



DIVISION OF
CORPORATION FINANCE

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

April 10, 2023

Raquel Fox
Skadden, Arps, Slate, Meagher & Flom LLP

Re: PayPal Holdings, Inc. (the "Company")
Incoming letter dated January 20, 2023

Dear Raquel Fox:

This letter is in response to your correspondence concerning the shareholder proposal (the "Proposal") submitted to the Company by Laurent Ritter for inclusion in the Company's proxy materials for its upcoming annual meeting of security holders.

The Proposal requests that the board revise the Company's transparency reports to provide clear explanations of the number and categories of account suspensions and closures that may reasonably be expected to limit freedom of expression or access to information or financial services.

There appears to be some basis for your view that the Company may exclude the Proposal under Rule 14a-8(i)(7). In our view, the Proposal relates to, and does not transcend, ordinary business matters.

Copies of all of the correspondence on which this response is based will be made available on our website at <https://www.sec.gov/corpfin/2022-2023-shareholder-proposals-no-action>.

Sincerely,

Rule 14a-8 Review Team

cc: Sanford Lewis

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January 20, 2023

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

RE: PayPal Holdings, Inc. – 2023 Annual Meeting
Omission of Shareholder Proposal of
Laurent Ritter

Ladies and Gentlemen:

Pursuant to Rule 14a-8(j) promulgated under the Securities Exchange Act of 1934, as amended (the “Exchange Act”), we are writing on behalf of our client, PayPal Holdings, Inc., a Delaware corporation (the “Company”), to request that the Staff of the Division of Corporation Finance (the “Staff”) of the U.S. Securities and Exchange Commission (the “Commission”) concur with the Company’s view that, for the reasons stated below, it may exclude the shareholder proposal and supporting statement (the “Proposal”) submitted by Tulipshare Ltd. (“Tulipshare”) on behalf of Laurent Ritter (the “Proponent”) from the proxy materials to be distributed by the Company in connection with its 2023 annual meeting of shareholders (the “2023 proxy materials”).

In accordance with Section C of Staff Legal Bulletin No. 14D (Nov. 7, 2008) (“SLB 14D”), we are emailing this letter and its attachments to the Staff at shareholderproposals@sec.gov. In accordance with Rule 14a-8(j), we are simultaneously sending a copy of this letter and its attachments to the Proponent as notice of the Company’s intent to omit the Proposal from the 2023 proxy materials.

Rule 14a-8(k) and Section E of SLB 14D provide that shareholder proponents are required to send companies a copy of any correspondence that the shareholder proponents elect to submit to the Commission or the Staff. Accordingly, we are taking this opportunity to remind the Proponent that if the Proponent submits correspondence to the Commission or the Staff with respect to the Proposal, a copy of that correspondence should concurrently be furnished to the Company.

I. The Proposal

The text of the resolution contained in the Proposal is set forth below:

RESOLVED: Shareholders request the Board revise PayPal's Transparency Reports to provide clear explanations of the number and categories of account suspensions and closures that may reasonably be expected to limit freedom of expression or access to information or financial services. Such revision may exclude proprietary or legally privileged information.

II. Basis for Exclusion

We hereby respectfully request that the Staff concur with the Company's view that the Proposal may be excluded from the 2023 proxy materials pursuant to Rule 14a-8(i)(7) because the Proposal deals with matters relating to the Company's ordinary business operations.

III. Background

The Company received the Proposal via FedEx on December 20, 2022, accompanied by a cover letter from the Proponent, dated December 19, 2022. Copies of the Proposal and cover letter are attached hereto as Exhibit A.

IV. The Proposal May be Excluded Pursuant to Rule 14a-8(i)(7) Because the Proposal Deals with Matters Relating to the Company's Ordinary Business Operations.

Under Rule 14a-8(i)(7), a shareholder proposal may be excluded from a company's proxy materials if the proposal "deals with matters relating to the company's ordinary business operations." In Exchange Act Release No. 34-40018 (May 21, 1998) (the "1998 Release"), the Commission stated that the policy underlying the ordinary business exclusion rests on two central considerations. The first recognizes that 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. The second consideration relates to the degree to which the proposal seeks to "micro-manage" the company by probing too deeply into matters of a complex nature

upon which shareholders, as a group, would not be in a position to make an informed judgment. As demonstrated below, the Proposal implicates both of these central considerations.

A. The Proposal relates to the Company's ordinary business matters.

In accordance with the policy considerations underlying the ordinary business exclusion, the Staff consistently has permitted exclusion under Rule 14a-8(i)(7) of shareholder proposals relating to a company's relationships with its customers. *See, e.g., JPMorgan Chase & Co.* (Feb. 21, 2019) (permitting exclusion under Rule 14a-8(i)(7) of a proposal requesting that the board complete a report on the impact to customers of the company's overdraft policies); *JPMorgan Chase & Co.* (Mar. 12, 2010) (permitting exclusion under Rule 14a-8(i)(7) of a proposal requesting that the board publish a report assessing, among other things, the adoption of a policy barring future financing by the company of companies engaged in mountain top removal coal mining, noting that the proposal related to the company's "decisions to extend credit or provide other financial services to particular types of customers" and that "[p]roposals concerning customer relations or the sale of particular services are generally excludable under rule 14a-8(i)(7)"); *Anchor Bancorp Wisconsin Inc.* (May 13, 2009) (permitting exclusion under Rule 14a-8(i)(7) of a proposal requesting that the board adopt a new policy for the lending of funds to borrowers and the investment of assets after taking preliminary actions specified in the proposal, noting that the proposal related to the company's "ordinary business operations (i.e., credit policies, loan underwriting and customer relations)"); *JPMorgan Chase & Co.* (Feb. 21, 2006) (permitting exclusion under Rule 14a-8(i)(7) of a proposal recommending that the company not issue first mortgage home loans, except as required by law, no greater than four times the borrower's gross income, noting that the proposal related to the company's "ordinary business operations (i.e., credit policies, loan underwriting and customer relations)").

In particular, the Staff has permitted exclusion under Rule 14a-8(i)(7) of proposals relating to a company's decisions with regard to the handling of customer accounts, including termination of accounts. In *Comcast Corp.* (Apr. 13, 2022), for example, the proposal requested that the company notify a customer in advance of any termination, suspension or cancellation of service to the customer. The company argued, in part, that the proposal related to ordinary business matters because decisions relating to how the company "handles its customer accounts and customer relations implicate[] routine management decisions encompassing legal, regulatory, operational, and financial considerations, among others." In permitting exclusion under Rule 14a-8(i)(7), the Staff noted that "the [p]roposal relates to, and does not transcend, ordinary business matters." *See also, e.g., PayPal Holdings, Inc.* (Apr. 2, 2021)* (permitting exclusion under Rule 14a-8(i)(7) of a proposal that requested that the

* Citations marked with an asterisk indicate Staff decisions issued without a letter.

company not freeze or terminate customer accounts without first providing the company's rationale to customers); *TD Ameritrade Holding Corp.* (Nov. 20, 2017) (permitting exclusion under Rule 14a-8(i)(7) of a proposal that requested that the company's shareholders have the right to be clients of the company, noting that "the [p]roposal relates to the [c]ompany's policies and procedures for opening and maintaining customer accounts"); *Zions Bancorporation* (Feb. 11, 2008) (permitting exclusion under Rule 14a-8(i)(7) of a proposal that requested that the board defer the termination of any customer account under circumstances specified in the proposal, noting that the proposal related to the company's "ordinary business operations (i.e., procedures for handling customers accounts)").

The Staff also consistently has permitted exclusion of shareholder proposals relating to a company's general legal compliance program. *See, e.g., Eagle Bancorp, Inc.* (Mar. 29, 2022) (permitting exclusion under Rule 14a-8(i)(7) of a proposal requesting an independent review of certain investigations performed by the company); *Navient Corp.* (Mar. 26, 2015, *recon. denied* Apr. 8, 2015) (permitting exclusion under Rule 14a-8(i)(7) of a proposal requesting "a report on the company's internal controls over student loan servicing operations, including a discussion of the actions taken to ensure compliance with applicable federal and state laws," as "concern[ing] a company's legal compliance program"); *Raytheon Co.* (Mar. 25, 2013) (permitting exclusion under Rule 14a-8(i)(7) of a proposal requesting a report on "the board's oversight of the [c]ompany's efforts to implement the provisions of the Americans with Disabilities Act, the Fair Labor Standards Act, and the Age Discrimination in Employment Act," noting that "[p]roposals that concern a company's legal compliance program are generally excludable under Rule 14a-8(i)(7)"); *FedEx Corp.* (July 14, 2009) (permitting exclusion under Rule 14a-8(i)(7) of a proposal requesting a report on compliance by the company and its contractors with federal and state laws governing the proper classification of employees and contractors, noting that the proposal relates to the ordinary business matter of a company's "general legal compliance program"); *The Coca-Cola Co.* (Jan. 9, 2008) (permitting exclusion under Rule 14a-8(i)(7) of a proposal seeking an annual report comparing laboratory tests of the company's products against national laws and the company's global quality standards, noting that the proposal relates to the ordinary business matter of the "general conduct of a legal compliance program"); *Verizon Communications Inc.* (Jan. 7, 2008) (permitting exclusion under Rule 14a-8(i)(7) of a proposal seeking the adoption of policies to ensure that the company does not illegally trespass on private property and a report on company policies for preventing and handling such incidents, noting that the proposal relates to the ordinary business matter of a company's "general legal compliance program"); *The AES Corp.* (Jan. 9, 2007) (permitting exclusion under Rule 14a-8(i)(7) of a proposal requesting that the board create an ethics committee to monitor the company's compliance with, among other things, federal and state laws, noting that the proposal relates to the ordinary business matter of the "general conduct of a legal compliance program").

