



DIVISION OF  
CORPORATION FINANCE

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

March 15, 2019

Irving S. Gomez  
Intel Corporation  
irving.s.gomez@intel.com

Re: Intel Corporation  
Incoming letter dated January 13, 2019

Dear Mr. Gomez:

This letter is in response to your correspondence dated January 13, 2019 and February 6, 2019 concerning the shareholder proposal (the "Proposal") submitted to Intel Corporation (the "Company") by Chris Hotz (the "Proponent") for inclusion in the Company's proxy materials for its upcoming annual meeting of security holders. 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,

M. Hughes Bates  
Special Counsel

Enclosure

cc: Chris Hotz  
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March 15, 2019

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

Re: Intel Corporation  
Incoming letter dated January 13, 2019

The Proposal requests that the Company update its “Global Human Rights Principles” to include, and include as part of certain websites and communications, a statement that “Intel affirms and believes all that the Pride flag and Gay Pride movement it is associated with represent or assert to be right and true.”

There appears to be some basis for your view that the Company may exclude the proposal under rule 14a-8(i)(7), as relating to the Company’s ordinary business operations. In our view, the Proposal seeks to micromanage the Company by dictating that the Company must adopt a specific policy position and prescribing how the Company must communicate that policy position. 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 bases for omission upon which the Company relies.

Sincerely,

Courtney Haseley  
Special Counsel

**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.



February 6, 2019

VIA E-MAIL

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

Re: *Intel Corporation*  
*Stockholder Proposal of Chris Hotz*  
*Exchange Act of 1934—Rule 14a-8*

Ladies and Gentlemen:

In a letter dated January 13, 2019 (the “No-Action Request”), we requested that the staff of the Division of Corporation Finance (the “Staff”) concur that Intel Corporation (the “Company”), may exclude from its proxy statement and form of proxy for its 2019 Annual Meeting of Stockholders (collectively, the “2019 Proxy Materials”) a stockholder proposal (the “Proposal”) and statements in support thereof received from Chris Hotz (the “Proponent”).

Enclosed as Exhibit A is correspondence, received via e-mail, from the Proponent indicating the Proponent’s revision of the Proposal in the manner set forth therein. In light of this correspondence, we hereby withdraw our objection relating to the Proposal, as revised, under Rule 14a-8(i)(1). However, we continue to believe that the Company may exclude the Proposal from the 2019 Proxy Materials pursuant to Rule 14a-8(i)(3) because the Proposal is materially false and misleading in violation of Rule 14a-9 and Rule 14a-8(i)(7) because the Proposal relates to the Company’s ordinary business operations, and accordingly we respectfully request that the Staff concur that it will take no action if the Company excludes the Proposal from its 2019 Proxy Materials on these bases.

Please do not hesitate to call me at (408) 653-7868 or Ronald O. Mueller of Gibson, Dunn & Crutcher LLP at (202) 955-8671, with any questions regarding this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "I. Gomez", written over a light gray dotted grid background.

Irving S. Gomez  
Assistant Corporate Secretary and Chief Governance Counsel, Corporate Legal Group

Office of Chief Counsel  
Division of Corporation Finance  
February 6, 2019  
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Enclosures

cc: Ronald O. Mueller, Gibson, Dunn & Crutcher LLP  
Chris Hotz

**EXHIBIT A**

**From:** \*\*\*  
**To:** [Walter, Geoffrey E.; irving.s.gomez@intel.com](mailto:Walter_Geoffrey_E.;_irving.s.gomez@intel.com)  
**Subject:** Re: Intel (Chris Hotz) Letter  
**Date:** Friday, February 1, 2019 12:51:47 PM

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[External Email]

I would like to revise the wording of my shareholder proposal to read as follows:

Proposed:

Shareholders request that Intel update its “Global Human Rights Principles” to include the following statement, as well as displaying said statement on all websites and communications which have Diversity and/or Inclusion as their primary subject matter: “Intel affirms and believes all that the Pride flag and the Gay Pride movement it is associated with represent or assert to be right and true.”

-Chris Hotz

On Sun, Jan 13, 2019 at 1:27 PM Walter, Geoffrey E. <[GWalter@gibsondunn.com](mailto:GWalter@gibsondunn.com)> wrote:

Dear Mr. Hotz,

Attached please find a copy of the no-action request submitted today by our client, Intel Corporation. A copy of this letter also will be sent to you via UPS.

Sincerely,

Geoffrey Walter

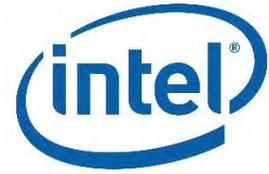
**Geoffrey Walter**

**GIBSON DUNN**

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This message may contain confidential and privileged information. If it has been sent to you in error, please reply to advise the sender of the error and then immediately delete this message.



