



DIVISION OF  
CORPORATION FINANCE

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

April 10, 2018

Ronald O. Mueller  
Gibson, Dunn & Crutcher LLP  
shareholderproposals@gibsondunn.com

Re: Amazon.com, Inc.  
Incoming letter dated January 29, 2018

Dear Mr. Mueller:

This letter is in response to your correspondence dated January 29, 2018 and March 9, 2018 concerning the shareholder proposal (the "Proposal") submitted to Amazon.com, Inc. (the "Company") by Green Century Capital Management, Inc. et al. for inclusion in the Company's proxy materials for its upcoming annual meeting of security holders. We also have received correspondence on behalf of Green Century Capital Management, Inc. dated March 1, 2018 and March 16, 2018. Copies of all of the correspondence on which this response is based will be made available on our website at <http://www.sec.gov/divisions/corpfin/cf-noaction/14a-8.shtml>. For your reference, a brief discussion of the Division's informal procedures regarding shareholder proposals is also available at the same website address.

Sincerely,

Matt S. McNair  
Senior Special Counsel

Enclosure

cc: Sanford Lewis  
sanfordlewis@strategiccounsel.net

April 10, 2018

**Response of the Office of Chief Counsel**  
**Division of Corporation Finance**

Re: Amazon.com, Inc.  
Incoming letter dated January 29, 2018

The Proposal requests that the Company issue a report on company-wide efforts to assess, reduce and optimally manage food waste.

There appears to be some basis for your view that the Company may exclude the Proposal under rule 14a-8(i)(7). 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). In reaching this position, we have not found it necessary to address the alternative basis for omission upon which the Company relies.

Sincerely,

Lisa Krestynick  
Attorney-Adviser

**DIVISION OF CORPORATION FINANCE**  
**INFORMAL PROCEDURES REGARDING SHAREHOLDER PROPOSALS**

The Division of Corporation Finance believes that its responsibility with respect to matters arising under Rule 14a-8 [17 CFR 240.14a-8], as with other matters under the proxy rules, is to aid those who must comply with the rule by offering informal advice and suggestions and to determine, initially, whether or not it may be appropriate in a particular matter to recommend enforcement action to the Commission. In connection with a shareholder proposal under Rule 14a-8, the Division's staff considers the information furnished to it by the company in support of its intention to exclude the proposal from the company's proxy materials, as well as any information furnished by the proponent or the proponent's representative.

Although Rule 14a-8(k) does not require any communications from shareholders to the Commission's staff, the staff will always consider information concerning alleged violations of the statutes and rules administered by the Commission, including arguments as to whether or not activities proposed to be taken would violate the statute or rule involved. The receipt by the staff of such information, however, should not be construed as changing the staff's informal procedures and proxy review into a formal or adversarial procedure.

It is important to note that the staff's no-action responses to Rule 14a-8(j) submissions reflect only informal views. The determinations reached in these no-action letters do not and cannot adjudicate the merits of a company's position with respect to the proposal. Only a court such as a U.S. District Court can decide whether a company is obligated to include shareholder proposals in its proxy materials. Accordingly, a discretionary determination not to recommend or take Commission enforcement action does not preclude a proponent, or any shareholder of a company, from pursuing any rights he or she may have against the company in court, should the company's management omit the proposal from the company's proxy materials.

# SANFORD J. LEWIS, ATTORNEY

March 16, 2018  
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 Amazon Regarding Food Waste  
– Supplemental Reply of Proponent, Green Century Capital Management

Ladies and Gentlemen:

Green Century Capital Management (the “Proponent”) is beneficial owner of common stock of Amazon.com, Inc (“Amazon”, or the “Company”) and has submitted a shareholder proposal (the “Proposal”) to the Company. We and the Company have each submitted prior correspondence. I have been asked by the Proponent to respond to the Company’s supplemental letter dated March 9, 2018 (“Company’s Supplemental Letter”) sent to the Securities and Exchange Commission by Ronald Mueller. In that letter, the Company further discusses its assertions that the Proposal may be excluded from the Company’s 2018 proxy statement. A copy of this response letter is being emailed concurrently to Ronald Mueller.

Having reviewed the Company’s Supplemental Letter, we stand by our initial response.<sup>1</sup> We wish to emphasize the following two points:

1. **The failure to disclose the requested information regarding food waste management represents a material ESG disclosure gap for the company. This makes the food waste topic of the proposal a significant policy issue for the Company ( Rule 14a-8(i)(7)), and demonstrates relevance ( Rule 14a-8(i)(5)).**

As we discussed in our prior letter of March 1, 2018, the Company’s attempts to treat the subject matter of the Proposal as insignificant to the Company are incongruent with the realities of the Company and the markets in which it functions.

First, as we noted previously, the Company will increasingly be viewed by investors through the ESG lens. A recent article in Investment News (February 10, 2018)<sup>2</sup> notes that a very substantial

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<sup>1</sup> We acknowledge that we were in error regarding the stake of former Whole Foods investors in Amazon.com performance on these issues due to the cash rather than stock based buyout, but otherwise believe that our facts and analysis were accurate, and accurately referenced.

<sup>2</sup> Jeff Benjamin, Is ESG investing going mainstream? [Investment News](#), Feb 10, 2018.

portion of investors choose to rely on ESG data as an indicator of future performance of companies:

.... asset managers are coming around to the idea that a company's stance on environmental, social and governance issues is a good proxy for future success.

\* \* \*

Old concerns about the limited number of ESG funds and drag on performance from strict screens are giving way to appreciation for the added intelligence ESG factors reveal about the future strength of any investment.

"ESG is rooted in improving the investment outcome, rather than some other goal which may not be investment-oriented, and that's where we're seeing some convergence," said Chris McKnett, head ESG strategist at [State Street Global Advisors](#).

The proof is that true believers — the ranks of which go well beyond the tree-huggers and do-gooders that pushed the agenda in decades past — are now showing up in such traditional firms as State Street Global Advisors, [BlackRock Inc.](#) and [Putnam Investments](#).

\* \* \*

"We believe looking at ESG factors can add alpha over time, so it's just good credit research," said James Rich, a portfolio manager at Aegon Asset Management, which manages \$375 billion in fixed-income strategies.

\* \* \*

The latest data from US SIF, [The Forum for Sustainable and Responsible Investment](#), show that at the end of 2016, \$8.72 trillion in assets in the United States qualified as social and impact investing. That total is up from less than \$7 trillion at the end of 2014 and roughly \$4 trillion at the end of 2012.

\* \* \*

Almost half of advisers...view ESG investing as a long-term trend and expect that within three years, about a third of their clients will be allocated to ESG strategies, up from about 20% now, according to the survey.

Mitchell Kraus, a partner at Capital Intelligence Associates Inc., is already seeing such a change in his firm.

"About 30% of our clients are invested in ESG strategies, but about 70% of our new clients are investing in ESG," he said. "It's the fastest-growing part of our practice."

\* \* \*

Analyses in investment literature demonstrate that retailers, in particular, are spotlighted by ESG

investing analysts, and that food waste is a focus area. For instance, Morgan Stanley includes this discussion in its ESG Framework: Food Retail<sup>3</sup>

“Reducing waste by its nature results in a cost-saving, whether this means buying less packaging or fewer perishable food products. It is estimated by IMechE that 30-50% of food produced globally is never actually consumed. Reducing food waste is a way in which Food Retail companies can address this sustainability issue, whilst also lowering their costs”

Similarly, it has been noted in ESG investor literature that even though food waste occurs at the consumer level, retailers are in the best position to utilize their contacts with consumers to reduce waste:<sup>4</sup>

Research suggests that around half of all waste occurs at the consumer level, and a material proportion of waste occurs before it reaches their warehouses. However, their size and contact with the different ends of the supply chain gives food retailers a unique ability to help both groups reduce waste.

Food waste is a consideration for all shareholders as it impacts shareholder value:

- Security of supply can lead to higher input costs for the retailer which can impact margins and their ability to compete in the current environment.
- Loss of revenue can lead to lower profitability, lower share price and dividends.
- Losses within the stores/warehouses will incur additional expense both in terms of loss of revenue and disposal costs.
- Too much focus on driving volume by using bulk purchase tactics can result in loss of customer loyalty and revenue.

The Company’s Supplemental Letter challenges specific figures regarding the food portion of its business, yet, by any measure, the food sale portion of the Company’s business is a significant and material segment, both because of the Company’s predominant position in the food marketplace and because of its expressed intent to continue growing that segment. For instance, the recent article regarding this Proposal in the Wall Street Journal<sup>5</sup> notes that “Amazon’s 18% share of online food and beverage sales last year was larger than that of any other retailer, according to the consultancy Packaged Facts”. In addition, in our prior letter we cited a reputable grocery sector report as noting \$2 billion in sales by the company on food and beverages, which does not include other groceries.<sup>6</sup>

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<sup>3</sup> [https://www.morganstanley.com/sustainableinvesting/pdf/Food\\_Retail\\_ESG\\_Framework\\_Exec\\_Summary.pdf](https://www.morganstanley.com/sustainableinvesting/pdf/Food_Retail_ESG_Framework_Exec_Summary.pdf)

<sup>4</sup> Legal & General Investment Management ESG Spotlight - [http://www.lgim.com/files/\\_document-library/knowledge/thought-leadership-content/esg-spotlight/esg-spotlight-food-wastejan-15.pdf](http://www.lgim.com/files/_document-library/knowledge/thought-leadership-content/esg-spotlight/esg-spotlight-food-wastejan-15.pdf)

<sup>5</sup> Heather Haddon and Laura Stevens, “Investors Want to Talk Food Waste With Amazon,” Wall Street Journal, March 1, 2018. <https://www.wsj.com/articles/investors-want-to-talk-food-waste-with-amazon-1519914762>

<sup>6</sup> One Click Retail, Jan. 16, 2018 /PRNewswire/ -- [One Click Retail](https://www.prnewswire.com/news-releases/one-click-retails-2017-grocery-report-reveals-amazon-captured-18-of-the-us-online-grocery-market-300583074.html), a market leader in eCommerce data measurement, sales analytics and search optimization for global brand manufacturers. It noted in its press release for its [Amazon Grocery 2017 Review](https://www.prnewswire.com/news-releases/one-click-retails-2017-grocery-report-reveals-amazon-captured-18-of-the-us-online-grocery-market-300583074.html) report, that Amazon attained an estimated \$2 billion in food and beverage sales, a market share of 18% of online grocery sales in the US. <https://www.prnewswire.com/news-releases/one-click-retails-2017-grocery-report-reveals-amazon-captured-18-of-the-us-online-grocery-market-300583074.html>

We note that there are many indicia of the significance of the food portion of the company and its handling of food waste. In its supplemental letter, the Company focuses on the acquisition of Whole Foods as their growth in the industry. But the commitment to long-term growth is occurring on multiple fronts — the development of brick and mortar AmazonGo stores, increasing AmazonFresh delivery range expansion and pick-up locations, and arguably best exemplified by the recent disclosure of \$22 billion “unconditional purchase obligations” with longtime Whole Foods supplier United Natural Foods (UNFI) going forward.<sup>7</sup>

An article that we previously cited from Bloomberg News, clearly states<sup>8</sup>: “Amazon’s goal is to become a Top 5 grocery retailer by 2025, according to a person familiar with the matter. That would require more than \$30 billion in annual food and beverage spending through its sites, up from \$8.7 billion — including Amazon Fresh and all other food and drink sales — in 2016, according to [Cowen & Co.](#)”

All of this is in line with overall market projections as the Food Marketing Institute and Nielsen recently released a joint report stating that online grocery sales are expected to capture 20% of the market, more than \$100 billion, by 2025.<sup>9</sup>

This is not an instance of micromanagement, as defined by the Commission:

*A proposal seeks to “micro-manage” operations when it probes “too deeply into matters of a complex nature upon which stockholders, as a group, would not be in a position to make an informed judgment.” 1998 Release.*

The evidence is clear that investors in this instance are well able to consider these issues at a top level, policy basis. Exclusion would run contrary to the purposes of the securities laws in improving disclosure to investors regarding a significant social policy issues relevant and significant to their companies. This is a matter of accountability to shareholders on a significant social policy issue that will directly bear on the company’s ESG ratings and reporting. The gap in disclosure on this issue is a material omission in accountability.

In attempting to assert that the proposal micromanages, the Company’s Supplemental Letter once again mischaracterizes the ask within the proposal, stating that Proponents are “requesting that the Company adjust its priorities and activities.” As noted in the Response, Proponents are not asking for any concrete changes to Company priorities or actions, but simply requesting accountability – a report on current efforts by the Company to assess, reduce, and manage food waste. While Proponents are hopeful that such an assessment and report would provide the Company operational insights to help minimize the creation of food waste and reduce costs, any

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<sup>7</sup> <https://www.cnbc.com/2018/03/07/amazon-purchase-obligations-to-unfi-show-confidence-whole-foods.html>

<sup>8</sup> <https://www.bloomberg.com/news/features/2017-03-20/inside-amazon-s-battle-to-break-into-the-800-billion-grocery-market>. See also <https://www.theverge.com/2017/6/16/15816304/amazon-whole-foods-acquisition-business-analysis>

<sup>9</sup> <https://www.fooddive.com/news/at-cagny-big-food-execs-prioritizing-e-commerce-for-future-growth/517501/>

steps the Company would wish to pursue following the issuance of a report would again be at the board and management's discretion. The Proposal in no way seeks to "dictate the Company's priorities" with respect to reporting on sustainability, although it is true that the omission of food waste does represent a material gap in the Company's sustainability reporting.

In this sense, the proposal is in line with the recent Staff decision in *Entergy, Inc.* (March 14, 2018) where a proposal sought disclosure of the company's assessment of its companywide strategy for integrating distributed energy resources into its energy mix. The company had argued at length that the disclosure-oriented proposal engaged in micromanagement, but as a request for disclosure of a particular issue on which the company seemed to have a perceptible vulnerability, the argument of micromanagement was rejected. Similarly, in the present instance, the Company is vulnerable to assertions that the Company's available ESG disclosure now has a significant and material gap with regard to the food waste issue.

The Company Supplemental Letter claims the Company "has implemented food waste strategies based on the same guidelines cited by the proposal", but of course the Company does not claim substantial implementation, because it has neither fulfilled the essential purpose nor guidelines of the proposal. Instead, their no action request amounts to a refusal to publicly disclose the strategies, results, and overarching goals for the management of food waste appropriately requested by the proposal.

The significant social issue associated with food waste will continue to dog the Company until it becomes transparent with regard to its strategy on these issues.<sup>10</sup> The Proposal addresses an issue that is significant to the Company and on which the board has failed to meet its burden of demonstrating insignificance.

**2. The form and focus of the Proposal is appropriately directed toward a significant policy issue, and the Proposal's appearance on the proxy is consistent with SEC rules and mission.**

The Company's initial and supplemental letters attempt to define and limit the form of investor advocacy on a social issue of the magnitude of the food waste issue. Effectively, it attempts to exert editorial control over the proposal, claiming that the proponent must expend more of the verbiage discussing the connection to climate change and hunger. It is an insult to the intelligence of the investors to believe that any shareholder reading the proposal would fail to see and understand the social significance of this issue from the discussion included the proposal.

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<sup>10</sup> We note in passing that the Company's Supplemental letter asserts that the Company believes the proposal would receive less than 20% support. There is an absurdity in the Company asserting such a belief in a request for exclusion. The legally proper voting threshold for this first time proposal at this company is the resubmission threshold of 3% support. Whether or not the proposal got 20% for the first time is voted on, and whether the Board thinks it will, is quite irrelevant to the questions of significance propriety of the proposal. To the contrary, the proposal process represents an important opportunity to educate fellow investors on significant and potentially material issues related to a significant policy issue, and to grow support over time.



The Company's demand that the proponent engage in less effective advocacy on the business case is neither the Company's appropriate business, nor would it be appropriate for the Staff to tell proponents not to elaborate on the business case for action once having addressed the connection to a significant social issue.

In attempting to negate the relevance of the significant policy issue to the Company, the Company's Supplemental Letter goes on to cherry pick information from our response describing the widespread debate in an attempt to argue that food waste is not significant to the Company's operations. Our response, for instance, pointed to the debate as to whether or not retailers should be compelled to divert food waste from landfills, or if the systemic causes of climate change and hunger should be addressed first. This demonstrates that there is in fact a significant policy debate. Its relevance to Amazon is demonstrated by many of Amazon's peers that have taken steps to track, report on, and actively seek to reduce the generation of food waste. Arguably Amazon's largest competitor in the online food retail industry, Walmart, has recently announced that it has been developing technology to reduce food waste and expect the measure to save the company \$2 billion over the next five years.<sup>11</sup> Nor does our prior discussion of whether or not food waste should be addressed with governmental resources obviate the need for retailer action.

### **Conclusion**

Based upon our prior response as well as the above, we continue to believe that the proposal is not excludable and respectfully request that the Staff concur that it will not permit the Company to exclude the Proposal from its 2018 Proxy Materials.

Sincerely,  
  
Sanford Lewis

Cc: Ronald Mueller  
Leslie Samuelrich  
Jared Fernandez

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<sup>11</sup> <http://www.businessinsider.com/walmart-saves-2-billion-with-machine-that-inspects-food-for-spoilage-2018-3>

March 9, 2018

**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.*  
*Supplemental Letter Regarding Shareholder Proposal of Green Century*  
*Capital Management, Inc. et al.*  
*Securities Exchange Act of 1934—Rule 14a-8*

Ladies and Gentlemen:

On January 29, 2018, we submitted a letter (the “No-Action Request”) on behalf of Amazon.com, Inc. (the “Company”) notifying the staff of the Division of Corporation Finance (the “Staff”) of the Securities and Exchange Commission that the Company intends to omit from its proxy statement and form of proxy for its 2018 Annual Meeting of Shareholders (collectively, the “2018 Proxy Materials”) a shareholder proposal (the “Proposal”) and statement in support thereof (the “Supporting Statement”) received from Green Century Capital Management, Inc. and the Hammerman Family Revocable Inter Vivos Trust (the “Proponents”). The No-Action Request demonstrates that the Proposal—which requests a report on company-wide efforts to assess, reduce, and optimally manage food waste—may be properly excluded from the 2018 Proxy Materials pursuant to Rule 14a-8(i)(5) because the issues addressed in the Proposal are not economically significant to the Company and pursuant to Rule 14a-8(i)(7) because the Proposal implicates the Company’s day-to-day operations.

On March 1, 2018, the Proponents submitted a letter to the Staff responding to the No-Action Request (the “Response”). As addressed in this letter, the Response fails to establish that the Proposal is economically significant to the Company, and the Response fails to demonstrate that the Proposal addresses a significant policy issue in the context of the Company’s operations. Additionally, the Response’s discussion of the Proposal further demonstrates that the Proposal should be excluded under both of the bases argued in the No-Action Request.

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## ANALYSIS

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

The Response tries to rewrite the Proposal as relating to climate change and hunger. While the Company recognizes that some proposals addressing climate change or hunger may implicate significant policy issues, the Proposal is not in that category because neither the Proposal nor the Supporting Statement focus on those issues. Instead, the Proponents have framed the Proposal as addressing primarily economic and competitive issues that implicate the Company's ordinary business operations. As discussed in the No-Action Request, across numerous paragraphs, the Supporting Statement focuses primarily on the economic and routine operational aspects of food waste; in addition to requesting information on the "[e]stimated cost savings from optimized food purchasing, handling, recycling, and disposal," the Supporting Statement frames the Proposal in terms of "cost savings," "lost profits," "be[ing] financially beneficial for companies," addressing "operational risk" and "competitive disadvantage." In contrast, "climate change and hunger" are referenced in passing only once, literally at the very end of the Supporting Statement, in a sentence that also states that addressing food waste "could cut costs, provide competitive advantage, [and] strengthen brand reputation."

In this respect, the Proposal is exactly like the proposal in *CVS Health Corp.* (avail. Mar. 8, 2016). The Response tries to distinguish *CVS Health Corp.* by wrongly claiming that the CVS proposal did not address climate change, and the Response asserts that if the CVS proposal had addressed climate change it would have involved a significant policy issue.<sup>1</sup> However, the supporting statement in *CVS Health Corp.* did refer to climate change in exactly the same manner that the Proposal here does—*i.e.*, in the very last line of the supporting statement. Just as the Proponents mention climate change and hunger at the very end of a Supporting Statement that is addressed primarily to economic and operational issues, the very last line of the supporting statement in *CVS Health Corp.* stated, "By setting renewable energy commitments, CVS can strengthen its current climate change strategy, reduce the company's exposure to fluctuating energy prices and move it closer to achieving GHG reductions." (Emphasis added). Thus, the Response's effort to re-characterize the Proposal fails to distinguish it from other proposals that the Staff has concurred are excludable.<sup>2</sup>

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<sup>1</sup> Response at page 9.

