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January 17, 2020

VIA E-MAIL

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

Re: *The Home Depot, Inc.*
Shareholder Proposal of the NorthStar Asset Management, Inc. Funded Pension Plan
Securities Exchange Act of 1934—Rule 14a-8

Ladies and Gentlemen:

This letter is to inform you that our client, The Home Depot, Inc. (the "Company"), intends to omit from its proxy statement and form of proxy for its 2020 Annual Meeting of Shareholders (collectively, the "2020 Proxy Materials") a shareholder proposal, including statements in support thereof (the "Proposal"), received from the NorthStar Asset Management, Inc. Funded Pension Plan (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 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 Proponent that if the Proponent elects 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 of The Home Depot urge the Board of Directors to produce an annual report to shareholders on prison labor, at reasonable cost and omitting proprietary information, summarizing the extent of known usage of prison labor in the company's supply chain.
>
> **SUPPORTING STATEMENT:** Shareholders recommend that the report, at the board and management's discretion:
>
> - Provide annual quantitative metrics regarding the number of supplier audits completed by the Company or third party auditors that evaluated whether prison labor is present in the supply chain, as well as the summary of those audits' results.
> - Evaluate any risks to finances, operations, and reputation related to prison labor in the Home Depot supply chain including from undetected uses of prison labor in the supply chain.

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

BASIS FOR EXCLUSION

We hereby respectfully request that the Staff concur in our view that the Proposal may be excluded from the 2020 Proxy Materials pursuant to Rule 14a-8(i)(7) because the Proposal relates to the Company's ordinary business operations.

BACKGROUND

This Proposal focuses on how the Company manages its supplier relationships, including how it monitors its suppliers' compliance with existing Company business and ethics standards and policies. Although the Proposal touches upon involuntary labor, the Proposal does not focus on any significant policy issue and is excludable because it broadly implicates all manner of prison labor (*i.e.*, voluntary and involuntary) that may occur in the Company's supply chain, which necessarily includes uncoerced, paid labor occurring under safe working conditions. The Proposal itself recognizes that the Company already has a policy prohibiting "involuntary and exploitative prison labor," and instead appears to question whether the Company adequately monitors for and reports on compliance with such prohibition and other existing supplier

standards addressing ordinary business matters such as general worker compensation, working conditions, and workplace safety.

The Company's responsible sourcing program, including the Company's Responsible Sourcing Standards (the "Responsible Sourcing Standards"),[1] supports its efforts to conduct its business in a responsible and ethical manner. The Responsible Sourcing Standards prohibit, among other things, child labor, forced, bonded (including debt bondage), or indentured labor, and involuntary or exploitative prison labor.[2] The Company revised its Responsible Sourcing Standards in 2019 to more specifically address practices that can create an environment where labor is forced and provides specific requirements regarding, among other things, workers' freedom of movement, supplier hiring practices, workers' ability to terminate their own employment, and access to identity or immigration documents.[3] Moreover, in early 2019 the Company joined the Responsible Business Alliance's Responsible Labor Initiative, a multi-industry, multi-stakeholder initiative focused on ensuring that the rights of workers vulnerable to forced labor in global supply chains are consistently respected and promoted.[4]

Notably, the Responsible Sourcing Standards are not limited to prison labor, but also provide the minimum requirements that all suppliers must meet in order to conduct business with the Company. For example, the Responsible Sourcing Standards address compliance with all applicable laws and regulations where a supplier operates and ordinary workforce matters pertaining to general compensation, hours of work, health and safety, freedom of association, business ethics, communication and subcontracting. The Proposal addresses several of the foregoing matters with respect to the Company's supply chain.

The Company's 2019 Responsible Sourcing Report (the "Report") describes how the Company addresses these ordinary business matters relating to the Company's supply chain through its responsible sourcing program. The Report also describes a number of Company measures in place to monitor and support compliance with its business and ethics standards. For example, the Audit Committee of the Company's Board of Directors annually reviews the Company's responsible sourcing program and the Company engages in a robust audit process to ensure its responsible sourcing program is effective, including through the use of third-party audit firms to

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[1] *Available at* https://corporate.homedepot.com/sites/default/files/THD%20RS%20Standards%20Revised%2006-19-2019%20-%20English.pdf.

[2] The Responsible Sourcing Standards further provide that any "use of prison or convict labor cannot be forced and must be consistent with the laws where the products are manufactured and the laws where it is imported."