January 13, 2019

VIA E-MAIL

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

Re: *Intel Corporation*  
*Stockholder Proposal of Chris Hotz*  
*Exchange Act of 1934—Rule 14a-8*

Ladies and Gentlemen:

This letter is to inform you that Intel Corporation (the “Company”) intends to omit from its proxy statement and form of proxy for its 2019 Annual Stockholders Meeting (collectively, the “2019 Proxy Materials”) a stockholder proposal (the “Proposal”) and statements in support thereof (the “Supporting Statement”) received from Chris Hotz (the “Proponent”).

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

- filed this letter with the Securities and Exchange Commission (the “Commission”) no later than eighty (80) calendar days before the Company intends to file its definitive 2019 Proxy Materials with the Commission; and
- concurrently sent copies of this correspondence to the Proponent.

Rule 14a-8(k) and Staff Legal Bulletin No. 14D (Nov. 7, 2008) (“SLB 14D”) provide that stockholder proponents are required to send companies a copy of any correspondence that the 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 Proponent that if he elects to submit additional correspondence to the Commission or the Staff with respect to the Proposal, a copy of that correspondence should be furnished concurrently to the undersigned on behalf of the Company pursuant to Rule 14a-8(k) and SLB 14D.

## **THE PROPOSAL**

The Proposal states:

Proposed:

Intel shall update its “Global Human Rights Principles” to include the following statement, as well as displaying said statement on all websites and communications which have Diversity and/or Inclusion as their primary subject matter: “Intel affirms and believes all that the Pride flag and the Gay Pride movement it is associated with represent or assert to be right and true.”

A copy of the Proposal and the Supporting Statement, as well as related correspondence with the Proponent, is attached to this letter as Exhibit A.

## **BASES FOR EXCLUSION**

We believe that the Proposal may properly be excluded from the 2019 Proxy Materials pursuant to:

- Rule 14a-8(i)(1) because the Proposal is mandatory rather than precatory and is therefore improper under state law;
- Rule 14a-8(i)(3) because the Proposal is materially false and misleading in violation of Rule 14a-9;
- Rule 14a-8(i)(7) because the Proposal relates the Company’s ordinary business operations.

## **ANALYSIS**

### **I. The Proposal May Be Excluded Under Rule 14a-8(i)(1) Because The Proposal Is Not A Proper Subject For Action By Stockholders Under The Laws Of The State Of Delaware.**

Rule 14a-8(i)(1) permits a company to exclude a stockholder proposal “[i]f the proposal is not a proper subject for action by shareholders under the laws of the jurisdiction of the company’s organization.” The Company believes that it may exclude the Proposal under this basis because the Proposal is not a proper subject for action by stockholders under the laws of Delaware, the jurisdiction of the Company’s organization. The Proposal is phrased as a mandate rather than as

a request. Section 141(a) of the Delaware General Corporation Law (the “DGCL”) vests management of the business and affairs of the Company in the Company’s Board of Directors (the “Board”), except as otherwise provided in the DGCL or the Company’s Certificate of Incorporation. Neither the DGCL nor the Company’s Certificate of Incorporation restricts the Board in a way relevant to the requirements of the Proposal. In our view, the language of the Proposal mandating that the Board take a specific action is contrary to the DGCL.

The Note to Rule 14a-8(i)(1) states that “[d]epending on the subject matter, some proposals are not considered proper under state law if they would be binding on the company if approved by shareholders.” In the 1976 adopting release for certain amendments to Rule 14a-8(c)(1) (now Rule 14a-8(i)(1)), the Commission stated:

The text of the above Note is in accord with the longstanding interpretative view of the Commission and its staff under subparagraph (c)(1). In this regard, it is the Commission’s understanding that the laws of most states do not, for the most part, explicitly indicate those matters which are proper for security holders to act upon but instead provide only that “the business and affairs of every corporation organized under this law shall be managed by its board of directors,” or words to that effect. Under such a statute, the board may be considered to have exclusive discretion in corporate matters, absent a specific provision to the contrary in the statute itself, or the corporation’s charter or bylaws. Accordingly, proposals by security holders that mandate or direct the board to take certain action may constitute an unlawful intrusion on the board’s discretionary authority under the typical statute.

Exchange Act Release No. 34-12999 (Nov. 22, 1976).

The Proposal mandates that the Company’s Board of Directors take action (“Intel shall update its ‘Global Human Rights Principles’ to include the following statement”). The Staff has consistently concurred that a stockholder proposal mandating or directing that a company’s board of directors take action is inconsistent with the discretionary authority granted to the board of directors under state law and is therefore excludable under Rule 14a-8(i)(1). *See Celgene Corp.* (avail. Mar. 27, 2013); *IEC Electronics Corp.* (avail. Oct. 31, 2012); *National Technical Systems Inc.* (avail. Mar. 29, 2011); *Bank of America Corp.* (avail. Feb. 16, 2011); *MGM MIRAGE* (avail. Feb. 6, 2008); *Cisco Systems, Inc.* (avail. July 29, 2005). In each case, the proposal mandated, rather than requested, that the company take a specific action. Similarly, the Proposal is not a proper subject for stockholder action under Delaware law since it mandates, instead of requests, that the Board address a matter clearly within its discretion and purview, and therefore the Proposal may be excluded pursuant to Rule 14a-8(i)(1).