<sup>2</sup> To the extent that food waste is one component of addressing sustainability and climate change, the Proposal seeks to micromanage the Company's business by requesting that the Company adjust its priorities and activities by directing an equal amount of resources to the issue of food waste as it does to other initiatives that the Company has determined more effectively address sustainability and climate change in the context of the Company's operations. While the Response acknowledges on page 2 that the Company is investing substantial time and effort to make visible its focus on sustainability, the Proposal seeks to dictate the Company's priorities as reflected on page 17 of the Response, which states, "Assessing the current state of food waste within

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Moreover, the Response demonstrates that the Proposal does not raise a significant policy issue as to the Company's operations. While the Response claims that some jurisdictions have restricted businesses' ability to transfer food to landfills, it also documents that much of the focus on food waste is not directed to retail establishments such as the Company. For example, the Response states:

- “The EPA estimates that 56 percent of all food waste in the United States occurs in the homes of consumers, versus just 10 percent at retailers.”<sup>3</sup>
- “Some argue that efforts to compel retailers to divert food waste from landfills may ultimately be a waste of time and resources, ignoring the more systemic inefficiencies in the food system that propagate the issues of hunger, waste, and climate change.”<sup>4</sup>; and
- “Still, some question whether or not food waste should be addressed with governmental resources.”<sup>5</sup>

Thus, while the Company maintains strong partnerships with food donation programs, has implemented food waste strategies based on the same guidelines cited by the Proposal, and is relentlessly focused on managing and reducing its expenses, all as addressed in the No-Action Request, this does not mean that the Proposal presents a significant policy issue that is appropriate for a vote by shareholders. Instead, the Proposal seeks to address—and even micromanage—the Company's ordinary business operations by addressing routine aspects of the Company's operations as they relate to sales of food products.

Based on the precedents cited in this letter and the No-Action Request, and the analysis and conclusions of the Nominating and Corporate Governance Committee (the “Governance Committee”) of the Board of Directors, and of the Board of Directors (the “Board”), regarding the implications of the Proposal for the Company's operations, we continue to believe the Proposal does not raise a significant policy issue that transcends its ordinary business operations, and accordingly, the Proposal may properly be excluded pursuant to Rule 14a-8(i)(7).

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company-wide operations would address the same concerns about climate change, carbon emissions, and operational efficiency that the Company espouses above” and that “The proposal seeks reporting at a similar level to reporting by the company on other sustainability issues.” In *Apple Inc. (Jantz)* (avail. Dec. 21, 2017), the Staff concurred that a proposal seeking to redirect the company's policies addressing greenhouse gas emissions was properly excludable as seeking to micromanage the company's business. *See also Amazon.com, Inc.* (avail. Mar. 6, 2018) and *PayPal Holdings, Inc.* (avail. Mar. 6, 2018) (same).

<sup>3</sup> Response at page 10.

<sup>4</sup> Response at page 11.

<sup>5</sup> Response at page 11.

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## **II. The Proposal May Be Excluded Under Rule 14a-8(i)(5) Because It Relates To Operations That Are Not Economically Significant To The Company And Is Not Otherwise Significantly Related To The Company's Business.**

In attempting to argue that the Proposal is significantly related to the Company's business, the Response relies upon a number of misstatements and mischaracterizations.

First, the Response cites a number of different reports and statistics on the Company's grocery sales and food sales. However, not all grocery sales represent food products. For example, cosmetics, vitamins and other health care products, paper products, cleaning supplies, and many other items sold online through the Company's grocery category or at the Company's Whole Foods Market stores are not food products. In addition, not all food products are perishable or present spoilage issues of the type addressed in the Proposal. For example, bottled water, wine and beer, coffee and tea, pastas, grains and cereals, and snacks and desserts, as well as canned and bottled products such as cooking oils, spices, and condiments do not face the types of spoilage issues that are the focus of the Proposal, and in many cases have longer "shelf lives" than other products sold by the Company, such as popular music recordings and fashion items.

Second, the Response relies upon faulty statistics. For example, the Response claims, "With Amazon's total sales of \$135.99B, food sales of \$8.7B, equal 11.5% of Amazon's sales."<sup>6</sup> However, the source cited for this statement does not include the 11.5% figure, and \$8.7 billion represents only 6.4% of the Company's 2016 revenue of \$135.99 billion.<sup>7</sup> While it is unclear how the source cited by the Response developed its estimate that the Company's food sales for 2016 were \$8.7 billion, it is worth noting that other statements in the Response estimate the Company's "grocery sales" for 2017 to be \$2 billion<sup>8</sup> and the Company's "food item sales" for 2017 to be over \$1.5 billion.<sup>9</sup> Similarly, the Response overstates the extent to which the Company's grocery business has grown by focusing on the one-time effect on the Company's revenues of the Company's acquisition of Whole Foods Market, Inc. ("Whole Foods Market"), which closed in the third quarter of 2017. Because of that acquisition, it is not surprising that the Company's sales of grocery products increased significantly on a year-over-year basis. However, as reported in the financial statements and footnotes to the Company's Annual Report on Form 10-K, the Company's total revenue grew almost 31% from 2016 to 2017, but revenue attributable to the Company's acquisition of Whole Foods Market accounted for only 13.85% of the year-over-year growth in revenues. Moreover, the one-time increase in the growth of the Company's grocery sales that resulted from the Whole Foods Market acquisition does not

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<sup>6</sup> Response at page 2.

<sup>7</sup> The Company's revenues for 2016 were \$135.99 billion and for 2017 were \$177.87 billion.

<sup>8</sup> Response at page 15.

<sup>9</sup> Response at page 17.

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mean—as suggested by the Response<sup>10</sup>—that the Company’s grocery sales will continue to grow at that pace in future years.

Finally, the references in the Response to the past vote on a similar proposal at Whole Foods Market are not relevant, as the Company’s operations and shareholder population are very different from the historical situation at Whole Foods Market. Specifically, noting that a similar proposal received 30% shareholder support at Whole Foods Market, the Response asserts, “For a portion of Amazon investors, including the legacy whole foods [*sic*] investors who have received Amazon stock, the company’s unresponsiveness on these issues may prove frustrating.” However, the Company’s acquisition of Whole Foods Market was for cash, so there are no “legacy whole foods [*sic*] investors who have received Amazon stock.”<sup>11</sup> Moreover, because the nature of the Company’s operations are significantly different from those of Whole Foods Market, it is unfounded speculation for the Response to assert that the Company’s shareholders are focused on the subject of the Proposal.<sup>12</sup> In contrast, as discussed in the No-Action Request, the Company’s management, Governance Committee, and the Board have carefully considered whether, given the economic and routine operational focus of the Proposal, it is appropriate for a vote of the Company’s shareholders.

The Company maintains proactive and on-going engagement with its institutional investors, regularly meeting in person or telephonically with significant unaffiliated shareholders, including each shareholder that owns at least 1% of the Company’s stock. In this regard, the Company notes that, both before and after the Company’s acquisition of Whole Foods Market, food waste has not been a topic raised in the Company’s engagement with its significant shareholders. Based on its engagement activities, the Company believes that its significant shareholders recognize that the Company is mindful of the issues raised by this Proposal and also recognize—as acknowledged in the Response—that the Company has invested substantial time and effort to make visible its strong commitment to sustainability and climate change issues. As a result, based on information provided by the Company’s proxy solicitor, the Company believes that the Proposal would receive less than 20% support if voted on by the Company’s shareholders. Notably, as part of the its review and consideration of the Proposal, the Governance Committee was briefed on these considerations, including specifically the past voting result at Whole Foods Market and the projected shareholder vote at the Company. After considering the factors

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<sup>10</sup> See, e.g., Response at page 15, stating, “Including the revenue of Whole Foods, the Company’s total revue [*sic*] for 2017 jumped 38% over the previous year.”

<sup>11</sup> See the Company’s report on Form 8-K, filed on August 28, 2017, reporting that “As a result of the Merger, each share of common stock, no par value, of Whole Foods Market . . . issued and outstanding immediately prior to the effective time of the Merger . . . was converted into the right to receive \$42.00 in cash, without interest.” Likewise, Whole Foods Market employee equity awards were cashed out in the merger.

<sup>12</sup> Staff Legal Bulletin No. 14I, at part C.3. (Nov. 1, 2017) (“Because the test only allows exclusion when the matter is not ‘otherwise significantly related to the company,’ we view the analysis as dependent upon the particular circumstances of the company to which the proposal is submitted. That is, a matter significant to one company may not be significant to another.”)

Office of Chief Counsel  
Division of Corporation Finance  
March 9, 2018  
Page 6

discussed in the No-Action Request and those discussed above, including specifically the historic and projected voting results and the Proposal's focus on economic and routine operational issues such as cost management, the Governance Committee concurred that the Proposal is not suited for a vote of shareholders because it does not address significant policy issues with respect to the Company. And, as noted in the No-Action Request, the Company's Board concurred with the Governance Committee's determination.

Because of the nature of the Company's operations, the Company's food sales are less significant to the Company than they were to Whole Foods Market. As stated in the No-Action Request, even if the Company had owned Whole Foods Market for all of 2017, the cost of food spoilage and waste for the year across all of its operations would have represented substantially less than five percent of the Company's costs of sales and total assets. For the reasons addressed above, the Response's attempts to argue that the Proposal is otherwise significant to the Company's operations are off-base. Thus, the Proposal addresses aspects of the Company's operations that are not economically or otherwise significant to the Company and the Proposal accordingly is excludable under Rule 14a-8(i)(5).

## CONCLUSION

Based upon the foregoing analysis and the No-Action Request, we respectfully request that the Staff concur that it will take no action if the Company excludes the Proposal from its 2018 Proxy Materials. In accordance with Rule 14a-8(j), a copy of this supplemental letter is being sent on this date to the Proponents.

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](mailto: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 and Assistant Secretary, at (206) 266-2132.

Sincerely,



Ronald O. Mueller

cc: Mark Hoffman, Amazon.com, Inc.  
Green Century Capital Management, Inc.

# **SANFORD J. LEWIS, ATTORNEY**

March 1, 2018

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

**Re: Shareholder Proposal to Amazon.com, Inc. Regarding Report on Food Waste  
filed by Green Century Capital Management, Inc.**

Ladies and Gentlemen:

Green Century Capital Management, Inc. (the “Proponent”) has submitted a shareholder proposal (the “Proposal”) to Amazon.com, Inc. (“Amazon” or the “Company”) as beneficial owners of common stock of the Company.<sup>1</sup> I have been asked by the Proponent to respond to the letter dated January 29, 2018 sent to the Securities and Exchange Commission Division of Corporation Finance by Ronald O. Mueller of Gibson, Dunn & Crutcher LLP (the “Company Letter”). In the Company Letter, the Company contends that the Proposal may be excluded from the Company’s 2018 proxy statement by virtue of Rule 14a-8(i)(5) and Rule 14a-8-(i)(7).

I have reviewed the Proposal, as well as the letter sent by the Company, and based upon the relevant rules, it is my opinion that the Proposal must be included in the Company’s 2018 proxy materials and that it is not excludable by virtue of those rules.

A copy of this letter is being emailed concurrently to Ronald O. Mueller of Gibson, Dunn & Crutcher, LLP.

## **SUMMARY**

The Proposal asks the Company to issue a report to shareholders regarding company-wide efforts to assess, reduce, and optimally manage food waste, suggesting that such a report include: results of audits to determine the causes, quantities, and destinations of food waste; estimated cost savings from optimized food purchasing, handling, recycling, and disposal; prioritization of strategies based on the Environmental Protection Agency (EPA) Food Recovery Hierarchy; time bound targets to reduce waste, and progress towards meeting these targets.

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<sup>1</sup> The Proposal was co-filed by JLens Investor Network (“JLens”), on behalf of its clients, the Hammerman Family Revocable Inter Vivos Trust.



The Company letter asserts that the Proposal does not address a significant policy issue for the company for purposes of Rule 14a-8(i)(7) and that the issue of food waste is not economically significant to the Company under Rule 14a-8(i)(5). The board of directors reiterated these assertions and added that the Proposal would misdirect resources by seeking a report that may become obsolete due to the rapid growth of its food related sales and businesses.

**I. Does the Proposal address a significant policy issue that transcends ordinary business?**

The Proposal focuses on the significant social policy issue of eliminating food waste. Food waste is linked to climate change and hunger, two massive social issues with significant economic and social impact. As noted in the proposal, forty percent of food produced in the U.S. goes uneaten, costing the economy \$218 billion per year, or 1.3 percent of GDP. If global food waste were a country, its emissions would be third behind China and the U.S. Production of wasted food also consumes 21 percent of U.S. freshwater, 19 percent of fertilizer, and 18 percent of cropland. The issue of how to manage the US food waste problem is subject to widespread debate and legislative efforts.

**II. Is the subject matter significant to the Company under Rule 14a-8(i)(5) and Rule 14a-8(i)(7)?**

The Proposal is relevant to the Company or “otherwise significantly related” under Rule 14a-8(i)(5) and significant to the Company under Rule 14a-8(i)(7). The Company’s sales of food items are one of the fastest growing segments of the Company’s business, representing 11 percent of Amazon sales growth in 2016<sup>2</sup>. With Amazon’s total sales of \$135.99B, food sales of \$8.7B, equal 11.5% of Amazon’s sales.<sup>3</sup> In addition, the subject matter of food waste is significantly tied to the Company’s brand and public presence. The Company has invested substantial time and effort to make visible its focus on sustainability, with high visibility reporting on its website regarding issues of environment and energy<sup>4</sup> and the “global operations footprint”<sup>5</sup>. Given that food waste is inextricably tied to greenhouse gas emissions, climate change, land use, wasted resources, and hunger, food waste is a significant social policy issue for the Company. The Company has demonstrated on its website that all these issues are significant to the Company. By failing to bring the issue of food waste up to the level of reporting provided by the Company on other items, such as greenhouse gas emissions, as the Company continues to scale up its food sales, the issue of food waste is a material weakness in its sustainability profile. Food waste mismanagement could jeopardize the “sustainable” reputation that the Company is building. Omission of reporting on this significant resource challenge for the Company might be construed by some investors as a looming managerial issue and an omission of relevant ESG data for their operations. Furthermore, having recently purchased Whole Foods, this issue has already proven to be of substantial interest to Whole Foods shareholders. At the Company’s

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<sup>2</sup> “Amazon Sales 2016.” Lee O’Carroll , [leecarroll.com/amazon-online-sales-2016/](http://leecarroll.com/amazon-online-sales-2016/)

<sup>3</sup> Soper, Spencer, and Olivia Zaleski. “Inside Amazon’s Battle to Break Into the \$800 Billion Grocery Market.” Bloomberg, 20 Mar. 2017, [www.bloomberg.com/news/features/2017-03-20/inside-amazon-s-battle-to-break-into-the-800-billion-grocery-market](http://www.bloomberg.com/news/features/2017-03-20/inside-amazon-s-battle-to-break-into-the-800-billion-grocery-market)

<sup>4</sup> “Energy & Environment.” Amazon, [www.amazon.com/p/feature/gkkwdp34z5ou7ug](http://www.amazon.com/p/feature/gkkwdp34z5ou7ug)

<sup>5</sup> “Our Global Operations Footprint” Amazon, <https://www.amazon.com/p/feature/nyz9brzz3zuw7kx>.

Whole Foods Market Inc.'s ("Whole Foods") subsidiary (prior to the acquisition of Whole Foods Market by Amazon), last year's vote on a similar proposal received 30% shareholder support.

**III. Does advocacy of the business case for action in its text render the Proposal excludable under Rule 14a-8(i)(7)?** The Proposal has correctly targeted a subject matter of food waste and connected it to the significant policy concerns regarding its societal impacts. The Proposal also addresses in its supporting statement the business case for action on this issue by the Company. The inclusion of a presentation of the business case for the proposal does not render the proposal excludable. In fact, it fulfills the purposes of the securities laws in providing investors with the information that they need to understand why addressing this issue might cause the company to do well for investors while managing this issue effectively. The approach of the proposal is consistent with numerous other proposals that have been found not to be excludable under Rule 14a-8(i)(7).

**IV. Do the terms of the Proposal micromanage the company?** The Proposal is framed as an appropriate top-level inquiry, asking the company to produce a report at reasonable cost and omitting proprietary information, on company-wide efforts to assess, reduce and optimally manage food waste. The recommended details included in the supporting statement to the Proposal would give shareholders the kind of summary level information needed to understand how the company is managing food waste issues. This level of detail is entirely consistent with how the company reports on other sustainability issues, and with hundreds of other shareholder proposals requesting that companies set sustainability targets and monitor and report on the effectiveness of management their sustainability issues.

**V. Does the board opinion alter any of these issues?** The board essentially reiterates the arguments regarding significance and relevance, but does not provide persuasive evidence that alters any of these outcomes. Food waste issues are a material gap in the Company's shareholder reporting on sustainability issues. The Board opinion does not provide a compelling basis for finding that the proposal to close this gap is insignificant, irrelevant or micromanages. The Board notes correctly that the Proposal does not request the creation of specific changes in operations, but simply the development of a report assessing Company-wide efforts to assess food waste. As a reporting request, the Proposal does not unduly meddle in core matters of the Company's business and operations but rather raises issues for shareholder accountability in a manner that affords substantial discretion regarding any changes to Company policies or procedures. The board also notes rapid growth in Amazon's food operations. We believe this is evidence that the proposal is timely, or in any event more suited as an argument for the opposition statement than a reason to exclude the proposal. While the firm is growing the footprint of food sales and business segments, it is the right time to design food waste management strategies. Tackling issues of food waste while the food segments are growing, by investing in and designing food waste infrastructure using economies of scale and design is preferable to trying to retrofit waste management systems after the fact.

## **THE PROPOSAL**

Resolved: Shareholders request that Amazon issue a report, at reasonable cost and omitting proprietary information, on company-wide efforts to assess, reduce and optimally manage food waste.

Supporting Statement: Shareholders recommend that the requested report include:

- Results of audits to determine the causes, quantities and destinations of food waste;
- Estimated cost savings from optimized food purchasing, handling, recycling, and disposal;
- Prioritization of strategies based on EPA's Food Recovery Hierarchy;
- Time bound targets to reduce waste and progress towards meeting these targets.

Whereas: Forty percent of food produced in the U.S. goes uneaten, costing the economy \$218 billion per year, or 1.3 percent of GDP. If global food waste were a country, its emissions would be third behind China and the U.S. Production of wasted food also consumes 21 percent of U.S. freshwater, 19 percent of fertilizer, and 18 percent of cropland.

Grocery retailers, restaurants, and food service companies waste about 25 million tons of food valued at \$57 billion annually. Beyond lost profits, companies lose money on the procurement of, labor and utilities for, and waste management costs of wasted food.

Reducing food waste can be financially beneficial for companies. A recent study found that for every dollar spent on reducing food waste, companies save on average \$14.

Amazon aims to become a top five grocery retailer by 2025. During Q1 of 2017, Amazon's grocery sales outpaced the industry 15 times, demonstrating 30 percent year-over-year growth.

However, online grocery retailers may be more susceptible to high rates of food waste given complex distribution systems and the inability to rely on solutions employed by conventional retailers such as discounting products nearing expiration. Estimates show that Amazon Fresh has lost money from spoilage at double the rate of a typical supermarket, posing significant operational risk.

While Amazon provides anecdotal evidence of specific food waste donation efforts, it has yet to report on a company-wide food waste management strategy.

In contrast, industry peers are taking action to reduce, optimally manage, and report on food waste, potentially leaving laggards with a competitive disadvantage.

- Stop & Shop saved \$100 million annually by reducing losses of perishables while providing items that were three days fresher on average.
- Kroger publishes a breakdown of quantity of food donated and recycled, with a goal of meeting 90 percent zero waste in all facilities by 2020.
- Walmart diverted 75 percent of global waste in 2016 through strategies including improved forecasting and packaging and standardized date labels.
- Through the Food Waste Reduction Alliance, Safeway, Publix and Kroger provide comprehensive, metrics-based disclosure on food waste management efforts.

Further, food waste legislation has passed in several states and has been introduced in Congress. The EPA has a national target to reduce food waste 50 percent by 2030.

