee supervision, *labor-management relations*, employee hiring and firing, conditions of the employment and employee training and motivation" (emphasis added). As discussed above, the Proposal's requested report on the "external social costs" of the Company's compensation policies implicates the Company's general workforce management through its focus on the Company's compensation policies generally. Together with the supporting statement's references to workers' wages, employee pay ratio, the "interests of stakeholders such as workers," and the Company's "business model," the requested report relates to how the Company compensates and engages with its employees, which are core components of managing a large, global workforce on a day-to-day basis.

Consistent with the foregoing, the Staff has recognized that a wide variety of proposals pertaining to the management of a company's workforce are excludable under Rule 14a-8(i)(7). For example, in *Yum! Brands, Inc.* (avail. Mar. 6, 2019), the Staff concurred with the exclusion of a proposal relating to adopting a policy not to "engage in any Inequitable Employment Practice," noting it related "generally to the [c]ompany's policies concerning its employees and does not focus on an issue that transcends ordinary business matters."

[1] As noted in Staff Legal Bulletin 14G (Oct. 16, 2012), Section D.1, when a proposal references a website address, in the Staff's view, the information on the website "supplements the information contained in the proposal and in the supporting statement."

*See also Walmart, Inc.* (avail. Apr. 8, 2019) (concurring with the exclusion of a proposal that requested the board evaluate the risk of discrimination that may result from [the company's] policies and practices of hourly workers taking absences from work for personal or family illness, as relating to "management of [the company's] workforce"); *PG&E Corp.* (avail. Mar. 7, 2016) (concurring with the exclusion of a proposal requesting that the board institute a policy banning discrimination based on race, religion, donations, gender, or sexual orientation in hiring vendor contracts or customer relations, as relating to the company's ordinary business operations); *Starwood Hotels & Resorts Worldwide, Inc.* (avail. Feb. 14, 2012) (concurring with the exclusion of a proposal requesting verification and documentation of U.S. citizenship for the company's U.S. workforce and requiring training for foreign workers in the U.S. to be minimized could be excluded because it "relates to procedures for hiring and training employees" and "[p]roposals concerning a company's management of its workforce are generally excludable under Rule 14a-8(i)(7)"); *Northrop Grumman Corp.* (avail. Mar. 18, 2010) (concurring with the exclusion of a proposal requesting that the board identify and modify procedures to improve the visibility of educational status in the company's reduction-in-force review process, noting that "[p]roposals concerning a company's management of its workforce are generally excludable under [R]ule 14a-8(i)(7)"); *Intel Corp.* (avail. Mar. 18, 1999) (concurring with the exclusion of a proposal seeking adoption of an "Employee Bill of Rights," which would have established various "protections" for the company's employees, including limited work-hour requirements, relaxed starting times, and a requirement that employees treat one another with dignity and respect, noting that the foregoing was excludable as relating to "management of the workforce").

Like the foregoing precedents, the Proposal is concerned with the Company's management of its workforce, insofar as it seeks a report relating to the Company's compensation policies and the supporting statements refer to the interests of the Company's workers, including their wages. The decisions implicated by the Proposal and its supporting statements concerning the management of the Company's workforce are multifaceted, complex, and based on a range of factors that are inappropriate for stockholder oversight. Further, the requested report would require the Company to report and consider its compensation-related actions, programs, policies, and issues that fall squarely within categories that have consistently been deemed excludable as ordinary business matters. By requesting a report that would review the "external social costs" created from the Company's compensation policies, the Proposal addresses the Company's management of its workforce and is therefore excludable under Rule 14a-8(i)(7).

*D. The Proposal Does Not Focus On Any Significant Policy Issue That Transcends The Company's Ordinary Business Operations.*

The well-established precedents set forth above demonstrate that the Proposal squarely addresses ordinary business matters and, therefore, is excludable under Rule 14a-8(i)(7). The 1998 Release distinguishes proposals pertaining to ordinary business matters from those involving "significant social policy issues." *Id.* (citing Exchange Act Release No. 12999 (Nov. 22, 1976)). While "proposals . . . focusing on sufficiently significant social policy issues (*e.g.*, significant discrimination matters) generally would not be considered to be excludable," the Staff has indicated that proposals relating to both ordinary business matters and significant social policy issues may be excludable in their entirety in reliance on Rule 14a-8(i)(7) if they do not "transcend the day-to-day business matters" discussed in the proposals. 1998 Release. In this regard, when assessing proposals under Rule 14a-8(i)(7), the Staff considers "both the proposal and the supporting statement as a whole." Staff Legal Bulletin No. 14C, part D.2 (June 28, 2005). Moreover, as Staff precedent has established, merely referencing topics in passing that might raise significant policy issues, but which do not define the scope of actions addressed in a proposal and which have only tangential implications for the issues that constitute the central focus of a proposal, does not transform an otherwise ordinary business proposal into one that transcends ordinary business.