[3] *See* the Company's 2019 Responsible Sourcing Report, *available at* https://corporate.homedepot.com/sites/default/files/THD_RS_Report.pdf, at page 11.

[4] *See id*.

conduct compliance audits.[5] The Responsible Sourcing Standards also provide for announced and unannounced site audits of production factories to monitor compliance, including review of records and confidential interviews.[6] The Report notes that the Company performed 1,362 factory audits in 2018 in 34 countries.[7] According to the Company, all of the factory audits assess whether there is any use of prison labor, and none of the audits in 2018 identified any use of prison labor.[8]

ANALYSIS

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

As discussed below, the Proposal may be omitted under Rule 14a-8(i)(7) as it relates to the Company's ordinary business operations because it relates to (i) decisions regarding the Company's suppliers and enforcement of its existing standards of supplier conduct, and (ii) general workplace safety, workplace conditions and worker compensation, and it does not focus on any significant policy issue that transcends the Company's ordinary business operations.

A. Background

Rule 14a-8(i)(7) permits a company to omit from its proxy materials a shareholder proposal that relates to its "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 explained 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."

The 1998 Release further distinguishes proposals pertaining to ordinary business matters from those involving "significant social policy issues." 1998 Release (citing Exchange Act Release

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[5] Report at page 8.
[6] *Id*. at page 10.
[7] *Id*. at page 15.
[8] *See* the Company's 2019 Proxy Statement, *available at* https://ir.homedepot.com/~/media/Files/H/HomeDepot-IR/2019_Proxy_Updates/Final%202019%20Proxy%20Statement_vF.PDF at page 31.

No. 12999 (Nov. 22, 1976)). While "proposals . . . focusing on sufficiently significant social policy issues (e.g., significant discrimination matters) generally would not be considered excludable," the Staff has indicated that proposals relating to both ordinary business matters and significant social policy issues may be excludable in their entirety in reliance on Rule 14a-8(i)(7) if they do not "transcend the day-to-day business matters" discussed in the proposals. *Id.* In this regard, when assessing proposals under Rule 14a-8(i)(7), the Staff considers "both the proposal and the supporting statement as a whole." Staff Legal Bulletin No. 14C, part D.2 (June 28, 2005).

Moreover, framing a shareholder proposal 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); *see also Johnson Controls, Inc.* (avail. Oct. 26, 1999) ("[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).").

B. The Proposal Is Excludable Because It Relates To Decisions Regarding The Company's Supplier Relationships And Enforcement Of Its Existing Supplier Standards Of Conduct

The Proposal requests a report "summarizing the extent of known usage of prison labor in the [C]ompany's supply chain." As noted in the recitals immediately preceding the "Resolved" clause, the Proponent believes that "[c]areful review of [the Company's] supply chain for voluntary and involuntary prison labor would help ensure that Home Depot suppliers are consistent with the Company policies and minimize risks to Home Depot's reputation and shareholder value." Notably, the Proposal does not seek to alter the Company's existing policies pertaining to its suppliers or modify its supply chain standards. Rather, the Proposal recognizes that the "Company publishes policies stating that it prohibits forced labor as well as 'involuntary or exploitative prison labor,' and reports on its response process for issues of noncompliance at certain manufacturers." The crux of the Proponent's concern is made clear elsewhere in the Proposal and is a reason this Proposal is properly excludable under Rule 14a-8(i)(7): "it is the understanding of the Proponent that Home Depot does not routinely verify compliance with this policy for suppliers . . . ." However, as highlighted above, the Company already has an existing supplier standard of conduct that prioritizes ethical sourcing, emphasizes ethical responsibility standards, and expressly prohibits involuntary and exploitative prison labor. The Company also has a robust program for monitoring and ensuring compliance by its suppliers with such standards and regularly performs a significant number of audits across its global supply chain (which the Company described most recently in the Report).