In this instance, the Proposal focuses primarily on the Company's policies regarding account suspensions and terminations, which relates to the ordinary business matter of how the Company handles customer accounts. In this respect, the Proposal's resolved clause requests that the Company revise its "Transparency Reports to provide clear explanations" regarding "the number and categories of account suspensions and closures" by the Company. The Proposal's supporting statement requests that if the Company "decides to close an individual or business account, [the Company] must provide meaningful notice about the particular Terms of Services provision that was violated, and users should have the opportunity to appeal in a timely and efficient manner." The supporting statement also references "blocking" accounts, "freezing" accounts, "terminating service to a user," and "banning" certain users. When read together, the Proposal's resolved clause and supporting statement demonstrate that the Proposal's requested report relates to the Company's relationships with its customers and the handling of customer accounts, including when, how and why to close customer accounts, which are core components of the Company's ordinary business.

The Company is a leading technology platform that provides payment solutions to millions of businesses and individuals worldwide. Necessarily, the Company's ability to manage and maintain the accounts of its customers is essential to the operation of the Company's business as a provider of payment solutions. In this regard, the Company has adopted an Acceptable Use Policy (the "AUP") that provides terms of service applicable to use of the Company's products and services.¹ The AUP protects both the Company and its customers against illicit and harmful activity, such as counterfeiting and fraud. The Company's ability to apply the AUP, which may sometimes result in the suspension or termination of accounts, is a fundamental part of the Company's day-to-day operations and cannot, as a practical matter, be subject to shareholder oversight.

Moreover, the Company's policies regarding the application of the AUP and decisions to suspend or terminate accounts relate directly to the ordinary business matter of the Company's legal compliance program. In this regard, the Proposal's supporting statement argues that the Company "must provide meaningful notice" regarding the "legal or policy basis and internal company criteria" behind any decision to suspend or terminate an account and expresses concern regarding the "legal, reputational, and financial risk" to the Company from such decisions. These statements demonstrate a clear focus on the management of the Company's legal compliance program.

As a global provider of payment solutions, the Company is highly regulated and subject to extensive and comprehensive regulation under federal and state laws, as well

¹ See the Company's Acceptable Use Policy, available at <https://www.paypal.com/us/legalhub/acceptableuse-full>.

as the applicable laws of the jurisdictions outside the United States where the Company does business. Notably, the Company and its subsidiaries are subject to complex and changing laws, rules, regulations, policies and legal interpretations in the markets in which the Company offers services directly or through partners, including those governing banking, credit, deposit taking, cross-border and domestic money transmission, prepaid access, foreign currency exchange, privacy, data protection, data governance, cybersecurity, banking secrecy, digital payments, cryptocurrency, payment services (including payment processing and settlement services), fraud detection, consumer protection, antitrust and competition, economic and trade sanctions, anti-money laundering and counter-terrorist financing, all of which may implicate decisions regarding whether to terminate a customer's account. The Company's ability to design and oversee its legal compliance program, including the application of the AUP, without interference is necessary to the operation of the Company's business as a regulated payment services provider. Accordingly, the Proposal is precisely the type that companies are permitted to exclude under Rule 14a-8(i)(7).

We note that a proposal may not be excluded under Rule 14a-8(i)(7) if it is determined to focus on a significant policy issue. The mere fact that a proposal may touch upon a significant policy issue, however, does not preclude exclusion under Rule 14a-8(i)(7). Instead, the question is whether the proposal focuses primarily on a matter of broad public policy versus matters related to the company's ordinary business operations. *See* 1998 Release; Staff Legal Bulletin No. 14E (Oct. 27, 2009). The Staff has consistently permitted exclusion of shareholder proposals where the proposal focused on ordinary business matters, even though it also related to a potential significant policy issue. As discussed above, in *Comcast Corp.* (Apr. 13, 2022), the excluded proposal requested, among other things, that the Company adopt a policy of notifying a customer in advance of any termination, suspension or cancellation of service to the customer. In permitting exclusion under Rule 14a-8(i)(7), the Staff noted that "the [p]roposal relates to, and does not transcend, ordinary business matters." *See also, e.g., PetSmart, Inc.* (Mar. 24, 2011) (permitting exclusion under Rule 14a-8(i)(7) when, although the proposal addressed the potential significant policy issue of the humane treatment of animals, the proposal covered a broad scope of laws ranging "from serious violations such as animal abuse to violations of administrative matters such as record keeping"); *CIGNA Corp.* (Feb. 23, 2011) (permitting exclusion under Rule 14a-8(i)(7) when, although the proposal addressed the potential significant policy issue of access to affordable health care, it also asked CIGNA to report on expense management, an ordinary business matter); *Capital One Financial Corp.* (Feb. 3, 2005) (permitting exclusion under Rule 14a-8(i)(7) when, although the proposal addressed the significant policy issue of outsourcing, it also asked the company to disclose information about how it manages its workforce, an ordinary business matter).

In this instance, the Proposal does not focus on a significant policy issue that has been recognized by the Staff. Even if the Proposal were viewed to touch on a potential

significant policy issue, the Proposal's overwhelming concern with the Company's handling of customer accounts and application of the AUP demonstrates that the Proposal's focus is clearly on ordinary business matters. Therefore, even if the Proposal could be viewed as touching upon a significant policy issue, its focus is on ordinary business matters.

B. The Proposal seeks to micromanage the Company.

The Staff has consistently agreed that shareholder proposals attempting to micromanage a company by probing too deeply into matters of a complex nature upon which shareholders, as a group, are not in a position to make an informed judgment are excludable under Rule 14a-8(i)(7). *See* 1998 Release; *see also, e.g., JPMorgan Chase & Co.* (Mar. 22, 2019); *Royal Caribbean Cruises Ltd.* (Mar. 14, 2019); *Walgreens Boots Alliance, Inc.* (Nov. 20, 2018). As the Commission has explained, a proposal may probe too deeply into matters of a complex nature if it “involves intricate detail, or seeks to impose specific time-frames or methods for implementing complex policies.” *See* 1998 Release. In Staff Legal Bulletin No. 14L (Nov. 3, 2021) (“SLB 14L”), the Staff explained that a proposal can be excluded on the basis of micromanagement based “on the level of granularity sought in the proposal and whether and to what extent it inappropriately limits discretion of the board or management.” For example, in *Deere & Co.* (Jan. 3, 2022), the Staff permitted exclusion under Rule 14a-8(i)(7) for a proposal that requested the annual publication of the “written and oral content of any employee-training materials” offered to the company’s employees, noting that the proposal probed “too deeply into matters of a complex nature by seeking disclosure of intricate details regarding the [c]ompany’s employment and training practices” and thus resulted in micromanagement. *See also American Express Co.* (Mar. 11, 2022); *Verizon Communications Inc.* (Mar. 17, 2022); *Amazon.com, Inc.* (Jan. 18, 2022).

In this case, the Proposal seeks to micromanage the Company by seeking intricate details and inappropriately limiting the discretion of management. It does so by requesting that the Company revise its Global Impact Report, which the Proposal calls a “Transparency Report,” to include granular details regarding the closure of customer accounts, including the “substantive content of account suspension decisions, by country, including which individuals or businesses made requests,” the “number of accounts removed by category such as ‘encrypted communications,’ VPN, etc.” and the “external legal or policy basis and internal company criteria for removals.” The Proposal also requests that the Company publish “the number of prior account suspension warnings and whether existing usage of the account was eliminated” and “[a]ny efforts by the [C]ompany to mitigate the harmful effects” of such account closures. Although the Proposal says that “[s]uch revision may exclude proprietary or legally privileged information,” it would be nearly impossible and impractical to produce the requested information without violating customer confidence and exposing proprietary details about the closure of customer accounts. As a result, the Proposal’s

request clearly goes beyond the level of detail necessary to enable investors to assess the matters raised by the Proposal and constitutes micromanagement.

The Proposal also would inappropriately limit the discretion of the Company's management. In this respect, the Company's team of dedicated professionals handles the review of potential account suspensions and closures individually with a thoughtful, consistent and objective approach. The Company's decisions are not politically driven, and the Company reviews input regarding potential suspensions and closures from a variety of sources, including its internal legal compliance program, customers, third-parties and other individuals in order to provide safe and affordable financial services to people of all backgrounds and to support freedom of expression and open dialogue. Such considerations are complex and outside the knowledge and expertise of shareholders, and require management and the Company's Board of Directors to have the discretion to exercise their independent judgment in making determinations appropriate for the Company and its employees.