Here, the Proposal seeks "a report on the external social costs created by the [Company's] compensation policy" and does not focus on any significant policy issues. Instead, as discussed above, the Proposal's principal focus is on the Company's general employee compensation and management of its workforce. The assertion in the supporting statements that the Proposal touches on a "social issue of great importance" and the confusing and cursory references to issues ranging from "inequality," corporate purpose, fiduciary duties, "corporate direction, domicile, structure, or form," and the "economy" do not alter the fact that the Proposal is focused on ordinary business matters. In particular, it is unclear how the report requested by the Proposal would address any of the foregoing. Notably, the Proposal does not actually seek to affect the Company's corporate form or the Company's impact on its stockholders vis-à-vis the value of its own stock. Instead, the Proposal is squarely focused on requesting a report of "external social costs" created by the Company's compensation policies and a request to analyze how such costs might impact diversified Company stockholders (to the extent such stockholders rely on overall market returns).

Further, the limited references to executive compensation do not diminish the ordinary business focus of the Proposal. Notably, the Staff confirmed that proposals that relate to general employee compensation and benefits, and do not focus on senior executive and/or director compensation, are excludable under Rule 14a-8(i)(7). *See* SLB 14J; *supra*

discussion in Section I, Part B. There, the Staff noted that the Rule 14a-8(i)(7) framework is intended to "ensure[] that form is not elevated over substance and that a proposal is not included simply because it addresses an excludable matter in a manner that is connected to or touches upon senior executive or director compensation matters." *Id.* The Staff went on to clarify that "[i]ncluding an aspect of senior executive or director compensation in a proposal that otherwise focuses on an ordinary business matter will not insulate a proposal from exclusion under Rule 14a-8(i)(7)." *Id.* To this end, as reiterated in SLB 14J, the Staff has concurred with "the exclusion of proposals that, while styled as senior executive compensation and/or director compensation proposals, have had as their underlying concern ordinary business matters." *See, e.g.*, *AT&T Inc.* (avail. Jan. 29, 2019) (concurring with the exclusion of a proposal seeking to amend the company's CEO and CFO compensation to include the company's long-term issuer debt rating as an incentive metric because the proposal related to ordinary business of managing the company's debt, and noting that "although the [p]roposal relates to executive compensation, the focus of the [p]roposal is on the ordinary business matter of management of existing debt"). *See also Delta Airlines, Inc.* (avail. Mar. 27, 2012). Here, although there is a passing reference in the supporting statements to the chief executive officer's compensation, the Proposal is focused broadly on the Company's "compensation policy," including general employees' compensation and wages. As such, the Proposal applies to the Company's full range of compensation practices, covering the Company's global workforce.

To this end, even if the Proposal were to raise a significant policy issue, the Staff has frequently concurred that a proposal that touches, or may touch, upon significant policy issues is nonetheless excludable if the proposal does not focus on such issues. For example, in *Wells Fargo (Harrington Investments, Inc.)* (avail. Feb. 27, 2019) ("*Wells Fargo 2019*"), the proposal requested that the board commission an independent study and then report to stockholders on "options for the board . . . to amend [the] [c]ompany's governance documents to enhance fiduciary oversight of matters relating to customer service and satisfaction." In spite of language relating to various compliance and governance issues at the company, the Staff concurred with exclusion of the proposal based on ordinary business. While it is possible that one or more of those issues related to policy issues that transcend ordinary business and may have been significant to the company, the "Resolved" clause focused on customer relations, rendering the proposal excludable under Rule 14a-8(i)(7). Similarly, in *Amazon.com, Inc. (Domini Impact Equity Fund and the New York State Common Retirement Fund)* (avail. Mar. 28, 2019) ("*Amazon 2019*"), where the proposal arguably touched on sustainability concerns, the proposal was broadly worded, encompassed a wide range of issues relating to the company's business and did not focus on any single issue. As a result, the Staff granted no-action relief under Rule 14a-8(i)(7), noting that "the [p]roposal relates generally to 'the community impacts' of the [c]ompany's operations and does not appear to focus on an issue that transcends ordinary business matters." Here, the Proposal presents an even stronger case for

exclusion than *Wells Fargo 2019* and *Amazon 2019* as the Proposal does not focus on any significant policy issues for the Company. Instead, the Proposal focuses on ambiguous and broad-sweeping "external social costs" relating to the Company's choice to offer particular compensation to its workforce and the tangential impact those compensation policies might have on the value of stockholders' external investments more broadly. Thus, similar to *Wells Fargo 2019* and *Amazon 2019*, the Proposal fails to focus on any issue that might rise to the level of significance that would preclude exclusion.

