

January 13, 2020

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 2020 Annual Stockholders Meeting (collectively, the “2020 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 2020 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: Shareholders request that Intel refrain from publicly displaying the pride flag.

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.

BASIS FOR EXCLUSION

We believe that the Proposal may properly be excluded from the 2020 Proxy Materials pursuant to Rule 14a-8(i)(7) because the Proposal addresses the Company's management of its workforce and therefore deals with matters relating to the Company's ordinary business operations, and seeks to micro-manage the Company.

ANALYSIS

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

As discussed below, the Proposal may be omitted because it relates to the Company's management of its workforce, including how the Company communicates about its employment policies, and does not transcend the Company's ordinary business operations. Additionally, the Proposal may also be excluded under Rule 14a-8(i)(7) because it seeks to micro-manage the Company by replacing management's judgment with that of the stockholders.

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

Pursuant to Rule 14a-8(i)(7), a stockholder proposal may be excluded from a company's proxy materials if it "deals with a matter relating 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.” Accordingly, even if a proposal touches upon a significant policy issue, the proposal may be excludable on ordinary business grounds if the proposal does not transcend a company’s ordinary business. 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.* Examples of the tasks cited by the Commission include “management of the workforce, such as the hiring, promotion, and termination of employees, decisions on production quality and quantity, and the retention of suppliers.” 1998 Release. 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) (“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 Proposal requests that the Company “refrain from publicly displaying the pride flag.” The Supporting Statement suggests that the Company’s “intended message to the public and employees” is that the Company “does not discriminate against LGBTQ individuals in its hiring, promotion or retention practices,” and notes that “the intended non-discrimination message is desirable to ensure Intel is able to achieve its goal to hire and retain the most qualified person for each position within the [C]ompany.” The Supporting Statement expresses concern, however, that “unintended messages put that same goal at risk” and states that the Company “should find an alternative to the pride flag for publicly conveying the [C]ompany’s non-discrimination message.”

The Proposal is focused on how the Company communicates with its employees and the public about its employment policies and, indirectly, how best to attract and retain qualified employees. The Commission and Staff have long concurred that these issues relate to companies’ ordinary business operations and do not raise significant policy issues because they relate to a company’s management of its workforce. As discussed above, 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.” 1998 Release. 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). Most recently, in *Walmart Inc.* (avail. Apr. 8, 2019) the Staff concurred in the exclusion of a proposal requesting a report evaluating the risk of discrimination that may result from the company’s policies and practices for hourly workers taking absences from work for personal or family illness because it related “generally to the [c]ompany’s management of its workforce, and [did] not focus on an issue that transcends ordinary business matters.” See also *Northrop Grumman Corp.* (avail. Mar. 18, 2010) (concurring in the exclusion of a proposal requesting the board provide certain disclosures in the context of the company’s reduction-in-force review process and noting “[p]roposals concerning a company’s management of its workforce are generally excludable under [R]ule 14a-8(i)(7)”).

This is because proposals addressing how a company manages its relationships with its employees, including how employee-related policies are implemented, interpreted and communicated to employees, implicate complex considerations that are not appropriately addressed through the shareholder proposal process. For example, in *Amazon.com, Inc.* (avail. Mar. 6, 2019) (“*Amazon 2019*”), the proposal urged the board to adopt a policy that the company would not engage in any “[i]nequitable [e]mployment [p]ractice” such as mandatory arbitration of certain claims or non-compete agreements with employees. The company argued that decisions regarding the employment arrangements outlined in the proposal were “multifaceted, complex, and based on factors beyond the knowledge and expertise of shareholders, such as the amount of compensation associated with such arrangements, competitive practices in different lines of business or geographic regions, and differing legal regimes” and that deciding whether to implement the requested policy would “require an understanding of [c]ompany-specific effects across tens or hundreds of thousands of employees who are employed in a wide range of positions around the world, and thus would be impractical for shareholders voting at an annual meeting.” The Staff concurred with the proposal’s exclusion because it related “generally to the [c]ompany’s policies concerning its employees, and [did] not focus on an issue that transcends ordinary business matters.” Similarly, 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 concurring with the proposal’s 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. 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 stockholders 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 Intel Corp.* (avail. Mar. 18, 1999) (concurring in the exclusion of a proposal requesting an employee bill of rights).

Even if the objective of a proposal is to address how best to achieve a company’s goal “to hire and retain the most qualified person for each position within the company,” it does not elevate the proposal beyond an ordinary business matter. In the 1998 Release, the Commission specifically identified “the hiring, promotion and termination of employees” as matters relating to the management of the workforce, and the Staff has consistently recognized that proposals pertaining to these matters are excludable under Rule 14a-8(i)(7). 1998 Release. For example, the proposal in *Merck & Co., Inc.* (avail. Mar. 6, 2015) (“*Merck 2015*”) requested that the company fill only entry-level positions with outside candidates and adopt a policy of developing individuals for its higher-level positions exclusively from employees meeting certain standards. The Staff concurred that the proposal could be excluded under Rule 14a-8(i)(7) because “the proposal relate[d] to procedures for hiring and promoting employees.” *See also Wells Fargo & Co.* (avail. Feb. 22, 2008) (concurring that a proposal requesting a policy stating that the company would not employ individuals who worked at a credit rating agency within the last year could be excluded because it related to “ordinary business operations (i.e., the termination, hiring, or promotion of employees)”).

