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

DIVISION OF
CORPORATION FINANCE

April 7, 2023

Ronald O. Mueller
Gibson, Dunn & Crutcher LLP

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

Dear Ronald O. Mueller:

This letter is in response to your correspondence concerning the shareholder proposal (the "Proposal") submitted to the Company by Green Century Capital Management, Inc. and co-filers for inclusion in the Company's proxy materials for its upcoming annual meeting of security holders.

The Proposal requests that the Company measure and disclose scope 3 greenhouse gas emissions from its full value chain inclusive of its physical stores and e-commerce operations and all products that it sells directly and those sold by third party vendors.

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 seeks to micromanage the Company by imposing a specific method for implementing a complex policy disclosure without affording discretion to management. *See* Staff Legal Bulletin No. 14L (Nov. 3, 2021). Accordingly, we will not recommend enforcement action to the Commission if the Company omits the Proposal from its proxy materials in reliance on Rule 14a-8(i)(7).

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: Leslie Samuelrich
Green Century Capital Management, Inc.

GIBSON DUNN

Gibson, Dunn & Crutcher LLP

1050 Connecticut Avenue, N.W.
Washington, DC 20036-5306
Tel 202.955.8500
www.gibsondunn.com

Ronald O. Mueller
Direct: +1 202.955.8671
Fax: +1 202.530.9569
RMueller@gibsondunn.com

January 20, 2023

VIA E-MAIL

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

Re: *Amazon.com, Inc.*
Shareholder Proposal of Green Century Capital Management, et al.
Securities Exchange Act of 1934—Rule 14a-8

Ladies and Gentlemen:

This letter is to inform you that our client, Amazon.com, Inc. (the "Company"), intends to omit from its proxy statement and form of proxy for its 2023 Annual Meeting of Shareholders (collectively, the "2023 Proxy Materials") a shareholder proposal (the "Proposal") and statement in support thereof received from Green Century Capital Management, the Longview Largecap 500 Index Fund, Dwight Hall at Yale, and First Affirmative Financial Network, LLC (on behalf of Ann Testa and Gordon R Feighner and Katherine A Prevost) (collectively, the "Proponents").

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 2023 Proxy Materials with the Commission; and

- concurrently sent copies of this correspondence to the Proponents.

Rule 14a-8(k) and Staff Legal Bulletin No. 14D (Nov. 7, 2008) ("SLB 14D") provide that shareholder proponents are required to send companies a copy of any correspondence that the proponents elect 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 Proponents that if the Proponents elect to submit additional correspondence to the Commission or the Staff with respect to the Proposal, a copy of such correspondence should be furnished

concurrently to the undersigned on behalf of the Company pursuant to Rule 14a-8(k) and SLB 14D.

THE PROPOSAL

The Proposal states:

> **Resolved:** Shareholders request that Amazon measure and disclose scope 3 GHG emissions from its full value chain inclusive of its physical stores and e-commerce operations and all products that it sells directly and those sold by third party vendors.

A copy of the Proposal, as well as correspondence with the Proponents directly relevant to this no-action request, is attached to this letter as Exhibit A.

BASIS FOR EXCLUSION

We hereby respectfully request that the Staff concur in our view that the Proposal may be excluded from the 2023 Proxy Materials pursuant to Rule 14a-8(i)(7) because the Proposal seeks to micromanage the Company: specifically, the Proposal impermissibly seeks to eliminate management's discretion by dictating the methodology and activities encompassed in the Company's scope 3 greenhouse gas ("GHG") emissions reporting.

ANALYSIS

The Proposal May Be Excluded Under Rule 14a-8(i)(7) Because The Proposal Relates To The Company's Ordinary Business Operations.

A. Background On The Ordinary Business Standard.

Rule 14a-8(i)(7) permits a company to omit from its proxy materials a shareholder 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 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. The first is that "[c]ertain tasks are so fundamental to management's ability to run a company on a day-to-day basis that they could not, as a practical matter, be subject to direct shareholder oversight." The second consideration is related to "the degree to which the proposal seeks to 'micro-manage' the company by probing too deeply into matters of a complex nature upon which shareholders, as a group, would not be in a position to make an informed judgment." *Id.* (citing Exchange Act Release No. 12999 (Nov. 22, 1976)).

The 1998 Release further states that "[t]his consideration may come into play in a number of circumstances, such as where the proposal involves intricate detail, or seeks to impose specific . . . methods for implementing complex policies." In Staff Legal Bulletin No. 14L (Nov. 3, 2021) ("SLB 14L"), the Staff clarified that not all "proposals seeking detail or seeking to promote timeframes" constitute micromanagement, and that going forward the Staff "will focus on the level of granularity sought in the proposal and whether and to what extent it inappropriately limits discretion of the board or management." To that end, the Staff stated that this "approach is consistent with the Commission's views on the ordinary business exclusion, *which is designed to preserve management's discretion on ordinary business matters* but not prevent shareholders from providing *high-level direction* on large strategic corporate matters." SLB 14L (emphasis added).

In SLB 14L, the Staff also stated that in order to assess whether a proposal probes matters "too complex" for shareholders, as a group, to make an informed judgment, it may consider "the sophistication of investors generally on the matter, the availability of data, and the robustness of public discussion and analysis on the topic." The Staff stated that it would also consider "references to well-established national or international frameworks when assessing proposals related to disclosure" as indicative of topics that shareholders are well-equipped to evaluate. *Id.*

When proposals request the adoption of specific approaches to address climate change matters, the extent to which a proposal permits the board or management to retain discretion is particularly relevant. In SLB 14L, the Staff indicated that when reviewing such proposals, it "would not concur in the exclusion of . . . proposals that *suggest* targets or timelines so long as the proposals *afford discretion to management as to how to achieve such goals*" (emphasis added). SLB 14L cites *ConocoPhillips Co.* (avail. Mar. 19, 2021) as an example of its application of the micromanagement standard, noting that the proposal at issue did not micromanage the company because it requested that the company address a particular issue but "did not *impose a specific method* for doing so." (Emphasis added).

In assessing whether a proposal micromanages by seeking to impose specific methods for implementing complex policies, the Staff evaluates not just the wording of the proposal but also the action called for by the proposal and the manner in which the action called for under a proposal would affect a company's activities and management discretion. *See Deere & Co.* (avail. Jan. 3, 2022) and *The Coca-Cola Co.* (avail. Feb. 16, 2022), each of which involved a broadly phrased request but required detailed and intrusive actions to implement. Moreover, "granularity" is only one factor evaluated by the Staff. As stated in SLB 14L, the Staff focuses "on the level of granularity sought in the proposal *and whether and to what extent it inappropriately limits discretion of the board or management*." (Emphasis added).

As with the shareholder proposals in *Deere*, *Coca-Cola*, and other precedents discussed below, the Proposal is excludable under Rule 14a-8(i)(7) because it seeks to micromanage the Company.

B. The Proposal May Be Excluded Under Rule 14a-8(i)(7) Because It Seeks To Micromanage The Company.

The Proposal requests that the Company "measure and disclose scope 3 GHG emissions from its full value chain," and specifically defines "full value chain" to include "all products that [the Company] sells directly and those sold by third party vendors." In this regard, the Proposal does not provide the Company "high-level direction on large strategic corporate matters." *See* SLB 14L. Instead, the Proposal eliminates the management-level discretion the Commission sought to preserve with the ordinary business exclusion by "impos[ing] a specific method" and "granularity" for defining the activities included in the Company's scope 3 GHG emissions reporting. Instead of operating within a well-established disclosure framework, the Proposal's prescriptive approach is inconsistent with the established framework of the Greenhouse Gas Protocol (the "GHG Protocol").