As discussed above, the Proposal relates to ordinary business matters: general employee compensation and the Company's management of its workforce. Accordingly, because the Proposal's request is directly related to the Company's ordinary business operations and does not transcend those ordinary business operations, similar to the proposals in the precedents discussed above, the Proposal may be excluded under Rule 14a-8(i)(7).

## II. The Proposal May Be Excluded Under Rule 14a-8(i)(3) Because It Is Impermissibly Vague And Indefinite So As To Be Inherently Misleading.

Rule 14a-8(i)(3) permits the exclusion of a stockholder proposal if the proposal or supporting statement is contrary to any of the Commission's proxy rules or regulations, including Rule 14a-9, which prohibits materially false or misleading statements in proxy soliciting materials. The Staff consistently has taken the position that vague and indefinite stockholder proposals are inherently misleading and therefore excludable under Rule 14a-8(i)(3) because "neither the [share]holders 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. SEC*, 287 F.2d 773, 781 (8th Cir. 1961) ("[I]t 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."); *Capital One Financial Corp.* (avail. Feb. 7, 2003) (concurring with the exclusion under Rule 14a-8(i)(3) of a proposal where the company argued that its stockholders "would not know with any certainty what they are voting either for or against"). As described below, the Proposal is so vague and indefinite that neither the Company nor the Company's stockholders could comprehend what the requested report would entail, nor is the subject matter of the requested report reasonably clear. Therefore, the Proposal is excludable under Rule 14a-8(i)(3).

Under this standard, the Staff has routinely concurred with the exclusion of proposals that fail to define key terms or otherwise fail to provide sufficient clarity or guidance to enable either stockholders or the company to understand how the proposal would be implemented. For example, the Staff recently concurred that a company could exclude, as vague and

indefinite, a proposal requesting that a company "reform the company's executive compensation committee." *eBay Inc.* (avail. April 10, 2019). The proposal's supporting statement did not request any specific reforms, but instead made observations about various elements of executive compensation. These statements did not indicate whether those elements of the company's executive compensation program needed reform or how they should or could be affected by reform of the compensation committee. In its response, the Staff noted that "neither shareholders nor the [c]ompany would be able to determine with any reasonable certainty the nature of the 'reform' the [p]roposal is requesting. Thus, the [p]roposal, taken as a whole, is so vague and indefinite that it is rendered materially misleading." Additionally, in *Apple Inc. (Zhao)* (avail. Dec. 6, 2019), the company sought exclusion of a proposal under Rule 14a-8(i)(3) because the proposal recommended the company "improve guiding principles of executive compensation" but failed to define or explain what improvements the proponent sought to the "guiding principles." The Staff noted that the proposal "lack[ed] sufficient description about the changes, actions or ideas for the [c]ompany and its shareholders to consider that would potentially improve the guiding principles" and concurred with exclusion of the proposal as "vague and indefinite." *See also Alaska Air Group, Inc.* (avail. Mar. 10, 2016) (concurring with the exclusion under Rule 14a-8(i)(3) of a proposal requesting an amendment to the company's bylaws and any other appropriate governing documents to require management to "strictly honor shareholders rights to disclosure identification and contact information" where the company asserted that the proposal "[did] not describe or define in any meaningfully determinate way the standard for [the] supposed 'shareholder[s] rights'" and that "it appear[ed] the [p]roponent ha[d] a different view of what those rights entail[ed] than is supported by generally understood principles of corporate law"); *AT&T Inc.* (avail. Feb. 21, 2014) (concurring with the exclusion under Rule 14a-8(i)(3) of a proposal requesting that the board review the company's policies and procedures relating to the "directors' moral, ethical and legal fiduciary duties and opportunities" where the phrase "moral, ethical and legal fiduciary" was not defined or meaningfully described); *Morgan Stanley* (avail. Mar. 12, 2013) (concurring with the exclusion under Rule 14a-8(i)(3) of a proposal where the key term "extraordinary transactions" could have multiple interpretations); *AT&T Inc.* (avail. Feb. 16, 2010, *recon. denied* Mar. 2, 2010) (concurring with the exclusion under Rule 14a-8(i)(3) of a proposal requesting a report on political contributions and payments used for "grassroots lobbying communications" as "vague and indefinite," where the company argued such term was not defined and constituted a material element of the proposal); *Bank of America Corp.* (avail. Feb. 22, 2010) (concurring with the exclusion under Rule 14a-8(i)(3) of a proposal requesting the establishment of a board committee on "US Economic Security" where the proposal failed to define such term and where the company argued that the proposal contained a vague litany of factors to be considered, including the "long term health of the economy," the "well-being of US citizens" and "levels of domestic and foreign control," all of which rendered the proposal impermissibly vague).