Amazon and its shareholders are positioned to benefit from a comprehensive approach to food waste reduction- that could cut costs, provide competitive advantage, strengthen brand reputation, help achieve sustainability goals, and combat climate change and hunger.

## ANALYSIS

### **I. Does the Proposal address a significant policy issue that transcends ordinary business?**

The Staff has indicated that a shareholder proposal that would normally be excludable as dealing with a matter relating to a company's ordinary business operations may not be excludable if it raises significant social policy issues.<sup>6</sup> The Commission has made it clear since 1976 that proposals with major implications for society transcend ordinary business:

Specifically, the term "ordinary business operations" has been deemed on occasion to include certain matters which have significant policy, economic or other implications inherent in them. For instance, a proposal that a utility company not construct a proposed nuclear power plant has in the past been considered excludable under former subparagraph (c)(5). In retrospect, however, it seems apparent that the economic and safety considerations attendant to nuclear power plants are of such magnitude that a

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<sup>6</sup> See SEC Release No. 34-40018 (1998).

determination whether to construct one is not an “ordinary” business matter. Accordingly, proposals of that nature, as well as others that have major implications, will in the future be considered beyond the realm of an issuer's ordinary business operations, and future interpretative letters of the Commission's staff will reflect that view.

The Staff decisions subsequent to 1976 identify proposals on various issues as addressing significant policy issues, including pollution, human rights violations, climate change, discrimination, and many other issues. Those proposals typically include requests for monitoring, targets and reporting on the significant policy issues, consistent with the current proposal.<sup>7</sup>

The current proposal focuses on the significant social policy issue of eliminating food waste. The proposal frames the social impact of this topic very clearly:

Forty percent of food produced in the U.S. goes uneaten, costing the economy \$218 billion per year, or 1.3 percent of GDP. If global food waste were a country, its emissions would be third behind China and the U.S. Production of wasted food also consumes 21 percent of U.S. freshwater, 19 percent of fertilizer, and 18 percent of cropland.

Amazon and its shareholders are positioned to benefit from a comprehensive approach to food waste reduction- that could cut costs, provide competitive advantage, strengthen brand reputation, help achieve sustainability goals, and combat climate change and hunger.

### **The Twin Social Impacts of Food Waste**

Food waste has massive social impact because of its connection to two major societal crises – hunger and climate change. The Company acknowledged in its letter that "resource" issues can be significant policy issues. This proposal is intended to address such resource issues.

### **Food Waste and Hunger**

In America, hunger and malnutrition are a national crisis. An estimated 8.5 million Americans experience hunger on a daily basis, wholly reliant on food banks and soup kitchens

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<sup>7</sup> See, for instance, *TJX Companies* (April 5, 2002) commit to a program of outside, independent monitoring of compliance with ILO human rights standards; *Dominion Resources Inc.* (February 11, 2014) adopt quantitative goals for reducing total greenhouse-gas emissions from the company's products and operations and report on its plans to achieve these goals; *Bob Evans Farms, Inc.* (June 6, 2011) phase-in the use of cage-free eggs to represent at least five percent of the company's total egg usage. *Verizon* (February 22, 2016) a report assessing the feasibility of adopting science-based greenhouse gas (GHG) reduction targets consistent with the 2-degree scenario; *Spectra Energy Corp.* (February 21, 2013) report on how the company is measuring, mitigating, and disclosing methane emissions. *Exxon Mobil Corporation* (March 23, 2016) requesting that the company quantify and report to shareholders its reserve replacements in British Thermal Units, by resource category, to assist the company in responding appropriately to climate change induced market changes.

for sustenance.<sup>8</sup> According to the Feeding America, an estimated 12.3 percent of households faced hunger and the inability to provide necessary nutrition in 2016. This figure translates to 41 million Americans, including 13 million children. Households with children are much more likely to deal with hunger and malnutrition than those without children. The elderly are not immune to this crisis as nearly 8% of Americans face hunger every year. Hunger is an issue in every county in America, ranging from 3% of households in Grant County, KS to 38% of households in Jefferson County, MS.<sup>9</sup>

The related statistics regarding food waste in America are staggering. The Environmental Protection Agency (EPA) estimates that approximately 31 percent (133 billion pounds) of the food produced in the U.S. is wasted.<sup>10</sup> The FAO estimates that if one-fourth of global food waste could be saved, it would be enough to feed 870 million people.<sup>11</sup>

According to the United States Department of Agriculture (USDA) supermarkets in the United States threw out 43 billion pounds in 2010, valued at \$46.7 billion.<sup>12</sup> As noted above, this speaks directly to the about one in seven Americans that lack reliable access to food, and the Natural Resources Defense Council (NRDC) estimates that saving just 15 percent of food could feed over 25 million Americans.<sup>13</sup>

### **Food Waste and Climate Change**

According to the Food and Agriculture Organization of the United Nations (FAO), about one third of all food produced in the world for human consumption is wasted. This represents 1.3 billion tons of food at an estimated cost of \$990 billion worldwide.<sup>14</sup> Factoring in the total methane emissions produced by the rotting of wasted food, wasted food production and decomposition is a significant source of greenhouse gas emissions, contributing to global warming and climate change.

Food waste contributes 23 percent of total methane emissions in the United States from food items decomposing in landfills, representing 4.5 percent of all U.S. greenhouse gas

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<sup>8</sup> Lundin, Deborah. "Malnutrition in America." *Livestrong.com*, Leaf Group, 3 Oct. 2017, [www.livestrong.com/article/487412-malnutrition-in-america/](http://www.livestrong.com/article/487412-malnutrition-in-america/).

<sup>9</sup> Gundersen, C., A. Dewey, A. Satoh, M. Kato & E. Engelhard. *Map the Meal Gap 2017: Food Insecurity and Child Food Insecurity Estimates at the County Level*. Feeding America, 2017

<sup>10</sup> "America's Food Waste Problem." United States Environmental Protection Agency, 22 Apr. 2016, [www.epa.gov/sciencematters/americas-food-waste-problem](http://www.epa.gov/sciencematters/americas-food-waste-problem).

<sup>11</sup> "Key Facts on Food Loss and Waste You Should Know!" Food and Agriculture Organization of the United Nations, [www.fao.org/save-food/resources/keyfindings/en/](http://www.fao.org/save-food/resources/keyfindings/en/).

<sup>12</sup> Buzby, Jean C., et al. "The Estimated Amount, Value, and Calories of Postharvest Food Losses at the Retail and Consumer Levels in the United States." United States Department of Agriculture, Feb. 2014, [www.endhunger.org/PDFs/2014/USDA-FoodLoss-2014.pdf](http://www.endhunger.org/PDFs/2014/USDA-FoodLoss-2014.pdf).

<sup>13</sup> "Food Waste." Natural Resources Defense Council, 6 Feb. 2018, [www.nrdc.org/issues/food-waste](http://www.nrdc.org/issues/food-waste).

<sup>14</sup> "Key Facts on Food Loss and Waste You Should Know!" Food and Agriculture Organization of the United Nations, [www.fao.org/save-food/resources/keyfindings/en/](http://www.fao.org/save-food/resources/keyfindings/en/).

emissions.<sup>15</sup> The Intergovernmental Panel on Climate Change (IPCC) notes that the warming effect of methane is eighty-six times that of carbon dioxide as it absorbs much more infrared radiation which heats the earth's atmosphere.<sup>16</sup> Also, methane is a precursor for the development of ozone in the atmosphere, itself a greenhouse gas.<sup>17</sup>

Food waste is inextricably linked to a waste of resources and inputs, such as water, land, energy, labor, and capital. Food waste is directly linked to 25 percent of water waste, 30 percent of fertilizer waste, and 31 percent of cropland waste in the United States.<sup>18</sup> Given the energy, labor, and capital to produce and manage these resources, the drag of food waste on our society and environment is substantial. The FAO reported that in 2007 the emissions required to produce all of the food wasted in the world during that year was equivalent to 3.3 billion tons of carbon dioxide, representing 7 percent of total greenhouse gas emissions and surpassed in quantity by only China and the United States.<sup>19</sup> The environmental impact of food waste only increases as products move through the supply chain. Aside from the impact of wasted inputs to create food, there are tremendous amounts of energy and natural resources used in processing, transporting, refrigerating, storing and preparing foods.

Prior Staff determinations have settled the question of whether matters pertaining to climate change and greenhouse gas emissions are issues appropriate for investor consideration that transcend ordinary business. See, e.g., *DTE Energy Company* (January 26, 2015), *J.B. Hunt Transport Services, Inc.* (January 12, 2015), *FirstEnergy Corp.* (March 4, 2015) (proposals not excludable as ordinary business because they focused on reducing greenhouse gas emissions GHG and did not seek to micromanage the company); *Dominion Resources* (February 27, 2014), *Devon Energy Corp.* (March 19, 2014), *PNC Financial Services Group, Inc.* (February 13, 2013), *Goldman Sachs Group, Inc.* (February 7, 2011) (proposals not excludable as ordinary business because they focused on significant policy issue of climate change); *NRG Inc.* (March 12, 2009) (proposal seeking carbon principles report not excludable as ordinary business); *Exxon Mobil Corp.* (March 23, 2007) (proposal asking board to adopt quantitative goals to reduce GHG emissions from the company's products and operations not excludable as ordinary business); *Exxon Mobil Corp.* (March 12, 2007) (proposal asking board to adopt policy significantly increasing renewable energy sourcing globally not excludable as ordinary business); *General Electric Co.* (January 31, 2007) (proposal asking board to prepare a global warming report not excludable as ordinary business).

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<sup>15</sup> "Food Waste." Interfaith Center on Corporate Responsibility, [www.iccr.org/our-issues/food-safety-and-sustainability/food-waste](http://www.iccr.org/our-issues/food-safety-and-sustainability/food-waste).

<sup>16</sup> Vaidyanathan, Gayathri. "How Bad of a Greenhouse Gas Is Methane?" *Scientific American*, 22 Dec. 2015, [www.scientificamerican.com/article/how-bad-of-a-greenhouse-gas-is-methane/](http://www.scientificamerican.com/article/how-bad-of-a-greenhouse-gas-is-methane/).

<sup>17</sup> "Understanding Global Warming Potentials." EPA, Environmental Protection Agency, 14 Feb. 2017, [www.epa.gov/ghgemissions/understanding-global-warming-potentials](http://www.epa.gov/ghgemissions/understanding-global-warming-potentials).

<sup>18</sup> "Food Waste." Interfaith Center on Corporate Responsibility, [www.iccr.org/our-issues/food-safety-and-sustainability/food-waste](http://www.iccr.org/our-issues/food-safety-and-sustainability/food-waste).

<sup>19</sup> Harvey, Chelsea. "The Enormous Carbon Footprint of Food That We Never Even Eat." *The Washington Post*, 28 Mar. 2016, [www.washingtonpost.com/news/energy-environment/wp/2016/03/28/the-enormous-carbon-footprint-of-the-food-we-never-eat/?utm\\_term=.8fde36024c6e](http://www.washingtonpost.com/news/energy-environment/wp/2016/03/28/the-enormous-carbon-footprint-of-the-food-we-never-eat/?utm_term=.8fde36024c6e).

The Company Letter cites the Staff decision in *CVS Health Corporation* (March 8, 2016) where a proposal on increasing renewable energy sourcing or production was excluded under Rule 14a-8(i)(7). That proposal requested company-wide quantitative targets by November 2016 to increase renewable energy sourcing and/or production. Notably, the proposal did not address a significant policy issue. Increasing renewable energy is not a significant policy issue. Addressing climate change would have been.

Further, in the SEC's February 8, 2010 Climate Change release (Release Nos. 33-9106; 34-61469; FR-82), "Guidance to Public Companies Regarding the Commission's Existing Disclosure Requirements as they Apply to Climate Change Matters", the Commission explained that climate change had become a topic of intense public discussion as well as significant national and international regulatory activity. The guidance cites numerous state and federal regulatory activities, including the California Global Warming Solutions Act, the Regional Greenhouse Gas Initiative, the Western Climate Initiative, the Clean Energy Jobs and American Power Act of 2009, and EPA's greenhouse gas reporting program. This new disclosure guidance was needed, according to the SEC, because "the regulatory, legislative and other developments described could have a significant effect on operating and financial decisions." This guidance demonstrated that the SEC recognizes climate change as a significant public policy issue affecting many businesses. To the extent that the Climate Guidance and other initiatives do not produce the needed levels of disclosure at particular companies, the shareholder resolution process provides one of the most important mechanisms for encouraging companies to enhance their disclosure.

### **Response to the issue of food waste is a subject of widespread public debate**

The Staff has determined that shareholder proposals addressing a social issue relate to transcendent issues if they address a topic that engenders widespread debate, media attention and legislative and regulatory initiatives.<sup>20</sup> Here, the Proposal relates to a topic that meets these criteria. Legislatures and policymakers are wrestling with the question of how to manage food waste - considering bans on disposal of food waste by companies like Amazon.

One policy approach to managing retailers' food waste is to make it illegal for supermarkets and other businesses to send wasted food to landfills. Such a law was enacted in France by unanimous legislative vote in late 2015, mandating that unsold but edible food must be donated to help feed the hungry, and inedible food must be donated back to farms for agricultural use and composting. This countrywide effort to divert food waste from landfills is the most aggressive of its kind.

Between 2011 and 2014, California, Connecticut, Massachusetts, Rhode Island, and

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<sup>20</sup> For instance, this approach to "significant policy issue" by the Staff is discussed by the company letter in *Fidelity Aberdeen Trust* (Jan. 22, 2008).



Vermont all passed laws against the landfilling of food waste by businesses.<sup>21</sup> Maryland, New Jersey, and New York have all seen similar legislation proposed. Many of the bans have been quantifiably successful. Massachusetts has seen a 170 percent increase in commercial organic material since the ban was imposed, generating \$175 million in economic activity along with \$50.5 million in capital investments in 2017.<sup>22</sup> In Vermont, the “Vermont Food Bank reported a 25-30% increase in food donation in 2015 and another 40% increase in 2016. Much of that increase is in healthier, fresher foods rather than canned goods. This has brought food costs per meal for the Salvation Army of Greater Burlington Area to under \$0.07 from \$1.47 just two years ago.”<sup>23</sup>

But some argue that the bans instituted by states do not go far enough. The EPA estimates that 56 percent of all food waste in the United States occurs in the homes of consumers, versus just 10 percent at retailers.<sup>24</sup> By failing to incorporate individual food waste mandates, bans against landfilling food at the business level are insufficient. Jonathan Bloom, author of *American Wasteland*, says “If you’re going to increase the composting infrastructure, why not include individuals in that equation? Cities like Seattle and San Francisco have already done that. I don’t want to sound like a Debbie-Downer. It’s a step in the right direction, but I think there’s an opportunity to do more in a state as progressive as Massachusetts.”<sup>25</sup>

Jacob Gerson, law professor at Harvard Law School and director of the Food Law Lab at the Petri-Flom Center, penned a 2016 opinion piece in *Time Magazine* arguing that current federal, state, and local laws make it unnecessarily difficult to donate prepared foods from restaurants and residential homes. “Notwithstanding laudable policy efforts to reduce food waste, local health laws usually prohibit the direct donation of foods, particularly food cooked in unlicensed kitchens. That means virtually all excess food from homes will be wasted. And there is a lot of food cooked and wasted at home.”<sup>26</sup> To remove this barrier, systemic change would need to occur. According to Gerson, “Most states and localities follow the FDA Food Code, a set of model laws for regulating the sale and distribution of food. Changing the Food Code would go a long way toward making it legal to do the right thing.”<sup>27</sup>

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<sup>21</sup> Gunders, Dana, and Jonathan Bloom. “Wasted: How America Is Losing Up to 40 Percent of Its Food From Farm to Fork to Landfill.” National Resource Defense Council, [www.nrdc.org/sites/default/files/wasted-2017-report.pdf](http://www.nrdc.org/sites/default/files/wasted-2017-report.pdf).

<sup>22</sup> Leibrock, Amy. “Are Food Waste Bans Working.” Sustainable America, 11 Jan. 2017, [www.sustainableamerica.org/blog/are-food-waste-bans-working/](http://www.sustainableamerica.org/blog/are-food-waste-bans-working/).

<sup>23</sup> Leibrock, Amy. “Are Food Waste Bans Working.” Sustainable America, 11 Jan. 2017, [www.sustainableamerica.org/blog/are-food-waste-bans-working/](http://www.sustainableamerica.org/blog/are-food-waste-bans-working/).

<sup>24</sup> “Food Waste Management in the United States.” EPA, Office of Resource Conservation and Recovery, Dec. 2017, [www.epa.gov/sites/production/files/2016-12/documents/food\\_waste\\_management\\_2014\\_12082016\\_508.pdf](http://www.epa.gov/sites/production/files/2016-12/documents/food_waste_management_2014_12082016_508.pdf).

<sup>25</sup> Leschin-Hoar, Clare. “Banning Food Waste: Companies in Massachusetts Get Ready to Compost.” The Guardian, Guardian News and Media, 9 Sept. 2014, [www.theguardian.com/sustainable-business/2014/sep/09/food-waste-ban-massachusetts-compost-landfill-food-banks](http://www.theguardian.com/sustainable-business/2014/sep/09/food-waste-ban-massachusetts-compost-landfill-food-banks).

<sup>26</sup> Gersen, Jacob. “The Single Bad Reason We Waste Billions of Pounds of Food.” Time, Time, 9 Sept. 2014, [time.com/4463449/food-waste-laws/](http://time.com/4463449/food-waste-laws/).

<sup>27</sup> Gersen, Jacob. “The Single Bad Reason We Waste Billions of Pounds of Food.” Time, Time, 9 Sept. 2014, [time.com/4463449/food-waste-laws/](http://time.com/4463449/food-waste-laws/).

Some argue that efforts to compel retailers to divert food waste from landfills may ultimately be a waste of time and resources, ignoring the more systemic inefficiencies in the food system that propagate the issues of hunger, waste, and climate change. Tim Lang, Professor of Food Policy at City University London, points to the larger problems within modern industrial food production and retail that lead to food waste: “The food system overproduces, wraps food in packaging, embeds energy, chucks away mountains of usable food, and produces food residues. All this is done on such a massive scale that the waste we’ve made is too dangerous even to feed to pigs, one traditional solution.”<sup>28</sup> Ultimately waste is not the problem, but a symptom. Lang writes, “The food system needs firm and clear frameworks and goals, and not just a focus on one aspect - waste - as though it can be separated from the rest.”<sup>29</sup>

Still, some question whether or not food waste should be addressed with governmental resources. In a 2017 opinion piece for *The Wall Street Journal*, University of Minnesota professor and director for the Center for International Food and Agricultural Policy Marc Bellemare argues that the U.N. definition of food waste is too broad and overstates the problem. Bellemare also takes issue with the notion that the reallocation of food waste is an economically feasible way to tackle hunger, writing “The U.N. says that the 5.9 billion people who live in developing countries and the 1.2 billion in industrialized ones waste roughly the same amount of food—about 715 million tons a year. As food becomes an increasingly small fraction of a household’s budget, wasting food becomes cheaper relative to other expenditures...So if we truly care about feeding the poor, is fighting waste the best use of the government’s next dollar, or would that money be better spent on food stamps and school lunches?”<sup>30</sup>

### **Environmental Protection Agency**

In 2015, the USDA and EPA collaborated to announce a domestic goal of reducing food waste by 50 percent by the year 2030. This ambitious target, known as the U.S. 2030 Food Loss and Waste Reduction Goal, involves a collective effort between federal, state, tribal, and local government working with communities, organizations and businesses to reduce waste.<sup>31</sup> Twenty-one companies are currently listed as U.S. Food Loss and Waste 2030 Champions on the EPA website, signifying a public commitment to adopting the goal of reducing company-wide food waste 50 percent by 2030.

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<sup>28</sup> Lang Professor of Food Policy, City, University of London, Tim. “Food Waste Is the Symptom, Not the Problem.” *The Conversation*, 27 Feb. 2018, [theconversation.com/food-waste-is-the-symptom-not-the-problem-15432](http://theconversation.com/food-waste-is-the-symptom-not-the-problem-15432).

<sup>29</sup> Lang Professor of Food Policy, City, University of London, Tim. “Food Waste Is the Symptom, Not the Problem.” *The Conversation*, 27 Feb. 2018, [theconversation.com/food-waste-is-the-symptom-not-the-problem-15432](http://theconversation.com/food-waste-is-the-symptom-not-the-problem-15432).