The Staff has consistently concurred with the exclusion under Rule 14a-8(i)(7) of proposals relating to a company's supplier relationships. For example, in *Foot Locker, Inc.* (avail. Mar. 3, 2017), the proposal requested a report "outlin[ing] the steps that the company is taking, or can take, to monitor the use of subcontractors by the company's overseas apparel suppliers." The proposal also specifically requested information relating to "[t]he extent to which company codes of conduct are applied to apparel suppliers and sub-contractors"; "[p]rocess and procedures for monitoring compliance with corporate codes of conduct by apparel suppliers and sub-contractors"; and "[p]rocess and procedures that the company has in place for dealing with code non-compliance by apparel suppliers and sub-contractors." The company argued that the proposal sought to "influence the manner in which the [c]ompany monitors the conduct of its suppliers and their subcontractors" and that "[t]he extent to which a company applies and enforces its code of conduct on suppliers and their subcontractors" was an ordinary business matter. In concurring with exclusion, the Staff noted "the proposal relates broadly to the manner in which the company monitors the conduct of its suppliers and their subcontractors." *See also Walmart Inc.* (avail. Mar. 8, 2018) (concurring with the exclusion of a proposal seeking a report outlining the requirements suppliers must follow regarding engineering ownership and liability as relating to the company's ordinary business matters); *Kraft Foods Inc.* (avail. Feb. 23, 2012) (concurring with the exclusion of a proposal requesting a report detailing the ways the company would assess and mitigate water risk to its agricultural supply chain as "relat[ing] to decisions relating to supplier relationships"); *Alaska Air Group, Inc.* (avail. Mar. 8, 2010) (concurring with the exclusion of a proposal requesting a report discussing the maintenance and security standards used by the company's aircraft contract repair stations and the company's procedures for overseeing maintenance performed by the contract repair stations as "relat[ing] to . . . standards used by the company's vendors"); *Dean Foods Co.* (avail. Mar. 9, 2007) (concurring with the exclusion of a proposal requesting an independent committee review of the company's standards for organic dairy product suppliers "as relating to [the company's] ordinary business operations (*i.e.*, customer relations and decisions relating to supplier relationships"); and *Seaboard Corp.* (avail. Mar. 3, 2003) (concurring with the exclusion of a proposal requesting a report discussing its suppliers' use of antibiotics in hog production facilities as relating to the company's ordinary business operations).

Like in *Foot Locker*, the Proposal seeks to influence the manner in which the Company monitors its supplier relationships. In this regard, the Proposal requests a report with "annual quantitative metrics regarding the number of supplier audits completed by the Company" to "evaluat[e] whether prison labor is present in the supply chain" and an evaluation of "any risks to finances, operations, and reputation related to prison labor in the [C]ompany's supply chain including from undetected uses of prison labor in the supply chain." As discussed below, and as was the case in *Foot Locker*, the fact that the Proposal may touch upon a significant policy issue is insufficient to preclude relief where the focus of the Proposal is on the Company's relationships with its suppliers and compliance with its existing Responsible Sourcing Standards.

Similarly, the Staff has consistently concurred with the exclusion of shareholder proposals related to a company's adherence to ethical business practices and policies. For example, *Mattel, Inc.* (avail. Feb. 10, 2012) involved a proposal that requested the company require its suppliers to publish a report detailing their compliance with the International Council of Toy Industries ("ICTI") Code of Business Practices. The proposal addressed several concerns relating to the company's suppliers' plants in China, including "underage workers during the summer, excessive overtime, concerns about chemicals and poor ventilation" and alleged that "reviewers of the audit firms of the ICTI" were "seeking bribes." Consequently, the proposal sought "proven and transparent compliance with [the ICTI Code of Business Practice] at [the company's] suppliers' plants" in order to "avoid strikes, negative media coverage and loud complaints from consumers." The Staff concurred with exclusion of the proposal in *Mattel* as relating to the company's ordinary business operations, noting that "the proposal calls for [the company] to require that its suppliers publish a report about their compliance with the ICTI Code of Business Practices" and specifically noted "[the company's] view that the ICTI Code 'has a broad scope that covers several topics that relate to the [c]ompany's ordinary business operations and are not significant policy issues.'" *See also Verizon Communications, Inc.* (avail. Jan. 10, 2011) (concurring with the exclusion of a proposal directing the board to form a Corporate Responsibility Committee charged with monitoring the company's commitment to integrity, trustworthiness and reliability—and the extent to which it lived up to its Code of Business Conduct, as "relating to [the company's] ordinary business operations" and concerning "general adherence to ethical business practices"); *The Walt Disney Co.* (avail. Dec. 12, 2011) (concurring with the exclusion of a proposal requesting a report on board compliance with Disney's Code of Business Conduct and Ethics for directors, stating that "[p]roposals that concern general adherence to ethical business practices and policies are generally excludable under [R]ule 14a-8(i)(7)"); *International Business Machines Corp.* (avail. Jan. 7, 2010) (concurring with the exclusion of a proposal directing officers to restate and enforce certain standards of ethical behavior was excludable because it related to general adherence to ethical business practices); and *NYNEX Corp.* (avail. Feb. 1, 1989) (concurring with the exclusion of a proposal related to the formation of a special committee of the registrant's board of directors to revise the existing code of corporate conduct was excludable because it related "to the [c]ompany's ordinary business operations (*i.e.*, the particular topics to be addressed in the company's code of conduct").