The GHG Protocol Initiative (the "Initiative") is a multi-stakeholder partnership of businesses, non-governmental organizations, governments, and others, convened by the World Resources Institute and the World Business Council for Sustainable Development, whose mission is to "develop internationally accepted [GHG] accounting and reporting standards for business and to promote their broad adoption."[1] In furtherance of this goal, the Initiative published the GHG Protocol Corporate Accounting and Reporting Standard (as revised, the "Corporate Standard")[2] in order to, among other things, guide companies on

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[1] *See* https://ghgprotocol.org/sites/default/files/standards/ghg-protocol-revised.pdf at 2.

[2] *See id.*

preparing "a GHG inventory that represents a true and fair account of their emissions, through the use of standardized approaches and principles" and "provide business with information that can be used to build an effective strategy to manage and reduce GHG emissions."[3] For those companies that choose to report scope 3 emissions, the Corporate Value Chain (Scope 3) Accounting and Reporting Standard[4] (the "Scope 3 Reporting Standard," and together with the Corporate Standard, the "Reporting Standards") provides a standardized approach to assessing, categorizing, and measuring their value chain emissions.

The Reporting Standards firmly recognize the complexity in determining which activities and categories of scope 3 emissions are included within a company's scope 3 inventory and that such determinations should rest with a company's management, since inventories should be established taking into account company-specific circumstances. For example, the Corporate Standard states:

> Scope 3 is optional, but it provides an opportunity to be innovative in GHG management. Companies may want to focus on accounting for and reporting those activities that are relevant to their business and goals, and for which they have reliable information. Since companies have discretion over which categories they choose to report, scope 3 may not lend itself well to comparisons across companies.[5]

The Corporate Standard further states, "Accounting for scope 3 emissions need not involve a full-blown GHG life cycle analysis of all products and operations."[6] And it recognizes that "it is difficult to provide generic guidance on which scope 3 emissions to include in an inventory."[7] Similarly, the Scope 3 Reporting Standard states, "The [Corporate Standard] allows companies flexibility in choosing which, if any, scope 3 activities to include in the GHG inventory when the company defines its operational boundaries."[8]

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[3] Corporate Standard at 3.

[4] *Available at* https://ghgprotocol.org/sites/default/files/standards/Corporate-Value-Chain-Accounting-Reporing-Standard_041613_2.pdf.

[5] Corporate Standard, Chap. 4, *Setting Operational Boundaries; Scope 3: Other Indirect GHG Emissions*, at 29.

[6] *Id.*

[7] *Id.*

[8] Scope 3 Reporting Standard, Chap. 6, *Setting the Scope 3 Boundary*, at 59.

The Scope 3 Reporting Standard recognizes that the process of determining which activities and categories of emissions are included within a company's scope 3 inventory is inherently tied to the day-to-day management of a company and the company's business goals, stating, "[b]efore accounting for scope 3 emissions, companies should consider which business goal or goals they intend to achieve."[9] The process of developing a scope 3 inventory is principles-based, with the Scope 3 Reporting Standard stating, "GHG accounting and reporting of a scope 3 inventory shall be based on the following principles: relevance, completeness, consistency, transparency, and accuracy." The Scope 3 Reporting Standard recognizes that "[i]n practice, companies may encounter tradeoffs between principles when completing a scope 3 inventory" and states, "[c]ompanies should balance tradeoffs between principles depending on their individual business goals."[10] The Scope 3 Reporting Standard provides an example that is particularly relevant here, noting, "[f]or example, a company may find that achieving the most complete scope 3 inventory requires using less accurate data, compromising overall accuracy."[11]

The Scope 3 Reporting Standard clearly illustrates the "complex nature" of and "tradeoffs" involved in determining what activities and categories are included within a company's scope 3 GHG emissions inventory, and that such determinations are inherently tied to the company's business goals and the evaluation of other considerations that are appropriately within the board and management's discretion, as to which "shareholders, as a group, would not be in a position to make an informed judgment."[12] As opposed to providing "high-level direction on large strategic corporate matters," the Proposal's prescribed methodology for dictating the scope of activities and categories to be included within the Company's scope 3 GHG emissions inventory disregards the complex principles, tradeoffs, and business goal considerations required when developing an appropriate scope 3 inventory under the Reporting Standards, and would replace the judgment of the Company's management in defining the appropriate activities to include in its inventory based on its particular business operations and business goals with the Proposal's prescriptive standard.[13] In particular, by

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[9] Scope 3 Reporting Standard, Chap. 2, *Business Goals*, at 11.

[10] *Id.*, Chap. 4, *Accounting and Reporting Principles*, at 23-24.

[11] *Id.* at 24.

[12] 1998 Release, as reaffirmed in SLB 14L.

[13] As contemplated by the Reporting Standards, it is common for companies to make assessments of which activities and categories to include in their GHG emissions inventory. For example, according to Walmart, Inc.'s CDP report cited in the Supporting Statement, Walmart's scope 1 and scope 2 GHG emissions inventory excludes emissions attributable to its eCommerce capabilities. *See* https://corporate.walmart.com/esgreport/media-library/document/cdp-climate-change-

prescribing that the scope 3 inventory include "its full value chain" including "all products [sold] directly and those sold by third party vendors," the Proposal would require the Company to estimate upstream and downstream emissions for products and services sold by third parties through the Company's websites, notwithstanding the Company's determinations that it has less control over such upstream and downstream activities and less ability to develop appropriate estimates of such emissions than with respect to other activities that it has elected to include within its scope 3 inventory. By dictating the scope of activities and categories to be included within the Company's scope 3 emissions inventory, the Proposal thus requires the Company to replace management's judgments about the appropriate activities to include based on management's consideration of the principles set forth in the Reporting Standards with a strict methodology prescribed by the Proponent, supplanting the industry-accepted approach set forth by the Reporting Standards. Further, the Proposal's reporting mandate would restrict the Company's ability to establish reporting in line with its commitment to transparency and reliability, and its determination of appropriate near- and long-term business goals.

Moreover, the Proposal does not reference "well-established national or international frameworks" when it requests disclosure of scope 3 emissions that include products "sold by third party vendors." As discussed above, the Proposal actually is inconsistent with the Reporting Standards by seeking to prescribe that products sold by third-party vendors be included within Amazon's scope 3 emissions inventory, instead of deferring to the Company's board and management to make that determination after consideration of all of the principles, business goals, and other factors prescribed in the Reporting Standards. Even if considered under the Scope 3 Reporting Standard, it is notable that none of the 15 categories of Scope 3 emissions enumerated in that standard clearly encompass all of the scope 3 emissions associated with products sold by third-party vendors through the Company's websites.[14]

2021/_proxyDocument?id=0000017f-d222-d452-a3ff-da66867f0000, at section C6.4. Similarly, eBay, Inc., which operates websites through which third parties sell products, states in its CDP report that its emissions inventory does not account for the products sold through its websites because "eBay does not produce goods for sale. Our 'product' is our platform, whose emissions are accounted for under Scope 1 & 2 GHG emissions." *See* https://static.ebayinc.com/assets/Uploads/Documents/CDP-CC-Response-eBay-2021.pdf, at section C6.5. In developing its scope 3 inventory, the Company includes emissions generated by transportation of products sold by third-party selling partners through its websites when that transportation is performed or paid for by the Company.

[14] Scope 3 Reporting Standard, Chap. 5, *Identifying Scope 3 Emissions*, at 31-37. Products sold by third-party vendors through the Company's websites have not been purchased by the Company and, as reported on page 3 of the Company's annual report on Form 10-K for the year ended December 31, 2021, the Company

As applied to the Company's operations, the Proposal addresses a complex, multifaceted issue by imposing a prescriptive standard that differs from both the approach the Company believes is best suited to the nature of the Company's operations when measuring GHG emissions and the standards set forth in the Reporting Standards. The Proposal thus falls clearly within the scope of the 1998 Release and SLB 14L by addressing intricate, granular details and prescribing a specific method for implementing complex policies.