<sup>30</sup> Bellemare, Marc. “Is ‘Food Waste’ Really Such a Waste?” *The Wall Street Journal*, 24 Aug. 2017, [www.wsj.com/articles/is-food-waste-really-such-a-waste-1503617475](http://www.wsj.com/articles/is-food-waste-really-such-a-waste-1503617475).

<sup>31</sup> “United States 2030 Food Loss and Waste Reduction Goal.” EPA, Environmental Protection Agency, 11 Dec. 2017, [www.epa.gov/sustainable-management-food/united-states-2030-food-loss-and-waste-reduction-goal](http://www.epa.gov/sustainable-management-food/united-states-2030-food-loss-and-waste-reduction-goal).

Notably, the program has participation by Amazon and Whole Foods peers and competitors. Six of the twenty-one are primarily traditional grocery and retail stores (Ahold USA, Weis Markets, Walmart and Sam’s U.S., Wegmans, Sprouts Market, and MOM’s Organic Market) and three are online grocery delivery services (Blue Apron, Marley Spoon, and Farmstead).<sup>32</sup>

The EPA Food Recovery Hierarchy chart, is an infographic that ranks and prioritizes the actions an organization can take to prevent and divert wasted food. “Source Reduction,” or reducing the volume of extra food that is created, is the most preferred method of addressing food waste. Next on the hierarchy is “Feed Hungry People,” including donations from retailers, followed by “Feed Animals,” “Industrial Uses,” “Composting,” and “Landfill/Incineration.” The EPA website suggests businesses conduct a waste audit to help reduce excess food purchases, noting that “Knowing how much and why wasted food is generated will help to create effective wasted food prevention strategies.”<sup>33</sup>



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### **State Legislation**

State governments have been at the forefront of instituting comprehensive legislation

<sup>32</sup> “List of U.S. Food Loss and Waste 2030 Champions.” EPA, [www.epa.gov/sustainable-management-food/United-states-food-loss-and-waste-2030-champions#list](http://www.epa.gov/sustainable-management-food/United-states-food-loss-and-waste-2030-champions#list).

<sup>33</sup> “How to Prevent Wasted Food Through Source Reduction.” EPA, [www.epa.gov/sustainable-management-food/how-prevent-wasted-food-through-source-reduction](http://www.epa.gov/sustainable-management-food/how-prevent-wasted-food-through-source-reduction).

<sup>34</sup> “How to Prevent Wasted Food Through Source Reduction.” EPA, [www.epa.gov/sustainable-management-food/how-prevent-wasted-food-through-source-reduction](http://www.epa.gov/sustainable-management-food/how-prevent-wasted-food-through-source-reduction).

aimed at diverting food waste from landfills while promoting food donation through tax incentives. Between 2011 and 2014, California, Connecticut, Massachusetts, Rhode Island, and Vermont all pass varying laws against the landfilling of food waste.<sup>35</sup> These five states represent 29 percent of all Whole Foods stores in the United States, serving as home to 129 locations.<sup>36</sup> Maryland, New Jersey, and New York have all seen similar legislation proposed. California has the most aggressive commitments regarding food waste diversion from landfills, targeting 50 percent diversion of food waste by 2020 and 75 percent by 2025, with the goal to recover 20 percent of all edible food waste for human consumption.<sup>37</sup> Arizona, California, Colorado, Iowa, Kentucky, Missouri, Oregon, Virginia, and Washington, D.C. have all added tax incentives for donating food that would otherwise be wasted and sent to landfills.<sup>38</sup>

### **Congressional Hearings**

A February 2008 hearing before the House Select Committee on Energy Independence and Global Warming, entitled “Food for Thought: Sustainability from Counter to Compost,” discussed the role of food waste in combating climate change and supporting green jobs. Chairman Edward J. Markey (D-MA) began the proceeding by saying “A 2006 study predicted that, by 2025, food waste will increase by 44 percent worldwide. This methane buildup is deplorable because it is preventable. Food waste can be recycled into compost, resulting in fewer emissions and in new economic products. Compost soil can be used to fertilize crops and landscaping and support green jobs in food waste recycling.”<sup>39</sup>

### **Executive Order on Food Waste**

A 2015 executive order issued by then President Obama entitled “Planning for Federal Sustainability in the Next Decade” required federal agencies to divert at least 50 percent of food waste while continually pursuing opportunities for net-zero waste.<sup>40</sup> The following year, President Obama hosted the first White House Roundtable on Food Waste, organizing agency staff with representatives from the food trade associations, food corporations, investors, and advocacy and hunger groups.

In May 2016, a hearing entitled “Food Waste from Field to Table” was held before the

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<sup>35</sup> Gunders, Dana, and Jonathan Bloom. “Wasted: How America Is Losing Up to 40 Percent of Its Food From Farm to Fork to Landfill.” National Resource Defense Council, [www.nrdc.org/sites/default/files/wasted-2017-report.pdf](http://www.nrdc.org/sites/default/files/wasted-2017-report.pdf).

<sup>36</sup> “Stores By US State.” Whole Foods Market, [www.wholefoodsmarket.com/stores/list/state](http://www.wholefoodsmarket.com/stores/list/state).

<sup>37</sup> Gunders, Dana, and Jonathan Bloom. “Wasted: How America Is Losing Up to 40 Percent of Its Food From Farm to Fork to Landfill.” National Resource Defense Council, [www.nrdc.org/sites/default/files/wasted-2017-report.pdf](http://www.nrdc.org/sites/default/files/wasted-2017-report.pdf).

<sup>38</sup> Gunders, Dana, and Jonathan Bloom. “Wasted: How America Is Losing Up to 40 Percent of Its Food From Farm to Fork to Landfill.” National Resource Defense Council, [www.nrdc.org/sites/default/files/wasted-2017-report.pdf](http://www.nrdc.org/sites/default/files/wasted-2017-report.pdf).

<sup>39</sup> “Food for Thought: Sustainability from Counter to Compost.” Government Publishing Office, [www.gpo.gov/fdsys/pkg/CHRG-110hrg61527/pdf/CHRG-110hrg61527.pdf](http://www.gpo.gov/fdsys/pkg/CHRG-110hrg61527/pdf/CHRG-110hrg61527.pdf).

<sup>40</sup> “Executive Order -- Planning for Federal Sustainability in the Next Decade.” The White House Archives, 19 Mar. 2015, [obamawhitehouse.archives.gov/the-press-office/2015/03/19/executive-order-planning-federal-sustainability-next-decade](http://obamawhitehouse.archives.gov/the-press-office/2015/03/19/executive-order-planning-federal-sustainability-next-decade).

House of Representatives Agriculture Committee a week after the introduction of the Food Date Labeling Act of 2016. K. Michael Conaway (R-TX), Chairman of the Committee, highlighted the importance of taking action on the issue, saying “Tackling food waste in this country is, and should be, a nonpartisan issue that will be most successful by engaging everyone in the food chain, from field to table,” Conaway said. “It will take the collaboration of all stakeholders to be successful.”<sup>41</sup> The hearing saw testimony from groups like the Natural Resources Defense Council, the Produce Marketing Association, the Grocery Manufacturers Association, Feeding America, and Harvard Law School.

### **Consumer Interest**

A 2016 Ad Council poll found that 74 percent of respondents said the issue of food waste was important or very important.<sup>42</sup> Over 3,300 articles were written in major media outlets between 2011 and 2016, representing a 205 percent increase in coverage.<sup>43</sup>

A 2017 survey found that concern among food waste has risen by 36 percent among women and millennials since 2012, correlating with a similar finding on general sustainability concerns. The overall proportion of consumers who were “more involved” on the issue of food waste was significantly higher than those “less involved”.<sup>44</sup> Many consumers view food waste as a moral issue given the millions of people in America who suffer poverty and food insecurity.

An estimated 40 percent of all food waste occurs at consumer facing businesses,<sup>45</sup> providing ample opportunity for retailers to address the problem and minimize reputational risk for being viewed as a laggard on the issue. Increasing consumer interest on the social and environmental impacts of food waste has pressured companies such as Target and Costco to become more transparent with internal regulations and reporting.

## **II. Is food waste a significant issue for the Company for purposes of Rule 14a-8(i)(7) and Rule 14a-8(i)(5)?**

The Company Letter asserts that food waste is not a significant issue for the business under Rule 14a-8(i)(7), and not “relevant” or “otherwise significantly related” to the company for purposes of Rule 14a-8(i)(5).

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<sup>41</sup> “Food Waste from Field to Table.” EPA, [www.scribd.com/document/345738688/HOUSE-HEARING-114TH-CONGRESS-FOOD-WASTE-FROM-FIELD-TO-TABLE](http://www.scribd.com/document/345738688/HOUSE-HEARING-114TH-CONGRESS-FOOD-WASTE-FROM-FIELD-TO-TABLE).

<sup>42</sup>Gunders, Dana, and Jonathan Bloom. “Wasted: How America Is Losing Up to 40 Percent of Its Food From Farm to Fork to Landfill.” National Resource Defense Council, [www.nrdc.org/sites/default/files/wasted-2017-report.pdf](http://www.nrdc.org/sites/default/files/wasted-2017-report.pdf).

<sup>43</sup> Gunders, Dana, and Jonathan Bloom. “Wasted: How America Is Losing Up to 40 Percent of Its Food From Farm to Fork to Landfill.” National Resource Defense Council, [www.nrdc.org/sites/default/files/wasted-2017-report.pdf](http://www.nrdc.org/sites/default/files/wasted-2017-report.pdf).

<sup>44</sup> “Survey: Americans Care About Food Waste and Sustainability.” Food Newsfeed, 27 June 2017, [www.foodnewsfeed.com/content/survey-americans-care-about-food-waste-and-sustainability](http://www.foodnewsfeed.com/content/survey-americans-care-about-food-waste-and-sustainability).

<sup>45</sup> “Survey: Americans Care About Food Waste and Sustainability.” Food Newsfeed, 27 June 2017, [www.foodnewsfeed.com/content/survey-americans-care-about-food-waste-and-sustainability](http://www.foodnewsfeed.com/content/survey-americans-care-about-food-waste-and-sustainability).

The Company's argument under Rule 14a-8(i)(5) asserts that the cost of food spoilage and waste for the year across all company operations is less than 5% of cost of sales and assets. Although the value of food waste itself may be under 5% of the Company's assets or sales, the waste management problems raised by the issue are directly related to the substantial portion of the Company engaged in food sales. The Company's total estimated grocery sales for 2017 reached \$2 billion, representing 59% growth over the previous year<sup>46</sup>. This was further buoyed by the Company's \$13 billion acquisition of Whole Foods on August 28, 2017, its largest acquisition yet by over \$10 billion.<sup>47</sup> Physical store revenue, mostly attributed to the acquisition of Whole Foods, accounted for \$4.5 billion in sales.<sup>48</sup> Including the revenue of Whole Foods, the Company's total revenue for 2017 jumped 38% over the previous year.<sup>49</sup>

The assertion that the Proposal is not significantly related to the Company's business is difficult to reconcile with the Company's stated aspirations for growth within the grocery industry, and the recent acquisition of Whole Foods in 2017. The Company's goal to become a top five grocery retailer by 2025<sup>50</sup> through initiatives such as Amazon Fresh, Amazon Go, and Prime Now underscore the ambitions that the Company has to rapidly increase its share in the industry.<sup>51</sup> During Q1 of 2017, Amazon's grocery sales outpaced the industry 15 times, demonstrating 30 percent year-over-year growth.

Since the issue of food waste management is a massive issue for the growing segment of Amazon focused on food, it is a significant ESG metric for the company. Further evidence of the significance of the issue of food waste is demonstrated by the inclusion of food waste statistics in the Sustainability Accounting Standards Board (SASB) guidelines. The SASB identifies issues that are likely to be material for purposes of reporting in the 10-K on a sector by sector basis. SASB guidelines for food retailers suggest disclosure of "Amount of food waste generated and the percentage diverted from the waste stream".

Online grocers face increased rates of food waste through poor forecasting and ordering, overstocking, and only selling cosmetically approved produce. Amazon Fresh has lost money from spoilage at more than double the rate of a typical supermarket.<sup>52</sup> In 2014, Amazon Fresh threw out

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<sup>46</sup> "Amazon Grocery Year In Review", Clavis Insight. <https://www.clavisinsight.com/blog/amazon-grocery-year-review>

<sup>47</sup> Amazon.com, Inc. 8-K, June 15, 2017  
<https://www.sec.gov/Archives/edgar/data/1018724/000119312517205287/d352949d8k.htm>

<sup>48</sup> Kim, Eugene. "Amazon Shares Jump after Earnings." CNBC, 1 Feb. 2018, [www.cnbc.com/2018/02/01/amazon-earnings-q4-2017.html](http://www.cnbc.com/2018/02/01/amazon-earnings-q4-2017.html).

<sup>49</sup> Kim, Eugene. "Amazon Shares Jump after Earnings." CNBC, 1 Feb. 2018, [www.cnbc.com/2018/02/01/amazon-earnings-q4-2017.html](http://www.cnbc.com/2018/02/01/amazon-earnings-q4-2017.html).

<sup>50</sup> Soper, Spencer, and Olivia Zaleski. "Inside Amazon's Battle to Break Into the \$800 Billion Grocery Market." Bloomberg, 20 Mar. 2017, [www.bloomberg.com/news/features/2017-03-20/inside-amazon-s-battle-to-break-into-the-800-billion-grocery-market](http://www.bloomberg.com/news/features/2017-03-20/inside-amazon-s-battle-to-break-into-the-800-billion-grocery-market)

<sup>51</sup> Wells, Jeff. "Report: Amazon Is Consolidating Its Fresh and Prime Now Services." Food Dive, 16 Feb. 2018, [www.fooddive.com/news/grocery--report-amazon-is-consolidating-its-fresh-and-prime-now-services/517287/](http://www.fooddive.com/news/grocery--report-amazon-is-consolidating-its-fresh-and-prime-now-services/517287/).

<sup>52</sup> Soper, Spencer, and Olivia Zaleski. "Inside Amazon's Battle to Break Into the \$800 Billion Grocery Market."

nearly one-third of all bananas purchased because the only option to purchase the fruit online was in bunches of five.<sup>53</sup>

In 2017, prior to the acquisition by the Company, 30 percent of Whole Foods shareholders voted in favor of a resolution calling for greater transparency around the company's food waste management efforts. While general consumer interest around food waste has demonstrably grown over the past decade, last year's shareholder vote demonstrates that the issue is of substantial interest to many of the Company's current shareholders. This voting record is appended as Appendix A to this letter.

The Company has publicly stated on its website that they support measures and initiatives, both internally and institutionally, that address climate change. Along with specific examples<sup>54</sup> on the Company's sustainability website regarding "Powering a Clean Future," "AWS (Amazon Web Services) and Sustainability," "Energy and Environment," "Packaging," and "Our Global Operations Footprint," the "Sustainability Question Bank" offers the following public comments indicating the importance of addressing climate change to the Company:

"Amazon is committed to minimizing our carbon emissions by optimizing our transportation network, improving product packaging to drive efficiency in the distribution of products, implementing energy efficiency measures in our operations, and using renewable energy to run our business. We have also joined numerous industry partnerships to express support for action on climate change and to accelerate the transition to a low-carbon economy."<sup>55</sup>

\* \* \*

"Amazon has made it clear that we support policies and programs that address the impacts of climate change on our planet. In 2015, Amazon expressed support for a strong outcome in the Paris Climate negotiations. In 2016 we filed an Amicus brief in conjunction with Google, Microsoft and Apple, which detailed our support for policies that support renewable energy."<sup>56</sup>

As the food retail aspect of the Company continues to grow, the importance of optimally managing Company food waste will follow suit. Food items have proven to be one of the fastest growing segments of the Company's business, representing 11 percent of Amazon sales growth

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Bloomberg, 20 Mar. 2017, [www.bloomberg.com/news/features/2017-03-20/inside-amazon-s-battle-to-break-into-the-800-billion-grocery-market](http://www.bloomberg.com/news/features/2017-03-20/inside-amazon-s-battle-to-break-into-the-800-billion-grocery-market)

<sup>53</sup> Soper, Spencer, and Olivia Zaleski. "Inside Amazon's Battle to Break Into the \$800 Billion Grocery Market."

Bloomberg, 20 Mar. 2017, [www.bloomberg.com/news/features/2017-03-20/inside-amazon-s-battle-to-break-into-the-800-billion-grocery-market](http://www.bloomberg.com/news/features/2017-03-20/inside-amazon-s-battle-to-break-into-the-800-billion-grocery-market)

<sup>54</sup> Sustainability Landing Page, Amazon. <https://www.amazon.com/p/feature/wnsdvqqghme982o>

<sup>55</sup> Sustainability Landing Page, Amazon. <https://www.amazon.com/p/feature/ufsuudkyu5db88d#?q=greenhouse>

<sup>56</sup> Sustainability Question Bank, Amazon. <https://www.amazon.com/p/feature/ufsuudkyu5db88d#?q=greenhouse>

in 2016<sup>57</sup> and further buoyed by the Whole Foods Market Inc. (“Whole Foods”) acquisition in August of 2017. Food item sales in 2017 are estimated at over \$1,500,000,000, the third fastest growing segment of the company at thirty-three percent growth year over year.<sup>58</sup> The Company’s goal to become a top five grocery retailer by 2025<sup>59</sup> through initiatives such as Amazon Fresh, Amazon Go, and Prime Pantry underscore the ambitions that the Company has to rapidly increase its footprint in the industry. The fact that the Board of Directors does not believe the Proposal transcends the Company’s ordinary business is troubling and reflects either a lack of understanding of the impact of food waste or a complete understanding of the issue within business operations but a hesitancy to disclose the Company’s actual footprint.

Assessing the current state of food waste within company-wide operations would address the same concerns about climate change, carbon emissions, and operational efficiency that the Company espouses above.

The proposal seeks reporting at a similar level to reporting by the company on other sustainability issues, and the failure of the Company to report on food waste makes its attempt to build a sustainable brand vulnerable, due to this evident gap in its reporting. Indeed, the Company has already come under scrutiny by a food sector think tank known as FoodTank for the potential for the Amazon Whole Foods purchase to lead to purchase a failure to address the issue of food waste. The full article is appended as Appendix B to this letter.

Whole Foods needs to assess and report on its food waste to help us better understand and address the problem. The company should strategically tackle food waste before it is wasted at the supply chain level with smarter purchasing policies. Whole Foods has been headed in the right direction. If Amazon is going to use this to shake up the grocery store model, it would help its bottom line, its reputation, and the planet to implement sound food waste policies all across its supply chain

### **III. Even though the Proposal is directed toward a significant policy issue, does the Proposal’s discussion of the business case for action make the proposal excludable?**

The Company Letter conflates the subject matter of the proposal (Food Waste) with the proposal’s advocacy and the presentation of the business case for action. The subject matter of food waste is broadly linked to significant social and environmental concerns — combatting climate change and hunger. By not recognizing, assessing, and publicly reporting on the Company’s food waste and the financial, environmental and social impacts associated with it,

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<sup>57</sup> “Amazon Sales 2016.” Lee O’Carroll , [leeocarroll.com/amazon-online-sales-2016/](http://leeocarroll.com/amazon-online-sales-2016/)

<sup>58</sup> Thomas, Lauren. “Amazon Grabbed 4 Percent of All US Retail Sales in 2017, New Study Says.” CNBC, CNBC, 3 Jan. 2018, [www.cnbc.com/2018/01/03/amazon-grabbed-4-percent-of-all-us-retail-sales-in-2017-new-study.html](http://www.cnbc.com/2018/01/03/amazon-grabbed-4-percent-of-all-us-retail-sales-in-2017-new-study.html).

<sup>59</sup> Soper, Spencer, and Olivia Zaleski. “Inside Amazon’s Battle to Break Into the \$800 Billion Grocery Market.” Bloomberg, 20 Mar. 2017, [www.bloomberg.com/news/features/2017-03-20/inside-amazon-s-battle-to-break-into-the-800-billion-grocery-market](http://www.bloomberg.com/news/features/2017-03-20/inside-amazon-s-battle-to-break-into-the-800-billion-grocery-market)



Amazon is failing to address a significant policy issue of widespread concern.

The Proposal's discussion of the business case for acting on this issue, including the elimination of losses and inefficiencies, represents a valid advocacy approach for a proposal that speaks to the interests of fellow investors. It addresses issues that cause investors to vote in favor of proposals on social issues.

Reading the Company's correspondence, one would be led to believe that a shareholder proposal on a significant policy issue like food waste must focus its verbiage solely the impacts of the issue on society. Once a proposal addresses a significant policy issue, as this one does, it is inappropriate for the Company or Staff to limit advocacy in the proposal other than eliminating misleading or impugning statements.