Like the proposals excluded in the precedent above, the Proposal relates to how Company manages its workforce, and specifically how the Company communicates about workforce-related policies. By seeking to dictate how the Company communicates about its existing policies, the Proposal does not raise a significant policy issue, but instead implicates the types of complex workplace-oriented matters that Rule 14a-8(i)(7) is intended to address, just like the proposals in *Amazon 2019*, *The Walt Disney Co.* and *Merck 2005*. Decisions regarding how the Company communicates with respect to its employment policies involve workforce management considerations that are, like those addressed in 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 *Merck 2015*, *Amazon 2019*, *The Walt Disney Co.* and *Merck 2005* in that it focuses on the Company’s employee relationships through its employment policies and the Company’s communications with its employees, including the “employee communication guidelines” specifically referenced in the Supporting Statement. Workplace policies and procedures, and the communication of such policies and

procedures to its employees, are complex but routine aspects of managing the Company's ordinary business operations.

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

The well-established 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. Recently, the Staff noted that it "believe[s] the focus of an argument for exclusion under Rule 14a-8(i)(7) should be on whether the proposal deals with a matter relating to that company's ordinary business operations or raises a policy issue that transcends that company's ordinary business operations." See Staff Legal Bulletin No. 14K (Oct. 16, 2019) ("SLB 14K"). The Staff further noted that "[w]hen a proposal raises a policy issue that appears to be significant, a company's no-action request should focus on the significance of the issue to that company."

Because the Proposal focuses on one very narrow and discrete aspect of how the Company communicates with employees and the public regarding its employment nondiscrimination policies, it does not transcend the Company's ordinary business. It is well established that the fact a proposal may touch upon or address issues such as employment discrimination (or in this case, nondiscrimination) does not automatically result in a proposal transcending ordinary business. For example, in *Deere & Co.* (avail. Nov. 14, 2014, *recon. denied* Jan. 5, 2015), the proposal requested that the company adopt an employee code of conduct that included an anti-discrimination policy "that protects employees' human right[s] to engage in the political process, civic activities and public policy of his or her country without retaliation." The proposal asserted that corporations who prohibited discrimination on those bases "have a competitive advantage in recruiting and retaining employees from the widest possible talent pool," while employee discrimination on such bases "diminishes employee morale and productivity." The company argued in its correspondence with the Staff that the proposal involved ordinary business matters such as "relations between [a] company and its employees" and "management of the employee workforce," and that "a handful of references to human rights [did] not transform the [p]roposal into a significant policy issue or override the clear ordinary business aspect of the [p]roposal." The Staff concurred, explaining that the proposal related to the company's "policies concerning its employees" and thus implicated the company's ordinary business operations. Similarly, 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, it addressed ordinary business matters such as to "prohibit discrimination in corporate advertising and marketing policy based on sexual

orientation or gender identity” and “prohibit discrimination in the allocation of employee benefits on the basis of sexual orientation or gender identity.” The company argued that the proposal and the principles “did not transcend the core ordinary business matters” of the company, and 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.”

Similar to the proposal in *Apache Corp.*, the Proposal touches on Company policies prohibiting discrimination on the basis of sexual orientation, but the Proposal is focused on one specific aspect of how the Company communicates about one of its non-discrimination policies. The Supporting Statement’s references to the topics of religious liberty, sexual orientation, hate speech and gender identity, as well as issues of non-discrimination, do not make the Proposal “transcend the day-to-day business matters.” 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.” In addition, SLB 14K clarified that in considering arguments for exclusion based on micro-management, the Staff looks to see “whether the proposal . . . imposes a specific strategy, method, action, outcome or timeline for addressing an issue, thereby supplanting the judgment of management and the board.” Furthermore, the Staff noted that if a proposal “potentially limit[s] the judgment and discretion of the board and management, the proposal may be viewed as micromanaging the company.” SLB 14K.

The Proposal requests that the Company “refrain from publicly displaying the pride flag,” and asserts in the Supporting Statement that the company “should find an alternative to the pride flag for publicly conveying [its] non-discrimination message with respect to LGBTQ individuals.” Because the Proposal seeks to dictate how the Company communicates its position on a complex policy issue (*i.e.*, by requiring the Company to cease its current communication of its policy message—the public display of the pride flag—and “find an

alternative”), the Proposal seeks to micro-manage the Company and for this reason as well may be excluded under Rule 14a-8(i)(7).