In applying the micromanagement prong of Rule 14a-8(i)(7), the Staff consistently has concurred that shareholder proposals attempting to micromanage a company by providing a specific method for implementing a proposal as a substitute for the judgment and discretion of management are excludable under Rule 14a-8(i)(7). For example, in *Rite Aid Corp.* (avail. Apr. 23, 2021, *recon. denied* May 10, 2021), the Staff concurred with the exclusion of a proposal that requested the board adopt a policy that would prohibit equity compensation grants to senior executives when the company common stock had a market price lower than the grant date market price of any prior equity compensation grants to such executives. There, the company argued that the proposal prescribed specific limitations on the ability of its compensation committee "to make business judgments, without any flexibility or discretion," and restricted the compensation committee from "making any equity compensation grants to senior executives in certain instances without regard to circumstances and the [c]ommittee's business judgment." *See also SeaWorld Entertainment, Inc.* (avail. April 20, 2021) ("*SeaWorld 2021*") (concurring with exclusion of a proposal seeking a report on specific changes to the company's business to address animal welfare concerns); *SeaWorld Entertainment, Inc.* (avail. Mar. 30, 2017, *recon. denied* Apr. 17, 2017) (concurring with the exclusion of a proposal requesting the replacement of live orca exhibits with virtual reality experiences as "seek[ing] to micromanage the company by probing too deeply into matters of a complex nature upon which shareholders, as a group, would not be in a position to make an informed judgment"). In *The Coca-Cola Co.* (avail. Feb. 16, 2022), the proposal requested that the company submit any proposed political statement to shareholders at the next shareholder meeting for approval prior to issuing the subject statement publicly. The company argued that the proposal thereby "dictates the content of and process by which the [c]ompany may make certain public statements by interfering with and impermissibly limiting the fundamental discretion of management to decide upon and exercise the corporate right to speech, and instead imposes a time-consuming and unnecessary process." The Staff concurred with the proposal's exclusion, as it "micromanages the [c]ompany." In *Texas Pacific Land Corp.* (*Recon.)* (avail. Oct. 5, 2021),

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is not the seller of record in these transactions. The Reporting Standards acknowledge that not all activities within a company's value chain necessarily fall within one of the fifteen identified categories.

the Staff granted exclusion of a proposal that would have required that the company "establish a goal of achieving a 95% profit margin." Though no Staff response letter was issued, the company argued that "the profit margin strategy of the [c]ompany" was a "matter fundamental to management's choices relevant to its revenues and expenditures in the context of the broader strategy of the [c]ompany," and that the proposal, by "mandating a very specific strategic goal," that was not informed by a "deep understanding of the [c]ompany's operations, growth opportunities and the industry as a whole" would "circumvent[] management's expertise and fiduciary duties," ultimately micromanaging the company.

Like the precedents discussed above, implementation of the Proposal would involve replacing management's judgments on complex reporting principles and decisions that are intimately tied to the Company's business goals and operations with a broad and extreme reporting scope favored by the Proponent. Unlike the businesses of other companies, the Company's operations are not primarily limited to a single industry or sector, but rather, the Company is involved in a broad range of retail, manufacturing, logistics, information technology, and media production activities. Given the scope and nature of the Company's global operations, changing its scope 3 inventory to report scope 3 GHG emissions "from its full value chain" including "all products [sold] directly and those sold by third party vendors" would alter the tradeoffs and alignment with business goals reflected in the Company's current scope 3 emissions inventory methodology (under which, for example, the Company accounts for emissions generated by transportation of products sold by third-party selling partners through the Company's websites when such transportation is performed or paid for by the Company), and require complex and extensive steps to identify, assess, categorize, and estimate emissions attributable to, for example, transportation of products sold through the Company's websites by third-party selling partners even when such transportation is handled by their third-party selling partner or another company that the selling partner has selected. These changes would have significant implications for numerous aspects of the Company's climate change activities reflecting the many "tradeoffs" and considerations described in the Scope 3 Reporting Standard, including the reliability of its data reporting and the ability to obtain third-party assurance of its scope 3 emissions reporting.[15] As such, the attempt by the Proposal to prescribe what is and is not counted in the Company's scope 3 GHG emissions inventory raises complex and nuanced issues that are

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[15] Scope 3 Reporting Standard, Chap. 10, *Assurance*, at 117 ("One of the primary challenges [in obtaining third party assurance] is that the emission sources are removed from the reporting company's control, reducing the assurer's ability to obtain sufficient appropriate evidence"). The Company's scope 3 emissions calculations currently are assured by an independent third party.

not appropriate for direct shareholder oversight. The specific and detailed choices a company makes to define the scope of activities and categories of emissions taken into account when preparing a scope 3 GHG inventory are exactly the types of day-to-day operational decisions that the 1998 Release and SLB 14L recognized as appropriate for exclusion under Rule 14a-8(i)(7).

C. Regardless Of Whether The Proposal Touches Upon A Significant Policy Issue, The Proposal Is Excludable Under Rule 14a-8(i)(7) Because It Seeks To Micromanage The Company.

As discussed in the "Background" section above, a proposal may be excluded under Rule 14a-8(i)(7) if it seeks to micromanage a company by specifying in detail the manner in which the company should address a policy issue, regardless of whether the proposal touches upon a significant policy issue. Here, although the Proposal's references to "GHG emissions" and "[c]limate change" address a significant social policy matter, the focus of the Proposal is not on a broad policy issue relating to GHG emissions and climate change. Instead, the Proposal is an attempt to limit the Company's discretion in addressing the complex and granular issue of what activities and categories to include within the Company's scope 3 inventory. In this respect, it is well established that a proposal that seeks to micromanage a company's business operations is excludable under Rule 14a-8(i)(7) regardless of whether or not the proposal raises issues with a broad societal impact. *See* Staff Legal Bulletin No. 14E (Oct. 27, 2009), at note 8, citing the 1998 Release for the standard that "a proposal [that raises a significant policy issue] could be excluded under Rule 14a-8(i)(7), however, if it 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." For example, since the issuance of SLB 14L, the Staff concurred in the exclusion of proposals addressing how companies interact with their shareholders on significant social policy issues because the proposals sought to micromanage how the companies addressed those policy issues. *See Verizon Communications, Inc. (National Center for Public Policy Research)* (avail. March 17, 2022) (concurring that a proposal requesting company to publish annually the written and oral content of diversity, inclusion, equity, or related employee-training materials probed too deeply into matters of a complex nature); *The Coca-Cola Co.* (avail. Feb. 16, 2022) (concurring that a proposal addressing the company's political activities was excludable on account of attempting to micromanage the issue); and *SeaWorld 2021* (concurring that a proposal addressing animal rights was excludable on account of attempting to micromanage the issue). Thus, the fact that the Proposal addresses climate change reporting does not preclude its exclusion under Rule 14a-8(i)(7).

CONCLUSION

Based upon the foregoing analysis, the Company intends to exclude the Proposal from its 2023 Proxy Materials, and we respectfully request that the Staff concur that the Proposal may be excluded under Rule 14a-8.

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) 955-8671, or Mark Hoffman, the Company's Vice President & Associate General Counsel, Corporate and Securities, and Legal Operations, and Assistant Secretary, at (206) 266-2132.