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

Rule 14a-8(i)(3) permits the exclusion of a stockholder proposal if the proposal or supporting statement is contrary to any of the Commission's proxy rules or regulations, including Rule 14a-9, which prohibits materially false or misleading statements in proxy soliciting materials. The Staff consistently has taken the position that vague and indefinite stockholder proposals are inherently misleading and therefore excludable under Rule 14a-8(i)(3) because "neither the stockholders voting on the proposal, nor the company in implementing the proposal (if adopted), would be able to determine with any reasonable certainty exactly what actions or measures the proposal requires." Staff Legal Bulletin No. 14B (Sept. 15, 2004). *See also Dyer v. SEC*, 287 F.2d 773, 781 (8th Cir. 1961) ("[I]t appears to us that the proposal, as drafted and submitted to the company, is so vague and indefinite as to make it impossible for either the board of directors or the stockholders at large to comprehend precisely what the proposal would entail."). As further described below, the Proposal is so vague and indefinite that neither the Company's Board nor the Company's stockholders can comprehend what the Proposal would entail and, therefore, is excludable under Rule 14a-8(i)(3).

The Staff has on numerous occasions concurred in the exclusion of stockholder proposals under Rule 14a-8(i)(3) where key terms used in the proposal were so inherently vague and indefinite that stockholders voting on the proposal would be unable to ascertain with reasonable certainty what actions or policies the company should address if the proposal were enacted. For example, in *Berkshire Hathaway Inc.* (avail. Jan. 31, 2012), the Staff concurred in the exclusion of a stockholder proposal under Rule 14a-8(i)(3) where the proposal requested that company personnel "sign off [by] means of an electronic key" to indicate whether they "approve or disapprove of [certain] figures and policies" because the proposal did not "sufficiently explain the meaning of 'electronic key' or 'figures and policies.'" *See also AT&T Inc.* (avail. Feb. 21, 2014) (concurring in the exclusion of a proposal requesting that the board review the company's policies and procedures relating to the "directors' moral, ethical and legal fiduciary duties and opportunities," where the phrase "moral, ethical and legal fiduciary" was not defined or meaningfully described); *The Boeing Co. (Recon.)* (avail. Mar. 2, 2011) (concurring with the exclusion of a proposal under Rule 14a-8(i)(3), noting "that the proposal does not sufficiently explain the meaning of 'executive pay rights' and that, as a result, neither stockholders nor the company would be able to determine with any reasonable certainty exactly what actions or measures the proposal requires"); *General Electric Co.* (Feb. 10, 2011) (same); *The Allstate Corp.* (avail. Jan. 18, 2011) (same); *General Motors Corp.* (avail. Mar. 26, 2009) (concurring with the exclusion of a proposal to "[e]liminate all incentives for the CEOs [sic] and the Board of Directors" where the proposal did not define "incentives" or "CEOs"); *Bank of America Corp.* (avail. June 18, 2007) (concurring with the exclusion of a proposal calling for the board of directors to compile a report "concerning the thinking of the Directors concerning representative

payees” as “vague and indefinite”); *Alaska Air Group, Inc.* (avail. Apr. 11, 2007) (concurring with the exclusion of a proposal requesting that the board amend the company’s governing instruments to “assert, affirm and define the right of the owners of the company to set standards of corporate governance”).

The Proposal requires the Company to update its Global Human Rights Principles with a specific statement that must also be included “on all websites and communications which have Diversity and/or Inclusion as their primary subject matter.” Thus, the entire thrust and focus of the Proposal is to define the meaning of certain Company policies and to ask Company stockholders to endorse the Proponent’s interpretation. However, the interpretation that the Proposal asks stockholders to vote on is itself vague and indefinite. The Proposal fails to define or provide sufficient guidance for stockholders to understand key terms of the proposed statement, such that stockholders voting on the Proposal would be unable to ascertain with reasonable certainty what they are being asked to vote on. Specifically, as discussed below, the Proposal fails to sufficiently explain the meaning of the phrase, “all that the Pride flag and the Gay Pride movement . . . represent or assert to be right and true” (emphasis added).

The Proposal does not provide a clear statement or understanding as to what “all . . . the Pride flag and the Gay Pride movement . . . represent or assert to be right and true.” Instead of providing sufficient clarification or context, the Supporting Statement acknowledges the inherent ambiguity in interpreting the meaning of a symbol (such as the “Pride flag”), conceding that “flags are powerful communication mediums which carry a multitude of meanings to those who observe them.” The Supporting Statement identifies three possible meanings of the flag,<sup>1</sup> but states that the first two of these are “only a subset of the full meaning” and that the third is only “one of the broader meanings.” As a whole, the Supporting Statement demonstrates that it is not possible to clarify or define what the Proposal asks stockholders to endorse, because interpreting symbols such as the Pride flag is an inherently subjective exercise, with the meaning varying from person to person. This reflects the fact that the Pride flag is not a flag that has been