Here, the Proposal fails to define a number of key terms and phrases essential to the Proposal. The Proposal seeks "a report on *the external social costs* created by the [Company's] compensation policy," as well as "the manner in which *such [external social] costs affect* the vast majority of its *shareholders who rely on overall market returns*" (emphasis added). Notably, and in the Proposal's own words, "[*t*]*his information* is *essential*" for stockholders to understand (emphasis added). Therefore, it is necessary for stockholders to understand these terms and phrases in order to reasonably determine what actions or measure the Proposal requires and, more importantly, whether or not the stockholders are in favor of undertaking the requested report.

The Proposal fails to define or provide any context around the key term "external social costs," and similar to the proposals in the precedents cited above, the term does not have a commonly understood uniform meaning. Neither the "Resolved" clause nor the supporting statements provide sufficient clarity or direction as to what these external social costs actually are or entail or, in the context of the Proposal, how such costs relate to the Company's compensation policy. A "social cost" could conceivably refer to actual monetary costs, broader, intangible social or political costs, positive or negative impacts, external or personal costs, a combination thereof, or other entirely different costs and concepts. Not only does the Proposal not provide any context for the kind of costs it refers to or how the Company could conceivably quantify or assess such costs, but it does not specify whether the requested report is to focus on all manner of "social costs" or some subset thereof.

The supporting statements refer repeatedly to how investors will "pay" these costs (*e.g.*, by lowered gross domestic product, reduced equity market values, economic harm), but the relationship between such harm and the "external social costs" within the scope of the requested report is fundamentally vague. That relationship is further obscured by the supporting statements' references to the Company's "inequality-heavy business model" as a driver for the costs paid by investors, as the Proposal focuses only on the Company's compensation policies (which are only one facet of the Company's overall "business model"). Additionally, the supporting statement refers to "costs the Company externalizes through compounding inequality and consequent economic harm," which lacks any decipherable meaning and can only lead to further stockholder confusion in considering this Proposal. Other scattershot references in the supporting statements to, among other topics, the Business Roundtable Statement of the Purpose of a Corporation, the Company's diversified investors, "inequality," and whether the Company should seek "a change in corporate direction, domicile, structure or form" all fail to explain how those varied factors and issues relate to the "external social costs" of the Company's compensation policies that are purportedly the focus of the Proposal. More broadly, the Proposal provides no guidance as to what level of review would be deemed to satisfy the requested report, as it is not clear whether "external social costs" are limited to only negative impacts, like reduced

spending, or encompass any type of impact (positive or negative). This lack of clarity would make it difficult, for example, for the Company, in implementing any such report, to know whether or how to account for perceived benefits from its compensation policies (*e.g.*, reduced demands on government-sponsored healthcare programs due to Company-provided healthcare benefits, enhanced retirement savings due to Company-sponsored retirement plan matching benefits, increased mobility and buying power for its employees).

The final phrase of the Resolved clause also renders the Proposal inherently vague. The Proposal requests that the report address "the manner in which *such [external social] costs affect* the vast majority of its *shareholders who rely on overall market returns*" (emphasis added). However, the Proposal fails to define the term "shareholders who rely on overall market returns" and neither the Proposal nor the supporting statements provide sufficient context to explain the scope of the requested assessment. For example, does the Proposal require the Company to assume that all of its stockholders "rely on overall market returns" and assess how these external social costs "affect" (whether positive, negative, tangible, or otherwise) the "vast majority" of them? Or, alternatively, is the Company required to first identify those stockholders who rely on overall market returns and then assess the "affect" of "external social costs" on the "vast majority" of that subset of stockholders? In either case, such vague and unexplained distinctions among the Company's stockholders are complicated by the fact that as a publicly-traded company, the Company's stockholders can change every day. Accordingly, without further explanation or context, it is unclear what stockholders are the focus of the requested report.

In the absence of further guidance regarding the scope and nature of the requested report, stockholders would inevitably be left to grapple with multiple and conflicting interpretations about the central ask of the Proposal. The Proposal could be interpreted as requiring the commissioning of a broad macro-economic report analyzing all manner of societal impacts, direct and indirect, whether financial, reputational, political, emotional, environmental, and otherwise, that the Company's compensation policies could conceivably create. Alternatively, the Proposal could be interpreted as narrowly focusing on the content and structure of the Company's compensation policies and their impacts on employees' overall budgets and spending (leading them to contribute more or less to the broader economy). A stockholder may be in favor of supporting a report of the Company's community impacts—but that same stockholder may not be in favor of supporting a report that could result in disclosure of details of the Company's compensation plans, including salaries and benefits for various levels of employees, which may put it at a competitive disadvantage to other employers, thereby potentially impacting the Company's performance. Different still, a stockholder may be in favor of this Proposal based on the expectation that the requested report would somehow inform such stockholder's own investment portfolio, since the Proposal purports to relate to "the manner in which *such costs affect* the vast majority of [the Company's] shareholders *who*