The Proposal correctly speaks to the needs and interests of investors by focusing on how the Company could do well by also doing good on this subject matter. Having identified the subject matter of food waste and connected it to the core issue of societal impacts, the proponent is under no obligation to limit advocacy to a focus on reducing the social impact.

The information and advocacy in the proposal is consistent with the purpose of the SEC's rules and regulations to provide material financial information to public investors. Given the SEC mission, the information regarding the potential for the Company and its shareholders to profit is an appropriate element for any proposal, whether it is a few words or it predominates of the supporting statement.

The text of the Proposal is consistent with the approach of hundreds of other proposals that substantially integrate the business case for action, and which have been found by the Staff to not entail micromanagement. To cite just a few examples: In *Spectra Energy Corp.* (February 21, 2013) the proposal asked the company to report on how it is measuring, mitigating, and disclosing methane emissions. The proposal itself extensively discussed the business case for methane leakage reduction, but was found to be non-excludable, not micromanaging. The language of the proposal included extensive discussion of efficiency and the business case. "Methane leakage has a direct economic impact on Spectra Energy as lost gas is not available for sale, whereas natural gas captured through control processes can be sold in the market, generating positive returns.... Significant reductions in methane emissions are possible using new technologies with positive return on investment. Benefits include safety improvements, maximizing available energy resources, reducing economic waste, protecting human health, and reducing environmental impacts....Upgrading production assets may also improve performance, making assets more robust and less susceptible to upsets and downtime." Similarly in *Unocal Corporation* (March 6, 1996) the proposal requested that the board adopt a policy of annual reviews of available pollution prevention options for high priority pollution sources. The subject of pollution was considered a significant policy issue, but the proposal did not belabor the social impacts. Instead, much of the proposal focused on the business case. "We believe that the responsible implementation of pollution prevention procedures result in benefits to the

corporation and its shareholders by increased efficiencies, reduced costs from potential enforcement and liability actions, and long term elimination of environmental compliance costs;

We also believe that pollution prevention is the best approach to reducing pollution because it seeks an efficient and cost effective means of reducing pollution at its source. Pollution prevention can keep a company's products from leaking into air, land or water and thereby reduces the amount of wasted products. A study conducted by the New Jersey Department of Environmental Protection concluded that companies will save five to eight dollars for every dollar they spend reducing the amount of hazardous chemicals that they use.”

The current Proposal is consistent with the mainstream focus of investors seeking to address social impacts while simultaneously encouraging companies to seize opportunities to lead or drive the market, and to head off crushing liabilities, reputation damage, or consumer revolts. There is a wealth of published data establishing that ESG or sustainability factors are positively and significantly correlated with both company and fund financial performance. Some of that literature comes from the world's largest financial firms, including ones like Bank of America Merrill Lynch, Morgan Stanley, Credit Suisse, UBS, Goldman Sachs and others.<sup>60</sup>

Amazon investors seeking so-called “ESG metrics” can be expected to support Food Waste disclosure. In light of the growth of the food segments and sales, they would surely consider it relevant to assessing the firm's long-term value creation efforts. As Larry Fink, the chief executive of BlackRock, the world's largest investor, has noted in his annual letter to investors that “ESG factors relevant to a company's business can provide essential insights into management effectiveness and thus a company's long-term prospects.” For a company like Amazon that is growing a massive food business, food waste statistics are core ESG statistics.

In addition, Whole Foods Market has long been a favorite investment for socially responsible investors. With the acquisition by Amazon, it raises significant questions for Whole

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<sup>60</sup> A recent report by the US SIF Foundation highlights that one in five investing dollars is currently invested in a fund using one or more sustainable investing strategies. Sustainable, responsible and impact (SRI) investing assets now account for \$8.72 trillion, or one in five dollars invested under professional management in the U.S. according to the US SIF Foundation's biennial Report on US Sustainable, Responsible and Impact Investing Trends 2016. The amount of these invested assets has grown from \$639 billion when first measured in 1995. Increasing numbers of investors, large and small, see financial materiality in ESG performance metrics on issues like climate change, diversity, environmental impact, bribery, and worker safety. The investor interest in these issues is further documented by the groundswell of comment letters to the SEC on the Regulation S-K Concept Release urging the SEC to mandate disclosure of ESG (environmental, social, and governance) information. The Sustainability Accounting Standards Board (SASB) analyzed the comment letters received by the SEC in response to the 2016 Concept Release. Two-thirds of the 276 non-form comment letters discussed ESG disclosures in SEC filings.

foods investors whether the larger company remains an appropriate investment for socially responsible firms and clients. For a portion of Amazon investors, including the legacy whole foods investors who have received Amazon stock, the company's unresponsiveness on these issues may prove frustrating.

Although the Company accurately points out a number of quantifiable and compelling examples from the whereas clause of the Proposal detailing the economic efficacy of food waste management and the current competitive landscape within the industry, these are valid advocacy points in the proposal and do not render it excludable under Rule 14a-8(i)(7).

#### **IV. Does the proposal micromanage?**

The Company Letter's assertion that the proposal engages in micromanagement is focused on the notion that the proposal is essentially a dialogue in which shareholders are trying to dictate how the company goes about minimizing food spoilage. The Company Letter notes that the company has various strategies already for reducing waste, including reusable tote bags and donation of food to local food kitchens, as well as other food waste strategies. They also note that these are issues that all companies have to deal with inventory obsolescence and that therefore these are day-to-day considerations.

Yet, the reality is that this is a top level, summary reporting type of proposal that does not drill down into the nitty-gritty of the company's day-to-day business but asks for summary information that allows shareholders to assess whether the company is effectively managing food waste, including using that information as a ESG proxy for understanding the board and management's approach to long-term value creation.

The courts have considered the question of broad differences regarding the timing of a corporate response to a critical social issue, and concluded that when investors seek a timeframe that is very different from the company's, that is not micromanagement. In *Roosevelt v. E.I. DuPont de Nemours & Company*, 958 F.2d 416 (D.C. Cir. 1992), Judge Ruth Bader Ginsburg confirmed that:

“Timing questions no doubt reflect “significant policy” when large differences are at stake. That would be the case, for example, if Du Pont projected a phase-out period extending into the new century. On the other hand, were Roosevelt seeking to move up Du Pont's target date by barely a season, the matter would appear much more of an “ordinary” than an extraordinary business judgment.”

The report is at an appropriate top-level frame for inquiry, asking the company to produce a report at reasonable cost and omitting proprietary information, on company-wide efforts to assess, reduce and optimally manage food waste. In other words, it is asking for the company to expand on the types of explanations offered in the no action reply, but in a form that would be more accessible and visible to all shareholders. The *recommended* details included in the

supporting statement to the Proposal would give shareholders the kind of **summary level** information needed to understand how the company is managing food waste issues. This level of detail is entirely consistent with how the company reports on other issues on its sustainability reports and pages:

Providing the “**Results of audits to determine the causes, quantities and destinations of food waste**” would demonstrate to the investors the degree to which the company is tackling this issue in audited segments.

Providing “**Estimated cost savings from optimized food purchasing, handling, recycling, and disposal**” would help to reveal whether the company has identified a profitable path for advancing food waste reduction strategies.

Setting “**Time bound targets to reduce waste**” and reporting on “**progress towards meeting these targets**” is the best way of demonstrating the Company’s level of commitment.

None of these elements meddle in the nitty-gritty of the business, they simply ask the questions needed by investors and investment fiduciaries with an eye for the social impact and business case reasons for controlling food waste to gain the information needed for effective understanding and oversight.

There is a long history of Staff rejecting companies’ ordinary business and micromanagement assertions on proposals seeking reports with targets, goals or monitoring or measurement of a significant social policy issue. See, for instance, *TJX Companies (April 5, 2002)* requesting that the company commit itself to the implementation of a code of corporate conduct based on the ILO human rights standards by its international suppliers and in its own international production facilities and commit to a program of outside, independent monitoring of compliance with these standards. *Dominion Resources Inc.* (February 11, 2014) requested the company adopt quantitative goals, taking into account International Panel on Climate Change guidance, for reducing total greenhouse-gas emissions from the company’s products and operations and report on its plans to achieve these goals. *Bob Evans Farms, Inc.* (June 6, 2011) phase-in the use of cage-free eggs for Bob Evans restaurants, so that they represent at least five percent of the company’s total egg usage. *Verizon* (February 22, 2016) a report assessing the feasibility of adopting science-based greenhouse gas (GHG) reduction targets consistent with the 2-degree scenario. *Spectra Energy Corp.* (February 21, 2013) report for investors on how Spectra Energy is measuring, mitigating, and disclosing methane emissions. The supporting statement added that a report adequate for investors to assess the company’s strategy would include methane leakage rate as a percentage of production, how the company is measuring and mitigating emissions, best practices, worst performing assets, risk mitigation, and environmental impact. *Exxon Mobil Corporation* (March 23, 2016) requesting that the company quantify and

report to shareholders its reserve replacements in British Thermal Units, by resource category, to assist the company in responding appropriately to climate change induced market changes.

#### **V. Does the Board opinion alter any of these issues?**

In Staff Legal Bulletin 14I, November 1, 2017 the Staff invited boards of directors to deliberate on whether proposals address a significant policy issue for the company, and whether they are economically relevant. For instance the Bulletin notes:

At issue in many Rule 14a-8(i)(7) no-action requests is whether a proposal that addresses ordinary business matters nonetheless focuses on a policy issue that is sufficiently significant. These determinations often raise difficult judgment calls that the Division believes are in the first instance matters that the board of directors is generally in a better position to determine. A board of directors, acting as steward with fiduciary duties to a company's shareholders, generally has significant duties of loyalty and care in overseeing management and the strategic direction of the company. A board acting in this capacity and with the knowledge of the company's business and the implications for a particular proposal on that company's business is well situated to analyze, determine and explain whether a particular issue is sufficiently significant because the matter transcends ordinary business and would be appropriate for a shareholder vote.

Accordingly, going forward, we would expect a company's no-action request to include a discussion that reflects the board's analysis of the particular policy issue raised and its significance. That explanation would be most helpful if it detailed the specific processes employed by the board to ensure that its conclusions are well-informed and well-reasoned. We believe that a well-developed discussion of the board's analysis of these matters will greatly assist the staff with its review of no-action requests under Rule 14a-8(i)(7).

In response to the Bulletin, the Company letter includes a description of the Board of Directors process. The board essentially reiterates the arguments regarding significance and relevance, but does not provide persuasive or empirical evidence that the Proposal does not address a significant and relevant policy issue for the Company.

Based on the information we have provided above, we believe it is clear that the Board opinion does not provide a compelling basis or evidence for finding that the proposal is insignificant, irrelevant or micromanages. **Food waste issues are a material gap in the Company's shareholder reporting on sustainability issues.** The Board opinion does not provide a compelling basis or evidence for finding that the proposal to close this gap is insignificant, irrelevant or micromanages.

The Board notes correctly that the Proposal does not request the creation of specific

changes in operations, but simply the development of a report assessing Company-wide efforts to assess food waste. As a reporting request, the Proposal does not unduly meddle in core matters of the Company's business and operations but rather raises issues *for shareholder accountability* in a manner that affords substantial discretion regarding any changes to Company policies or procedures. Shareholders are legitimately interested in the ESG metrics associated with food waste. The form of the proposal as a reporting request does not render this excludable under Rule 14a-8(i)(7).

Next the Board section of the letter notes the Proposal's objective and its existing activities. The letter asserts that the proposal is focused on mere "inventory spoilage," an issue central to the Company's day-to-day business operations. However, the need for the Proposal's top level assessment of a food waste strategy by the Company to fill its gap in its sustainability reporting is not obviated by the Board's assertion that the company is already addressing these issues. Moreover its mention that it has some initiatives in this area such as donation programs does not obviate the need for the report. The Board and Company did not, and could not, claim that the requests of the proposal are substantially implemented.

The board also notes rapid growth in Amazon's food operations. We believe this is evidence that the proposal is timely, or in any event more suited as an argument for the opposition statement than a reason to exclude the proposal. While the firm is growing the footprint of food sales and business segments, it is the right time to design food waste management strategies. Tackling issues of food waste while the food segments are growing, by investing in and designing food waste infrastructure using economies of scale and design is preferable to trying to retrofit waste management systems after the fact.

## CONCLUSION

Based on the foregoing, we believe it is clear that the Company has provided no basis for the conclusion that the Proposal is excludable from the 2018 proxy statement pursuant to Rule 14a-8. As such, we respectfully request that the Staff inform the company that it is denying the no action letter request. If you have any questions, please contact me at 413 549-7333 or [sanfordlewis@strategiccounsel.net](mailto:sanfordlewis@strategiccounsel.net).

Sincerely,



Sanford J. Lewis

Cc:

Leslie Samuelrich  
Jared Fernandez  
Ronald O. Mueller

APPENDIX A  
RECORD OF WHOLE FOODS MARKET  
SHAREHOLDER PROPOSAL IN 2017

For the foregoing reasons, our Board of Directors believes that our current proxy access right serves the best interests of our shareholders and that the proponent's approach is not necessary or appropriate for the Company and recommends that shareholders vote AGAINST this proposal.

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## PROPOSAL 6 – SHAREHOLDER PROPOSAL REGARDING FOOD WASTE REPORTING

---

We received a formal shareholder proposal. The Company will promptly provide to any shareholder the name, address and number of the Company's voting securities held of/by the person submitting this proposal (to whom we refer as the "Proponent") upon receiving an oral or written request from such shareholder made to Company counsel, via phone at 512-542-0676, or via email at proxy.information@wholefoods.com. Proponent has furnished evidence of ownership of no less than \$2,000 (market value) of shares of Whole Foods Market, Inc. common stock for at least one year prior to the date the proposal was submitted. The Proponent's proposal and supporting statement are quoted verbatim below.

For the reasons set forth by the Company in the section titled Our Statement in Opposition, following the Proponent's proposal and supporting statement, the Company disagrees with Proponent's proposal and supporting statement.

### Board of Directors Recommendation

**THE BOARD OF DIRECTORS RECOMMENDS A VOTE "AGAINST" THE ADOPTION OF THIS PROPOSAL.  
Vote Required**

Approval of this proposal requires the affirmative vote of the holders of a majority of the shares entitled to vote on, and who vote for or against, this proposal.

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## PROPONENT'S PROPOSAL AND SUPPORTING STATEMENT

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### Food Waste

Whereas:

40% of food produced in the U.S. goes uneaten, costing the American economy \$218 billion per year, or 1.3% of GDP.

Food decomposing in landfills emits approximately 23% of U.S. methane emissions, a greenhouse gas 84 times as potent as CO<sub>2</sub>. Production of uneaten food consumes 21% of U.S. freshwater, 19% of fertilizer and 18% of cropland. If global food waste were a country, its emissions would be 3rd, behind only China and the United States.

Nearly 50 million Americans, including 16 million children, are food insecure; reducing food waste by just 15% could feed 25 million people every year.

Some grocery retailers are taking action to capitalize on related financial opportunities. Stop & Shop saved an estimated \$100 million annually by reducing losses of perishables while providing items that were 3 days fresher on average. Price Chopper reduced bakery item losses by \$2 million in one year, while increasing sales by 3%.

The 400 members of The Consumer Goods Forum have committed to halve food waste by 2025. Safeway, Publix and Kroger have joined the Food Waste Reduction Alliance and have provided comprehensive, metrics-based disclosure on their food waste management efforts.

While WFM provides anecdotal evidence of its food waste reduction efforts in select stores, it has yet to report on its food waste management strategy or disclose current, company-wide data on food waste prevention or diversion.

Several states have laws that commonly require retailers to divert food waste from landfills, creating regulatory risk for those who lack adequate diversion strategies. Food waste related legislation has also been introduced in the U.S. Congress and the EPA announced a national target to reduce food waste 50 percent by 2030.



In addition, many non-governmental organizations are working to raise awareness of the impacts of food waste that may lead to negative media attention for retailers like WFM.

In light of these political and industry trends, we believe Whole Foods Market and its shareholders are positioned to benefit from a comprehensive approach to food waste prevention and strategic diversion that can cut costs, provide competitive advantage, strengthen brand reputation, save resources, help alleviate hunger and reduce greenhouse gas emissions.

**Resolved:** Shareholders request Whole Foods Market issue a report, at reasonable cost and omitting proprietary information, on company-wide efforts (above and beyond its existing reporting) to assess, reduce and optimally manage food waste.

**Supporting Statement:** Items to be covered in the report can include:

- Results of audits to determine the causes, quantities and destinations of food waste
- Estimated cost savings from optimized food purchasing, handling, and disposal
- Prioritization of strategies based on EPA's Food Recovery Hierarchy
- Identification of additional revenue streams and possible tax benefits from new uses of previously wasted food
- Time bound targets to reduce waste and progress towards meeting these targets.

---

## OUR STATEMENT IN OPPOSITION

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Our Board of Directors has carefully considered this proposal and, in light of our Company's track record and demonstrated commitment to lessening the impact of our business operations on the environment, including the management of food waste, believes this proposal would result in additional labor and expense that would provide limited justifiable benefit.

The Company has been and remains committed to practicing and advancing various Green Mission initiatives, including diverting materials from community landfills. Unless located in a community that does not support recycling and composting, all of our stores are involved in a recycling program, and most participate in a composting program. Between our food bank partnerships, composting programs, and recycling efforts, more than 30 stores have received Zero Waste Certification from the U.S. Zero Waste Business Council, and we are committed to annually increasing that store count. To further our efforts, in 2016 we partnered with a national waste service and tracking provider and are in the process of implementing their management, tracking and reporting solution across the company.

Sustainability is a core value of the Company and our environmental commitment extends beyond food waste. In 2007, we introduced fiber packaging in many of our prepared foods departments as a compostable alternative to traditional petroleum, wood or tree-based materials. In 2008, we discontinued the use of disposable plastic grocery bags at the checkouts in all stores, and were the first national retailer to utilize Forest Stewardship Council certified paper bags originating from 100 percent post-consumer recycled fiber. We continue to actively work with our vendor partners to ensure more responsible product packaging, such as eliminating the use of Styrofoam. Additional information about our sustainability efforts is available on our website at <http://www.wholefoodsmarket.com/mission-values/core-values/sustainability-and-our-future>. For the foregoing reasons, our Board of Directors believes that this proposal is unnecessary and recommends that shareholders vote AGAINST this proposal.

## CERTAIN RELATIONSHIPS AND RELATED TRANSACTIONS

### 2016 Related Party Transactions

During fiscal year 2016, the Company received lease payments totaling approximately \$0.53 million from BookPeople, Inc. ("BookPeople"), a retailer of books and periodicals unaffiliated with the Company. Mr. Mackey and Ms. Flanagan, executive officers of the Company, own approximately 51% and 2%, respectively, of the capital stock of BookPeople. BookPeople leases retail space from the Company at one of the Company's Austin, Texas locations. The lease, which was entered into on December 31, 1993, provides for an aggregate annual minimum rent of approximately \$0.5 million.

During fiscal year 2016, the Company made purchases totaling approximately \$1.9 million from Willow Wood Partners One, LLC d/b/a New Barn, a company in which Ted Robb and Chris Robb, Walter Robb's sons, have a collective ownership interest of approximately 25%. By way of background, the Company's relationship with New Barn began from the Company's Southern Pacific Region's desire to sell an almond milk product with simple, quality ingredients at a desirable price point. The region believed that they found such a product from New Barn. Once this vendor was established, some

**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION**  
Washington, D.C. 20549

**FORM 8-K**

**CURRENT REPORT  
Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934**

Date of Report (Date of earliest event reported): **February 17, 2017**

**WHOLE FOODS MARKET, INC.**  
(Exact name of registrant as specified in its charter)

**Texas**  
(State or other jurisdiction of  
incorporation)

**0-19797**  
(Commission File  
Number)

**74-1989366**  
(IRS Employer  
Identification No.)

**550 Bowie Street, Austin, Texas**  
(Address of principal executive offices)

**78703**  
(Zip Code)

Registrant's telephone number, including area code:  
**(512) 477-4455**

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
- Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
- Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
- Pre-commencement communications pursuant to Rule 13c-4(c) under the Exchange Act (17 CFR 240.13c-4(c))

6. To approve the shareholder proposal requesting that the Company issue a report regarding the Company's food waste efforts. This proposal was not approved.

FOR	AGAINST	ABSTAIN	BROKER NON-VOTES	APPLICABLE PERCENTAGE
63,832,376	146,199,855	12,942,917	54,100,392	70% AGAINST

Office of Chief Counsel  
March 1, 2018  
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**APPENDIX B**  
**ARTICLE FROM FOOD TANK**



OP-ED (HTTPS://FOODTANK.COM/NEWS/CATEGORY/OP-ED/).