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<sup>1</sup> Specifically, “to support LGBTQ individuals,” “to highlight the company’s commitment to non-discrimination in hiring and retention processes and to fostering a safe and inclusive workplace,” and “celebrating sexual diversity and gender variance.”

formally endorsed by a country or standard-setter, but instead is a symbol that has been embraced internationally by popular culture.<sup>2</sup>

Similarly, both the Proposal and the Supporting Statement fail to clarify what is meant by the term “Gay Pride movement,” except by indicating that it is associated with the “Pride flag.” Understanding the meaning of that term is critical for stockholders as the Proposal requires the Company to take specific action by issuing a statement regarding the “all that the ... Gay Pride movement represent[s] or assert[s] to be right and true.” Like the “Pride flag,” the “Gay Pride movement” is not a unitary formal doctrine, but instead a general reference that can encompass a variety of interests and concerns. Without proper explanation, stockholders could interpret “Gay Pride movement” to reference any number of disparate and distinct social or political views. For example, by one account, in the U.S. alone there are at least 55 different and currently active lesbian, gay, bisexual and transgender rights organizations, with diverse and potentially distinct perspectives as to the meaning of Gay Pride movement.<sup>3</sup>

The Proposal asks stockholders to endorse the Proponent’s proposed interpretation of specific terms, but both the terms that the Proposal seeks to define and the meaning of those terms that the Proposal asks stockholders to endorse are vague and subjective. Because these key terms are not sufficiently explained, the Proposal asserts an open-ended interpretation of Company policies that could be interpreted in a number of conflicting ways by stockholders. As a result, stockholders cannot possibly know what they are being asked to vote upon when they are being asked to endorse the phrase “all that [they] represent or assert.” As well, because the Proposal and Supporting Statement do not provide any guidance or interpretation, the phrase “all that the Pride flag and the Gay Pride movement . . . represent or assert” is so vague and overbroad that stockholders and the Company could differ widely in their subjective understanding of what the phrase entails. Accordingly, the Proposal is similar to the stockholder proposal that was excluded

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<sup>2</sup> We note that since it emerged in 1978, the “Pride flag” has not been static, but has continually changed both in style and interpretation, with each change altering the intended meaning of the flag. The flag first comprised eight stripes, but is now most commonly a six-stripe flag with each color intended to represent a different concept: red for life, orange for healing, yellow for sunlight, green for nature, blue for harmony and purple for spirit. Moreover, there are many varieties of the Pride flag, which has been often reinterpreted to modify the colors or include additional stripes. For example, in 2017 the City of Philadelphia unveiled a new flag that included two new stripes of black and brown “added to represent people of color who previously felt ‘marginalized, ignored, and even intentionally excluded’ from its Pride celebrations.” See Curtis M. Wong, *The History And Meaning Of The Rainbow Pride Flag*, The Huffington Post (June 7, 2018), [https://www.huffingtonpost.com/entry/rainbow-pride-flag-history\\_us\\_5b193aafe4b0599bc6e124a0](https://www.huffingtonpost.com/entry/rainbow-pride-flag-history_us_5b193aafe4b0599bc6e124a0). See also, Ariel Sobel, *The Complete Guide to Queer Pride Flags*, The Advocate (June 13, 2018), purporting to identify the flags associated with a variety of Pride perspectives, at <https://www.advocate.com/pride/2018/6/13/complete-guide-queer-pride-flags#media-gallery-media-1>.

<sup>3</sup> See List of LGBT Organization in United States, Equaldex, available at <https://www.equaldex.com/organizations/united-states>.

in *Berkshire Hathaway* and the other precedent cited above in that the Proposal is so inherently vague and indefinite that neither stockholders voting on the Proposal nor the Company in implementing the Proposal would know with any degree of certainty the meaning of the proposed actions. Thus, the Proposal is properly excludable under Rule 14a-8(i)(3).

### **III. The Proposal May Be Excluded Under Rule 14a-8(i)(7) Because It Deals With Matters Related To The Company's Ordinary Business Operations.**

As discussed below, the Proposal may be omitted as it implicates the Company's ordinary business operations because it relates to the Company's management of its workforce, and also because it seeks to micro-manage the Company by replacing management's judgment with stockholders' judgment.

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

Rule 14a-8(i)(7) permits a company to omit from its proxy materials a stockholder proposal that relates to the company's "ordinary business" operations. According to the Commission 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 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 stockholder vote." *Id.* (citing Exchange Act Release

No. 12999 (Nov. 22, 1976)).<sup>4</sup> 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, part D.2 (June 28, 2005) (“SLB 14C”) (“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.”).