In this regard, the Proposal is similar to the proposal the Proponent submitted in *Intel Corp.* (avail. Mar. 15, 2019) (“*Intel 2019*”). In *Intel 2019*, the proposal requested that the Company include a specific policy 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”—in its Global Human Rights Principles, as well as certain Company websites and communications. Like the instant Proposal, the *Intel 2019* proposal sought to dictate how the Company communicated a policy position. The Staff concurred in the exclusion of the proposal as relating to the Company’s ordinary business operations, as, in its view, “the [p]roposal [sought] 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.” *See also MGE Energy, Inc.* (avail. Mar. 13, 2019) (concurring in the exclusion under Rule 14a-8(i)(7) of a proposal requesting the company prepare a public report describing how it “can provide a secure, low cost energy future for [its] customers and shareholders by eliminating coal and moving to 100% renewable energy by 2050 or sooner” as “seek[ing] to micromanage the [c]ompany by seeking to impose specific methods for implementing complex policies in place of the ongoing judgments of management as overseen by its board of directors”); *Amazon.com, Inc.* (avail. Jan. 18, 2018) (“*Amazon 2018*”) (concurring in the exclusion under Rule 14a-8(i)(7) of a proposal instructing the company to list WaterSense showerheads before the listing of other showerheads and to provide a short description of the meaning of WaterSense showerheads as “seek[ing] to micromanage the [c]ompany 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 *Intel 2019*, *MGE Energy* and *Amazon 2018*, the Proposal seeks to “impose[] a specific strategy, method, action, [or] outcome . . . for addressing an issue, thereby supplanting the judgment of management and the board.” SLB 14K. The Proposal dictates the specific manner in which the Company’s position on a specific policy must be communicated throughout the Company (i.e., through a means other than the display of the pride flag). The extent to which the detailed requirements of the Proposal seek to micro-manage the Company are comparable to the specific policy position and communication methods prescribed in *Intel 2019*, the energy strategy dictated in *MGE Energy* and the particular product presentation mandated in *Amazon 2018*. 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 manage a company. As discussed above, decisions about how to communicate certain workplace policies and manage the Company’s relationship with employees, both before and after they are hired, are decisions that are beyond the purview of stockholders. These decisions are multifaceted and require management to evaluate complex issues. The

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Company has gone to great lengths to develop employee-related policies and communications, including those related to diverse candidates and employees, and, as discussed above, the implementation of those policies are fundamental to the management of the Company's day-to-day operations. By mandating how the Company should communicate a specific policy position, the Proposal impermissibly seeks to replace management's informed and reasoned judgments with respect to how its employee workplace 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 2020 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. If we can be of any further assistance in this matter, please do not hesitate to call me at (408) 653-7868 or Ronald O. Mueller of Gibson, Dunn & Crutcher LLP at (202) 955-8671.

Sincerely,



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

Proposed:

Shareholders request that Intel refrain from publicly displaying the pride flag.

Support:

Symbols such as flags are powerful communication mediums which carry a multitude of meanings to those who observe them. The pride flag is no exception, and while it **can** convey Intel's intended message to the public and employees (i.e. that Intel does not discriminate against LGBTQ individuals in its hiring, promotion, or retention practices), it may also be interpreted by those who see it as sending more controversial messages. The display of the pride flag together with statements by those holding it surrounding the recent court cases *Obergefell v. Hodges*, *Masterpiece Cakeshop v. Colorado Civil Rights Commission*, and others can lead to additional meanings of the flag, such as:

Intel advocates for marriage equality as a fundamental right which supersedes religious liberty in the public square

Intel denounces those holding to a traditional view of marriage (one man, one woman) as bigoted and prejudiced

Intel denounces the belief that same-sex attraction is disordered and supports efforts to classify the expression of such as hate speech

Intel denounces the belief that sexual encounters between any individuals besides a (biological) man and (biological) woman that are married to each other are wrong/sinful.

While the intended non-discrimination message is desirable to ensure Intel is able to achieve its goal to hire and retain the most qualified person for each position within the company (regardless of that person's sexual orientation), the unintended messages put that same goal at risk. Candidates or employees from diverse faith backgrounds (such as denominations of Judaism, Islam, or Christianity to name a few) may hold beliefs opposed to one or more of these unintended messages (or to other messages which they associate with the pride flag) and thus see Intel as a hostile place for them to work.

With the pride flag displayed publicly, there is simply no practical means for Intel to communicate to all those viewing it what the company's specific intended message was in so doing. Intel's employee communication guidelines prohibit advocating for religious or moral beliefs, or disparaging the religious or moral beliefs of other employees. While the policy does not specifically cover communication via symbols/flags, it is telling that an employee who sent an e-mail to another employee listing the above meanings of the pride flag could be in violation of those very guidelines (regardless of whether the meanings were cast in a positive or negative light).

Intel should find an alternative to the pride flag for publicly conveying the company's non-discrimination message with respect to LGBTQ individuals; an alternative which will **only** convey the desired message.

Chris Hotz ***

I, Chris Hotz do confirm my commitment to maintain ownership of the 148 shares of Intel stock acquired on 4/21/2017 via vesting of RSU grant *** (original grant ID ***) up to and throughout the Intel 2020 shareholders meeting.

Chris Hotz
Sign

12/1/19
Date

Susie Giordano
Intel Corporation
M/S RNB-4-151
2200 Mission College Blvd,
Santa Clara, CA 95054-1549

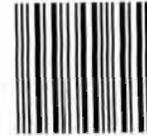
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