# Amazon-Whole Foods Deal Could Mean Prime Waste



435 SHARES

Amazon’s acquisition of Whole Foods has the potential to have a ripple effect across the grocery industry, affecting our food chain from farm to landfill. And one big area this new partnership could shape is combating wasted food.

Food waste in the United States has tripled in the last 50 years. We now waste 40 percent of the food we produce (<http://journals.plos.org/plosone/article?id=10.1371/journal.pone.0007940>). And this adds up:

foodtank (HTTPS://FOODTANK.COM/)

greenhouse gas emissions, which should be a concern for people who care about the planet and for companies looking to shrink their carbon footprint. Globally, wasted food produces 3 billion tons of greenhouse gas emissions.

Since 2016, Whole Foods has made stronger efforts to tackle food waste. Its strength lies in donating excess food and selling imperfect produce at discounted rates. Even before these efforts, the stores have been using perfectly good but not-quite-perfect produce in prepared meals and juices.

But this agreement could be a raw deal for that progress. Amazon's record of wastefulness and lack of transparent reporting should sound the alarm for all of us, given this enormous boost to its monopoly over the marketplace. Amazon's carbon footprint (<http://www.businessinsider.com/greenpeace-amazon-lags-behind-apple-google-and-facebook-on-renewables-2017-1>) lags behind other giants like Google and Apple, particularly when it comes to adopting renewable energy sources (<http://www.clickclean.org/downloads/ClickClean2016%20HiRes.pdf>) for their data centers, and the company has a history (<http://www.seattletimes.com/business/retail/greenpeace-amazons-path-to-green-cloud-computing-is-unclear/>) of not being open about its energy sources (<http://www.popularmechanics.com/technology/infrastructure/a25505/amazon-adding-solar-panels-to-fulfillment-centers/>). Also, Amazon's wasteful packaging for shipping is worsened by Amazon Fresh, its current grocery service, which over-packages food items (<http://www.networkworld.com/article/3091863/internet/amazon-s-amazingly-wasteful-packaging.html>).

Despite strong rhetoric and a food donation program, Whole Foods has also come under fire for not fully disclosing its efforts to reduce food waste company-wide. And although Amazon recently committed to add solar panels to its massive distribution warehouses, the online retail giant has been criticized for failing to disclose its emissions data.

Whole Foods needs to assess and report on its food waste to help us better understand and address the problem. The company should strategically tackle food waste before it is wasted at the supply chain level with smarter purchasing policies. Whole Foods has been headed in the right direction. If Amazon is going to use this to shake up the grocery store model, it would help its bottom line, its reputation, and the planet to implement sound food waste policies all across its supply chain.

Meanwhile other grocery retailers—and even food delivery services—are strategizing how to stay competitive. Now they have an opportunity to distinguish themselves by focusing on local economies and truly sustainable and green policies. They can get ahead of Amazon and Whole Foods by committing to zero-waste policies, eliminating buy-one-get-one-free promotions that encourage over-purchasing, helping customers with smart shopping tools, purchasing entire crops from growers rather than rejecting “ugly” produce, and tracking and reporting their waste data

[foodtank](https://foodtank.com/) ([HTTPS://FOODTANK.COM/](https://foodtank.com/))

leader in food waste reduction.

Shoppers want to buy food that is sustainable and shop at stores that are supporting rather than destroying the planet. Amazon's Whole Foods may introduce new ways of selling food—but if it clings to a wasteful past, it won't be long until it's bypassed for stores that are selling what we need, show they value communities, and lead in Earth-friendly policies.

Voting with our wallets has always been our greatest power as shoppers. We can help put pressure on Amazon to be transparent, modern and green, or we can choose to shop elsewhere. We won't waste our time on grocers who won't fight food waste.

 print



 **435**  
SHARES

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**Join the Conversation:**

foodtank ([HTTPS://FOODTANK.COM/](https://FOODTANK.COM/))

January 29, 2018

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, Inc. 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 2018 Annual Meeting of Shareholders (collectively, the “2018 Proxy Materials”) a shareholder proposal (the “Proposal”) and statements in support thereof received from Green Century Capital Management, Inc. and the Hammerman Family Revocable Inter Vivos Trust (the “Proponents”).<sup>1</sup>

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 2018 Proxy Materials with the Commission; and
- concurrently sent copies of this correspondence to the Proponents.

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<sup>1</sup> The Proposal was also submitted by Waterglass, LLC. As reflected by the correspondence in Exhibit A, this proponent did not timely submit its proposal under Rule 14a-8 because its submission was received after the deadline for submissions that was set forth in the Company’s proxy materials for its 2018 Annual Meeting of Shareholders, and the Company has not changed the date of its 2018 Annual Meeting of Shareholders by more than thirty days from the date of the preceding year’s annual meeting.

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Division of Corporation Finance  
January 29, 2018  
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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 this Proposal, a copy of that correspondence should be furnished concurrently to the undersigned on behalf of the Company pursuant to Rule 14a-8(k) and SLB 14D.

## THE PROPOSAL

The Proposal states:

**RESOLVED:** Shareholders request that Amazon issue a report, at reasonable cost and omitting proprietary information, on company-wide efforts to assess, reduce and optimally manage food waste.

The Supporting Statement states:

**Supporting Statement:** Shareholders recommend that the requested report include:

- Results of audits to determine the causes, quantities and destinations of food waste;
- Estimated cost savings from optimized food purchasing, handling, recycling, and disposal;
- Prioritization of strategies based on EPA’s Food Recovery Hierarchy;
- Time bound targets to reduce waste and progress towards meeting these targets.

The Supporting Statement continues with a number of paragraphs that focus on the economic costs and competitive implications of food waste. Among other things, the Supporting Statement asserts:

- “Forty percent of food produced in the United States goes uneaten, costing the economy 218 billion dollars per year, or 1.3 percent of gross domestic product.”
- “Grocery retailers, restaurants, and food service companies waste about 25 million tons of food valued at 57 billion dollars annually. Beyond lost profits, companies lose money on the procurement of, labor and utilities for, and waste management costs of wasted food.”



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- “Reducing food waste can be financially beneficial for companies. A recent study found that for every dollar spent on reducing food waste, companies save on average 14 dollars.”
- “Estimates show that Amazon Fresh has lost money from spoilage at double the rate of a typical supermarket, posing significant operational risk.”
- “[I]ndustry peers are taking action to reduce, optimally manage, and report on food waste, potentially leaving laggards with a competitive disadvantages.”
- “Stop & Shop saved 100 million dollars annually by reducing losses of perishables while providing items that were three days fresher on average.”
- “Amazon and its shareholders are positioned to benefit from a comprehensive approach to food waste reduction that could cut costs, provide competitive advantage, strengthen brand reputation, help achieve sustainability goals, and combat climate change and hunger.”

A copy of the Proposal and its supporting statement, as well as related correspondence with the Proponents, is attached to this letter as Exhibit A.

## **BASES FOR EXCLUSION**

The Proposal and its supporting statements focus on the economic and competitive implications of food waste. The Company is a retailer that sells, among hundreds of millions of other products, grocery products, including through its retail websites, its Amazon Fresh grocery delivery business, and its Whole Foods Market stores. The Company strives to offer its customers the lowest prices possible through low everyday product pricing and shipping offers, and to improve the Company’s operating efficiencies so that it can continue to lower prices for its customers. The issues addressed in the Proposal – managing inventory and other aspects of the food products sold by the Company in order to address the costs and competitive implications of food waste – are not economically significant to the Company, and implicate the Company’s day-to-day operations. Accordingly, we respectfully request that the Staff concur in our view that the Proposal may be excluded from the 2018 Proxy Materials pursuant to:

- Rule 14a-8(i)(5) because the Proposal relates to operations which are not economically significant or otherwise significantly related to the Company’s business; and

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Division of Corporation Finance  
January 29, 2018  
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- Rule 14a-8(i)(7) because the Proposal relates to the Company's ordinary business operations.

## ANALYSIS

### **I. The Proposal May Be Excluded Under Rule 14a-8(i)(5) Because It Relates To Operations That Are Not Economically Significant To The Company And Is Not Otherwise Significantly Related To The Company's Business.**

#### *A. Background On Rule 14a-8(i)(5)*

Rule 14a-8(i)(5) permits the exclusion of a shareholder proposal relating to operations which account for less than five percent of a company's (i) total assets at the end of its most recent fiscal year, (ii) net earnings for the most recent fiscal year, and (iii) gross sales for the most recent fiscal year, and that is not otherwise significantly related to the company's business. In the context of proposals relating to company expenses, the five percent tests have been applied to a company's operating expenses and assets. *See AT&T* (avail. Jan 17, 1990) ("The operation of the program [addressed in the proposal] entails the incurrence of expenses rather than the generation of revenues and net earnings. In fact, the expenses associated with the [program] was less than 1 percent of the Company's operating expenses and assets for its most recent fiscal year."); *see also Atlantic Richfield Co.* (avail. Jan. 28, 1997) (company noted that spending obligations that were the subject of the proposal represented a *de minimis* percentage of capital expenditures and assets); *Atlantic Richfield Co.* (avail. Jan. 6, 1995) (same).

Prior to adoption of the current version of the exclusion in Rule 14a-8(i)(5), the rule permitted companies to omit any proposal that "deals with a matter that is not significantly related to the issuer's business." In proposing changes to that version of the rule in 1982, the Commission noted that the Staff's practice had been to agree with exclusion of proposals that bore no economic relationship to a company's business, but that "where the proposal has reflected social or ethical issues, rather than economic concerns, raised by the issuer's business, and the issuer conducts any such business, no matter how small, the [S]taff has not issued a no-action letter with respect to the omission of the proposal." Exchange Act Release No. 19135 (Oct. 14, 1982). The Commission stated that this interpretation of the rule may have "unduly limit[ed] the exclusion," and proposed adopting the economic tests that appear in the rule today. *Id.* In adopting the rule, the Commission characterized it as relating "to proposals concerning the functioning of the economic business of an issuer and not to such matters as shareholders' rights, e.g., cumulative voting." Exchange Act Release No. 20091 (Aug. 16, 1983).

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In the years following the decision in *Lovenheim v. Iroquois Brands, Ltd.*, 618 F. Supp. 554 (D.D.C. 1985), the Staff did not agree with exclusion under Rule 14a-8(i)(5), even where a proposal has related to operations that accounted for less than 5% of total assets, net earnings and gross sales, when the company conducted business, no matter how small, related to the issue raised in the proposal. In Staff Legal Bulletin No. 14I (Nov. 1, 2017) (“SLB 14I”), the Staff reexamined its historic approach to interpreting Rule 14a-8(i)(5) and determined that the “application of Rule 14a-8(i)(5) has unduly limited the exclusion’s availability because it has not fully considered the second prong of the rule as amended in 1982 – the question of whether the proposal ‘deals with a matter that is not significantly related to the issuer’s business’ and is therefore excludable.” *Id.* Accordingly, the Staff noted that, going forward, it “will focus, as the rule directs, on a proposal’s significance to the company’s business when it otherwise relates to operations that account for less than 5% of total assets, net earnings and gross sales.” *Id.* Under this framework, the analysis is “dependent upon the particular circumstances of the company to which the proposal is submitted.” *Id.* A proponent can continue to raise social or ethical issues in its arguments, but it would need to tie those to a significant effect on the company’s business.

*B. The Proposal Is Not Significantly Related To The Company’s Business Operations*

The Company acquired Whole Foods Market during fiscal 2017, but has confirmed that, even had it owned Whole Foods Market for the entire year, the cost of food spoilage and waste for the year across all of its operations still would have represented substantially less than five percent of the Company’s costs of sales and total assets.<sup>2</sup> The Company has confirmed that it does not expect these percentages to increase meaningfully in 2018. The quantitative importance of food waste to the Company’s operations therefore is not significant within the meaning and interpretations of Rule 14a-8(i)(5).

Similarly, the Proposal is not otherwise significant to the Company’s business. As reflected in the Proposal’s supporting statements and addressed in more detail in part II of this letter, the Proposal focuses on the economic and competitive implications of managing the Company’s inventory to reduce food waste and spoilage. While the Proposal touches upon the issue of resource management and may implicate programs such as the Company’s

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<sup>2</sup> As noted above, in the context of proposals relating to company operations that entail the incurrence of expenses rather than the generation of revenues and net earnings, the five percent tests of Rule 14a-8(i)(5) are applied to costs of sales and total assets. *See AT&T*. Moreover, because the Company passes costs savings on to its customers, it would not be appropriate to compare a proposal that addresses management of Company expenses to the Company’s earnings.

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nationwide initiative with Feeding America to donate excess food to the non-profit organization to support its network of food banks, the focus of the Proposal, as demonstrated by its supporting statements, is on managing the costs and competitive impact of food waste. Seeking to enhance efficiencies, reduce costs, and create an excellent customer experience are business-as-usual for the Company. Thus, the Proposal does not otherwise raise significant issues with respect to or significantly implicate the Company's operations.

For the foregoing reasons, the Proposal addresses aspects of the Company's operations that are not economically or otherwise significant to the Company. Accordingly, the Proposal is excludable under Rule 14a-8(i)(5).

## **II. The Proposal May Be Excluded Under Rule 14a-8(i)(7) Because The Proposal Involves Matters Relating To The Company's Ordinary Business Operations.**

### *A. Background On The Ordinary Business Standard Under Rule 14a-8(i)(7)*

Pursuant to Rule 14a-8(i)(7), a shareholder proposal may be excluded if it "deals with a matter relating 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 distinguishes proposals pertaining to ordinary business matters from those involving "significant social policy issues," the latter of which are not excludable under Rule 14a-8(i)(7) because they "transcend the day-to-day business matters and raise policy issues so significant that it would be appropriate for a shareholder vote." *Id.* (citing

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Exchange Act Release No. 12999 (Nov. 22, 1976)). In this regard, when assessing proposals under Rule 14a-8(i)(7), the Staff considers the terms of the resolution and its supporting statement as a whole. *See* Staff Legal Bulletin No. 14C (“SLB 14C”), part D.2 (June 28, 2005) (“In determining whether the focus of these proposals is a significant social policy issue, we consider both the proposal and the supporting statement as a whole.”)

A shareholder proposal being framed in the form of a request for a report does not change the nature of the proposal. The Commission has stated that a proposal requesting the dissemination of a report may be excludable under Rule 14a-8(i)(7) if the subject matter of the report is within the ordinary business of the issuer. *See* Exchange Act Release No. 20091 (Aug. 16, 1983). In addition, the Staff has indicated that “[where] the subject matter of the additional disclosure sought in a particular proposal involves a matter of ordinary business . . . it may be excluded under [R]ule 14a-8(i)(7).” *Johnson Controls, Inc.* (avail. Oct. 26, 1999).

As discussed below, the Proposal is excludable under Rule 14a-8(i)(7) because it relates to the manner in which the Company sells its products and services, and because the primary focus of the Proposal relates to cost reduction and financial strategy.

*B. The Proposal May Be Excluded Under Rule 14a-8(i)(7) Because The Primary Focus Of The Proposal Is To Promote Ordinary Cost Reduction And Address Financial And Competitive Strategies.*

The Proposal requests that the Company issue a report on “company-wide efforts to assess, reduce and optimally manage food waste.” While the Proposal provides no definition for the term “food waste,” its recitals and supporting statements demonstrate that the Proposal is focused primarily on the perishable food inventory that goes unsold or is spoiled before it can be consumed. For example, the recitals point to actions by industry peers as examples for minimizing food spoilage, such as “reducing losses of perishables,” and “improved forecasting and packaging and standardized date labels.”

Addressing food waste in the Company’s operations involves complex management considerations of issues that include managing in-stock availability, brand reputation, product display, breadth of product selection, labeling and packaging, and staffing for refreshing product displays. Because these issues implicate the Company’s ordinary business activities, the Company already is actively involved in making business decisions and implementing approaches to its grocery inventory management that address food waste. For example, Amazon uses reusable tote bags in its grocery delivery service, which are designed to keep food products at proper temperatures to retain grocery quality for as long as possible. Whole Foods Market maintains strong partnerships with food donation programs such as the Food Donation Connection, which reduces food waste by distributing unsold food to local food kitchens and shelters. Similarly, in 2016 the Company launched a nationwide initiative

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to donate excess food to Feeding America, a non-profit organization whose mission is to feed America's hungry through a nationwide network of member food banks. The Company also has implemented food waste strategies based on the same guidelines cited by the Proposal; Whole Foods Market prominently features the Environmental Protection Agency's Food Recovery Hierarchy<sup>3</sup> on its website as evidence of its commitment to addressing food waste.<sup>4</sup>

The spoilage and waste issues raised in the Proposal may be more acute in the context of a retail grocery business but are not unique to the grocery business; inventory obsolescence occurs in other of the Company's retail product lines as well, such as for clothing, electronics, and DVDs. While inventory obsolescence and spoilage mean that resources were used to produce products that ultimately did not enter into the stream of commerce, addressing these issues implicates competitive and financial decisions, as reflected in the Proposal's supporting statements. Managing these considerations is central to the Company's day-to-day business operations, as the Company seeks to increase unit sales by reducing prices, increasing in-stock inventory availability, and increasing selection. These decisions and their competitive and financial implications are exactly the types of day-to-day operational considerations that Rule 14a-8(i)(7) recognizes as a proper function for management, who have the requisite knowledge and resources to appropriately analyze and weigh the complex management considerations described above in light of the Company's business operations.

Where a proposal "reveal[s] a central theme of financial management by emphasizing the creation of cost-savings for the Company," the Staff has supported exclusion on the grounds that the proposal relates to ordinary business operations. *CVS Health Corp.* (avail. Mar. 8, 2016). For example, in *CVS Health Corp.* the shareholder proposal at issue required the company to set targets to increase renewable energy sourcing, followed by several statements pointing to cost savings as a driving factor for the targets. In response, the company argued that the Proposal, framed principally as a cost-saving measure, encroached too closely upon the company's day-to-day financial management and the Staff ultimately concurred in exclusion on Rule 14a-8(i)(7) grounds. *See also FLIR Systems, Inc.* (avail. Feb. 6, 2013) ("Proposals that concern the manner in which a company manages its expenses are generally excludable under rule 14a-8(i)(7).").

Just as the proposal in *CVS Health Corp.* sought to address that company's cost savings by exploring new types of energy sourcing for its retail stores, the Proposal here seeks to

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<sup>3</sup> See <https://www.epa.gov/sustainable-management-food/food-recovery-hierarchy>

<sup>4</sup> See <http://www.wholefoodsmarket.com/blog/new-approaches-ending-food-waste>

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address cost savings by interfering with the Company's management of a routine part of its business: inventory management. The manner in which the perishable inventory is managed – implicating considerations such as in-stock availability, brand reputation, product display, breadth of product selection, labeling and packaging, and staffing – is a matter of ordinary cost reduction and operational strategy.

Furthermore, similar to the proposal in *CVS Health Corp.*, here the Proposal and its supporting statements themselves frame the issue to focus on the ordinary financial goals of reducing expenses and competing effectively, and only briefly touch upon other policy goals. In its supporting statements, the Proposal states that food spoilage poses a “significant operational risk” in the form of “lost profits” and indirect labor and utility costs. The Proposal further requests that the Company perform audits on its grocery operations, report on “[e]stimated cost savings” related to food waste, and set time-bound targets in order to “cut costs” and gain a “competitive advantage” over other industry peers. Thus, the principal focus of the Proposal is the financial implications of the Company's grocery operations. Because the management of inventory is inherent to the Company's general cost-reduction and financial strategy, the Proposal's request addresses matters relating to the day-to-day operation of the Company's business, which shareholders are not in a position to effectively vote upon. Thus, the Proposal may be excluded under Rule 14a-8(i)(7), consistent with the precedents discussed above.