As a result, the Proposal would improperly constrain the decision-making process of the Company's management. Even under the "measured approach" described in SLB 14L, the Proposal would inappropriately limit management's discretion such that it micromanages the Company, as it affords no flexibility at all. Further, in requesting that the Company publish the "substantive content of account suspension decisions, by country, including which individuals or businesses made requests" and the "external legal or policy basis and internal company criteria for removals," among other matters, the Proposal is seeking precisely the level of granularity that the Staff highlighted as problematic in SLB 14L. Thus, the Proposal attempts to micromanage the Company by probing too deeply into matters of a complex nature upon which shareholders, as a group, are not in a position to make an informed judgment.

Accordingly, the Proposal should be excluded from the Company's 2023 proxy materials pursuant to Rule 14a-8(i)(7) as relating to its ordinary business operations.

V. Conclusion

Based upon the foregoing analysis, the Company respectfully requests that the Staff concur that it will take no action if the Company excludes the Proposal from its 2023 proxy materials. Should the Staff disagree with the conclusions set forth in this letter, or should any additional information be desired in support of the Company's position, we would appreciate the opportunity to confer with the Staff concerning these matters prior to the issuance of the Staff's response. Please do not hesitate to contact the undersigned at (202) 371-7050.

Very truly yours,



Raquel Fox

Enclosures

cc: Brian Y. Yamasaki
Vice President, Corporate Legal and Secretary
PayPal Holdings, Inc.

Laurent Ritter

Constance Ricketts
Tulipshare Ltd.

EXHIBIT A

(see attached)



December 19, 2022

Via Electronic Mail and FedEx Overnight Delivery

PayPal Holdings, Inc.
2211 North First Street
San Jose, California 95131
Attn: Corporate Secretary of PayPal Holdings, Inc.
Email: [REDACTED]

Re: Shareholder Proposal for 2023 Annual Shareholder Meeting

Dear Corporate Secretary,

Tulipshare Ltd. (“Tulipshare”) is filing a shareholder proposal on behalf of Laurent Ritter (“Proponent”), who is a shareholder of PayPal Holdings, Inc. (the “Company”), for action at the next annual meeting of PayPal Holdings, Inc. The Proponent submits the enclosed shareholder proposal for inclusion in the Company’s 2023 proxy statement, for consideration by shareholders, in accordance with Rule 14a-8 of the General Rules and Regulations of the Securities Exchange Act of 1934.

The Proponent has continuously beneficially owned an amount of PayPal Holdings, Inc. stock for a duration of time that enables it to file a shareholder proposal for inclusion in the Company’s 2023 proxy statement. These shares will be held through the date of the 2023 annual meeting of shareholders. Proof of ownership and the Proponent’s authorization letter are being sent separately.

The Proponent has authorized Tulipshare to act on its behalf. Please forward any correspondence on this matter to Tulipshare and not to Laurent Ritter. A representative of the Proponent will attend the stockholders’ meeting to move the proposal as required.

Tulipshare is available to meet with the Company via teleconference on Wednesday, January 11 between 3pm PT and 5pm PT; Wednesday, January 18 between 3pm PT and 5pm PT; and Thursday, January 19 between 3pm PT and 5pm PT. Any co-filers will, in their submission letters, authorize Tulipshare to engage with the Company on their behalf, within the meaning of Rule 14a-8(b)(iii)(B), but may participate subject to their availability.

I can be contacted at [REDACTED] or by email at [REDACTED] to schedule a meeting and to address any questions. Please address any future correspondence regarding the proposal to me at this address.

Sincerely,

A handwritten signature in blue ink that reads "Constance Ricketts".

Constance Ricketts
Head of Shareholder Activism
Tulipshare Ltd.

Encl: Shareholder Proposal

In June 2021, the American Civil Liberties Union launched a campaign¹ calling on PayPal to provide nondiscriminatory financial services to all users. ACLU argued that accountability on human rights, civil liberties, and sound technology policy necessitates that PayPal provide transparency to users. If PayPal decides to close an individual or business account, PayPal must provide meaningful notice about the particular Terms of Services provision that was violated, and users should have the opportunity to appeal in a timely and efficient manner.

In addition to blocking the accounts of sex workers,² PayPal routinely targets users for speech protected by the First Amendment³ including:

- Freezing the account⁴ of News Media Canada for a payment to submit an article about Syrian refugees for an award;
- Terminating service⁵ to a user for using open-source software enabling anonymous communication;
- Stalling⁶ efforts to provide bail support to protestors;
- Banning legal sex workers access to services, which disproportionately harms Black, Brown and trans communities.⁷

As Electronic Frontier Foundation notes,⁸ because a few companies dominate online payment processing, PayPal wields tremendous power to control the speech environment by turning off the financial faucet for users who express disfavored views or discuss controversial subject matter. Merchants and individuals on PayPal's blacklist may find themselves in a financially precarious situation since payment platforms are extremely centralized, creating what in practice is a duopoly. Any argument that those dissatisfied with PayPal's terms and conditions should simply seek other payment methods is not particularly realistic.

PayPal's 2021 Global Impact Report touts its commitment to "[b]uilding a digital economy that powers a more inclusive and resilient world," and yet that report fails to include any information relevant to account suspensions or actions that may chill free speech.⁹

PayPal's poor transparency reporting veils the contradiction between PayPal's human rights policy and account suspensions and other potential violations of freedom of speech. This poses significant legal, reputational, and financial risk to PayPal and its shareholders.

RESOLVED: Shareholders request the Board revise PayPal's Transparency Reports to provide clear explanations of the number and categories of account suspensions and closures that may reasonably be expected to limit freedom of expression or access to information or financial services. Such revision may exclude proprietary or legally privileged information.

¹ <https://www.aclu.org/news/lgbtq-rights/paypal-and-venmo-are-shutting-out-sex-workers-putting-lives-and-livelihoods-at-risk>

² <https://www.bloomberg.com/news/articles/2019-11-14/porn-site-says-paypal-ban-will-hurt-more-than-100-000-performers>

³ <https://www.thefire.org/research-learn/fire-statement-free-speech-and-online-payment-processors>

⁴ <https://www.cbc.ca/news/canada/manitoba/paypal-freezes-flin-flon-newspaper-syrian-refugees-1.3977292>

⁵ <https://www.eff.org/deeplinks/2021/06/paypal-shuts-down-long-time-tor-supporter-no-recourse>

⁶ <https://www.vice.com/en/article/k7qbnz/venmo-paypal-freeze-transfer-limits-bail-funds>

⁷ <https://www.aclu.org/news/lgbtq-rights/sex-work-is-real-work-and-its-time-to-treat-it-that-way/>

⁸ <https://www.eff.org/deeplinks/2016/02/kafkaesque-battle-soulseek-and-paypal-and-why-free-speech-defenders-should-be>

⁹ https://s201.q4cdn.com/346340278/files/doc_downloads/PayPal-2021-Global-Impact-Report.pdf

Supporting Statement

Proponents suggest the company include in its Transparency Reports, or explain why it cannot disclose:

- The substantive content of account suspension decisions, by country, including which individuals or businesses made requests; number of accounts removed by category such as “encrypted communications,” VPN, etc.; and external legal or policy basis and internal company criteria for removals;
- Any indicia of impact, such as the number of prior account suspension warnings and whether existing usage of the account was eliminated;
- Any efforts by the company to mitigate the harmful effects.

Sanford Lewis & Associates

PO Box 231
Amherst, MA 01004-0231
413 549-7333
sanfordlewis@strategiccounsel.net

February 21, 2023
Via electronic mail

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

Re: Shareholder proposal to PayPal Holdings, Inc. on behalf of Laurent Ritter

Ladies and Gentlemen:

Tulipshare Ltd. (“Tulipshare”) has submitted a shareholder proposal (the “Proposal”) to PayPal Holdings, Inc. (the “Company”) on behalf of Laurent Ritter (the “Proponent”), who is the beneficial owner of common stock of the Company. We have been asked by the Proponent to respond to the letter dated January 20, 2023 (the “Company Letter”) sent to the Securities and Exchange Commission by Raquel Fox of Skadden, Arps, Slate, Meagher & Flom LLP. In that letter, the Company contends that the Proposal may be excluded from the Company’s 2023 proxy statement. A copy of this letter is being emailed concurrently to Ms. Fox.

SUMMARY

The background section of the Proposal focuses on the discriminatory impacts that account suspensions and closures by PayPal appear to be causing to protected classes and groups, and the need for transparency. To that end, the “resolved” clause requests accountability from management, requesting “clear explanations regarding the numbers and categories of account suspensions and closures that may reasonably be expected to limit freedom of expression or access to information or financial services.” In the supporting statement, the proposal suggests, among other things, reporting of “any efforts by the company to mitigate the harmful effects”

The Supporting Statement also suggests, but does not require, inclusion in the revised report of: (1) the substantive content of account suspension decisions, by country, including which individuals or businesses made requests, number of accounts removed by category such as “encrypted communications” or VPN, and external legal or policy basis and internal Company criteria for removals; (2) any indicia of impact, such as the number of prior account suspension warnings and whether existing usage of the account was eliminated.