*rely on overall market returns*," despite there being no certainty whatsoever that any such report could or would ultimately link the Company's general employee compensation to macro-economic impacts that both affect "overall market returns" and the majority of the Company's own stockholder base, whom the Proposal presumes are deeply diversified investors. Given the inherent vagueness of the Proposal, there is likewise little assurance that if the Proposal received majority support that the Company would implement it in the manner that the majority of stockholders expected. This is the kind of situation the Staff has consistently sought to avoid when concurring with the exclusion of similarly inherently vague proposals in the past.

Thus, as in *Apple*, *eBay*, *AT&T* and the other precedents cited above, based on the language in the Proposal, neither the Company nor its stockholders would be able to determine with any reasonable certainty how to implement the Proposal, nor what information the requested report is intended to address. Just as *eBay* hinged on the vagueness of a simple and seemingly innocuous term, "reform," where the proposal failed to provide any hints or indication as to the manner and scope of reform being sought, so too here do the terms "external social costs" and "affect," among others, as used in this Proposal, leave the Company and its stockholders unable to determine with any reasonable certainty the scope and nature of the requested undertaking. As such, the Proposal lacks sufficient specificity to indicate to the Company and to its stockholders what actions the Proposal requires, and the Proposal as a whole is thus rendered materially misleading. This is not a question of marginal ambiguity that the Company's Board of Directors or management could, in exercising its discretion, resolve. Rather, it is an inherent vagueness in the central subject matter that forms the cornerstone of the Proposal's request. Similar to *eBay*, when a proposal fails to define a term or key phrase that is essential to an understanding and execution of the proposal, the Proposal is excludable under Rule 14a-8(i)(3) as vague and indefinite.

**CONCLUSION**

Based upon the foregoing analysis, we respectfully request that the Staff concur that it will take no action if the Company excludes the Proposal from its 2021 Proxy Materials.

We would be happy to provide you with any additional information and answer any questions that you may have regarding this subject. Correspondence regarding this letter should be sent to shareholderproposals@gibsondunn.com. If we can be of any further assistance in this matter, please do not hesitate to call me at (202) 955-8287 or Andrew Wright, the Company's Vice President, Senior Counsel and Corporate Secretary, at (301) 380-5750.

Sincerely,

Elizabeth A. Ising

Enclosures

cc: Andrew Wright, Marriott International, Inc.
Myra K. Young
John Chevedden

**EXHIBIT A**

**From:** John Chevedden ***
**Sent:** Tuesday, December 8, 2020 9:17 AM
**To:** Wright, Andrew (HQ) <Andrew.PC.Wright@marriott.com>
**Cc:** Tom Marder <thomas.marder@marriott.com>
**Subject:** Rule 14a-8 Proposal (MAR)``

Mr. Wright,
Please see the attached rule 14a-8 proposal to improve corporate governance and enhance long-term shareholder value at de minimis up-front cost – especially considering the substantial market capitalization of the company.

I expect to forward a broker letter soon so if you acknowledge this proposal in an email message it may very well save you from requesting a broker letter from me.

Sincerely,
John Chevedden

Corporate Governance
CorpGov.net: improving accountability through democratic corporate governance since 1995

***

Mr. Bancroft S. Gordon
Corporate Secretary
Marriott International Inc. (MAR)
10400 Fernwood Road
Bethesda, MD 20817
PH: 301-380-3000
PH: 301-380-6601
FX: 301-380-6727

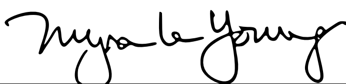
Dear Corporate Secretary,

I am submitting the attached shareholder proposal for a vote at the next annual shareholder meeting on **External Costs of Inequality Disclosure**. My proposal meets all Rule 14a-8 requirements, including the continuous ownership of the required stock value for over a year. I pledge to continue to hold the required amount of stock until after the date of the next shareholder meeting. My submitted format, with shareholder-supplied emphasis, is intended for use in the definitive proxy publication.

This letter confirms that I am delegating John Chevedden to act as my agent regarding this Rule 14a-8 proposal, including its submission, negotiations and/or modification, and presentation at the forthcoming shareholder meeting. Please direct all future communications regarding my rule 14a-8 proposal to John Chevedden ***
to facilitate prompt communication. My husband, James McRitchie is hereby delegated to act as Mr. Chevedden's backup agent regarding this proposal. Please identify Myra K. Young as the proponent of the proposal exclusively.