Similarly, the Proposal necessarily entails a review of the Company's existing standards of ethical behavior applicable to its suppliers (*i.e.*, the Responsible Sourcing Standards) by seeking both a report "summarizing the extent of known usage of prison labor in the [C]ompany's supply chain" as well as "annual quantitative metrics regarding the number of supplier audits completed by the Company" that evaluate compliance with the Responsible Sourcing Standards. As noted above, the Responsible Sourcing Standards expressly prohibit forced labor and "the use of any prison or convict labor" that is inconsistent with applicable local laws. Developing and

maintaining relationships with suppliers and determining how best to manage those relationships is an important management responsibility. As described in the "Background" section, the Company already requires its suppliers to comply with a wide variety of business and ethical standards, as explained in and implemented through the Responsible Sourcing Standards. Further, the Company's existing practices already prohibit the use of involuntary prison labor in its supply chain, and the Company actively monitors and enforces the Responsible Sourcing Standards to which each of its suppliers must adhere. As noted above and in the Report, the Company regularly performs audits of its supply chain, and such audits include an assessment of whether there is any use of prison labor. Thus, similar to *Mattel*, by seeking to require the Company to report on its suppliers' compliance with the Responsible Sourcing Standards, the Proposal delves into the terms of the Company's relationship with its suppliers and compliance with its existing policies such that it is properly excludable under Rule 14a-8(i)(7).

The extent to which a company oversees, applies, and enforces compliance with its supplier code of conduct (such as the Responsible Sourcing Standards) involves decisions that are fundamental to the company's day-to-day operations and entails a variety of ordinary business considerations. The underlying subject matter of the Proposal addresses standards set forth in the Responsible Sourcing Standards, which involve the Company's oversight of its suppliers and their workforce. Such considerations are complex and cannot, as a practical matter, be subject to shareholder oversight. As such, consistent with *Foot Locker*, *Mattel, Verizon,* and the other well-established precedent discussed above, the Proposal is properly excludable under Rule 14a-8(i)(7) because it seeks a report concerning general adherence to the Company's existing ethical business practices and policies applicable to its suppliers (*i.e.*, the Responsible Sourcing Standards), which relate to the Company's ordinary business operations.

C. The Proposal Is Excludable Because It Relates To Overall Workplace Safety, Workplace Conditions, and General Worker Compensation

Based on the language of the Proposal, taken as a whole, the Proponent appears concerned with a select subset of workers (*i.e.,* those who may be incarcerated, to the extent any prison labor is used in the Company's supply chain), including such workers' level of compensation, health and safety, and working conditions, each of which has been recognized by the Staff as an ordinary business matter properly excludable under Rule 14a-8(i)(7). In this regard, the recitals of the Proposal make broad reference to "worker mistreatment" and that "[c]orrectional industries workers may be paid as little as $0.33-$1.41 per hour for work that sometimes occurs in unsafe or unhealthy conditions." The Proponent also cites to a 2017 lawsuit involving one of the Company's suppliers that alleges such supplier used "unpaid workers from a local drug rehabilitation program" to construct dock floats – but the Proposal mentions no allegations of involuntary labor, coercion, abuse or mistreatment. As described above, the Company's Responsible Sourcing Standards address a wide variety of matters pertaining to the standards,

terms, schedules, compensation, environment, health and safety, and other conditions required for workers utilized by the Company's domestic and global suppliers.