*B. The Proposal May Be Excluded Under Rule 14a-8(i)(7) Because It Relates To The Company’s Management Of Its Workforce.*

The Commission and Staff have long held that a stockholder proposal may be excluded under Rule 14a-8(i)(7) if it, like the Proposal, relates to a company’s management of its workforce, including its relationship with employees. The Commission recognized in the 1998 Release that “management of the workforce” is “fundamental to management’s ability to run a company on a day-to-day basis.” Consistent with the 1998 Release, the Staff has recognized that proposals pertaining to the management of a company’s workforce are excludable under Rule 14a-8(i)(7). For example, in *Bank of America Corp.* (avail. Feb. 14, 2012), the Staff concurred in the exclusion of a proposal requesting that a company policy be amended to include “protection to engage in free speech outside the job context, and to participate freely in the political process without fear of discrimination or other repercussions on the job” because the proposal related to the company’s policies concerning its employees. *See also Merck & Co., Inc.* (avail. Jan. 23, 1997) (concurring in the exclusion of a proposal requesting the adoption of a policy “to encourage employees to express their ideas on all matters of concern affecting the company”); *W.R. Grace & Co.* (avail. Feb. 29, 1996) (concurring in the exclusion of a proposal requesting that the company implement a “high-performance” workplace based on policies of workplace democracy and worker participation). The Staff also consistently has concurred in the exclusion of proposals that relate to management’s relations with the company’s employees. *See e.g., Donaldson Company, Inc.* (avail. Sept. 13, 2006) (concurring in the exclusion of a proposal requesting the establishment of “appropriate ethical standards related to employee relations”); *Intel Corp.* (avail. Mar. 18, 1999) (concurring in the exclusion of a proposal requesting an employee bill of rights); *McDonald’s Corp.* (avail. Mar. 19, 1990) (concurring that a proposal

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<sup>4</sup> The mere fact that a proposal touches upon a significant policy issue is not alone sufficient to avoid the application of Rule 14a-8(i)(7) when a proposal implicates ordinary business matters. The Commission has stated that “proposals relating to such [ordinary business] matters but focusing on sufficiently significant social policy issues . . . generally would not be considered to be excludable.” Thus, when proposals are not sufficiently focused on a significant social policy issue, or addresses both ordinary business matters and significant social policy issues, they may be excluded in their entirety in reliance on Rule 14a-8(i)(7). 1998 Release.

regarding various Company policies, including affirmative action and equal employment opportunity policies, could be excluded under the predecessor to Rule 14a-8(i)(7)).

Importantly, the Staff has specifically concurred that managing a company's relationship with its employees, including how employee-related policies are implemented, interpreted and communicated to employees, are part of the ordinary business of companies and, thus, proposals related to such matters are excludable under Rule 14a-8(i)(7). For example, in *The Walt Disney Co.* (avail. Nov. 24, 2014, *recon. denied* Jan. 5, 2015), the Staff permitted exclusion of a proposal requesting that the company "consider the possibility of adopting anti-discrimination principles that protect employees' human right[s]" relating to engaging in political and civic expression. The company argued that the adoption of anti-discrimination principles involved "decisions with respect to, and modifications of the way the company manages its workforce and employee relations" that were "multi-faceted, complex and based on a range of factors beyond the knowledge and expertise of the shareholders." In allowing exclusion, the Staff again affirmed that "policies concerning [the companies'] employees" relate to companies' ordinary business operations covered by Rule 14a-8(i)(7) and are thus excludable on that basis. Similarly, in *PG&E Corp.* (avail. Feb. 27, 2015) (*PG&E 2015*), the Staff concurred in the exclusion of a proposal requesting that the company include in all employment and related policies the right of employees to freely express their personal and religious thoughts. The company argued that the management of a company's relationship with its employees "is integral to a company's ability to run its business on a day-to-day basis" and that employee-related policies are necessarily "tailored to the needs of the particular company, its workforce, its customers, and its shareholders." *See also PG&E Corp.* (avail. Mar. 7, 2016) (concurring in the exclusion of a proposal to institute a policy that there shall be no discrimination based on, among other things, sexual orientation and gender in hiring, vendor contracts or customer relations); *CVS Health Corp.* (avail. Feb. 27, 2015) (concurring in the exclusion of a proposal requesting that the company amend its employment policies to explicitly prohibit discrimination based on political ideology, affiliation or activity); *Bristol-Myers Squibb Co.* (avail. Jan. 7, 2015) (concurring in the exclusion of a proposal suggesting the adoption of employee anti-discrimination principles related to engaging in political and civic expression, stating that the proposal related to "policies concerning [the company's] employees"); *Yum! Brands, Inc.* (avail. Jan. 7, 2015) (same); *Deere & Co.* (avail. Nov. 14, 2014, *recon. denied* Jan. 5, 2015) (concurring in the exclusion of a proposal requesting that the company adopt an employee code of conduct that included an anti-discrimination policy "that protects employees' human right to engage in the political process, civic activities and public policy of his or her country without retaliation"); *Wal-Mart Stores, Inc.* (avail. Mar. 16, 2006) (concurring in the exclusion of a proposal requesting an amendment to a company policy barring intimidation of company employees exercising their right to freedom of association). In addition, in *Merck & Co.* (avail. Dec. 29, 2005) (*Merck 2005*), the Staff concurred with the exclusion of a proposal requiring that the company communicate to its employees and shareholders all reports and allegations of, and investigations and actions taken in

response to, violations of the law and professional misconduct. The company argued that communications with its employees were “fundamental to the conduct of ordinary business operations of the [c]ompany.” In its response, the Staff noted that the proposal’s requested communications related to the company’s “management of the workplace” and thus, was excludable under Rule 14a-8(i)(7). *See also AT&T Inc.* (avail. Dec. 28, 2015) (concurring in the exclusion of a proposal seeking to establish a program to educate, and thus communicate with, AT&T employees on certain matters related to certain public health concerns as relating to the company’s ordinary business operations).