*C. Even If The Proposal Touches Upon A Significant Policy Issue, It May Be Excluded Under Rule 14a-8(i)(7) Because The Board Of Directors Has Determined That The Proposal Does Not Transcend The Company's Ordinary Business Operations.*

Note 4 of Staff Legal Bulletin 14E (Oct. 27, 2009) states that “[i]n those cases in which a proposal's underlying subject matter transcends the day-to-day business matters of the company and raises policy issues so significant that it would be appropriate for a shareholder vote, the proposal generally will not be excludable under Rule 14a-8(i)(7) as long as a sufficient nexus exists between the nature of the proposal and the company.” Accordingly, even if a proposal touches upon a significant policy issue, the proposal may be excludable on ordinary business grounds if there is not a sufficient connection to a company's business. The Staff recently reaffirmed this position, stating that “[w]hether the significant policy exception applies depends, in part, on the connection between the significant policy issue and the company's business operations.” Staff Legal Bulletin No. 14I (“SLB 14I”), part B.2 (Nov. 1, 2017). In SLB 14I, the Staff further observed that, “A board of directors, acting as steward with fiduciary duties to a company's shareholders . . . and with the knowledge of the company's business and the implications for a particular proposal on that company's business is well situated to analyze, determine and explain whether a particular issue is

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sufficiently significant because the matter transcends ordinary business and would be appropriate for a shareholder vote.”

Accordingly, in contemplation of this no-action request, management of the Company, the Nomination and Corporate Governance Committee (“Committee”) of the Board of Directors (the “Board”), and the Board itself evaluated whether the Proposal raises a particular issue that is sufficiently significant that it would be appropriate for a shareholder vote because the matter transcends the Company’s ordinary business. To facilitate this evaluation, management of the Company solicited detailed information from various functions at the Company, including its Whole Foods Market and Amazon Fresh retail grocery businesses, its Sustainability group, and its legal department regarding the Company’s approach to food waste in its retail grocery operations. After gathering this information, the Company’s legal department and outside legal counsel prepared a presentation for consideration by the Committee and the Board. After hearing the presentation and considering the information presented, the Committee concurred with the Company’s analysis and conclusion and recommended that the Board concur with the determination that the Proposal does not raise significant policy issues for the Company. Thereafter, the Board reviewed and considered the information included in the same presentation that had been considered by the Committee and concurred that the Proposal does not raise significant policy issues that transcend the Company’s ordinary business.

Among the information and factors considered by the Committee and the Board were the following:

- **The Proposal’s Stated Purpose.** The Proposal does not ask the Company to change its practices to manage food waste, but instead seeks a report on the Company’s existing and on-going activities. The Company focuses on those initiatives and activities that can have the greatest impact given the specific nature of its operations, but also has innumerable large and small initiatives underway at any point in time, as its employees seek to constantly invent and improve operations across the Company. For these reasons, the Company generally opposes proposals requesting specific reports as not being the most efficient use of the Company’s time and resources or not reflecting the unique and evolving nature of the Company’s operations.
- **The Proposal’s Objective.** The Proposal is primarily focused on the economic impact to the Company of inventory spoilage, and the Company already is relentlessly focused on reducing costs and enhancing efficiencies. While spoilage is more rapid in the grocery business, the economic implications of spoilage are similar to those of hard good inventory obsolescence. Managing these considerations is central to the Company’s day-to-day business operations, as the Company seeks to increase unit sales by reducing prices, increasing in-stock inventory availability, and increasing selection.



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- **The Company's Existing Activities Affecting The Issues Raised By The Proposal.** Spoilage of food inventory is a complex issue that involves balancing many practical considerations implicating day-to-day managerial decisions, such as maintaining sufficient inventory, determining how products are priced and displayed, determining delivery logistics, and maintaining brand reputation. The Company is already engaged in numerous ongoing initiatives to address food waste by minimizing the amount of food going to landfills and putting excess food to better use. For example, in 2016, the Company launched its first nationwide initiative with Feeding America in the Company's North American fulfillment centers to donate excess food to Feeding America, a non-profit organization whose mission is to feed America's hungry through a nationwide network of member food banks, and Whole Foods Market maintains strong partnerships with food donation programs which distribute unsold food to local food kitchens and shelters.
- **Amazon's Grocery Business Is Rapidly Changing.** The Company acquired Whole Foods Market during its 2017 third quarter, and is in the early stages of integrating the strengths of the two organizations to reinvent the retail grocery business. As a result, the Company's grocery business is rapidly changing and any report issued by the Company would soon be out of date.

Based on the precedents discussed above, and the Committee's and Board's analysis and conclusion regarding the implications of the Proposal for the Company's operations, we believe the Proposal does not raise a significant policy issue that transcends the Company's ordinary business operations, and accordingly may properly be excluded pursuant to Rule 14a-8(i)(7).

## CONCLUSION

Based upon the foregoing analysis, we respectfully request that the Staff concur that it will take no action if the Company excludes the Proposal from its 2018 Proxy Materials.

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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](mailto: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 and Assistant Secretary, at (206) 266-2132.

Sincerely,

A handwritten signature in blue ink, appearing to read "Ronald O. Mueller".

Ronald O. Mueller

Enclosures

cc: Mark Hoffman, Amazon.com, Inc.  
Green Century Capital Management, Inc.

**EXHIBIT A**



# GREEN CENTURY FUNDS

RECEIVED

DEC 13 2017

AMAZON.COM, INC.  
LEGAL DEPARTMENT

December 11, 2017

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

Dear Mr. Zapolsky,

Green Century Capital Management hereby submits the enclosed shareholder proposal with Amazon.com, Inc. (AMZN) for inclusion in the Company's 2018 proxy statement in accordance with Rule 14a-8 of the General Rules and Regulations of the Securities and Exchange Act of 1934 (17 C.F.R. § 240.14a-8).

Per Rule 14a-8, Green Century Capital Management is the beneficial owner of at least \$2,000 worth of Amazon.com, Inc.'s common stock. We have held the requisite number of shares for over one year, and will continue to hold sufficient shares in the Company through the date of the annual shareholders' meeting. Verification of ownership from a DTC participating will be sent separately.

Due to the importance of the issue and our need to protect our rights as shareholders, we are filing the enclosed resolution for inclusion in the proxy statement for a vote at the next shareholder's meeting. However, we look forward to a constructive engagement that may address our concerns.

We anticipate there will be co-filers on this proposal.

We welcome the opportunity to further discuss the subject of the enclosed proposal with Company representatives. Please direct all correspondence to Marissa LaFave, Shareholder Advocate at Green Century Capital Management. She may be reached at 617-482-0800 or by email at [mlafave@greencentury.com](mailto:mlafave@greencentury.com).

We would appreciate confirmation of receipt of this letter via email.

Sincerely,

Leslie Samuelrich  
President  
Green Century Capital Management

Enclosures: Shareholder Proposal

GREEN CENTURY CAPITAL MANAGEMENT, INC.  
114 STATE STREET, SUITE 200 BOSTON, MA 02109  
tel 617-482-0800  
[www.greencentury.com](http://www.greencentury.com)

**Resolved:** Shareholders request that Amazon issue a report, at reasonable cost and omitting proprietary information, on company-wide efforts to assess, reduce and optimally manage food waste.

**Supporting Statement:** Shareholders recommend that the requested report include:

- Results of audits to determine the causes, quantities and destinations of food waste;
- Estimated cost savings from optimized food purchasing, handling, recycling, and disposal;
- Prioritization of strategies based on EPA's Food Recovery Hierarchy;
- Time bound targets to reduce waste and progress towards meeting these targets.

**Whereas:** Forty percent of food produced in the U.S. goes uneaten, costing the economy \$218 billion per year, or 1.3 percent of GDP. If global food waste were a country, its emissions would be third behind China and the U.S. Production of wasted food also consumes 21 percent of U.S. freshwater, 19 percent of fertilizer, and 18 percent of cropland.

Grocery retailers, restaurants, and food service companies waste about 25 million tons of food valued at \$57 billion annually. Beyond lost profits, companies lose money on the procurement of, labor and utilities for, and waste management costs of wasted food.

Reducing food waste can be financially beneficial for companies. A recent study found that for every dollar spent on reducing food waste, companies save on average \$14.

Amazon aims to become a top five grocery retailer by 2025. During Q1 of 2017, Amazon's grocery sales outpaced the industry 15 times, demonstrating 30 percent year-over-year growth.

However, online grocery retailers may be more susceptible to high rates of food waste given complex distribution systems and the inability to rely on solutions employed by conventional retailers such as discounting products nearing expiration. Estimates show that Amazon Fresh has lost money from spoilage at double the rate of a typical supermarket, posing significant operational risk.

While Amazon provides anecdotal evidence of specific food waste donation efforts, it has yet to report on a company-wide food waste management strategy.

In contrast, industry peers are taking action to reduce, optimally manage, and report on food waste, potentially leaving laggards with a competitive disadvantage.

- Stop & Shop saved \$100 million annually by reducing losses of perishables while providing items that were three days fresher on average.
- Kroger publishes a breakdown of quantity of food donated and recycled, with a goal of meeting 90 percent zero waste in all facilities by 2020.
- Walmart diverted 75 percent of global waste in 2016 through strategies including improved forecasting and packaging and standardized date labels.
- Through the Food Waste Reduction Alliance, Safeway, Publix and Kroger provide comprehensive, metrics-based disclosure on food waste management efforts.

Further, food waste legislation has passed in several states and has been introduced in Congress. The EPA has a national target to reduce food waste 50 percent by 2030.

Amazon and its shareholders are positioned to benefit from a comprehensive approach to food waste reduction that could cut costs, provide competitive advantage, strengthen brand reputation, help achieve sustainability goals, and combat climate change and hunger.

December 15, 2017

**VIA OVERNIGHT MAIL**

Marissa LaFave  
Shareholder Advocate  
Green Century Capital Management  
114 State Street, Suite 200  
Boston, MA 02109

Dear Ms. LaFave:

I am writing on behalf of Amazon.com, Inc. (the “Company”), which received on December 13, 2017, a shareholder proposal submitted by Green Century Capital Management (“the Proponent”) regarding food waste management pursuant to Securities and Exchange Commission (“SEC”) Rule 14a-8 for inclusion in the proxy statement for the Company’s 2018 Annual Meeting of Shareholders (the “Proposal”).

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

To remedy this defect, the Proponent must submit sufficient proof of the Proponent’s continuous ownership of the required number or amount of Company shares for the one-year period preceding and including December 11, 2017, the date the Proposal was submitted to the Company. As explained in Rule 14a-8(b) and in SEC staff guidance, sufficient proof must be in the form of:

- (1) a written statement from the “record” holder of the Proponent’s shares (usually a broker or a bank) verifying that the Proponent continuously held the required number or amount of Company shares for the one-year period preceding and including December 11, 2017; or

Marissa LaFave  
December 15, 2017  
Page 2

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

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

- (1) If the Proponent's broker or bank is a DTC participant, then the Proponent needs to submit a written statement from the Proponent's broker or bank verifying that the Proponent continuously held the required number or amount of Company shares for the one-year period preceding and including December 11, 2017.
- (2) If the Proponent's broker or bank is not a DTC participant, then the Proponent needs to submit proof of ownership from the DTC participant through which the shares are held verifying that the Proponent continuously held the required number or amount of Company shares for the one-year period preceding and including December 11, 2017. You should be able to find out the identity of the DTC participant by asking the Proponent's broker or bank. If the Proponent's broker is an introducing broker, you may also be able to learn the identity and telephone number of the DTC participant through the Proponent's account statements, because the clearing broker identified on the account statements will generally be a DTC participant. If the DTC participant that holds the Proponent's shares is not able to confirm the Proponent's individual holdings but is able to confirm the holdings of the Proponent's broker or bank, then the Proponent needs to satisfy the proof of ownership requirements by obtaining and submitting two

Marissa LaFave  
December 15, 2017  
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proof of ownership statements verifying that, for the one-year period preceding and including December 11, 2017, the required number or amount of Company shares were continuously held: (i) one from the Proponent's broker or bank confirming the Proponent's ownership, and (ii) the other from the DTC participant confirming the broker or bank's ownership.

Rule 14a-8(d) of the Exchange Act requires that any shareholder proposal, including any accompanying supporting statement, not exceed 500 words. The Proposal, including the supporting statement, exceeds 500 words. In reaching this conclusion, we have counted dollar symbols as words and have counted acronyms and hyphenated terms as multiple words. To remedy this defect, the Proponent must revise the Proposal so that it does not exceed 500 words.

The SEC's rules require that any response to this letter be postmarked or transmitted electronically no later than 14 calendar days from the date you receive this letter. Please address any response to me at Gibson, Dunn & Crutcher LLP, 1050 Connecticut Ave., N.W., Washington, DC 20036. Alternatively, you may transmit any response by email to me at [rmueller@gibsondunn.com](mailto:rmueller@gibsondunn.com).

If you have any questions with respect to the foregoing, please contact me at (202) 955-8671. For your reference, I enclose a copy of Rule 14a-8 and Staff Legal Bulletin No. 14F.

Sincerely,



Ronald O. Mueller

Enclosures

cc: Mark Hoffman, Amazon.com, Inc.  
Gavin McCraley, Amazon.com, Inc.



December 28, 2017

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

Dear Mr. Zapolsky,

Green Century Capital Management hereby submits a revised version of its earlier submitted shareholder proposal to Amazon.com, Inc. (AMZN) for inclusion in the Company's 2018 proxy statement in accordance with Rule 14a-8 of the General Rules and Regulations of the Securities and Exchange Act of 1934 (17 C.F.R. § 240.14a-8). This is in response to the Company's letter summarizing the original proposal's procedural deficiencies. The revised proposal has a word count of 486.

Per Rule 14a-8, Green Century Capital Management is the beneficial owner of at least \$2,000 worth of Amazon.com, Inc.'s common stock. We have held the requisite number of shares for over one year, and will continue to hold sufficient shares in the Company through the date of the annual shareholders' meeting. Verification of ownership from a DTC participating is enclosed.

Green Century is the lead filer of this proposal. We expect there to be co-filers.

We welcome the opportunity to further discuss the subject of the enclosed proposal with Company representatives. Please direct all correspondence to Marissa LaFave, Shareholder Advocate at Green Century Capital Management. She may be reached at 617-482-0800 or by email at [mlafave@greencentury.com](mailto:mlafave@greencentury.com).

We would appreciate confirmation of receipt of this letter via email.

Sincerely,



Leslie Samuelrich  
President  
Green Century Capital Management

Enclosures: Revised Shareholder Proposal, Proof of Ownership



December 18, 2017

P.O. Box 1170  
Valley Forge, PA 19482-2600  
www.vanguard.com

GREEN CENTURY CAPITAL  
MANAGEMENT INC  
114 STATE ST STE 200  
BOSTON MA 02109-2402

To Whom It May Concern:

Please accept this letter as verification that the following Vanguard Brokerage client continuously held 12 shares of Amazon.com Inc. (AMZN) in the below referenced account between December 11, 2016, through December 11, 2017. This stock was held through Vanguard Marketing Corporation, a Depository Trust Company (DTC) participant, in the Vanguard Brokerage Account \*\*\*

Green Century Capital Management Inc.  
Corporation Account  
\*\*\*

Furthermore, please note that this security's value has been in excess of \$2,000.00 between the above referenced dates.

If you have any questions, please call us at **800-662-2739**. You can reach us on business days from 8 a.m. to 10 p.m., Eastern time.

Sincerely,

Audrey Zuckerman  
Registered Representative  
Retail Investor Group

53580245

**Resolved:** Shareholders request that Amazon issue a report, at reasonable cost and omitting proprietary information, on company-wide efforts to assess, reduce and optimally manage food waste.

**Supporting Statement:** Shareholders recommend that the requested report include:

- Results of audits to determine the causes, quantities and destinations of food waste;
- Estimated cost savings from optimized food purchasing, handling, recycling, and disposal;
- Prioritization of strategies based on Environmental Protection Agency Food Recovery Hierarchy;
- Time bound targets to reduce waste and progress towards meeting these targets.

Forty percent of food produced in the United States goes uneaten, costing the economy 218 billion dollars per year, or 1.3 percent of gross domestic product. If global food waste were a country, its emissions would be third behind China and the United States. Production of wasted food also consumes 21 percent of United States freshwater, 19 percent of fertilizer, and 18 percent of cropland.

Grocery retailers, restaurants, and food service companies waste about 25 million tons of food valued at 57 billion dollars annually. Beyond lost profits, companies lose money on the procurement of, labor and utilities for, and waste management costs of wasted food.

Reducing food waste can be financially beneficial for companies. A recent study found that for every dollar spent on reducing food waste, companies save on average 14 dollars.

Amazon aims to become a top five grocery retailer by 2025. During Quarter one of 2017, Amazon's grocery sales outpaced the industry 15 times, demonstrating 30 percent year over year growth.

However, online grocery retailers may be more susceptible to high rates of food waste given complex distribution systems and the inability to rely on solutions employed by conventional retailers such as discounting products nearing expiration. Estimates show that Amazon Fresh has lost money from spoilage at double the rate of a typical supermarket, posing significant operational risk.

While Amazon provides anecdotal evidence of specific food waste donation efforts, it has yet to report on a company-wide food waste management strategy.

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Further, food waste legislation has passed in several states and has been introduced in Congress. The Environmental Protection Agency has a national target to reduce food waste 50 percent by 2030.

Amazon and its shareholders are positioned to benefit from a comprehensive approach to food waste reduction that could cut costs, provide competitive advantage, strengthen brand reputation, help achieve sustainability goals, and combat climate change and hunger.

# JLens

INVESTOR NETWORK

December 11, 2017

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

RECEIVED  
DEC 13 2017  
AMAZON.COM, INC.  
LEGAL DEPARTMENT

Dear Mr. Zapolsky:

JLens is a network of institutional and individual investors dedicated to investing through a Jewish values lens. JLens conducts shareholder engagement for the Jewish Advocacy Strategy, managed by Lens Investments LLC. As responsible shareholders, we care deeply about food waste and fear that Amazon's lack of disclosure and transparency about food waste poses financial, regulatory, and reputational risks to our investors.

JLens is co-filing the enclosed shareholder proposal, brought by Green Century Capital Management, for inclusion in Amazon.com, Inc. (AMZN)'s 2018 proxy statement in accordance with Rule 14a-8 of the General Rules and Regulations of the Securities and Exchange Act of 1934 (17 C.F.R. § 240.14a-8). The proposal calls on Amazon to "issue a report on company-wide efforts to assess, reduce, and optimally manage food waste." JLens is co-filing this shareholder proposal on behalf of the Hammerman Family Revocable Inter Vivos Trust (the "Trust"). JLens has been designated to act as their representative in voting their proxies, engaging companies and filing or co-filing resolutions, including co-filing this shareholder proposal. A designation letter from the Trust attesting to this authority is included, as is proof of ownership of 22 shares of AMZN stock. Per Rule 14a-8, the Trust is the beneficial owner of at least \$2,000 worth of Amazon.com, Inc.'s common stock, has held the requisite number of shares for over one year, and will continue to hold sufficient shares in the Company through the date of the annual shareholders' meeting. A representative of the shareholders will attend the annual meeting as required by SEC rules.

Please direct any communications to JLens Director of Advocacy, Rabbi Josh Ratner ([rabbiratner@jlensnetwork.org](mailto:rabbiratner@jlensnetwork.org)), and the Proposal's primary contact, Marissa LaFave, Shareholder Advocate at Green Century Capital Management, who may be reached at 617-482-0800 or by email at [mlafave@greencentury.com](mailto:mlafave@greencentury.com).

We welcome the opportunity to discuss the subject of the enclosed proposal with company representatives. While we co-filed this resolution due to our need to protect our rights as shareholders, we look forward to a constructive engagement that may address our concerns.

Sincerely,



Joshua Ratner  
Director of Advocacy  
JLens Investor Network

Enclosures: Shareholder Proposal; Authorization Letter from the Trust; Verification Letter of AMZN Ownership from Charles Schwab

**Resolved:** Shareholders request that Amazon issue a report, at reasonable cost and omitting proprietary information, on company-wide efforts to assess, reduce and optimally manage food waste.

**Supporting Statement:** Shareholders recommend that the requested report include:

- Results of audits to determine the causes, quantities and destinations of food waste;
- Estimated cost savings from optimized food purchasing, handling, recycling, and disposal;
- Prioritization of strategies based on EPA's Food Recovery Hierarchy;
- Time bound targets to reduce waste and progress towards meeting these targets.

**Whereas:** Forty percent of food produced in the U.S. goes uneaten, costing the economy \$218 billion per year, or 1.3 percent of GDP. If global food waste were a country, its emissions would be third behind China and the U.S. Production of wasted food also consumes 21 percent of U.S. freshwater, 19 percent of fertilizer, and 18 percent of cropland.

Grocery retailers, restaurants, and food service companies waste about 25 million tons of food valued at \$57 billion annually. Beyond lost profits, companies lose money on the procurement of, labor and utilities for, and waste management costs of wasted food.

Reducing food waste can be financially beneficial for companies. A recent study found that for every dollar spent on reducing food waste, companies save on average \$14.