Your consideration and the consideration of the Board of Directors is appreciated in responding to this proposal. *We are open to negotiating possible changes to the proposal or withdrawal. We expect to forward a broker letter soon. Therefore, if you simply acknowledge my proposal in an email message to* *** *, it may not be necessary for you to request such evidence of ownership.*

Sincerely,



Myra K. Young

December 7, 2020
Date

cc: Tom Marder <thomas.marder@marriott.com> PH: 301-380-2553
Sara E. Murphy, Chief Strategy Officer, The Shareholder Commons
sara@theshareholdercommons.com

[MAR: Rule 14a-8 Proposal, December 7, 2020]
[This line and any line above it – *Not* for publication.]
ITEM 4* – External Costs of Inequality Disclosure

**RESOLVED, shareholders ask that the board commission and disclose a report on the external social costs created by the compensation policy of our company (the "Company") and the manner in which such costs affect the vast majority of its shareholders who rely on overall market returns.**

Our company recently signed the Business Roundtable Statement of the Purpose of a Corporation (the "Statement"), which reads, "we share a fundamental commitment to all of our stakeholders. . . . We commit to deliver value to all of them, for the future success of our companies, our communities and our country."

However, the Company is a conventional Delaware corporation, so that directors' duties emphasize the Company and its shareholders, but no one else (except to the extent they create value for shareholders). Accordingly, when the financial return of the Company to its shareholders and the interests of stakeholders such as workers or customers clash, the directors must choose shareholder return. (The Company could become a public benefit corporation[1] to prevent this.)

It has been estimated that inequality has reduced demand by 2-4% of GDP.[2] This cost devastates economic growth and productivity.[3] Yet the Company does not disclose any methodology to address the economic and social costs of a business model that relies on inequality, with its CEO receiving compensation equal to 346 times that of the Company's median compensated employee, while workers must strike in order to receive a "one job is enough" wage.[4]

Thus, shareholders have no guidance as to costs the Company externalizes through compounding inequality and consequent economic harm. This information is essential to shareholders, the majority of whom are beneficial owners with broadly diversified interests. As of September 2020, the Company's top three holders were Vanguard, BlackRock and Price (T.Rowe) Associates, whose clients are generally indexed or otherwise broadly diversified.

Such shareholders pay a price when companies impose costs on the economy that lower GDP, which reduces equity value.[5] While the Company may profit by ignoring such costs, its diversified shareholders will ultimately pay them, and they have a right to ask what they are.

The Company's prior disclosures and prior shareholder proposals do not address this issue, because they do not address *the social costs that an inequality-heavy business model imposes on diversified investors who must fund retirement, education, and other critical needs.* This is a separate social issue of great importance. A study would help shareholders determine whether to seek a change in corporate direction, domicile, structure, or form in order to better serve their interests and to match the commitment made in the Statement.

Please vote for: External Costs of Inequality Disclosure – Proposal [4*]

[This line and any below are *not* for publication]
Number 4* to be assigned by the Company

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[1] 8 Del. Code Section 361.

[2] https://www.epi.org/publication/secular-stagnation/

[3] Id.

[4] https://onejob.org/updates/?fwp_campaigns=marriott

[5] See, e.g., https://www.advisorperspectives.com/dshort/updates/2020/11/05/market-cap-to-gdp-an-updated-look-at-the-buffett-valuation-indicator (total market capitalization to GDP "is probably the best single measure of where valuations stand at any given moment") (quoting Warren Buffet).

CorpGov.net

The graphic above is intended to be published with the rule 14a-8 proposal.
The graphic would be the same size as the largest management graphic (and accompanying bold or highlighted management text with a graphic) or any highlighted management executive summary used in conjunction with a management proposal or a rule 14a-8 shareholder proposal in the 2021 proxy.

The proponent is willing to discuss the in unison elimination of both shareholder graphic and management graphic in the proxy in regard to specific proposals.

Reference SEC Staff Legal Bulletin No. 14I (CF)
[16] Companies should not minimize or otherwise diminish the appearance of a shareholder's graphic. For example, if the company includes its own graphics in its proxy statement, it should give similar prominence to a shareholder's graphics. If a company's proxy statement appears in black and white, however, the shareholder proposal and accompanying graphics may also appear in black and white.

Notes: This proposal is believed to conform with Staff Legal Bulletin No. 14B (CF), September 15, 2004 including (emphasis added):

> Accordingly, going forward, we believe 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) in the following circumstances:
>
> - the company objects to factual assertions because they are not supported;
> - the company objects to factual assertions that, while not materially false or misleading, may be disputed or countered;
> - the company objects to factual assertions because those assertions may be interpreted by shareholders in a manner that is unfavorable to the company, its directors, or its officers; and/or
> - the company objects to statements because they represent the opinion of the shareholder proponent or a referenced source, but the statements are not identified specifically as such.
>
> **We believe that it is appropriate under rule 14a-8 for companies to address these objections in their statements of opposition.**

See also Sun Microsystems, Inc. (July 21, 2005)

The stock supporting this proposal will be held until after the annual meeting and the proposal will be presented at the annual meeting. Please acknowledge this proposal promptly by email ***
.