Sincerely,

Ronald O. Mueller

Enclosures

cc: Mark Hoffman, Amazon.com, Inc.
Andrea Ranger, Green Century Capital Management, Inc.
Daniel Stewart, As You Sow
Ivan Frishberg, Amalgamated Bank
Mackenzie Birkey, Dwight Hall at Yale
Holly Testa, First Affirmative Financial Network

EXHIBIT A

December 14, 2022

Attn: David A. Zapolsky
Senior Vice President, General Counsel, and Secretary
Amazon.com, Inc.
410 Terry Avenue North
Seattle, Washington 98109

Sent: via FedEx and email to

Re: Shareholder proposal for 2023 Annual Shareholder Meeting

Dear Mr. Zapolsky,

We are sending this corrected shareholder proposal filing to replace the filing that was sent to your office yesterday December 13, 2022. Please disregard the documents previously sent, and use this set of documents in its place.

Green Century Capital Management (Green Century) is submitting the attached proposal (the "Proposal") pursuant to the Securities and Exchange Commission's Rule 14a-8 to be included in the proxy statement of the Amazon.com, Inc. (the "Company") for its 2023 annual meeting of shareholders. We are co-lead filing this proposal with Amalgamated Bank, the trustee of Longview Largecap 500 Index.

Green Century has continuously beneficially owned, for at least three years as of the date hereof, at least $2,000 worth of the Company's common stock. We have held the requisite number of shares for over one year, and we will continue to hold sufficient shares in the Company through the date of the Company's 2023 annual shareholders' meeting. Verification of ownership from a DTC participating bank will be sent under separate cover.

Green Century and Amalgamated Bank are available to meet with the Company on January 10th at 1 p.m. and January 12th at 10 a.m. Pacific Time. Please let us know within 10 days if the Company would like to meet at one of these times. After 10 days we may no longer be able to hold these dates and times.

We will send a representative to the stockholders' meeting to move the shareholder proposal as required by the SEC rules.

Due to the importance of the issue and our need to protect our rights as shareholders, we are filing the enclosed proposal for inclusion in the proxy statement for a vote at the next shareholders' meeting.

We would welcome the opportunity to discuss the subject of the enclosed proposal with company representatives. Please direct all correspondence to Andrea Ranger, Shareholder Advocate at Green

Century Capital Management. She may be reached at [redacted] and [redacted].

We would appreciate confirmation of receipt of this proposal via email, as encouraged by SEC Staff Legal Bulletin No. 14L (CF).

Sincerely,

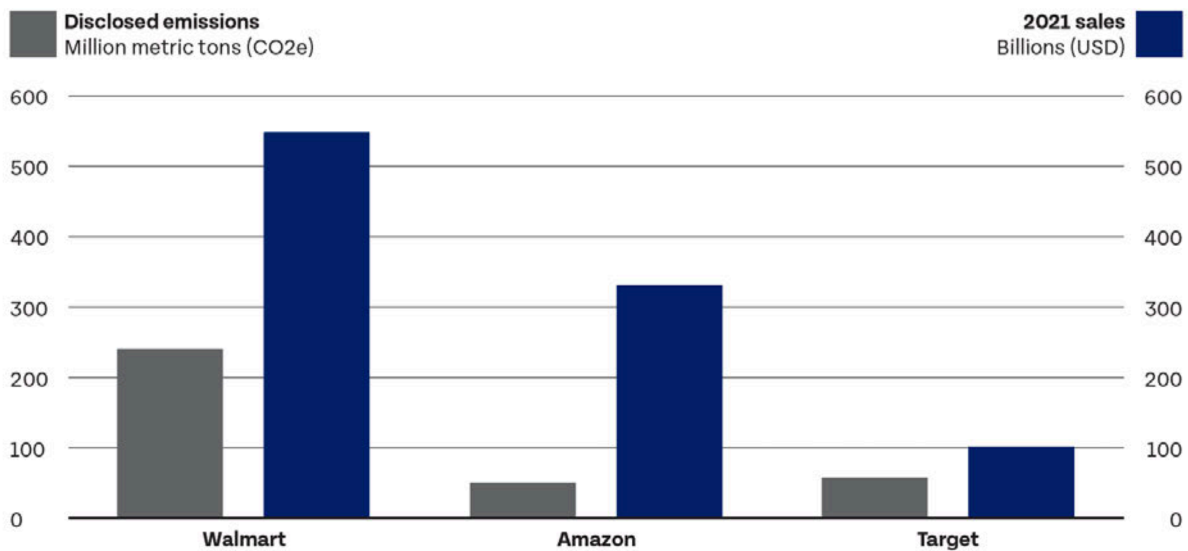
Leslie Samuelrich
President
The Green Century Funds
Green Century Capital Management, Inc.

Whereas: Climate change is creating systemic risks to the economy, and the window for avoiding the most catastrophic impacts of climate change is quickly narrowing. Immediate, sharp emissions reduction is required of all market sectors and industries.[1]

For many companies, a majority of their climate risk is contained within their value chain. According to McKinsey, scope 3 value chain emissions may constitute 80 percent of companies' climate impact,[2] underscoring the importance of assuring emissions reductions from suppliers and customers.

Amazon, one of the largest global retailers,[3] discloses enormous and growing greenhouse gas (GHG) emissions, which have increased nearly 40 percent between 2019 and 2021.[4] Yet this reflects only a portion of its full climate impact. For example, for product related emissions, Amazon only discloses emissions for Amazon-branded products, which comprise 1 percent of its sales.[5,6]

In contrast, peers Target and Walmart each disclose emissions from all product sales.[7,8] As indicated in the chart below, Amazon's emissions are significantly misaligned with its total volume of sales, in contrast with Target and Walmart's more comprehensive disclosures.



Amazon is not clear as to what emissions are covered by its Net Zero target; its failure to disclose 99 percent of product emissions suggests that these emissions are not covered by its Net Zero target.[9] In contrast, Target and Walmart have ambitious targets to reduce value chain emissions, both verified by

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1 https://report.ipcc.ch/ar6wg3/pdf/IPCC_AR6_WGIII_FinalDraft_FullReport.pdf
2 https://www.mckinsey.com/capabilities/operations/our-insights/making-supply-chain-decarbonization-happen
3 https://www.forbes.com/sites/laurendebter/2022/05/12/worlds-largest-retailers-2022-amazon-walmart-alibaba/?sh=3992e7f659e3
4 https://sustainability.aboutamazon.com/environment/carbon-footprint
5 https://www.congress.gov/116/meeting/house/110883/documents/HHRG-116-JU05-20200729-QFR052.pdf, p.24
6 https://sustainability.aboutamazon.com/environment/carbon-footprint
7 https://corporate.target.com/_media/TargetCorp/Sustainability-ESG/PDF/2022-CDP-Climate-Response.pdf, p.64-74
8 https://corporate.walmart.com/esgreport/media-library/document/cdp-climate-change-2021/_proxyDocument?id=0000017f-d222-d452-a3ff-da66867f0000, p.20-24
9 https://sustainability.aboutamazon.com/environment/carbon-footprint

Science Based Targets initiative. Walmart launched Project Gigaton, targeting removal of a billion tons of carbon from its global value chains by 2030.[10] Target has a goal to reduce scope 3 emissions from all retail purchased goods and services by 30 percent by 2030; by 2023, 80 percent of its suppliers by spend must adopt science-based reduction targets for scope 1 and 2 emissions.[11]

By calculating its full value chain emissions and including them in its net zero reduction strategies, Amazon can provide investors with assurance that management is adequately addressing concern about growing climate risks, including reputational risk.

Resolved: Shareholders request that Amazon measure and disclose scope 3 GHG emissions from its full value chain inclusive of its physical stores and e-commerce operations and all products that it sells directly and those sold by third party vendors.