Like the proposals that were excluded in *Bank of America*, *PG&E 2015* and *CVS Health*, the Proposal relates to the Company’s policies concerning its employees and the Company’s relationship with its employees. Specifically, the Proposal requires the Company to amend the Company’s Global Human Rights Principles to reflect the Proponent’s interpretation of the Company’s employee-related policies by including the following statement: “Intel affirms and believes all that the Pride flag and the Gay Pride movement it is associated with represent or assert to be right and true.” The Company’s Global Human Rights Principles<sup>5</sup> “appl[y] to all employees and contingent workers [at the Company and] employees of [the Company’s] subsidiaries” and set forth specific principles that the Company follows with respect to the management of its workforce. Among these principles are “diversity and nondiscrimination” and “harassment prohibition.” As described more fully in the Global Human Rights Principles, when managing its workforce the Company “do[es] not discriminate on the basis of race, color, religion, religious creed, sex, national origin, ancestry, age, physical or mental disability, medical condition, genetic information, military and veteran status, marital status, pregnancy, gender, gender expression, gender identity, sexual orientation, or any other characteristic protected by local law, regulation or ordinance.” The Global Human Rights Principles express the Company’s commitment to “providing a workplace free of sexual harassment as well as harassment based on [certain enumerated] factors,” and provide that the Company “will not tolerate harassment of employees by managers, co-workers, or [its] suppliers.”

In seeking to amend the Company’s interpretation of policies with respect to its management of the Company’s workforce, the Proposal is imposing upon the “decisions with respect to . . . the way the company manages its workforce and employee relations,” just like the proposal in *The Walt Disney Co.* The policies that the Company develops and implements with respect to its employees involve workforce management considerations that are, like the proposal in *The Walt Disney Co.*, “multi-faceted, complex and based on a range of factors beyond the knowledge and expertise of the shareholders.” The Proposal is thus analogous to the proposals in *Wal-Mart*

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<sup>5</sup> The Company’s Global Human Rights Principles are available at <https://www.intel.com/content/dam/www/public/us/en/documents/corporate-information/policy-human-rights.pdf>.

*Stores* and *Merck 2005* in that it focuses on the Company's employee relationships through its employee policies and practices, and the Company's communications with its employees. For example, in addition to requiring amendments to the Company's policies with respect to discrimination and harassment of employees both before and after hiring, the Supporting Statement addresses the Company's "communication guidelines" and the effect of the Company's policies on "employees from [certain] religious or moral traditions." Workplace policies and procedures and the communication of such policies and procedures to its employees are significant elements that contribute to the Company's ordinary business of management of its workforce and the Company's relationship with its employees.

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

The precedent set forth above demonstrates that the Proposal addresses ordinary business matters and therefore is excludable under Rule 14a-8(i)(7) because it relates to the Company's management of its workforce and the manner in which it conducts its public relations. In line with the 1998 Release, the Staff consistently has concurred that a proposal may be excluded in its entirety when it addresses ordinary business matters, even if it also addresses a significant social policy issue, such as human rights or discrimination. For instance, in *Apache Corp.* (avail. Mar. 5, 2008), the Staff concurred that a company could exclude a proposal requesting that the company "implement equal employment opportunity policies based on principles specified in the proposal prohibiting discrimination based on sexual orientation and gender identity." Even though the proposal in *Apache Corp.* referenced discrimination issues based on sexual orientation and gender identity, the company argued that the proposal and the principles "did not transcend the core ordinary business matters" of the company. The aforementioned principles included a request for efforts by the company "to prohibit discrimination in corporate advertising and marketing policy based on sexual orientation or gender identity," "prohibit discrimination in the allocation of employee benefits on the basis of sexual orientation or gender identity," and "refrain from barring corporate charitable contributions to groups and organizations based on sexual orientation." The Staff concurred in its exclusion under Rule 14a-8(i)(7), stating "in particular that some of the principles [mentioned in the proposal] related to [the company's] ordinary business operations." See also *FedEx Corp.* (avail. July 14, 2009); *The Walt Disney Co.* (avail. Nov. 30, 2007).