The Company seeks to omit the Proposal from its 2023 proxy statement pursuant to Rule 14a-8(i)(7). In this respect, the Company posits that the Proposal concerns its handling of customer accounts and legal compliance. The Company also argues that the Proposal seeks to micromanage the Company by seeking intricate details and inappropriately limiting the discretion of management with regards to the Company's business operations.

Contrary to the Company's position, the Proposal is focused on a transcendent policy issue: discriminatory impacts of account closure and suspension activities, especially those that affect freedom of speech and or economically discriminate against protected classes or groups. The Proposal does not call for changes to the Company's existing policies governing account closures or suspensions. In turn, the requested transparency disclosures would allow investors to better understand and assess how the Company manages the balance between its routine account management activities and significant issues of the Company's social impacts and "any efforts to mitigate the harmful effects."

The Proposal is also not overly granular in its request to revise the transparency reports with "clear explanations of the number and categories of account suspensions and closures that may reasonably be expected to limit freedom of expression or access to information or financial services." The additional elements described in the Supporting Statement, which are relevant to the issues of social impact, are not points of *mandatory* disclosure. Management is afforded flexibility to decline to make such disclosures, to "include in its Transparency Reports, or explain why it cannot disclose." As such, it retains flexibility regarding legal compliance and the implementation of existing policies as no modifications of policies are requested.

Further, investors are well-informed and rightfully concerned about how these issues may affect the Company's long-term value. As the Proposal notes, civil rights organizations have documented — to significant negative press attention — myriad instances in which the Company has infringed upon PayPal and Venmo users' civil liberties when restricting access to their accounts. As such, the Proposal appropriately requests an accounting from management as to how the Company is causing or avoiding harm so as to enable investors to make appropriate investment risk management determinations based on that information.

Given the foregoing, the Proposal is not excludable under Rule 14a-8(i)(7).

THE PROPOSAL

In June 2021, the American Civil Liberties Union launched a campaign¹ calling on PayPal to provide nondiscriminatory financial services to all users. ACLU argued that accountability on human rights, civil liberties, and sound technology policy necessitates that PayPal provide transparency to users. If PayPal decides to close an individual or business account, PayPal must provide meaningful notice about the particular Terms of Services provision that was violated, and users should have the opportunity to appeal in a timely and efficient manner.

In addition to blocking the accounts of sex workers,² PayPal routinely targets users for speech protected by the First Amendment³ including:

- Freezing the account⁴ of News Media Canada for a payment to submit an article about Syrian refugees for an award;
- Terminating service⁵ to a user for using open-source software enabling anonymous communication;
- Stalling⁶ efforts to provide bail support to protestors;
- Banning legal sex workers access to services, which disproportionately harms Black, Brown and trans communities.⁷

As Electronic Frontier Foundation notes,⁸ because a few companies dominate online payment processing, PayPal wields tremendous power to control the speech environment by turning off the financial faucet for users who express disfavored views or discuss controversial subject matter. Merchants and individuals on PayPal's blacklist may find themselves in a financially precarious situation since payment platforms are extremely centralized, creating what in practice is a duopoly. Any argument that those dissatisfied with PayPal's terms and conditions should simply seek other payment methods is not particularly realistic.

PayPal's 2021 Global Impact Report touts its commitment to "[b]uilding a digital economy that powers a more inclusive and resilient world," and yet that report fails to include any information relevant to account suspensions or actions that may chill free speech.⁹

PayPal's poor transparency reporting veils the contradiction between PayPal's human rights policy and account suspensions and other potential violations of freedom of speech. This poses significant legal, reputational, and financial risk to PayPal and its shareholders.

RESOLVED: Shareholders request the Board revise PayPal's Transparency Reports to provide clear explanations of the number and categories of account suspensions and closures that may reasonably be expected to limit freedom of expression or access to information or financial

services. Such revision may exclude proprietary or legally privileged information.

Supporting Statement

Proponents suggest the company include in its Transparency Reports, or explain why it cannot disclose:

- The substantive content of account suspension decisions, by country, including which individuals or businesses made requests; number of accounts removed by category such as “encrypted communications,” VPN, etc.; and external legal or policy basis and internal company criteria for removals;
- Any indicia of impact, such as the number of prior account suspension warnings and whether existing usage of the account was eliminated;
- Any efforts by the company to mitigate the harmful effects.

¹ <https://www.aclu.org/news/lgbtq-rights/paypal-and-venmo-are-shutting-out-sex-workers-putting-lives-and-livelihoods-at-risk>

² <https://www.bloomberg.com/news/articles/2019-11-14/porn-site-says-paypal-ban-will-hurt-more-than-100-000-performers>

³ <https://www.thefire.org/research-learn/fire-statement-free-speech-and-online-payment-processors>

⁴ <https://www.cbc.ca/news/canada/manitoba/paypal-freezes-flin-flon-newspaper-syrian-refugees-1.3977292>

⁵ <https://www.eff.org/deeplinks/2021/06/paypal-shuts-down-long-time-tor-supporter-no-recourse>

⁶ <https://www.vice.com/en/article/k7qbnz/venmo-paypal-freeze-transfer-limits-bail-funds>

⁷ <https://www.aclu.org/news/lgbtq-rights/sex-work-is-real-work-and-its-time-to-treat-it-that-way/>

⁸ <https://www.eff.org/deeplinks/2016/02/kafkaesque-battle-soulseek-and-paypal-and-why-free-speech-defenders-should-be>

⁹ https://s201.q4cdn.com/346340278/files/doc_downloads/PayPal-2021-Global-Impact-Report.pdf

BACKGROUND

A small number of companies dominate the field of online payment processing, allowing them to wield significant power and control over fundamental human rights issues of free speech, access to information and access to economic participation.

One such company is PayPal, which reported having, by the third quarter of 2022, 432 million active users and merchants as well as having processed 5.6 billion transactions.¹ There are numerous reported instances of PayPal actions that have appeared to interfere with such human rights.

In 2017 *The Canadian Press* reported that a community newspaper's payment to enter a feel-good story about a family of Syrian refugees in an awards competition prompted the Company to freeze the account of a national media organization after flagging the transaction as suspicious.² The Company identified the payment as possibly not in compliance with its AUP, and “promise[d] to follow up within 72 hours of its investigation,” but instead reversed the payment without any follow-up communication. While PayPal unfroze the account “[w]ithin hours of *The Canadian Press* asking about the situation,” the Company failed to explain its process to the news agency.

In 2021, the Company similarly shut down the account of Larry Brandt, a prominent supporter of internet freedom who primarily used his 20-year-old PayPal account to donate to Tor, an open-source software that protects internet users’ privacy.³ PayPal denied that the shutdown was related to any issues related to Tor, only claiming that “the situation ha[d] been determined appropriately” without offering any details or explanation as to what PayPal terms he had violated. Brandt remarked that he had no opportunity to appeal the account suspension.

Additionally, a New York City-based bail advocacy group experienced “constant security freezes and transfer limits” by PayPal and Venmo as part of an influx of monetary donations in support of jailed racial justice demonstrators during the summer of racial reckoning protests in 2020.⁴ As a result, the group was unable to quickly provide bail support for those jailed

¹ See *History & Facts*, PayPal (last visited Feb. 10, 2023), <https://about.pypl.com/who-we-are/history-and-facts/default.aspx>.

² See Colin Perkel, *PayPal freezes Canadian media company's account over story about Syrian family*, *The Canadian Press* (Feb. 10, 2017), <https://www.cbc.ca/news/canada/manitoba/paypal-freezes-flin-flon-newspaper-syrian-refugees-1.3977292>.

³ See Rainey Reitman, *PayPal Shuts Down Long-Time Tor Supporter with No Recourse*, *Electronic Frontier Foundation* (June 2, 2021), <https://www.eff.org/deeplinks/2021/06/paypal-shuts-down-long-time-tor-supporter-no-recourse>.

⁴ Samantha Cole, *Venmo and Paypal Are Stalling Urgent Efforts to Bail People Out of Jail*, *Vice* (June 12,

individuals who were exercising their First Amendment rights of protesting and organizing.

In September 2022, PayPal also shut down the personal account of Toby Young – a British conservative commentator – as well as the accounts of two organizations he founded: the Free Speech Union, a UK-based free speech organization, and the Daily Sceptic.⁵ In response, the Company stated that “[a]chieving the balance between protecting the ideals of tolerance, diversity and respect for people of all backgrounds and upholding the values of free expression and open dialogue can be difficult, but we do our best to achieve it.”⁶ After significant public pushback, however, the Company reinstated the accounts.⁷

More recently, PayPal similarly suspended the accounts, without explanation, of several independent journalists and writers, including the “well-known alt sites” *Consortium News* and *Mint Press*.⁸ Overall, when popular online financial services such as PayPal patrol their users’ speech and views, the bedrock principles and culture of freedom of expression suffer.