Amazon aims to become a top five grocery retailer by 2025. During Q1 of 2017, Amazon's grocery sales outpaced the industry 15 times, demonstrating 30 percent year-over-year growth.

However, online grocery retailers may be more susceptible to high rates of food waste given complex distribution systems and the inability to rely on solutions employed by conventional retailers such as discounting products nearing expiration. Estimates show that Amazon Fresh has lost money from spoilage at double the rate of a typical supermarket, posing significant operational risk.

While Amazon provides anecdotal evidence of specific food waste donation efforts, it has yet to report on a company-wide food waste management strategy.

In contrast, industry peers are taking action to reduce, optimally manage, and report on food waste, potentially leaving laggards with a competitive disadvantage.

- Stop & Shop saved \$100 million annually by reducing losses of perishables while providing items that were three days fresher on average.
- Kroger publishes a breakdown of quantity of food donated and recycled, with a goal of meeting 90 percent zero waste in all facilities by 2020.
- Walmart diverted 75 percent of global waste in 2016 through strategies including improved forecasting and packaging and standardized date labels.
- Through the Food Waste Reduction Alliance, Safeway, Publix and Kroger provide comprehensive, metrics-based disclosure on food waste management efforts.

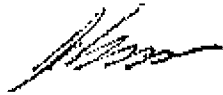
Further, food waste legislation has passed in several states and has been introduced in Congress. The EPA has a national target to reduce food waste 50 percent by 2030.

Amazon and its shareholders are positioned to benefit from a comprehensive approach to food waste reduction that could cut costs, provide competitive advantage, strengthen brand reputation, help achieve sustainability goals, and combat climate change and hunger.

As of December 8, 2017, the Hammerman Family Revocable Inter Vivos Trust ("stockholder") authorizes JLens to co-file a shareholder resolution with Amazon on food waste on stockholder's behalf to be included in Amazon's 2018 Proxy Statement in accordance with Rule 14a-8 of the Securities and Exchange Act of 1934. The stockholder gives JLens the authority to deal on the stockholder's behalf with any and all aspects of the shareholder resolution.



Julie Hammerman, Trustee



Jason Hammerman, Trustee



November 14th, 2017

To: Whom it may concern

RE: Ownership Verification for the Hammerman Family Revocable Inter Vivos Trust

This letter is to confirm that Charles Schwab & Co. holds as custodian for the above account 22 shares of Amazon Com Inc (AMZN). The shares have been held in this account continuously for at least one year prior to the date of this letter.

These shares are held at Depository Trust Company under the nominee name of Charles Schwab and Company.

This letter serves as confirmation that the shares are held by Charles Schwab & Co. Inc.

Sincerely,

A handwritten signature in black ink, appearing to read "SB", with a long horizontal flourish extending to the right.

Sydney Brock  
Relationship Specialist | Advisor Custody & Trading | Norcal

December 15, 2017

**VIA EMAIL**

Joshua Ratner  
Director of Advocacy  
JLens Investor Network  
rabbiratner@jlensnetwork.org

Dear Mr. Ratner:

I am writing on behalf of Amazon.com, Inc. (the “Company”), which received on December 13, 2017, a shareholder proposal you submitted on behalf of the Hammerman Family Revocable Inter Vivos Trust (“the Proponent”) regarding food waste management pursuant to Securities and Exchange Commission (“SEC”) Rule 14a-8 for inclusion in the proxy statement for the Company’s 2018 Annual Meeting of Shareholders (the “Proposal”).

The Proposal contains certain procedural deficiencies, which SEC regulations require us to bring to your attention. Rule 14a-8(b) under the Securities Exchange Act of 1934, as amended, provides that shareholder proponents must submit sufficient proof of their continuous ownership of at least \$2,000 in market value, or 1%, of a company’s shares entitled to vote on the proposal for at least one year as of the date the shareholder proposal was submitted. The Company’s stock records do not indicate that the Proponent is the record owner of sufficient shares to satisfy this requirement. In addition, to date we have not received adequate proof that the Proponent has satisfied Rule 14a-8’s ownership requirements as of the date that the Proposal was submitted to the Company. The November 14, 2017 letter from Charles Schawb that you provided is insufficient it states the number of shares the Proponent held as of November 14, 2017 but does not cover the full one-year period preceding and including December 11, 2017, the date the Proposal was submitted to the Company.

To remedy this defect, the Proponent must obtain a new proof of ownership letter verifying] the Proponent’s continuous ownership of the required number or amount of Company shares for the one-year period preceding and including December 11, 2017, the date the Proposal was submitted to the Company. As explained in Rule 14a-8(b) and in SEC staff guidance, sufficient proof must be in the form of:

- (1) a written statement from the “record” holder of the Proponent’s shares (usually a broker or a bank) verifying that the Proponent continuously held the required number or amount of Company shares for the one-year period preceding and including December 11, 2017; or



Joshua Ratner  
December 15, 2017  
Page 2

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

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

- (1) If the Proponent's broker or bank is a DTC participant, then the Proponent needs to submit a written statement from the Proponent's broker or bank verifying that the Proponent continuously held the required number or amount of Company shares for the one-year period preceding and including December 11, 2017.
- (2) If the Proponent's broker or bank is not a DTC participant, then the Proponent needs to submit proof of ownership from the DTC participant through which the shares are held verifying that the Proponent continuously held the required number or amount of Company shares for the one-year period preceding and including December 11, 2017. You should be able to find out the identity of the DTC participant by asking the Proponent's broker or bank. If the Proponent's broker is an introducing broker, you may also be able to learn the identity and telephone number of the DTC participant through the Proponent's account statements, because the clearing broker identified on the account statements will generally be a DTC participant. If the DTC participant that holds the Proponent's shares is not able to confirm the Proponent's individual holdings but is able to confirm the holdings of the Proponent's broker or bank, then the Proponent needs to satisfy the proof of ownership requirements by obtaining and submitting two

Joshua Ratner  
December 15, 2017  
Page 3

proof of ownership statements verifying that, for the one-year period preceding and including December 11, 2017, the required number or amount of Company shares were continuously held: (i) one from the Proponent's broker or bank confirming the Proponent's ownership, and (ii) the other from the DTC participant confirming the broker or bank's ownership.

Rule 14a-8(d) of the Exchange Act requires that any shareholder proposal, including any accompanying supporting statement, not exceed 500 words. The Proposal, including the supporting statement, exceeds 500 words. In reaching this conclusion, we have counted dollar symbols as words and have counted acronyms and hyphenated terms as multiple words. To remedy this defect, the Proponent must revise the Proposal so that it does not exceed 500 words.

The SEC's rules require that any response to this letter be postmarked or transmitted electronically no later than 14 calendar days from the date you receive this letter. Please address any response to me at Gibson, Dunn & Crutcher LLP, 1050 Connecticut Ave., N.W., Washington, DC 20036. Alternatively, you may transmit any response by email to me at [rmueller@gibsondunn.com](mailto:rmueller@gibsondunn.com).

If you have any questions with respect to the foregoing, please contact me at (202) 955-8671. For your reference, I enclose a copy of Rule 14a-8 and Staff Legal Bulletin No. 14F.

Sincerely,



Ronald O. Mueller

Enclosures

cc: Jason Hammerman, Hammerman Family Revocable Inter Vivos Trust  
Julie Hammerman, Hammerman Family Revocable Inter Vivos Trust  
Marissa LaFave, Green Century Capital Management  
Mark Hoffman, Amazon.com, Inc.  
Gavin McCraley, Amazon.com, Inc.



December 25, 2017

**VIA EMAIL**

Ronald O. Mueller  
Gibson, Dunn & Crutcher LLP  
1050 Connecticut Ave., N.W.,  
Washington, DC 20036.  
RMueller@gibsondunn.com  
Re: *Amazon.com Inc. Shareholder Proposal*

Dear Mr. Mueller:

I am writing in response to your December 15, 2017 letter (the "December 15 Letter") sent on behalf of Amazon.com, Inc. (the "Company"). Your letter articulates "certain procedural deficiencies" in our December 11, 2017 shareholder proposal submitted by JLens on behalf of the Hammerman Family Revocable Inter Vivos Trust ("the Proponent") pursuant to Securities and Exchange Commission ("SEC") Rule 14a-8 for inclusion in the proxy statement for the Company's 2018 Annual Meeting of Shareholders (the "Proposal").

First, your December 15 Letter stated that the November 14, 2017 proof of ownership letter submitted by Charles Schwab was insufficient because it only "states the number of shares the Proponent held as of November 14, 2017 but does not cover the full one-year period preceding and including December 11, 2017, the date the Proposal was submitted to the Company." To remedy this, you stated in your December 15 Letter that "the Proponent needs to submit a written statement from the Proponent's broker or bank verifying that the Proponent continuously held the required number or amount of Company shares for the one-year period preceding and including December 11, 2017."

Enclosed please find precisely this documentation: a written statement from Schwab ("Schwab December 21 Proof of Ownership Letter") verifying that the Proponent continuously held at least \$2000 worth of Amazon shares for the one-year period preceding and including December 11, 2017. This letter should be sufficient to correct any procedural concerns you or the Company might have had about the Proponent's requisite stock ownership to bring this Proposal.

Second, your December 15 Letter claims that our Proposal exceeds 500 words. We disagree. A word count search of our proposal (which can be seen in the attached "Screen Shot") confirms that our Proposal contains only 489 words. If you have evidence showing that our Proposal exceeds 500 words, and by how many, we will be

happy to consider that evidence and, if necessary, delete the requisite number of words from a "Whereas" section of the Proposal.

If you have any questions with respect to the foregoing, please contact me at (203) 610-4104 or via email at [rabbiratner@jlensnetwork.org](mailto:rabbiratner@jlensnetwork.org).

Very truly yours,

A handwritten signature in black ink, appearing to read "Joshua Ratner", written in a cursive style.

Rabbi Joshua Ratner  
Director of Advocacy  
JLens Investor Network

Enclosures

Cc: Marissa LaFave, Green Century Capital Management  
Holly Testa, First Affirmative Financial Network  
Jason Hammerman, Hammerman Family Revocable Inter Vivos Trust  
Julie Hammerman, Hammerman Family Revocable Inter Vivos Trust



PO Box 52013  
Phoenix, AZ 85072

December 21, 2017

To: Whom it may concern

RE: Ownership Verification for the Hammerman Family Revocable Inter Vivos Trust

This letter is to confirm that Charles Schwab & Co. holds as custodian for the above account 22 shares of Amazon Com Inc. (AMZN) common stock, valued in excess of \$2000. The Hammerman Family Revocable Inter Vivos Trust has continuously held at least \$2000 worth of shares of AMZN for the one-year period preceding and including December 11, 2017.

These shares are held at Depository Trust Company under the nominee name of Charles Schwab and Company.

Sincerely,

A handwritten signature in black ink, appearing to read "S Brock", written in a cursive style.

Sydney Brock  
Relationship Specialist | Advisor Custody & Trading | Norcal

**From:** Rabbi Joshua Ratner  
**To:** [Mueller, Ronald O.](mailto:Mueller.Ronald.O)  
**Cc:** [Twu, Victor](mailto:Twu.Victor); [Holly Testa](mailto:Holly.Testa); [Marissa LaFave](mailto:Marissa.LaFave); [Julie Hammerman](mailto:Julie.Hammerman)  
**Subject:** Re: Correspondence re Hammerman Family Revocable Inter Vivos Trust Submission to Amazon  
**Date:** Thursday, December 28, 2017 1:13:45 PM  
**Attachments:** [AMZN\\_FoodWasteFY18Reso\\_12.28.17\\_FINAL.pdf](#)

---

Dear Mr. Mueller,

Please note that we are joining in the revised proposal sent to you today by Ms. Lafave and attached here. All other aspects of our December 25 response to your December 15 letter citing "certain procedural deficiencies" remain the same. Please acknowledge that you have received this prior response as we have not yet received confirmation from your office.

Sincerely,

Rabbi Joshua Ratner  
Director Of Advocacy  
JLens Investor Network  
[rabbiratner@jlensnetwork.org](mailto:rabbiratner@jlensnetwork.org)  
646-525-3600 (office)  
203-610-4104 (cell)  
[jlensnetwork.org](http://jlensnetwork.org)

On Mon, Dec 25, 2017 at 4:19 PM, Rabbi Joshua Ratner <[rabbiratner@jlensnetwork.org](mailto:rabbiratner@jlensnetwork.org)> wrote:

Dear Mr. Mueller,  
Attached please find our response to your December 15, 2017 Letter regarding our December 11, 2017 shareholder proposal we co-filed with Amazon.com, Inc.

We are including our other proponents, Green Century Capital Management (the lead filer) and First Affirmative Financial Network (co-filer) in this correspondence.

Best wishes for a wonderful holiday season.

Sincerely,

Rabbi Joshua Ratner  
Director Of Advocacy  
JLens Investor Network  
[rabbiratner@jlensnetwork.org](mailto:rabbiratner@jlensnetwork.org)  
646-525-3600 (office)  
203-610-4104 (cell)  
[jlensnetwork.org](http://jlensnetwork.org)

On Fri, Dec 15, 2017 at 8:36 PM, Twu, Victor <[VTwu@gibsondunn.com](mailto:VTwu@gibsondunn.com)> wrote:

Mr. Ratner –

Attached please find a correspondence regarding your submission, dated December 11, 2017, to Amazon.com, Inc.

Best,

Victor

**Victor Twu**

## GIBSON DUNN

Gibson, Dunn & Crutcher LLP  
3161 Michelson Drive, Irvine, CA 92612-4412  
Tel [+1 949.451.3870](tel:+19494513870) • Fax [+1 949.475.4787](tel:+19494754787)  
[VTwu@gibsondunn.com](mailto:VTwu@gibsondunn.com) • [www.gibsondunn.com](http://www.gibsondunn.com)

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---



**First Affirmative**  
Financial Network, LLC

*Investing for a Sustainable Future*

December 12, 2017

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

RECEIVED

DEC 14 2017

AMAZON.COM, INC.  
LEGAL DEPARTMENT

Dear Mr. Zapolsky,

First Affirmative Financial Network, LLC is a United States based investment management firm with more than \$1 billion in assets under management and administration. We hold shares of Amazon.com, Inc. on behalf of clients who ask us to integrate their values with their investment portfolios.

First Affirmative is co-filing the enclosed resolution on behalf of Waterglass, LLC. We are co-filing this resolution with lead filer Green Century Capital Management and authorize them to act on our behalf, to include withdrawal of the resolution if an agreement is reached. We support the inclusion of this proposal in the 2018 proxy statement, in accordance with Rule 14a-8 of the General Rules and Regulations of the Securities and Exchange Act of 1934 (17 C.F.R. § 240.14a-8).

Per Rule 14a-8, both client accounts hold more than \$2,000 of Amazon.com common stock, acquired more than one year prior to date of this filing and held continuously for that time. The client intends to remain invested in this position continuously through the date of the 2018 annual meeting. Verification of ownership can be forwarded under separate cover by DTC participant custodian Folio Institutional (Folio*fn* Investments, Inc.)

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

Please direct communications to me at [hollytesta@firstaffirmative.com](mailto:hollytesta@firstaffirmative.com) / 303-641-5190.

Sincerely,

Holly A. Testa  
First Affirmative Financial Network, LLC

Enclosures: Resolution, Client Authorizations



# SHAREHOLDER ENGAGEMENT AUTHORIZATION

COMPANY NAME: AMAZON.COM

SHAREHOLDER PROPOSAL: REPORT ON FOOD WASTE

## **Authorization and Agent Appointment of First Affirmative**

I/we do hereby authorize First Affirmative Financial Network, LLC, acting through its officers and employees (collectively "First Affirmative") to represent me/us, as our agent, to file this "shareholder proposal" as defined by the U.S. Securities and Exchange Commission ("SEC") in SEC Rule 14a-8 at the next annual meeting. This authority and agent appointment includes:

- The submission, negotiation and withdrawal of my/our shareholder proposal, including statements in support of such shareholder proposal.
- Requesting Letters of Verification from custodians that I/we hold the requisite number of securities of the company to be eligible to submit the shareholder proposal.
- Issuing a Letter of Intent to the company of my/our intent to hold my/our securities required for eligibility to submit the shareholder proposal through the meeting for such shareholder proposal.
- Attending, speaking, and presenting my/our shareholder proposal at the shareholder meeting.
- Should a meeting be rescheduled and re-solicitation is not required, this authorization will apply to a re-convened meeting as well.

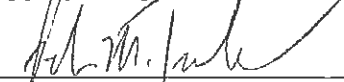
Please dialogue constructively with First Affirmative, promptly act upon their communications and instructions related to the shareholder proposal and direct all correspondence and questions regarding the above to First Affirmative.

## **Statement of Intent to First Affirmative,**

In order for First Affirmative to act as my/our agent in a Letter of Intent, I/we do hereby affirmatively state an intent to First Affirmative to continue to hold a sufficient value of the company's securities, as defined within SEC Rule 14a-8(b)(1), from the time the shareholder proposal is filed at that company through the date of the subsequent related meeting of shareholders.

Should this authorization be rescinded in writing, First Affirmative is not required to take any action with respect to a pending shareholder proposal.

The undersigned hereby represent that I/we (whether individually, jointly, or organizationally) hold all appropriate power and authority to enter into this Shareholder Engagement Authorization.



---

Peter Trueblood  
Manager, Waterglass LLC

12/1/17

Date

**Resolved:** Shareholders request that Amazon issue a report, at reasonable cost and omitting proprietary information, on company-wide efforts to assess, reduce and optimally manage food waste.

**Supporting Statement:** Shareholders recommend that the requested report include:

- Results of audits to determine the causes, quantities and destinations of food waste;
- Estimated cost savings from optimized food purchasing, handling, recycling, and disposal;
- Prioritization of strategies based on EPA's Food Recovery Hierarchy;
- Time bound targets to reduce waste and progress towards meeting these targets.

**Whereas:** Forty percent of food produced in the U.S. goes uneaten, costing the economy \$218 billion per year, or 1.3 percent of GDP. If global food waste were a country, its emissions would be third behind China and the U.S. Production of wasted food also consumes 21 percent of U.S. freshwater, 19 percent of fertilizer, and 18 percent of cropland.

Grocery retailers, restaurants, and food service companies waste about 25 million tons of food valued at \$57 billion annually. Beyond lost profits, companies lose money on the procurement of, labor and utilities for, and waste management costs of wasted food.

Reducing food waste can be financially beneficial for companies. A recent study found that for every dollar spent on reducing food waste, companies save on average \$14.

Amazon aims to become a top five grocery retailer by 2025. During Q1 of 2017, Amazon's grocery sales outpaced the industry 15 times, demonstrating 30 percent year-over-year growth.

However, online grocery retailers may be more susceptible to high rates of food waste given complex distribution systems and the inability to rely on solutions employed by conventional retailers such as discounting products nearing expiration. Estimates show that Amazon Fresh has lost money from spoilage at double the rate of a typical supermarket, posing significant operational risk.

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In contrast, industry peers are taking action to reduce, optimally manage, and report on food waste, potentially leaving laggards with a competitive disadvantage.

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- Kroger publishes a breakdown of quantity of food donated and recycled, with a goal of meeting 90 percent zero waste in all facilities by 2020.
- Walmart diverted 75 percent of global waste in 2016 through strategies including improved forecasting and packaging and standardized date labels.
- Through the Food Waste Reduction Alliance, Safeway, Publix and Kroger provide comprehensive, metrics-based disclosure on food waste management efforts.

Further, food waste legislation has passed in several states and has been introduced in Congress. The EPA has a national target to reduce food waste 50 percent by 2030.

Amazon and its shareholders are positioned to benefit from a comprehensive approach to food waste reduction that could cut costs, provide competitive advantage, strengthen brand reputation, help achieve sustainability goals, and combat climate change and hunger.

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\*NOTE: Black and white (grayscale) images show the outside, front of letter-sized envelopes and mailpieces that are processed through USPS automated equipment.

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Careers

(<http://about.usps.com/careers/welcome.htm>)

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(<https://gateway.usps.com/>)

Postal Inspectors

(<https://postalinspectors.uspis.gov/>)

Inspector General (<http://www.uspsig.gov/>)

Postal Explorer (<http://pe.usps.gov/>)

National Postal Museum

(<http://www.postalmuseum.si.edu/>)

Resources for Developers

(<https://www.usps.com/webtools/welcome.htm>)

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Terms of Use

(<http://about.usps.com/termsfuse.htm>)

FOIA (<http://about.usps.com/who-we-are/foia/welcome.htm>)

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