Supporting Statement: Proponents recommend, at management discretion:

- Adopting emissions reduction targets for all GHG Protocol-defined sources of scope 3 emissions—including from sales of all products—in alignment with limiting global temperature increases to 1.5 degrees Celsius;
- Requiring largest vendors by spend to set science-based targets.

[10] https://www.walmartsustainabilityhub.com/climate/project-gigaton/faqs
[11] https://corporate.target.com/_media/TargetCorp/Sustainability-ESG/PDF/2022-CDP-Climate-Response.pdf, p.34

February 21, 2023

VIA EMAIL

Office of Chief Counsel
Division of Corporation Finance
U.S. Securities and Exchange Commission
100 F Street NE
Washington, DC 20549
Email: shareholderproposals@sec.gov

Re: Shareholder Proposal to Amazon.com, Inc. Regarding Scope 3 Greenhouse Gas Emissions on Behalf of Green Century Capital Management, Longview Largecap 500 Index Fund, et al.

Ladies and Gentlemen:

Green Century Capital Management and Amalgamated Bank's Longview Largecap 500 Index Fund (the "Proponents") are the beneficial owners of common stock of Amazon.com, Inc. (the "Company") and have co-lead-filed a shareholder proposal (the "Proposal") to the Company.[1] The Longview Largecap 500 Index Fund has designated *As You Sow* to act as its representative with respect to the Proposal, and it is in that capacity that I write in response to the letter dated January 20, 2023 (the "Company Letter") sent to the Securities and Exchange Commission by Ronald O. Mueller of Gibson, Dunn & Crutcher LLP. Green Century Capital Management, as co-lead-filer, has participated in the preparation of this letter, and it is sent on behalf of both co-lead-filers.

In the Company Letter, Amazon contends that the Proposal may be excluded from the Company's 2023 proxy statement. The Company has no basis under Rule 14a-8 for exclusion of the Proposal. As such, Proponents respectfully request that the Staff inform the Company that it is denying the no action request. A copy of this letter is being emailed concurrently to the Company and its counsel.

SUMMARY

The Proposal requests that the Company measure and disclose Scope 3 greenhouse gas ("GHG") emissions from its full value chain, including e-commerce operations, physical stores, and all products sold directly or by third-party vendors through its e-commerce platform. The Company contends that the Proposal may be excluded pursuant to Rule 14a-8(i)(7) because it "impermissibly seeks to eliminate management's discretion" by defining the range of material Scope 3 emissions to be disclosed.

Shareholders seek disclosure of Scope 3 emissions associated with the Company's direct and third-party e-commerce sales because, based on peer data, these emissions are likely the largest portion of Amazon's Scope 3 emissions, and the Company does not currently disclose that data. If a company discloses relevant data categories A, B, and D, it is not micromanagement to ask for C, especially where that information is material to investor decision making, where the company's peers disclose category C, and where category C is expected to constitute the bulk of the relevant data.

The Company's arguments that the Proposal micromanages its business fail to persuade. First, the Company misframes the Proposal and the relevant standard under Rule 14a-8(i)(7). While the Proposal seeks measurement and disclosure of specific missing emissions data associated with the Company's

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[1] Dwight Hall at Yale and First Affirmative Financial Network, LLC (on behalf of Ann Testa and Gordon R Feighner and Katherine A Prevost) are co-filers of the Proposal.

value chain, defining the emissions sought by a Proposal does not mean that the Proposal micromanages. Rather, the Proposal seeks information critical to investor decision making and provides necessary parameters to both define the scope of its requested disclosures to avoid substantial implementation or vagueness challenges.

Proposals seeking the measurement and disclosure of a specific set of material information are not generally subject to challenge under Rule 14a-8(i)(7). Seeking the disclosure of Scope 3 greenhouse gas emissions data is a well-accepted basis for a proposal. Indeed, measure-and-disclose proposals are *less* prescriptive than greenhouse gas target-setting proposals that the Staff has explicitly stated are generally not subject to micromanagement exclusions.

Finally, even taken on its own terms, the Company Letter is unpersuasive. The Company's argument relies on an inaccurate portrayal of the Greenhouse Gas Protocol, which is a global standard by which companies measure and manage their greenhouse gas emissions. While the Protocol avoids overly prescriptive definitions to allow its application across industries and sectors, a proper application of the Protocol to the Company's value chain would counsel in favor of reporting the emissions described by the Proposal.

THE PROPOSAL

Whereas: Climate change is creating systemic risks to the economy, and the window for avoiding the most catastrophic impacts of climate change is quickly narrowing. Immediate, sharp emissions reduction is required of all market sectors and industries.[1]

For many companies, a majority of their climate risk is contained within their value chain. According to McKinsey, scope 3 value chain emissions may constitute 80 percent of companies' climate impact,[2] underscoring the importance of assuring emissions reductions from suppliers and customers.

Amazon, one of the largest global retailers,[3] discloses enormous and growing greenhouse gas (GHG) emissions, which have increased nearly 40 percent between 2019 and 2021.[4] Yet this reflects only a portion of its full climate impact. For example, for product related emissions, Amazon only discloses emissions for Amazon-branded products, which comprise 1 percent of its sales.[5,6]

In contrast, peers Target and Walmart each disclose emissions from all product sales.[7,8] As indicated in the chart below, Amazon's emissions are significantly misaligned with its total volume of sales, in contrast with Target and Walmart's more comprehensive disclosures.

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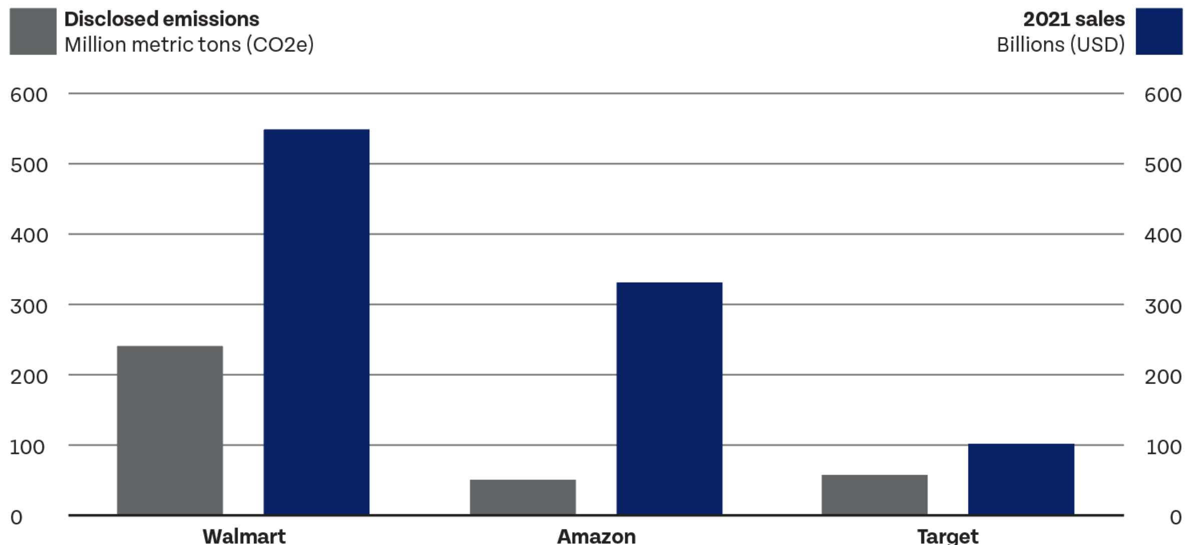
[1] https://report.ipcc.ch/ar6wg3/pdf/IPCC_AR6_WGIII_FinalDraft_FullReport.pdf
[2] https://www.mckinsey.com/capabilities/operations/our-insights/making-supply-chain-decarbonization-happen
[3] https://www.forbes.com/sites/laurendebter/2022/05/12/worlds-largest-retailers-2022-amazon-walmart-alibaba/?sh=3992e7f659e3
[4] https://sustainability.aboutamazon.com/environment/carbon-footprint
[5] https://www.congress.gov/116/meeting/house/110883/documents/HHRG-116-JU05-20200729-QFR052.pdf, p.24
[6] https://sustainability.aboutamazon.com/environment/carbon-footprint
[7] https://corporate.target.com/_media/TargetCorp/Sustainability-ESG/PDF/2022-CDP-Climate-Response.pdf, p.64-74
[8] https://corporate.walmart.com/esgreport/media-library/document/cdp-climate-change-2021/_proxyDocument?id=0000017f-d222-d452-a3ff-da66867f0000, p.20-24