The Proposal recognizes that the Company’s conduct pertaining account suspensions and restrictions can affect certain people’s routine activities, such as their ability to work, shop or socialize. In this regard, the Proposal suggests that when PayPal banned “legal sex workers access to services,” it posed a disproportionate harm to Black, Brown and trans communities. Indeed, independent news organization *KnockLA* reported that “[o]ne of the companies most notorious for discriminating against . . . sex workers is PayPal,” which “especially hurts racial and gender minorities, along with other disadvantaged groups,”⁹ despite the Company’s multi-million-dollar commitment “to support Black businesses, strengthen minority communities and fight economic inequality.”¹⁰

Another example of economic discrimination is occurring in Israel where PayPal has been

2020), <https://www.vice.com/en/article/k7qbnz/venmo-paypal-freeze-transfer-limits-bail-funds>.

⁵ See FIRE *supra* note 8.

⁶ Tom Slater, *Big Tech is waging financial war on dissenters*, Spiked (Sept. 21, 2022), <https://www.spiked-online.com/2022/09/21/big-tech-is-waging-financial-war-on-dissenters/>.

⁷ See Tony Diver, *PayPal reinstates Free Speech Union accounts after being accused of ‘politically motivated’ ban*, The Telegraph (Sept. 27, 2022), <https://www.telegraph.co.uk/politics/2022/09/27/paypal-reinstates-free-speech-union-accounts-accused-politically/>.

⁸ Matt Taibi, *PayPal’s IndyMedia Wipeout*, Racket News (May 3, 2022), <https://www.racket.news/p/paypals-indymedia-wipeout>.

⁹ Maggie Clancy, *Paypal is Widening the Racial Wealth Gap with Discriminatory Practices Against Sex Workers*, KnockLA (Jul. 9, 2020), <https://knock-la.com/paypal-sex-work-discrimination-ground-game-8eee88240ec4/>.

¹⁰ *PayPal Announces \$530 Million Commitment to Support Black Businesses, Strengthen Minority Communities and Fight Economic Inequality*, news provided by PayPal (June 11, 2020), <https://www.prnewswire.com/news-releases/paypal-announces-530-million-commitment-to-support-black-businesses-strengthen-minority-communities-and-fight-economic-inequality-301074470.html>.

accused of engaging in economic discrimination against Palestinians, refusing to allow the use of the PayPal service for Palestinian businesses:

PayPal's refusal to offer services in Palestine is impeding the region's economic growth and preventing many freelance knowledge workers from receiving digital payments¹¹.

The precarious role of the Company in promoting or obstructing access and movement of information throughout the economy is demonstrated by its recent misstep in which it attempted to add a term to its Acceptable Use Policy (AUP), set to take effect November 3, 2022, which would have expanded its list of prohibited activities to include “the sending, posting, or publication of any messages, content, or materials” that “promotes misinformation.” This could have seen users fined \$2,500 for spreading “misinformation,” and was targeted as exemplifying the taking hold of “cancel culture” at PayPal.¹² The Company later claimed such a policy update was published “in error.”¹³ But the revelation of this type of issue in the Company’s recent history demonstrates the clear need for better transparency on the company’s own understanding as to the extent to which access to information is impacted by its account suspensions and removals.

Based on all of these concerns, the Proposal seeks to improve on the Company’s existing transparency reporting, by seeking a revision that provides more transparency on how the Company understands its impacts on such issues. The Proposal simply asks the Board to revise PayPal’s Transparency Reports to provide clear explanations of the number and categories of account suspensions and closures that may reasonably be expected to limit freedom of expression or access to information or financial services. Such revision may exclude proprietary or legally privileged information

ANALYSIS

The Proposal is not excludable under Rule 14a-8(i)(7).

The Proposal focuses on issues that transcend ordinary business matters and does not micromanage the Company.

The Company seeks to exclude the Proposal under Rule 14a-8(i)(7) as relating to and micromanaging the Company’s ordinary business operations without implicating a significant social policy issue. In essence, the Company argues that the Proposal overwhelmingly concerns its handling of customer accounts and legal compliance. The Company further argues that the

¹¹ Palestinians call out PayPal for discrimination <https://www.al-monitor.com/originals/2022/06/palestinians-call-out-paypal-discrimination#ixzz7trSCsGEV>

¹² <https://www.valueaddedresource.net/paypal-updates-acceptable-use-policy/>

¹³ <https://cointelegraph.com/news/paypal-says-policy-to-punish-users-for-misinformation-was-in-error>

Proposal seeks to micromanage the Company by seeking granular details that go beyond what is necessary or appropriate for investors, as well as limiting management's discretion with respect to making appropriate determinations in handling customer accounts.

The Company's contentions are without merit. The Proposal primarily considers issues of significant public concern and of broad societal impact – namely, whether the Company is engaging in conduct that encroaches upon freedom of expression or results in economic discrimination of protected classes or groups. Although the Proposal is specifically concerned with the Company's conduct with respect to user account closures and suspensions, the Proposal does not urge or require PayPal to make any changes to its existing governing policies in this regard. Rather, the Proposal requests a reasonable accounting from management regarding its understanding of the extent to which its account restrictions or closures may impact freedom of expression or result in financial discrimination, affording management wide discretion on the metrics it ultimately chooses to disclose. The requested disclosures would be highly useful for investors to make appropriate determinations about the Company's reputational risks, among other considerations. As such, the Proposal's exclusion is unwarranted under Rule 14a-8(i)(7) because it raises a significant policy issue and, further, does not micromanage.

Rule 14a-8(i)(7): ordinary business according to the Commission

Rule 14a-8(i)(7) ordinarily permits a Company to omit a shareholder proposal from its proxy statement “[i]f the proposal deals with a matter relating to the company's ordinary business operations.” In 1998, the Commission issued Release No. 34-40018 (May 21, 1998) (the “1998 Release”), updating and interpreting the ordinary business rule by both reiterating and clarifying past precedents. To date, the 1998 Release serves as the Commission's authoritative interpretation of the meaning and scope of the ordinary business exclusion. In it, the Commission summarized two central considerations in making ordinary business determinations: first, whether the proposal addresses a significant social policy issue, and second, whether it micromanages.

The first relates to the subject matter of the proposal. 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.

Here, it is evident that the current Proposal fits squarely within the exception described by the Commission. It certainly addresses "significant discrimination matters" as well as freedom of speech, and access to information, all of which are recognized as transcending ordinary business.

A Proposal that passes through the first prong and addresses a transcendent policy issue can still be excluded if the level of detail is inappropriate, that is, if it micromanages. The second prong of the 1998 release addresses the appropriate level of detail in a proposal's request.

The second consideration relates to the degree to which the proposal seeks to "micro-manage" the company by probing too deeply into matters of a complex nature upon which shareholders, as a group, would not be in a position to make an informed judgment. This consideration may come into play in a number of circumstances, such as where the proposal involves intricate detail, or seeks to impose specific time-frames or methods for implementing complex policies.

The Commission also made it clear in the 1998 release that not all "time frames" or "details" in a proposal's request would entail micromanagement:

Some commenters thought that the examples cited seemed to imply that all proposals seeking detail, or seeking to promote time-frames or methods, necessarily amount to "ordinary business." We did not intend such an implication. Timing questions, for instance, could involve significant policy where large differences are at stake, and proposals may seek a reasonable level of detail without running afoul of these considerations.

Thus, in evaluating a proposal for micromanagement, the critical issue is whether the proposal seeks "a reasonable level of detail" without crossing the line into a level of granularity that drills down too far either for investor comprehension or management discretion.

From this it is quite evident that the present Proposal does not micromanage. The Proposal merely asks the Company to explain its understanding of the portion of account closures and suspensions that the Company views as potentially implicating freedom of speech, access to information and economic discrimination. This is a flexible request and within the comprehension and interest of investors.

The Proposal also invites but does not require disclosure of further metrics, and discussion of any action the company is taking to reduce the problematic impacts.

The Proposal concerns significant social policy issues that transcend ordinary business operations

In Staff Legal Bulletin No. 14L (Nov. 3, 2021), the Staff reaffirmed its commitment to exempting "certain proposals that raise significant social policy issues" when challenged under

the ordinary business rule. To determine whether a proposal concerns such important issues, the Staff stated that it “will consider whether the proposal raises issues with a broad societal impact, such that they transcend the ordinary business of the company.”

As the Proposal notes, twenty-three civil rights organizations sent a letter in June 2021 (the “Civil Liberties Letter”) to the Company’s leadership raising concerns over “the continuous practices of opaque account limitations and closures” by PayPal and its subsidiary, Venmo.¹⁴ The Civil Liberties Letter particularly raised concern about the impacts of such practices on free speech as well as the financial well-being of traditionally marginalized individuals and protected classes or groups. The Civil Liberties Letter called upon the Company to institute systems that ensure due process, transparency, and accountability with respect to such practices.