Here, as discussed above, the Proposal relates to ordinary business matters: the manner in which the Company manages its workforce, specifically the interpretation of, and communication regarding, the Company's employee-related policies. The Proposal's references to the Company's Global Human Rights Policies and policies related to sexual orientation and gender identity do not "transcend the day-to-day business matters," and therefore the Proposal can be excluded pursuant to Rule 14a-8(i)(7). See 1998 Release. The Proposal discusses policies that

address discrimination on the basis of sexual orientation and gender identity, but the Proposal is not focused on those issues. Instead, the Proposal's core focus is how the Company, in its management of its day-to-day business operations, interprets and communicates such policies. That the Proposal seeks to invoke issues that, in different contexts, have been found to implicate significant policy issues is not sufficient to avoid exclusion under Rule 14a-8(i)(7) when presented in the context of a proposal that fails to "transcend the day-to-day business matters" that it addresses. While, similar to the proposal in *Apache Corp.*, the Proposal touches on Company policies prohibiting discrimination on the basis of sexual orientation or gender identity, here the Proposal is focused entirely on how the Company interprets and communicates certain non-discrimination policies. Accordingly, even more so than the proposal in *Apache Corp.*, the Proposal's request does not transcend the ordinary business considerations of the Company to focus on a significant policy issue on which it is appropriate for stockholders to vote.

*D. The Proposal May Be Excluded Under Rule 14a-8(i)(7) Because It Seeks To Micro-Manage The Company.*

As explained above, the Commission stated in the 1998 Release that one of the considerations underlying the ordinary business exclusion is "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." The 1998 Release further states that "[t]his consideration may come into play in a number of circumstances, such as where the proposal involves intricate detail, or seeks to impose specific time-frames or methods for implementing complex policies." The Proposal requests that the Company "update its 'Global Human Rights Principles' to include [a specific statement], as well as display[] said statement on all websites and communications which have Diversity and/or Inclusion as their primary subject matter." Because the Proposal seeks to dictate the Company's policy position on a complex matter as well as how the Company communicates that policy position (*i.e.*, by requiring the Company to include the dictated policy position in specified internal and external Company communication materials), the Proposal seeks to micro-manage the Company and for this reason as well may be excluded under Rule 14a-8(i)(7).

The Staff consistently has concurred that stockholder proposals attempting to micro-manage a company by providing specific details for implementing a proposal as a substitute for the judgment of management are excludable under Rule 14a-8(i)(7). For example, in *Marriott International, Inc.* (avail. Mar. 17, 2010, *recon. denied* Apr. 19, 2010), the Staff concurred in the exclusion of a proposal requiring the installation of low-flow showerheads at certain of the company's hotels because "although the proposal raises concerns with global warming, the proposal seeks to micromanage the company to such a degree that exclusion of the proposal is

appropriate.” In particular, the Staff in *Marriott International* noted that the proposal required the use of “specific technologies.” See also *SeaWorld Entertainment, Inc.* (avail. Mar. 30, 2017, *recon. denied* Apr. 17, 2017) (concurring in the exclusion under Rule 14a-8(i)(7) of a proposal requesting the replacement of live orca exhibits with virtual reality experiences as “seek[ing] to micromanage the company by probing too deeply into matters of a complex nature upon which shareholders, as a group, would not be in a position to make an informed judgment”).

As in *Marriott International* and *SeaWorld Entertainment*, the Proposal provides specific details for implementation as a substitute for the judgment of management. The Proposal does not merely require that the Company amend its policies and procedures to include the Company’s position on a particular matter, it mandates what that position should be as well as the specific communications and places where the prescribed statement must appear throughout the Company. The extent to which the detailed requirements of the Proposal seek to micro-manage the Company are comparable to the “specific technologies” mandated in *Marriott International* and the virtual reality experiences proposed in *SeaWorld Entertainment*. The stockholder proposal process is not intended to provide an avenue for stockholders to impose detailed requirements of this sort in areas where they, as a group, are not in the best position to make an informed decision. As discussed above, decisions about how to draft and communicate certain workplace policies and manage its relationship with employees are decisions that are beyond the purview of stockholders. These decisions are multifaceted and require management to evaluate complex issues. The Company has gone to great lengths to develop employee-related policies and communications, including those related to “Diversity and/or Inclusion,” and, as discussed above, the development and implementation of those policies are fundamental to the management of the Company’s day-to-day operations. By requiring a specific policy position and mandating how that should be communicated, the Proposal impermissibly seeks to replace management’s informed and reasoned judgments with respect to its development of employee-related and workplace policies and how those policies are communicated. The Proposal thus micro-manages the Company’s fundamental day-to-day decisions and policies with respect to its workforce and therefore may be excluded under 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 2019 Proxy Materials.

We would be happy to provide you with any additional information and answer any questions that you may have regarding this subject. Please direct any correspondence regarding this matter to me at [irving.s.gomez@intel.com](mailto:irving.s.gomez@intel.com). If we can be of any further assistance in this matter, please

Office of Chief Counsel  
Division of Corporation Finance  
January 13, 2019  
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do not hesitate to call me at (408) 653-7868 or Ronald O. Mueller of Gibson, Dunn & Crutcher LLP at (202) 955-8671.

Sincerely,

A handwritten signature in black ink, appearing to read "I. Gomez", is positioned above the typed name.