Amazon is not clear as to what emissions are covered by its Net Zero target; its failure to disclose 99 percent of product emissions suggests that these emissions are not covered by its Net Zero target.[9] In contrast, Target and Walmart have ambitious targets to reduce value chain emissions, both verified by Science Based Targets initiative. Walmart launched Project Gigaton, targeting removal of a billion tons of carbon from its global value chains by 2030.[10] Target has a goal to reduce scope 3 emissions from all retail purchased goods and services by 30 percent by 2030; by 2023, 80 percent of its suppliers by spend must adopt science-based reduction targets for scope 1 and 2 emissions.[11]

By calculating its full value chain emissions and including them in its net zero reduction strategies, Amazon can provide investors with assurance that management is adequately addressing concern about growing climate risks, including reputational risk.

Resolved: Shareholders request that Amazon measure and disclose scope 3 GHG emissions from its full value chain inclusive of its physical stores and e-commerce operations and all products that it sells directly and those sold by third party vendors.

Supporting Statement: Proponents recommend, at management discretion:

- Adopting emissions reduction targets for all GHG Protocol-defined sources of scope 3 emissions—including from sales of all products—in alignment with limiting global temperature increases to 1.5 degrees Celsius;
- Requiring largest vendors by spend to set science-based targets.

[9] https://sustainability.aboutamazon.com/environment/carbon-footprint
[10] https://www.walmartsustainabilityhub.com/climate/project-gigaton/faqs
[11] https://corporate.target.com/_media/TargetCorp/Sustainability-ESG/PDF/2022-CDP-Climate-Response.pdf, p.34

BACKGROUND

The Central Importance to Investors of Companies' Scope 3 Emissions

Investors seek increased transparency on climate risk to inform investment decisions. A key metric of climate risk associated with a securities investment is the level of emissions associated with an issuer's value chain. Specifically, Scope 3 emissions are central to understanding what level of climate risk a company is exposed to and what level of climate impact it is creating through its value chain.

In most sectors, Scope 3 emissions make up the majority of a company's total emissions. The Carbon Disclosure Project ("CDP"), a global disclosure system for investors, found that Scope 3 emissions are on average more than 11 times higher than a company's operational emissions.[1] Likewise, the Science Based Targets Initiative ("SBTi") confirms that "Scope 3 emissions often represent the largest portion of companies' GHG inventories."[2]

As World Resources Institute states, measuring and disclosing Scope 3 emissions is vitally important to:

> understanding climate-related financial risks, facilitating actual emissions reductions within the value chain, preventing companies from claiming lower emissions and related liabilities by outsourcing carbon intensive activities (i.e., 'moving' emissions from Scope 1 or 2 to Scope 3), and preventing companies from skirting responsibilities to be transparent to their shareholders about their overall risk exposure, which is especially relevant for industries with a majority of their emissions classified as Scope 3.[3]

As noted, accounting for Scope 3 emissions is not only pivotal to addressing climate change, but is important to mitigating risk within company value chains, unlocking new innovations and collaborations, and responding to mounting pressure from investors, customers, and civil society related to climate change.[4] A survey from the Task Force on Climate Related Financial Disclosures ("TCFD") of climate-disclosure users, preparers, and other respondents, found that "[n]early all (95%) users responded that Scope 3 emissions disclosures are useful for decision-making and most preparers (87%) responded that they estimate or plan to estimate scope 3 emissions."[5]

ANALYSIS

I. The Proposal Does Not Micromanage the Company.

The Company argues for exclusion of the Proposal under Rule 14a-8(i)(7)'s proscription against proposals that "micromanage" a company. The gravamen of the Company's argument is that the Proposal inappropriately seeks to prescribe the range of the Company's Scope 3 emissions reporting. Amazon insists that under the GHG Protocol, it retains the discretion to define Scope 3 emissions however it sees fit, and that any attempt by shareholders to seek disclosure of a particular set of such emissions would constitute micromanagement. This argument is wholly unpersuasive.

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[1] https://cdn.cdp.net/cdp-production/cms/reports/documents/000/006/106/original/CDP_SC_Report_2021.pdf?1644513297, p.3
[2] https://sciencebasedtargets.org/resources/files/SBT_Value_Chain_Report-1.pdf, p.5
[3] https://www.wri.org/update/trends-show-companies-are-ready-scope-3-reporting-us-climate-disclosure-rule
[4] *Id.*
[5] *Id.*

Rule 14a-8(i)(7) regulates "the degree to which [a] 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." SEC, Exchange Act Release No. 40018 (May 21, 1998) ("1998 Release"). More recently, the Staff offered two basic tests to determine whether a proposal micromanages company business. First is whether the proposal "frame[s] 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." Staff Legal Bulletin No. 14L (Nov. 3, 2021). The Staff has stated that in analyzing proposals under this standard, it will consider "the sophistication of investors generally on the matter, the availability of data, and the robustness of public discussion and analysis on the topic," as well as "references to well-established national or international frameworks when assessing proposals related to disclosure." *Id.* The second test is whether the proposal "leave[s] sufficient flexibility for board and management discretion." *Id.*

A. Investors' focus on the incomplete nature of the Company's Scope 3 emissions does not constitute inappropriate granularity.

Investors are entitled to seek information at an appropriate level of granularity "consistent with that needed to enable investors to assess an issuer's impacts, progress towards goals, risks or other strategic matters appropriate for shareholder input." Staff Legal Bulletin No. 14L. That includes, as relevant here, a complete, rather than partial, accounting of material Scope 3 emissions. Disclosure of *all* material and relevant Scope 3 emissions is a universally featured element of every major "well-established national or international framework[]" for climate reporting. *See* Staff Legal Bulletin No. 14L. Accordingly, the Proposal is consistent with Rule 14a-8(i)(7).

Underlying the Company's argument is a misapplication of the Rule 14a-8(i)(7) legal standard. The Company argues that the determination of "which activities and categories of scope 3 emissions are included within a company's scope 3 inventory. . . should rest with a company's management." Company Letter at 5. This argument is, simply put, that a company may choose to ignore the most significant component of its emissions, thereby disclose a misleading picture of its greenhouse gas emissions, and evade shareholder's request for information on this materially important set of climate data because it has made a strategic decision to do so.

Staff precedent demonstrates that investors have the right under Rule 14a-8 to ask companies to disclose materially relevant information. *E.g.*, *Pilgrim's Pride Corporation* (Mar. 19, 2021) (company's Rule 14a-8(i)(7) exclusion request denied where proponent argued that proposal sought material disclosures). Material Scope 3 emissions fall within this category. In the last two years alone, numerous proposals seeking disclosure of Scope 3 emissions and actions on Scope 3 emissions have succeeded against micromanagement challenges. For example, in *Chubb Limited* (Mar. 26, 2022), the proposal requested that the company disclose "whether and how it intends to measure, disclose, and reduce the GHG emissions associated with its underwriting, insuring, and investment activities," *i.e.*, its Scope 3 emissions.[6] The company argued that the requested disclosure would constitute micromanagement, both because it was too complex and granular for investors and because it denied management and board discretion. The Staff concluded, however, that the proposal "d[id] not seek to micromanage the company."