**From:** Wright, Andrew (HQ) <Andrew.PC.Wright@marriott.com>
**Sent:** Wednesday, December 9, 2020 4:52 PM
**To:** John Chevedden ***
**Subject:** RE: Rule 14a-8 Proposal (MAR)``

[External Email]
Mr. Chevedden,

I hope you are doing well in this challenging year. I received your email. Please see the attached response.

Best,
Andy Wright


**Andy Wright**
Vice President, Senior Counsel & Corporate Secretary
10400 Fernwood Road, Bethesda, MD 20817
301-380-5750 (O) | 240-446-8905 (M)

This communication contains information from Marriott International, Inc. that may be confidential. Except for personal use by the intended recipient, or as expressly authorized by the sender, any person who receives this information is prohibited from disclosing, copying, distributing, and/or using it. If you have received this communication in error, please immediately delete it and all copies, and promptly notify the sender. Nothing in this communication is intended to operate as an electronic signature under applicable law.


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**From:** John Chevedden ***
**Sent:** Tuesday, December 8, 2020 9:17 AM
**To:** Wright, Andrew (HQ) <Andrew.PC.Wright@marriott.com>
**Cc:** Tom Marder <thomas.marder@marriott.com>
**Subject:** Rule 14a-8 Proposal (MAR)``

Mr. Wright,
Please see the attached rule 14a-8 proposal to improve corporate governance and enhance long-term shareholder value at de minimis up-front cost – especially considering the substantial market capitalization of the company.

I expect to forward a broker letter soon so if you acknowledge this proposal in an email message it may very well save you from requesting a broker letter from me.

Sincerely,
John Chevedden

Marriott
INTERNATIONAL

December 9, 2020

***VIA OVERNIGHT MAIL AND EMAIL***
John Chevedden
***

Dear Mr. Chevedden:

I am writing on behalf of Marriott International, Inc. (the "Company"), which received via email on December 8, 2020, the stockholder proposal you submitted on behalf of Myra K. Young (the "Proponent") entitled "External Costs of Inequality Disclosure" pursuant to Securities and Exchange Commission ("SEC") Rule 14a-8 for inclusion in the proxy statement for the Company's 2021 Annual Meeting of Stockholders (the "Proposal").

The Proposal contains certain procedural deficiencies, which SEC regulations require us to bring to your attention. Rule 14a-8(b) under the Securities Exchange Act of 1934, as amended, provides that stockholder proponents must submit sufficient proof of their continuous ownership of at least $2,000 in market value, or 1%, of a company's shares entitled to vote on the proposal for at least one year as of the date the stockholder proposal was submitted. The Company's stock records do not indicate that the Proponent is the record owner of sufficient shares to satisfy this requirement. In addition, to date we have not received proof that the Proponent has satisfied Rule 14a-8's ownership requirements as of the date that the Proposal was submitted to the Company.

To remedy this defect, the Proponent must submit sufficient proof of the Proponent's continuous ownership of the required number or amount of Company shares for the one-year period preceding and including December 8, 2020, the date the Proposal was submitted to the Company. As explained in Rule 14a-8(b) and in SEC staff guidance, sufficient proof must be in the form of:

(1) a written statement from the "record" holder of the Proponent's shares (usually a broker or a bank) verifying that the Proponent continuously held the required number or amount of Company shares for the one-year period preceding and including December 8, 2020; or

(2) if the Proponent has filed with the SEC a Schedule 13D, Schedule 13G, Form 3, Form 4 or Form 5, or amendments to those documents or updated forms, reflecting the Proponent's ownership of the required number or amount of Company shares as of or before the date on which the one-year eligibility period begins, a copy of the schedule and/or form, and any subsequent amendments reporting a change in the ownership level and a written statement that the Proponent continuously held the required number or amount of Company shares for the one-year period.

If the Proponent intends to demonstrate ownership by submitting a written statement from the "record" holder of the Proponent's shares as set forth in (1) above, please note that most large U.S. brokers and banks deposit their customers' securities with, and hold those securities through, the Depository Trust Company ("DTC"), a registered clearing agency that acts as a securities depository (DTC is also known through the account name of Cede & Co.). Under SEC Staff Legal Bulletin No. 14F, only DTC participants are viewed as record holders of securities that are deposited at DTC. You can confirm whether the Proponent's broker or bank is a DTC participant by asking the Proponent's broker or bank or by checking DTC's participant list, which is available at http://www.dtcc.com/~/media/Files/Downloads/client-center/DTC/alpha.ashx. In these situations, stockholders need to obtain proof of ownership from the DTC participant through which the securities are held, as follows:

(1) If the Proponent's broker or bank is a DTC participant, then the Proponent needs to submit a written statement from the Proponent's broker or bank verifying that the Proponent continuously held the required number or amount of Company shares for the one-year period preceding and including December 8, 2020.