Since publication of the Civil Liberties Letter, the Company has received significant negative press and commentary in the U.S. and abroad. *Fox News* examined how “PayPal’s bans are a form of censorship,” documenting instances where an organization’s account had been suspended for violating a user agreement, without providing any detailed justification.¹⁵ *Democracy Now!* reported how PayPal canceled the account and froze the funds of independent news outlet *Consortium News*, which had been critical of U.S. foreign policy.¹⁶ *The Telegraph* offered extensive reporting and commentary on how PayPal suspended the accounts of British conservative public figures and groups, “mark[ing] a vicious new phase in the war on free speech¹⁷.” As a result, lawmakers in the United Kingdom — where “PayPal is well established” and “is the most popular digital wallet for online transactions”¹⁸ — are now considering regulating when the Company may restrict user access to its financial platforms.¹⁹ Notwithstanding, the Company has been largely silent on these issues.

¹⁴ *Letter to PayPal and Venmo from EFF and others*, Electronic Frontier Foundation (June 15, 2021), <https://www.eff.org/document/letter-paypal-and-venmo-eff-and-others>.

¹⁵ Megan Myers, *PayPal’s bans are a form of censorship, put some businesses at risk, digital privacy advocate says*, *Fox News* (Dec. 29, 2022), <https://www.foxnews.com/us/paypals-bans-form-censorship-put-businesses-risk-digital-privacy-advocate-says>.

¹⁶ *PayPal Freezes Funds for Consortium News, An Outlet Critical of U.S. Policy on Ukraine*, *Democracy Now!* (May 4, 2022), https://www.democracynow.org/2022/5/4/headlines/paypal_freezes_funds_for_consortium_news_independent_outlet_critical_of_us_policy_on_ukraine.

¹⁷ Fraser Nelson, *PayPal’s censorship marks a vicious new phase in the war on free speech*, *The Telegraph* (Sept. 22, 2022), <https://www.telegraph.co.uk/news/2022/09/22/paypals-censorship-marks-vicious-new-phase-war-free-speech/>; see also Louisa Clarence-Smith, *PayPal shuts down accounts of Free Speech Union*, *The Telegraph* (Sept. 20, 2022), <https://www.telegraph.co.uk/news/2022/09/20/paypal-shuts-accounts-free-speech-union/>.

¹⁸ *UK Consumers Trust PayPal More Than Banks to Provide Super App, Study Finds*, PYMTS (Jul. 18, 2022), <https://www.pymnts.com/connectedeconomy/2022/uk-consumers-trust-paypal-more-than-banks-to-provide-super-app-study-finds/>.

¹⁹ See Tony Driver, *Paypal could be banned from blocking accounts of campaign groups for political reasons*, *The Telegraph* (Sept. 25, 2022), <https://www.telegraph.co.uk/politics/2022/09/25/paypal-could-banned-blocking-accounts-campaign-groups-political/>.

Within this context, the Proposal predominantly focuses on civil liberties matters of significant public concern and broad societal impact: freedom of speech and economic discrimination of protected classes or groups. At the outset, the Proposal’s background section raises concern with PayPal’s ability to “provide nondiscriminatory financial services to all users” and takes issue with Company practices that infringe upon “speech protected by the First Amendment.” To that end, the “resolved” clause specially requests a course of action regarding Company practices that “may reasonably be expected to limit freedom of expression or access to information or financial services.”

Staff precedents support the current proposal as addressing a significant policy issue

Freedom of speech as a significant policy issue

Freedom of speech is one of the most sacrosanct civil rights. Article 19 of the Universal Declaration of Human Rights recognizes the “right to freedom of opinion and expression,” which “includes freedom to hold opinions without interference.”²⁰ Free speech is notably protected in most countries ranking highest in the Human Freedom Index.²¹ The United States enshrines freedom of speech in the Bill of Rights of its Constitution, and nearly all state constitutions have free speech clauses.²² The European Union Convention on Human Rights – signed by all 47 Council of Europe members, including the United Kingdom – protects “the right to freedom of expression and to receive and impart information,” noting that “[f]reedom of expression is one of the essential foundations of a democratic society.”²³ On that account, freedom of speech is often used as a measurement of the quality of societies.

When financial institutions and payment intermediaries close customer accounts or obstruct commercial transactions, such conduct can result in serious infringements upon free speech. Access to online payment systems is essential for countless individuals and groups that depend on financial support for their expressive activity. Websites and organizations with an online presence, in particular, rely on financial institutions to ensure they can continue to operate

²⁰ *Universal Declaration of Human Rights*, Art. 19, <https://www.un.org/en/about-us/universal-declaration-of-human-rights>.

²¹ *Countries with Freedom of Speech 2023*, World Population Review (last visited Feb. 8, 2023), <https://worldpopulationreview.com/country-rankings/countries-with-freedom-of-speech>.

²² See Elijah O’Kelley, *State Constitutions as a Check on the New Governors: Using State Free Speech Clauses to Protect Social Media Users from Arbitrary Political Censorship by Social Media Platforms*, 69 *Emory L. J.* 111 (2019).

²³ *Convention for the Protection of Human Rights and Fundamental Freedoms*, Art. 10, <https://www.coe.int/en/web/human-rights-convention/expression#>.

by accepting online donations, selling goods online, or having a bank account.²⁴ Therefore, financial institutions that act as political or controversial speech arbiters by restricting or denying access to payment processing can present a grave threat to free expression.

The Staff has recognized that freedom of speech, as it pertains to corporate practices, is a significant social policy issue. (*See Northrop Grumman Corp.* (Mar. 19, 2019) (finding that a proposal requesting a report regarding the implementation of the company’s “Human Rights Policy” on “management systems and processes” that included “vetting and implementing contracts” was not excludable under Rule 14a-8(i)(7) because it “transcend[ed] ordinary business matters”); *Cisco Systems, Inc.* (Sept. 19, 2002) (rejecting exclusion under Rule 14a-8(i)(7) of a proposal concerned with how “[g]overnment monitoring and control of internet content is a threat to freedom of speech for . . . worldwide users”); *Yahoo! Inc.* (Apr. 13, 2007) (denying exclusion under Rule 14a-8(i)(7) of a proposal concerning the detrimental effects of limits to web internet access on “freedom of speech” and other human rights); *Halliburton Co.* (Mar. 9, 2009) (denying exclusion under Rule 14a-8(i)(7) of a proposal requesting a “review [of company] policies related to human rights to assess areas where the company needs to adopt and implement additional policies”)).

Economic discrimination against protected groups as a significant social policy issue

The potential discriminatory impact of Company account suspension and closure practices also transcends ordinary business. Even though the ordinary business of the Company requires making account suspension and closure decisions, and taking a customer’s economic circumstances into consideration when making product offerings, those policies and decisions also come into the public spotlight when it becomes clear that disparate treatment undermines access for protected classes or groups. For instance, the discriminatory practice of redlining made it impossible for many members of racial and ethnic minority groups to qualify for mortgage loans or gain access to consumer credit, even when the lending or credit companies were unintentionally participating in redlining. In fact, not all discrimination is intentional, and instead may be baked into a company’s internal policies where the result of such practice is discriminatory. Therefore, the Proposal seeks thoughtful accountability and engagement of the Company’s management in assessing whether such discriminatory impacts are occurring. Accordingly, the Proposal’s focus on shedding light on issues of discriminatory impact and the risks posed to the Company transcends ordinary business.

In this vein, the Company may be inadvertently engaging in discrimination based on gender, race or ethnicity by making its services unavailable to users engaged in certain types of jobs such as sex work. Indeed, this type of economic discrimination often occurs against

²⁴ *See Financial Censorship*, Electronic Frontier Foundation (last visited Feb. 10, 2023), <https://www.eff.org/issues/financial-censorship>.

minority-owned businesses, traditionally underserved communities and members of protected classes. Financial discrimination – in which access to banking and financial services is limited, severely restricted, or denied – is a particularly egregious form of economic discrimination since it pushes away these individuals or groups from participating in the broader economy.

Numerous prior staff decisions to support an array of approaches to concerns about diversity, inclusion and discriminatory impacts of company practices. One set of decisions focused on addressing particular discrimination issues. Staff decisions have recognized economic discrimination of protected classes or groups is a matter of significant social policy that transcends ordinary business (*See General Electric Corp.* (Jan. 29, 1997) (rejecting exclusion under Rule 14a-8(i)(7) of a proposal requesting a “fair lending policy” aimed at “achieving at least the industry level of lending to each major disadvantaged group,” including “low income borrowers”); *Moderna, Inc.* (Feb. 8, 2022) (finding that a proposal requesting a report concerning the transfer of patented intellectual property to manufacturers in “low- and middle-income countries” as “transcend[ing] ordinary business matters”); *see also JPMorgan Chase & Co.* (Mar. 14, 2011) (Staff denied exclusion under Rule 14-a8(i)(7) because the proposal concerned the overwhelming social policy issue posed by the housing crisis and its relationship to mortgage lending practices).