Irving S. Gomez  
Assistant Corporate Secretary and Chief Governance Counsel, Corporate Legal Group

Enclosures

cc: Ronald O. Mueller, Gibson, Dunn & Crutcher LLP  
Chris Hotz

**EXHIBIT A**

I, Chris Hotz confirm my intent to continue to hold  
the 148 shares of INTC stock associated with grant  
number \*\*\* through the date of Intel Corporation's  
2019 shareholder meeting.

Chris Hotz 10/15/2018

Chris Hotz  
\*\*\*

**Proposed:**

Intel shall update its "Global Human Rights Principles" to include the following statement, as well as displaying said statement on all websites and communications which have Diversity and/or Inclusion as their primary subject matter: "Intel affirms and believes all that the Pride flag and the Gay Pride movement it is associated with represent or assert to be right and true."

**Support:**

Symbols such as flags are powerful communication mediums which carry a multitude of meanings to those who observe them. From 2015 through the present, Intel has raised the Pride flag over its campuses across the United States, as well as many international sites throughout the month of June. Intel's stated purpose in this public display was to support LGBTQ individuals and highlight the company's commitment to non-discrimination in hiring and retention processes and to fostering a safe and inclusive workplace for them. This intended message is however only a subset of the full meaning which the Pride flag carries with it, and there is no reasonable means by which Intel can ensure that the public, and to a lesser extent the employees, receives only the intended message from the display.

As an example, in 2018 company communications related to the June observance acknowledged that one of the broader meanings of the Pride which was represented by the flag included "celebrating sexual diversity and gender variance". Intel's communication guidelines prohibit advocating for religious or moral beliefs, or disparaging the religious or moral beliefs of employees. This acknowledged meaning of the flag left those employees from religious or moral traditions which did not celebrate sexual diversity or gender variance unsure as to whether their beliefs were actually being contradicted, or were only publicly perceived to be so, either of which could be disparaging.

This contradiction between the message intended by displaying the Pride flag and the message received by those observing it is very similar to the situation many southern locales in the U.S. found themselves in recent years due to their display of the Confederate flag. While the stated purpose in these displays was to communicate southern pride, many perceived the symbol to carry a fuller meaning which included racism. When efforts to shift public perception of the Confederate flag to remove the association with racism failed, these locales were left with the choice of either acknowledging a racist message or removing the flags, and in most cases the flags came down.

In this case, Intel does not control the meaning associated with the Pride flag, and upper management has made it clear that their intent is to continue to fly the Pride flag going forward each June. Therefore the only way to resolve the contradiction between Intel's claimed meaning of the display and the actual message received by those who see it, is to accept this proposal and fully align Intel's principles and intended message with the Pride flag's full meaning.

September 20, 2018

Chris Hotz  
Kelly Hotz  
\*\*\*

Re: E\*TRADE Securities Account XXXX- \*\*\*

Dear Chris & Kelly Hotz,

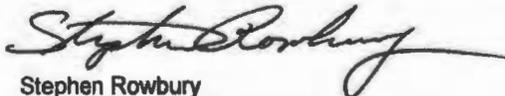
This letter is in response to your request for verification of the vested Intel Corp. (INTC) Restricted Stock Units held in E\*TRADE Securities account XXXX- \*\*\*

Account number XXXX- \*\*\* is a joint Stock Plan brokerage account registered in the names of Chris Hotz and Kelly Hotz. This account was opened on June 15, 2018, and is currently in good standing. As of the time this letter was prepared on September 20, 2018, the following vested Restricted Stock Units were held in the account:

Vested INTEL CORP. (INTC) Restricted Stock Units					
Vest Date	Quantity Held 9/20/2018	Grant Date	Grant Number	Closing Price 9/20/2018	Market Value 9/20/2018
4/21/2017	148	4/21/2015	***	\$47.20	\$6,985.60
4/22/2017	216	4/22/2014		\$47.20	\$10,195.20
4/25/2017	217	4/25/2013		\$47.20	\$10,242.40
4/26/2017	293	4/26/2016		\$47.20	\$13,829.60
7/22/2017	100	7/22/2015		\$47.20	\$4,720.00
4/21/2018	155	4/21/2015		\$47.20	\$7,316.00
4/22/2018	226	4/22/2014		\$47.20	\$10,667.20
4/26/2018	299	4/26/2016		\$47.20	\$14,112.80
5/2/2018	96	5/2/2017		\$47.20	\$4,531.20
7/22/2018	104	7/22/2015		\$47.20	\$4,908.80
				<b>Total Market Value</b>	<b>\$87,508.80</b>

We hope that this information satisfies your request. Should you have any further questions, please feel free to contact a Financial Services Representative at 800-ETRADE-1 (800-387-2331, or +1 678 624 6210 internationally), 24 hours a day, seven days a week.

Sincerely,



Stephen Rowbury  
Correspondence Department

**PLEASE READ THE IMPORTANT DISCLOSURES BELOW.**

The E\*TRADE Financial family of companies provides financial services, including trading, investing, and banking products and services, to retail customers.

Securities products and services are offered by E\*TRADE Securities LLC, Member FINRA/SIPC.