(2) If the Proponent's broker or bank is not a DTC participant, then the Proponent needs to submit proof of ownership from the DTC participant through which the shares are held verifying that the Proponent continuously held the required number or amount of Company shares for the one-year period preceding and including December 8, 2020. You should be able to find out the identity of the DTC participant by asking the Proponent's broker or bank. If the Proponent's broker is an introducing broker, you may also be able to learn the identity and telephone number of the DTC participant through the Proponent's account statements, because the clearing broker identified on the account statements will generally be a DTC participant. If the DTC participant that holds the Proponent's shares is not able to confirm the Proponent's individual holdings but is able to confirm the holdings of the Proponent's broker or bank, then the Proponent needs to satisfy the proof of ownership requirements by obtaining and submitting two proof of ownership statements verifying that, for the one-year period preceding and including December 8, 2020, the required number or amount of Company shares were continuously held: (i) one from the Proponent's broker or bank confirming the Proponent's ownership, and (ii) the other from the DTC participant confirming the broker or bank's ownership.

The SEC's rules require that any response to this letter be postmarked or transmitted electronically no later than 14 calendar days from the date you receive this letter. Please address any response to me at Marriott International, Inc., Department 52/862, 10400 Fernwood Road, Bethesda, Maryland 20817 and send a copy of any response by email to me at Andrew.PC.Wright@marriott.com. (Alternatively, you may send the response electronically only.)

If you have any questions with respect to the foregoing, please contact me at 301-380-5750. For your reference, I enclose a copy of Rule 14a-8 and Staff Legal Bulletin No. 14F.

Sincerely,

Andrew Wright
Vice President, Senior Counsel & Corporate Secretary

Enclosures

**From:** John Chevedden ***
**Date:** December 10, 2020 at 4:34:35 PM EST
**To:** "Wright, Andrew (HQ)" <Andrew.PC.Wright@marriott.com>
**Subject: Rule 14a-8 Proposal (MAR) blb**

Mr. Wright,
Please see the attached broker letter.
Please confirm receipt.
Sincerely,
John Chevedden

TD Ameritrade

12/10/2020

Myra K Young
***

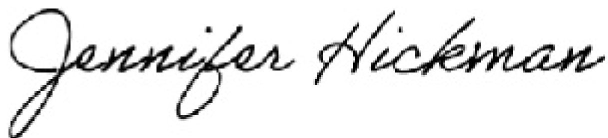
Re: Your TD Ameritrade Account Ending in ***

Dear Myra Young,

Thank you for allowing me to assist you today. Pursuant to your request, this letter is to confirm that as of the date of this letter, Myra K. Young held, and had held continuously for at least 13 months, 75 shares of Marriott International (MAR) common stock in her account ending in *** at TD Ameritrade. The DTC clearinghouse number for TD Ameritrade is 0188.

If we can be of any further assistance, please let us know. Just log in to your account and go to the Message Center to write us. You can also call Private Client Services at 800-400-4078. We're available 24 hours a day, seven days a week.

Sincerely,



Jennifer Hickman
Resource Specialist
TD Ameritrade

This information is furnished as part of a general information service and TD Ameritrade shall not be liable for any damages arising out of any inaccuracy in the information. Because this information may differ from your TD Ameritrade monthly statement, you should rely only on the TD Ameritrade monthly statement as the official record of your TD Ameritrade account.

Market volatility, volume, and system availability may delay account access and trade executions.

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**From:** Wright, Andrew (HQ) <Andrew.PC.Wright@marriott.com>
**Sent:** Thursday, December 10, 2020 3:10 PM
**To:** John Chevedden
**Subject:** RE: Rule 14a-8 Proposal (MAR) blb

John,

I confirm receipt. Thank you.

Best,
Andy

**Andy Wright**
Vice President, Senior Counsel & Corporate Secretary
10400 Fernwood Road, Bethesda, MD 20817
301-380-5750 (O) | 240-446-8905 (M)

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**From:** John Chevedden ***
**Sent:** Thursday, December 10, 2020 4:34 PM
**To:** Wright, Andrew (HQ) <Andrew.PC.Wright@marriott.com>
**Subject:** Rule 14a-8 Proposal (MAR) blb

Mr. Wright,
Please see the attached broker letter.
Please confirm receipt.
Sincerely,
John Chevedden