A second set of decisions, more recent, established that proposals transcend ordinary business in seeking an audit of the racial or civil-rights or human rights impacts of a company, regardless of whether they are inward looking (employee relations) or outward looking (impact on customers) basis. Examples include *Meta Platforms, Inc.* (March 30, 2022) seeking an independent third-party human rights impact assessment of the actual potential human rights impacts of Facebook targeted advertising policies and practices; *McDonald’s Corporation* (April 5, 2022) third-party audit analyzing the adverse impact of the company’s policies and practices on the civil rights of company stakeholders, including employees, customers and host communities; *Amazon Inc.* (April 7, 2021) (civil rights equity diversity and inclusion audit) including the impact on employees, neighborhoods and consumers, such as facial surveillance technology impacts on civil rights and sale of products on the Amazon platform that promote hatred; *Travelers Companies* (March 31, 2022) urging the board to oversee a third-party audit which assesses and produces recommendations for improving the racial impacts of its policies, practices, products, and services, above and beyond legal and regulatory matters. Here the proposal fits with these requests for evaluation but is more contained in its breadth and ambition as well as the likely costs associated with the request, because it neither requires corporate expenditures to hire a third party to evaluate the related issues nor makes a request of open-ended evaluation of the related issues of concern. Instead, it identifies a concrete and clearly articulated issue of concern, and therefore poses a clear request for the management to implement an efficient focus to evaluate and report on.

Censorship and access to information as a significant policy issue

Numerous staff precedents have found that assessment of the company’s impact on stakeholders’ right of *access to information* to be a significant policy issue that transcends ordinary business. *Yahoo Inc.* (April 13, 2007) Yahoo! Inc., requesting exclusion of a proposal requesting that management institute policies to help protect freedom of access to the internet. Also analogous to the current proposal is the proposal in *Omnicom Group Inc.* (February 8, 2020) requesting an independent third-party report assessing how and whether Omnicom ensures its *advertising policies* are not contributing to violations of civil or human rights including consideration of whether the company’s policies undermine efforts to defend civil and human rights, such as through the ***demonetization of content that seeks to advance and promote such rights***. [emphasis added]

Many of the “transcending ordinary business” access to information decisions have in contexts of business practices alleged to reduce accessibility of information critical to the exercise of civil or human rights, including in regions under authoritarian control. **See for instance**, *Apple Inc.* (November 20, 2017) recommending that the Company establish a human rights committee to review, assess, disclose and make recommendations to enhance the Company’s policy and practice on human rights. *Cisco Systems Inc.* (September 19, 2002) requesting exclusion of the proposal that Cisco report to shareholders on the capabilities of its hardware and software products that allow monitoring and/or recording of internet traffic, and that act as firewalls that prevent internet traffic from reaching intended addressees or downloads from reaching selected sites outside of the country. *Alphabet Inc.* (April 12, 2022) requesting a report assessing the siting of Google Cloud Data Centers in countries of significant human rights concern, and the Company’s strategies for mitigating the related impacts.

The Proposal does not micromanage the Company.

The Company also contends that “the Proposal seeks to micromanage the Company by seeking intricate details and inappropriately limiting the discretion of management.” In support, the Company argues that implementation of the Proposal would inevitably “violat[e] customer confidence and expos[e] proprietary details about the closure of customer accounts.” The Company further argues that the Proposal would limit management discretion with respect to account suspensions and closures – matters that the Company characterizes as too complex for shareholder knowledge in that they involve consideration of numerous factors such as third-party feedback and legal compliance.

Staff Legal Bulletin 14L (Nov. 3, 2021) provides that the success of a micromanagement challenge mainly rests upon consideration of whether the proposal micromanages the company “by probing too deeply into matters of a complex nature upon which shareholders, as a group,

would not be in a position to make an informed judgment.” According to the Staff, such analysis requires examination of two central questions: (1) whether the proposal frames the investor deliberation in a manner consistent with market discussions, available guidelines and the state of familiarity/expertise on the issues in the investing marketplace, and (2) whether the proposal leaves sufficient flexibility for board and management discretion.

As to the first prong, the issue of user account restriction is a well-known matter that has been reported on many news outlets and advocacy organizations. In the case of PayPal and Venmo specifically, as the foregoing section notes, popular and independent media outlets such as *Fox News*, *The Canadian Press*, *The Telegraph* and *Democracy Now!* have provided negative press on the issue of freedom of expression with respect to certain account closures. Civil liberties organizations like the Electronic Frontier Foundation, Foundation for Individual Rights and Expression and ACLU have also reported on the Company’s issues with free speech and economic discrimination, particularly against sex workers and jailed individuals. More broadly, the topic of user account closures and suspension has been widely debated with respect to social media platforms like Twitter, Facebook and Instagram – just last month, for example, there was significant media attention on the reinstatement of former President Donald Trump’s social media accounts following a two-year ban.²⁵

Regarding the second micromanagement prong concerning management discretion, the Proposal explicitly affords management with sufficient flexibility in effectuating the requested disclosures. The “resolved” clause simply seeks accountability from the management in the form of clear explanations regarding the numbers and categories of accounting suspensions and closures “may reasonably be expected to limit freedom of expression or access to information or financial services.” This is a reasonable request, with sufficient flexibility. It requires the management to provide thoughtful disclosure, rationales, and analysis of its own understanding of where its decision-making may intersect with freedom of expression and financial discriminatory impacts. Moreover, it certainly allows management to “exclude proprietary or legally privileged information,” thereby overriding the Company’s contention that fulfillment of the Proposal would “expos[e] proprietary details about the closure of customer accounts.”

Moreover, the Supporting Statement “suggests” recommended disclosures. Should the Company determine that publication of any of the requested information would affect customer relations or interfere with any other policies, the Proposal affords management with the ability to not make such disclosures, so long as it “explain[s] why it cannot disclose” the information.

²⁵ See e.g., Alex Leary, *Meta Allows Trump to Regain Access to Facebook, Instagram*, Wall Street Journal (Feb. 9, 2023), <https://www.wsj.com/articles/trump-regains-access-to-facebook-instagram-11675965436>; Azmi Haroun & Samantha Delouya, *Meta is letting Trump back onto Facebook and Instagram*, Business Insider (Jan. 25, 2023), <https://www.businessinsider.com/donald-trumps-facebook-account-will-be-restored-in-coming-weeks-2023-1>.

Company cited ordinary business precedents are not applicable.

The Company Letter cites a litany of exclusion circumstances in Staff precedents, none of which is relevant to the current Proposal given its focus on a transcendent policy issue.

For example, the Company argues that the Proposal is akin to other proposals that the Staff has excluded under Rule 14a-8(i)(7) as “relating to a company’s relationships with its customer.” To that end, the Company Letter states that “the Staff has permitted exclusion under Rule 14a-8(i)(7) of proposals relating to a company’s decisions with regard to the handling of customer accounts, including termination of accounts.” The Company cites cases concerning proposals that sought to alter processes and policies regarding customer accounts such as adoption of new policies or changes in mortgage lending practices including *Comcast Corp.* (Apr. 13, 2022), wherein the Staff permitted exclusion under the ordinary business rule of a proposal requesting that the company “send a registered letter, return receipt requested, at least thirty days in advance of any termination, suspension or cancellation of any service to the customer named on the account at the address where such service is located advising the customer of the action to be taken by [the company].” However, the instant Proposal does not concern or request a change in how the company manages its relationship with its customers, for instance the Proposal does not mandate the Company to take a specific undertaking that would affect the existing processes for closing or suspending user accounts.

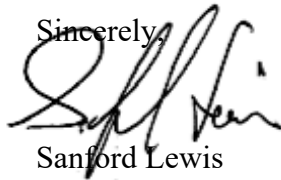
Moreover, the Proposal addresses a significant policy issue, in contrast to Company-cited precedents such as *JPMorgan Chase & Co.* (Feb. 21, 2019), relating to overdraft fees. The lack of recognition by the Staff of a transcendent policy issue, despite the arguments of the proponent, led the Staff to treat that proposal as merely addressing the company’s products and services.

Nor does the Proposal impact the Company’s ability “to design and oversee its legal compliance program, including the application of the AUP, without interference” (Company Letter at page 6). The Proposal does not call for different ways of designing or implementing its legal compliance program nor direct board or third-party oversight over the Company’s day-to-day application of its legal compliance program. The Proposal does not even request a disclosure of the Company’s internal policies for determining when it may suspend or close a customer account. Instead, the Proposal only calls for a revision of the Company’s transparency reporting so as to provide investors with more information regarding the management’s evaluation of how account suspensions and closures may affect civil rights, a course of action that the Staff has repeatedly declined to exclude (*See Alphabet Inc.* (Apr. 15, 2022) (denying exclusion of a proposal under Rule 14a-8(i)(7) that requested disclosures on the company’s algorithmic systems

– specifically, “how Alphabet uses algorithmic systems to target and deliver ads, error rates, and the impact these systems had on user speech and experiences”); *Alphabet Inc.* (Apr. 12, 2022) (finding that a proposal requesting a human rights impact report on the company’s “existing policies and practices” with respect to “content management policies” was “transcend[ent of] ordinary business matters”). Accordingly, the Proposal centers the civil rights issues of freedom of expression and economic discrimination such that its overriding policy concern transcends the Company’s ordinary business matters.

CONCLUSION

In view of the foregoing, exclusion of the Proposal is unwarranted pursuant to Rule 14a-8. As such, the Proponent respectfully submits that the Company’s request for no-action relief be denied.