The Staff has recognized that proposals relating to workplace safety are a matter of ordinary business and excludable under Rule 14a-8(i)(7).[9] For example, in *Pilgrim's Pride Corp*. (avail. Feb. 25, 2016), the proposal requested a report describing the company's policies, practices, performance and improvement targets related to occupational health and safety. In concurring with exclusion under Rule 14a-8(i)(7), the Staff "note[d] that the proposal relates to workplace safety." *See also The GEO Group Inc.* (avail. Feb. 2, 2017) (concurring with the exclusion of a proposal requesting implementation of provisions relating to operational audits of its facilities examining issues such as workplace violence rates and disciplinary and grievance systems, as relating to the company's ordinary business operations); and *The Chemours Company* (avail. Jan. 17, 2017) (concurring with the exclusion of a proposal requesting a report "on the steps the [c]ompany has taken to reduce the risk of accidents" with the supporting statement citing to a number of industrial accidents at the company's facilities and significant regulatory fines that had been assessed against the company for various safety violations). In *Pilgrim's Pride*, the requested report also sought disclosure of "employee injury causes and rates, incidents of non-compliance with safety and labor laws, remedial actions taken and measures contributing to long-term mitigation and improvements." The foregoing is similar to the Proposal's request for a report on "the extent of known usage of prison labor in the [C]ompany's supply chain," as well as "quantitative metrics regarding the number of supplier audits completed by the Company … that evaluated whether prison labor is present in the supply chain." Additionally, the *Pilgrim's Pride* proposal asserted that "detailed reporting would[] strengthen Pilgrim's ability to assess and improve working conditions for its employees …" and "enable shareholders to better

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[9] By way of analogy, we also note that the Staff has consistently recognized that a wide variety of proposals pertaining to the management of a company's workforce are excludable under Rule 14a-8(i)(7). *See, e.g.*, *Walmart, Inc.* (avail. Apr. 8, 2019) (concurring with the exclusion of a proposal that requested the board evaluate the risk of discrimination that may result from the company's policies and practices of hourly workers taking absences from work for personal or family illness, as relating to "management of [the company's] workforce"); *Yum! Brands, Inc.* (avail. Mar. 6, 2019) (concurring with the exclusion of a proposal requesting adoption of a policy not to "engage in any Inequitable Employment Practice", noting it related "generally to the [c]ompany's policies concerning its employees and does not focus on an issue that transcends ordinary business matters"); *Donaldson Company, Inc.* (avail. Sept. 13, 2006) (concurring with the exclusion of a proposal requesting the board of directors to oversee company procedures to "assure appropriate ethical standards related to employee relations are adhered to"); *Intel Corp.* (avail. Mar. 18, 1999) (concurring with the exclusion of a proposal seeking adoption of an "Employee Bill of Rights" that would have established various "protections" for the company's employees, including limited work-hour requirements and relaxed starting times, as "relating, in part, to [the company's] ordinary business operations (i.e. management of the workforce)"); and *W.R. Grace & Co.* (avail. Feb. 29, 1996) (concurring with the exclusion of a proposal regarding the creation of a "high performance workplace based on policies of workplace democracy and meaningful worker participation").

understand potential regulatory, legal, reputational and financial risks relating to OHS." That same reasoning is echoed in the Proposal, where the Proponent likewise claims that a summary of audit results and a "[c]areful review of [the Company's] supply chain for voluntary and involuntary prison labor would help ensure that Home Depot suppliers are consistent with Company policies and minimize risks to Home Depot's reputation and shareholder value." Similar to the proposals in the precedent cited above, the Proposal implicates a broad array of day-to-day workforce issues that confront the Company's suppliers.

Likewise, the Staff has consistently recognized that shareholder proposals addressing minimum wage concerns are excludable as relating to ordinary business matters. *See, e.g.*, *CVS Health Corp.* (avail. Mar. 1, 2017) (concurring with the exclusion of a proposal urging the board to adopt and publish principles for minimum wage reform as "relating to ordinary business operations" and, specifically, "general compensation matters"); *CVS Health Corp.* (avail. Feb. 23, 2016, *recon. denied* Mar. 8, 2016) (same); and *Chipotle Mexican Grill, Inc.* (avail. Feb. 23, 2016, *recon. denied* Mar. 8, 2016) (same). Similar to such proposals, the Proposal takes issue with "unpaid workers from a local drug rehabilitation center" and asserts that "[c]orrectional industries workers may be paid as little as $0.33-$1.41 per hour." Like the cited precedent, the Proposal's minimum wage concerns fall squarely within the realm of ordinary business matters, and render the Proposal properly excludable under Rule 14a-8(i)(7).