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[6] As relevant to the precedents cited herein, the GHG emissions associated with lending and underwriting qualify as Scope 3 emissions. *See, e.g.*, *Chubb Limited* (Mar. 26, 2022) (Company Letter at 6, stating "GHG emissions from its insurance and investment activities (i.e., Scope 3 emissions)").

See also numerous proposals asking for specific climate-related actions reliant on Scope 3 emissions data. In *Morgan Stanley* (Mar. 25, 2022) and *Citigroup, Inc.* (Mar. 6, 2022), the proposals requested companies take "proactive measures to ensure that the company's lending and underwriting do not contribute to new fossil fuel development," *i.e.*, that the Company address its Scope 3 emissions. Both of these 14a-8(i)(7) no action requests were denied. In *The Travelers Companies, Inc.* (Mar. 30, 2022) and *The Hartford Financial Services Group, Inc.* (Mar. 28, 2022), the proposals requested that companies "adopt and disclose new policies to help ensure that its underwriting practices do not support new fossil fuel supplies." Both 14a-8(i)(7) no action requests were denied. In *JPMorgan Chase & Co.* (Mar. 25, 2022), the proposal requested that company "take[] available actions to help ensure that its financing does not contribute to new fossil fuel supplies," and the 14a-8(i)(7) no action request was denied. *See also Occidental Petroleum* (Mar. 19, 2021) (proposal requested that Company create medium-term Scope 3 emissions reduction targets, Staff rejected Company's argument that the proposal micromanaged the Company); *ConocoPhillips Company* (Mar. 19, 2021) (proposal requested company set Scope 1, 2, and 3 emissions reduction targets, Staff concluded the proposal did "not seek to micromanage the Company"); *Air Products & Chemicals, Inc.* (Nov. 15, 2021) (proposal requested company set Scope 1, 2, and 3 emissions reduction targets, Staff denied no-action request).

These precedents demonstrate that investors are entitled to ask companies to measure, disclose, and even reduce their Scope 3 emissions.[7] If Scope 3 emissions data reporting could so easily be evaded, companies could avoid investor oversight on a central component of the climate crisis simply by releasing misleading or incomplete Scope 3 emissions data. Rule 14a-8(i)(7) does not prohibit shareholder proposals from defining the scope of the problem they seek to address.

The Proposal is appropriately tailored to investor needs for informed decision making on climate-related risk. It does not dictate to the Company how it should actually calculate the full range of its material Scope 3 emissions such as what standards, methods, estimates, or models it should use, simply that it *does* report the requested range of material Scope 3 emissions. The Proposal therefore does not micromanage.

B. The Proposal is appropriately tailored to investor sophistication and marketplace discussion and is consistent with the Greenhouse Gas Protocol.

1. The disclosure of all relevant and material Scope 3 emissions is the market-standard and is reflected in numerous well-established international frameworks.

The measurement and disclosure of Scope 3 emissions is considered by most reliable benchmarks to be a prerequisite to true alignment with the Paris Agreement's net-zero by 2050 goal. *See* Staff Legal Bulletin No. 14L (stating that Staff will look to "well-established … frameworks" in micromanagement determination). "[R]eporting and reducing scope 3 emissions has become an integral aspect of reporting frameworks such as the CDP climate change questionnaire, the recommendations of the Task Force on Climate-related Financial Disclosures, and initiatives to drive ambitious corporate action like the [SBTi]."[8] Under the Climate Action 100+ framework, a company's "net-zero GHG emissions ambition" must

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[7] Obviously, setting Scope 3 emissions reduction targets necessarily requires both the measurement and disclosure of Scope 3 emissions.
[8] https://sciencebasedtargets.org/resources/files/SBT_Value_Chain_Report-1.pdf, p.10

"cover[] the most relevant Scope 3 GHG emissions categories for the company's sector."[9] Companies who join the SBTi, an organization which defines and promotes best practices in greenhouse gas emissions reduction and net-zero target setting and validation, are required to conduct "a complete scope 3 screening" and must "[i]nclude all mandatory scope 3 emissions," because a full Scope 3 inventory "is critical for identifying emissions hotspots, reduction opportunities, and areas of risk up and down the value chain."[10] Likewise, the CDP 2021 questionnaire notes that companies should undertake "a complete, accurate, transparent, consistent, and relevant inventory of all three scopes of emissions," and that "[o]rganizations should calculate and disclose all material categories of scope 3 and provide an explanation for categories that are not relevant."[11]

2. The Greenhouse Gas Protocol supports the Proposal, not the Company's incomplete disclosures.

The primary argument of the Company Letter is that the Greenhouse Gas Protocol (the "Protocol") leaves the selection of Scope 3 category disclosures up to the company. While the Protocol does not require reporting of Scope 3 emissions, it also does not support the conclusion that, where Scope 3 emissions are reported by a company, such disclosures may be partial and leave out major components of Scope 3 emissions. Further, investors are not bound by the Protocol's reporting standards. Investors are entitled to seek information from companies that is material and relevant to their decision making, whether or not such information is required by law or other standards.

The Greenhouse Gas Protocol Initiative, formed in 1998, is a multi-stakeholder partnership of businesses, NGOs, governments, and others, convened by the World Resources Institute and the World Business Council for Sustainable Development. Its mission is to develop internationally accepted GHG accounting and reporting standards for businesses and to promote their broad adoption. To that end, the Initiative published the *GHG Protocol Corporate Accounting and Reporting Standard, As Revised* (the "Corporate Standard") and the *Corporate Value Chain (Scope 3) Accounting and Reporting Standard – Supplement to the GHG Protocol Corporate Accounting and Reporting Standard* (the "Scope 3 Standard"). Among other objectives, these standards seek to "help companies prepare a GHG inventory that represents a true and fair account of their emissions, through the use of standardized approaches and principles."[12]

Under these standards, companies are expected to account for all relevant emissions sources within the chosen inventory boundary. Indeed, a *core* principle, "intended to underpin all aspects of GHG accounting and reporting" under the Standards, is completeness. Under this principle, "companies need to make a good faith effort to provide a complete, accurate, and consistent accounting of their GHG emissions."[13]

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[9] https://www.climateaction100.org/wp-content/uploads/2021/10/Climate-Action-100-v1.1-Benchmark-Indicators-Oct21.pdf CA100+ is an investor led climate initiative with 700 investors and 68 billion in assets under management seeking company action on climate. https://www.climateaction100.org.
[10] https://sciencebasedtargets.org/resources/files/Net-Zero-Standard.pdf, p.20
[11] https://www.cdp.net/en/articles/companies/just-a-third-of-companies-4002-13-100-that-disclosed-through-cdp-in-2021-have-climate-transition-plans.
[12] https://ghgprotocol.org/sites/default/files/standards/ghg-protocol-revised.pdf, p.3
[13] https://ghgprotocol.org/sites/default/files/standards/ghg-protocol-revised.pdf, p.8

Under the GHG Protocol — as opposed to other widespread and well-established frameworks — the reporting of Scope 3 emissions is optional.[14] The Scope 3 Standard of the GHG Protocol, however, wholly refutes the Company's argument that Scope 3 reporting, where undertaken, may be done piecemeal:

> Companies should follow the principles of relevance, completeness, accuracy, consistency, and transparency when deciding whether to exclude any activities from the scope 3 inventory. Companies should not exclude any activity that would compromise the relevance of the reported inventory. … Companies should ensure that the scope 3 inventory appropriately reflects the GHG emissions of the company, and serves the decision-making needs of users, both internal and external to the company.
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> In particular, companies should not exclude any activity that is expected to contribute significantly to the company's total scope 3 emissions.[15]

Among other factors, the Protocol states that a Scope 3 emissions category may be "relevant" based on its "size," based on the industry sector,[16] and based on the interest in the material from key stakeholders, including investors and civil society.[17] These criteria support the Proposal, not Amazon's piecemeal approach. As an example of Amazon's current approach, for product-related Scope 3 emissions, it measures and discloses the emissions associated with only ***one percent*** of its product sales.[18] There is no question that this approach is inconsistent with the relevancy and completeness principles of the Protocol or with SBTi's application of the Protocol:

> Under the protocol, retail companies should be counting all the products they sell directly to consumers, said Alberto Carrillo Pineda, managing director of the Science Based Targets Initiative.
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> "Everything you purchased should be included, and everything that you sell should be included," he said.[19]

Ultimately, however, the specifics of the GHG Protocol are less important than the simpler question of whether the emissions described in the Proposal are considered by investors to be material information. There is ample evidence that investors fully understand and consider complete Scope 3 disclosure important. At Costco's 2022 AGM, a proposal requesting adoption of GHG emission reduction targets "inclusive of emissions from its full value chain," including "all GHG Protocol-defined sources of Scope 3 emissions," received 69.9% of the vote.[20] At Builders FirstSource's 2022 AGM, a proposal recommending

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[14] https://ghgprotocol.org/sites/default/files/standards/ghg-protocol-revised.pdf, p.29
[15] https://ghgprotocol.org/sites/default/files/standards/Corporate-Value-Chain-Accounting-Reporing-Standard_041613_2.pdf, p.60 (emphasis added).
[16] Data from Target and Walmart, retail peers of Amazon, suggest that emissions associated with all sold products are likely to constitute an absolute majority of the Company's *total* (Scopes 1-3) emissions. *See* https://corporate.walmart.com/esgreport/media-library/document/cdp-climate-change-2021/_proxyDocument?id=0000017f-d222-d452-a3ff-da66867f0000 and https://corporate.target.com/_media/TargetCorp/Sustainability-ESG/PDF/2022-CDP-Climate-Response.pdf.
[17] https://ghgprotocol.org/sites/default/files/standards/Corporate-Value-Chain-Accounting-Reporing-Standard_041613_2.pdf, p.61.
[18] https://revealnews.org/article/private-report-shows-how-amazon-drastically-undercounts-its-carbon-footprint.
[19] *Id.*
[20] https://www.corporatesecretary.com/articles/shareholders/32889/costco-shareholders-back-net-zero-proposal-including-scope-3-emissions.

"adopting emissions reduction targets inclusive of all GHG Protocol-defined sources of Scope 3 emissions" received 87.6% of the vote.[21] And at US Foods, the same language received 88.5% of the vote.[22]

The Company's micromanagement argument, which relies on an inaccurate description of a single international framework, is meritless. Investors are entitled to seek materially complete Scope 3 emissions data. A request that the Company provide that data does not constitute micromanagement.

C. The Proposal, which solely seeks disclosure of data, does not deny board and management discretion.

To the extent the Company makes an independent argument about management discretion separable from its inaccurate portrayal of the Greenhouse Gas Protocol, that argument is wholly unworkable and at odds with Rule 14a-8(i)(7) precedent. The Company argues that "implementation of the Proposal would involve replacing management's judgments on complex reporting principles and decisions that are intimately tied to the Company's business goals and operations with" the request of the Proposal. Company Letter at 9.

Make no mistake: this argument amounts to a *per se* objection to disclosure proposals such as this one. By definition and necessity, every disclosure protocol must identify the data it seeks. That is a feature of a disclosure proposal, not a Rule 14a-8(i)(7) bug. As explained above, investors believe the data requested by the Proposal is material to climate risk and relevant to strategic Company decisions. Data from peers confirm these beliefs.

Any data sought by a disclosure proposal will presumably not already have been disclosed by the company. Any company in receipt of a disclosure proposal, in other words, could make the exact argument the Company makes here: that management has made a "judgment" not to disclose requested information based on "complex … principles and decisions that are intimately tied to the Company's business goals and operations."

The extreme nature of the Company's micromanagement argument explains why the Company can muster no precedent applying Rule 14a-8(i)(7) in this way. Much of the precedent cited by the company involves proposals seeking to direct specific policies or actions and is therefore inapposite.[23] The only disclosure precedent the Company cites is *Verizon Communications, Inc. (National Center for Public Policy Research (NCPPR))* (Mar. 17, 2022). There, the proponent demanded the publication of "the written and oral content of diversity, inclusion, equity or related employee-training materials offered to the company's employees by the company or with its consent, as well as any such materials that were sponsored by the company in whole or part," along with the commissioning of a "workplace non-

[21] https://www.corporatesecretary.com/articles/esg/33053/builders-firstsource-shareholders-back-emission-targets-proposal.

[22] https://www.greencentury.com/statement-green-century-shareholder-proposal-on-climate-change-wins-vote-with-88-5-approval-at-us-foods-annual-meeting.

[23] *See Rite Aid Corp.* (Apr. 23, 2021, r*econ. denied* May 10, 2021) (proposal requested board adopt extremely specific policy governing equity compensation to senior executives); *SeaWorld Entertainment, Inc.* (Apr. 20, 2021) (proposal requested that company conduct feasibility study to determine how soon it could eliminate animal-based programs); *SeaWorld Entertainment, Inc.* (Mar. 30, 2017, *recon. denied* Apr. 17, 2017) (proposal requested that company replace live orca exhibits with virtual reality experiences); *The Coca-Cola Company* (Feb. 16, 2022) (proposal requested company submit every proposed political statement for shareholder approval); *Texas Pacific Land Corp.* (Oct. 5, 2021) (proposal requested that company establish a goal of achieving 95% profit margin).

discrimination audit." The Staff concluded that the proposal was excludable because it sought "disclosure of intricate details regarding the Company's employment and training practices." The relevant factor there was that the proposal sought "intricate details" – specifically, the contents of every single employee-training pamphlet, binder, booklet, video, poster, etc. that the Company distributed or sponsored throughout the entire United States, at every level of company employment. *Verizon Communications* and the other NCPPR DEI disclosure precedents provide no support for the Company's position. A proposal equivalent to that in *Verizon*, for example, would be a request to provide the documentation behind every unit of greenhouse gas emissions disclosed by the Company. The disclosure requested by the Proposal does not seek such "intricate detail." In contrast, numerous proposals like the one at issue here, as cited *supra*, seeking measurement, disclosure, and/or reduction of Scope 3 emissions, have withstood Rule 14a-8(i)(7) challenges in recent years.

CONCLUSION

Based on the foregoing, the Company has provided no basis for the conclusion that the Proposal is excludable from the 2023 proxy statement pursuant to Rule 14a-8. We urge the Staff to deny the no action request.

Sincerely,

Luke Morgan
Staff Attorney, *As You Sow*

cc:

Victor Twu, Gibson Dunn & Crutcher LLP
Robert Mueller, Gibson Dunn & Crutcher LLP
Mark Hoffman, Amazon.com, Inc.
Danielle Fugere, *As You Sow*
Andrea Ranger, Green Century Capital Management, Inc.
Ivan Frishberg, Amalgamated Bank
Mackenzie Birkey, Dwight Hall at Yale
Holly Testa, First Affirmative Financial Network