Sincerely,

Sanford Lewis

Antonio Pontón-Núñez

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BY EMAIL (shareholderproposals@sec.gov)

April 4, 2023

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

RE: PayPal Holdings, Inc. – 2023 Annual Meeting
Supplement to Letter dated January 20, 2023
Relating to Shareholder Proposal of
Laurent Ritter

Ladies and Gentlemen:

We refer to our letter dated January 20, 2023 (the “No-Action Request”), submitted on behalf of our client, PayPal Holdings, Inc., a Delaware corporation (the “Company”), pursuant to which we requested that the Staff of the Division of Corporation Finance (the “Staff”) of the U.S. Securities and Exchange Commission (the “Commission”) concur with the Company’s view that the shareholder proposal and supporting statement (the “Proposal”) submitted by Tulipshare Ltd. (“Tulipshare”) on behalf of Laurent Ritter (the “Proponent”) may be excluded from the proxy materials to be distributed by the Company in connection with its 2023 annual meeting of shareholders (the “2023 proxy materials”).

This letter is in response to the letter to the Staff, dated February 21, 2023, submitted on behalf of the Proponent (the “Proponent’s Letter”), and supplements the No-Action Request. In accordance with Rule 14a-8(j), a copy of this letter also is being sent to the Proponent.

The Proponent's Letter presents an unconvincing attempt to rebut the No-Action Request. In particular, it argues, among other things, that the Proposal should not be excluded as relating to the Company's ordinary business because it focuses on a significant policy issue. As explained below, this argument is not persuasive for several reasons.

Notably, the Proponent's Letter concedes that a company's relationships with its customers and the handling of customer accounts are ordinary business matters and does not dispute that the Proposal is clearly focused on these ordinary business matters. In fact, the Proponent's Letter states that "the Proposal is specifically concerned with the Company's conduct with respect to user account closures and suspensions." While the Proponent's Letter continues to argue that the Proposal should not be excluded because it relates to a significant policy issue, the Proponent's Letter fails to articulate a significant policy issue that the Proposal focuses on, and the no-action letters cited in the Proponent's Letter are distinguishable.

With respect to the significant policy issue of "freedom of speech," the Proponent's Letter seeks to draw support from *Cisco Systems, Inc.* (Sept. 19, 2002). In this no-action letter, the proposal requested a report describing the capabilities of the company's hardware and software that was sold, leased or otherwise provided to governments, which could act as a "firewall" to throttle certain internet traffic or otherwise allow government monitoring of internet users' activities. Although the Staff denied the company's request for exclusion under Rule 14a-8(i)(7), the proposal in *Cisco* can be distinguished because it focused on the narrow question of the company's facilitation of *government* restriction of speech on the internet. In the Proponent's case, the Proposal does not allege that the Company is coordinating with governments to limit access to the internet. Instead, it requests a report on "the number and categories of account suspensions and closures that may reasonably be expected to limited freedom of expression or access to information *or financial services*" (emphasis added).

As described in the No-Action Request, a report on account suspensions that would limit access to financial services clearly relates to the Company's decisions with regard to the handling of customer accounts, including termination of accounts, which are well-established as ordinary business matters. While the decision to terminate a particular customer's account might result in that customer having a grievance against the Company, denial of service for valid reasons consistent with a published use policy is not an issue of free speech. The Company must be able to administer its terms of service without shareholder intervention in order to properly function and meet its regulatory and ordinary business needs. The Proponent's Letter attempts to link a series of unrelated matters around a purported notion of

Office of Chief Counsel
April 4, 2023
Page 3

“free speech,” but this is without merit or reason. Ultimately, the Proposal's request is firmly rooted in the Company's ordinary business and does not implicate, no less focus upon, any particular policy issue sufficiently significant to transcend ordinary business.

The other policy issues raised in the Proponent's Letter represent little more than an unfocused list of irrelevant examples. The Proponent's Letter cites among other things, proposals relating to “economic discrimination against protected groups,” human rights, racial equity audits and other diversity and inclusion issues, none of which are at issue in this Proposal. Indeed, the inability of the Proponent's Letter to focus on any one particular policy issue clearly demonstrates that the Proposal is not focused on any significant policy issue. Accordingly, the Proposal should be excluded from the Company's 2023 proxy materials pursuant to Rule 14a-8(i)(7) as relating to its ordinary business operations.

Should the Staff disagree with the conclusions set forth in this letter, or should any additional information be desired in support of the Company's position, we would appreciate the opportunity to confer with the Staff concerning these matters prior to the issuance of the Staff's response. Please do not hesitate to contact the undersigned at (202) 371-7050.

Very truly yours,



Raquel Fox

cc: Brian Y. Yamasaki
Vice President, Corporate Legal and Secretary
PayPal Holdings, Inc.

Laurent Ritter

Constance Ricketts
Tulipshare Ltd.

Sanford Lewis & Associates

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April 7, 2023
Via electronic mail

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

Re: Shareholder proposal to PayPal Holdings, Inc. on behalf of Laurent Ritter

Ladies and Gentlemen:

Tulipshare Ltd. (“Tulipshare”) has submitted a shareholder proposal (the “Proposal”) on behalf of Laurent Ritter (the “Proponent”), the beneficial owner of common stock of PayPal Holdings, Inc. (the “Company”), to the Company. We are writing to respond to the Company’s supplemental no-action request (“Supplemental Letter”) submitted by the Company on April 4, 2023.¹ A copy of this letter is being emailed concurrently to Raquel Fox of Skadden, Arps, Slate, Meagher & Flom LLP.

On February 28, 2023, we responded to the Company’s initial no-action request of January 20, 2023. Our initial response demonstrated that the Proposal goes beyond ordinary business matters because it primarily focuses on issues of significant public concern and of broad societal impact – specifically, how the Company’s account handling practices infringe upon freedom of speech and result in economic discrimination of traditionally marginalized individuals and groups. We noted myriad instances when the Company severely restricted or closed accounts of journalists or peaceful protestors expressing views on social or political issues. In most instances these individuals and organizations neither had the opportunity to challenge nor to understand the basis for the Company’s decision. Notably, PayPal restored access to some of the accounts only after being exposed to negative press from major domestic and international news outlets. Alongside those account closures are other closures or account denials that amount to economic

¹ On January 20, 2023, the Company submitted a no-action request to the Securities Exchange Commission seeking to omit the Proposal from its forthcoming proxy statement on the basis that the Proposal implicates the Company’s ordinary business matters of handling customer accounts and legal compliance. On February 28, 2023, the Proponent and Tulipshare submitted a letter opposing the no-action request. Raquel Fox of Skadden, Arps, Slate, Meagher & Flom LLP submitted a supplemental reply on behalf of the Company on April 4, 2023.

discrimination of traditionally marginalized individuals. For example, sex workers have reported being banned from their accounts in jurisdictions where that conduct is legal or where the sex worker was not using the platform to trade goods related to sexual activity.

Ignoring the repeated and concrete manifestations of the significant social policy issues stemming from the Company's account handling practices, PayPal now contends in its Supplemental Letter that the Proposal warrants exclusion because the Proponent has failed to articulate a significant policy issue that would transcend the ordinary business matters.²

Notably, in a December 2022 article entitled *What the Hell Happened to PayPal?*, the Company's co-founder Peter Thiel responded to account closure events, saying: "if the online forms of your money are frozen, that's like destroying people economically, limiting their ability to exercise their political voice. There's something about destroying people economically that seems like a far more totalitarian thing."³

The article noted that at the Company's launch, Thiel had declared the great social purpose and mission of PayPal:

"PayPal will give citizens worldwide more direct control over their currencies than they ever had before," Thiel said at a company meeting, in late 1999... But the company that was meant to liberate countless individuals is becoming something else.

Increasingly, it is becoming a police officer. It is deciding what is right and wrong, who gets to be heard, who is silenced. It is locking out of the financial system those people or brands that have slipped outside the parameters of acceptable discourse, those who threaten the consensus of the gatekeepers. The consensus is hard to articulate; it is an ideology lacking clearly defined ideological contours.⁴

The perspective of the Proposal is that the decisions and actions of companies like PayPal can devolve into unaccountable, totalitarian behavior, regardless of whether those actions are ordered by governments. Human rights and economic fairness are affected as much by the misdeeds of a company like PayPal as they are by governments. Numerous shareholder proposals have been recognized to transcend ordinary business where the activities targeted involved company decision-making that curtails human or economic rights, without reference to government involvement. In our response we cited *Halliburton Co.* (Mar. 9, 2009) in support of freedom of speech as a significant policy issue, which did not involve government conduct, but rather the company's human rights general due diligence. Involvement of or interaction with

² Supplemental Letter at 2.

³ Rupa Subramanya, *What the Hell Happened to PayPal?*, The Free Press (Dec. 13, 2022), <https://tinyurl.com/mr2f7hn9>.

⁴ *Id.*

government is neither an essential element for free speech nor on economic discrimination as transcendent issues.

We stand by our initial response and maintain that the Proposal should not be excluded under Rule 14a-8 (i)(7) because its focus transcends ordinary business. Therefore, we urge the Staff to deny the Company's no-action request.

Sincerely,


Sanford Lewis

Antonio Pontón-Núñez