The Company is aware that the Staff has denied exclusion of certain proposals relating to prisoners' rights. *See*, *e.g.*, *Corrections Corporation of America* (avail. Feb. 10, 2012) (unable to concur with the exclusion of a proposal requesting biannual reports to stockholders on oversight of the company's efforts to reduce incidents of rape and sexual abuse of prisoners housed in facilities operated by the company). Here, however, the Proposal neither raises the same types of concerns as in *Corrections Corp.* nor does so with the same narrowly tailored focus. In contrast, the Proposal relates to minimum wage, worker treatment, workplace safety, and compliance with the Company's existing Responsible Sourcing Standards (which prohibit, among other things, involuntary prison labor, and address standards relating to general compensation, hours of work, health and safety, freedom of association, business ethics, communication and subcontracting). Although the Proposal arguably touches upon a significant policy issue by implicating involuntary prison labor, the Proposal relates broadly to all kinds of prison labor and recognizes that the Company's policies already prohibit "involuntary or exploitative prison labor."

While the Company agrees that the issues raised in the Proposal are important, these types of issues (*e.g.*, compliance with existing business and ethics standards and supply chain oversight) relate to the Company's ordinary business. Thus, consistent with the other precedent discussed above, the Proposal may properly be excluded under Rule 14a-8(i)(7) as relating to the Company's ordinary business operations.

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

While the Proposal touches on involuntary prison labor (which the Proponent views as raising human rights concerns), the plain language of the Proposal encompasses all manner of prison labor (*i.e.*, voluntary and involuntary) in the Company's supply chain, including uncoerced, paid labor occurring under safe working conditions, and thus it implicates a host of ordinary business matters. As drafted, the Proposal does not focus on any significant policy issues. Rather, the Proposal broadly addresses decisions relating to the Company's suppliers, specifically, the use of all forms of prison labor in the Company's supply chain, and mechanisms for ensuring compliance with the Company's existing standards which prohibit, among other things, involuntary prison labor. In this regard, the Proposal requests a "[c]areful review of [the Company's] supply chain for *voluntary and involuntary prison labor*" (emphasis added), calls out the potential for general "worker mistreatment," and takes issue with how correctional industry workers are compensated. In addition, the Proposal appears to be primarily concerned with "minimiz[ing] risks to [the Company's] reputation and shareholder value." This is evidenced further by the Proposal's statement that "companies have experienced public backlash, boycotts, and long-term brand name and reputation harm from a connection to prison labor."

In fact, the Proposal does not once use the phrase "human rights" or "abuse" in referring to the issues raised in the Proposal. The Proposal makes no reference to allegations of human rights abuse in the Company's supply chain nor does it request that the Company alter its policies pertaining to its suppliers. Instead, the Proposal requests a report and audits relating to the Company's enforcement and oversight of its existing policies in order to "minimize risks to Home Depot's reputation."

Consistent with the 1998 Release, the Staff routinely concurs with the exclusion of proposals that relate to ordinary business decisions even where the proposal references a significant policy issue. For example, in *PetSmart, Inc.* (avail. Mar. 24, 2011), the proposal requested that the board require its suppliers to certify they had not violated "the Animal Welfare Act, the Lacey Act, or any state law equivalents," the principal purpose of which related to preventing animal cruelty. The Staff concurred with exclusion under Rule 14a-8(i)(7) and stated, "[a]lthough the humane treatment of animals is a significant policy issue, we note your view that the scope of the laws covered by the proposal is 'fairly broad in nature from serious violations such as animal abuse to violations of administrative matters such as record keeping.'"

The Staff's position that proposals are excludable where they relate to both ordinary and non-ordinary business matters is well established. Notably, in *Wal-Mart Stores, Inc.* (avail. Mar. 15, 1999) ("*Wal-Mart 1999*"), the Staff concurred with the exclusion of a proposal that requested

that the board of directors report on the company's "actions to ensure it does not purchase from suppliers who manufacture items using forced labor, convict labor, or child labor or who fail to comply with laws protecting their employees' wages, benefits, working conditions, freedom of association and other rights." In concurring with the company's request, the Staff noted "in particular that, although the proposal appears to address matters outside the scope of ordinary business, paragraph 3 of the description of matters to be included in the report relates to ordinary business operations." The paragraph referenced by the Staff addressed "[p]olicies to implement wage adjustments to ensure adequate purchasing power and a sustainable living wage." In addition, the proposal also addressed disclosure regarding "[c]urrent monitoring practices enforcing the company's Standards for Vendor Partners for its manufacturers and licensees," "[i]ncentives to encourage suppliers to comply with standards" and "[p]lans to report to the public on supplier compliance reviews." *See also Foot Locker*; *JPMorgan Chase & Co.* (avail. Mar. 9, 2015) (concurring with the exclusion of a proposal requesting the company amend its human rights-related policies "to address the right to take part in one's own government free from retribution" because the proposal related to "[the company's] policies concerning its employees"); *Papa John's International, Inc.* (avail. Feb. 13, 2015) (concurring with the exclusion of a proposal requesting the company to include more vegan offerings in its restaurants, despite the proponent's assertion that the proposal would promote animal welfare—a significant policy issue); *JPMorgan Chase & Co.* (avail. Mar. 12, 2010) (concurring with the exclusion of a proposal that requested the adoption of a policy banning future financing of companies engaged in a particular practice that impacted the environment because the proposal addressed "matters beyond the environmental impact of JPMorgan Chase's project finance decisions"); and *Apache Corp.* (avail. Mar. 5, 2008) (concurring with the exclusion of a proposal requesting the implementation of equal employment opportunity policies based on certain principles and noting that "some of the principles relate to [the company's] ordinary business operations").

While the Proposal makes passing references to involuntary prison labor, the overall text of the Proposal makes clear that it focuses on ordinary business matters. In this regard, the Proposal is similar to the proposal in *Foot Locker*, which was recently excludable under ordinary business notwithstanding its references to human rights issues. In *Foot Locker*, a proposal entitled "Supplier Labor Standards" took issue with violations of human rights in overseas operations, child labor, and "sweatshop" conditions. The proposal included only four recitals, two of which addressed human rights in the company's supply chain. Although the proposal raised incidents of human rights violations in certain overseas operations, the actual request was much broader and implicated ordinary business operations: seeking a report on actions the company is taking or can take to "monitor the use of subcontractors by the company's overseas apparel suppliers," including "[c]ompany policies on subcontractors …, [t]he extent to which company codes of conduct are applied to such suppliers and subcontractors[,] [p]rocess and procedures for monitoring compliance with corporate codes of conduct by apparel suppliers and sub-

contractors, and [p]rocess and procedures that the company has in place for dealing with code non-compliance by apparel suppliers and sub-contractors." In concurring with exclusion, the Staff specifically noted the broad nature of the proposal ("the proposal relates broadly to the manner in which the company monitors the conduct of its suppliers and their subcontractors"). Likewise, here the Proposal broadly requests a report on any and all prison labor in the Company's supply chain, including voluntary and involuntary, which necessarily encompasses the use of non-coerced, fairly compensated, and safe labor which clearly implicates ordinary business matters. Similar to *Foot Locker*, the Proposal also focuses on the manner in which the Company monitors the conduct of its suppliers, particularly with respect to its Responsible Sourcing Standards, and is thus properly excludable under Rule 14a-8(i)(7).

The breadth of the topics addressed by the Proposal, including as it relates to the Company's suppliers' compliance with existing policies, including the Responsible Sourcing Standards, is similar to *Mattel.* In *Mattel,* the company successfully argued that a proposal which required a report on its suppliers' compliance with existing standards was excludable because of the "broad scope" of the standards at issue (with the Staff specifically noting that the ICTI Code covered "several topics that relate to the [c]ompany's ordinary business operations and are not significant policy issues"). There, the company successfully argued that the "ICTI Code contains provisions on a number of topics … such as sick and maternity benefits, a 'safe working environment,' proper lighting and ventilation, emergency exists, and safeguards on machinery." Similarly, as noted above, the Responsible Sourcing Standards address a host of ordinary day-to-day worker and workplace considerations relevant to the Company's suppliers, such as matters pertaining to general compensation, hours of work, health and safety, freedom of association, business ethics and subcontracting. Thus, similar to *Mattel*, the Proposal is excludable as relating to the Company's relationships with its suppliers, a well-recognized ordinary business operations.

The Company is aware that the Staff, in the past, has been unable to concur with the exclusion of a proposal that focuses on human rights considerations. *See, e.g.*, *Amazon.com, Inc.* (avail. Mar. 25, 2015) (unable to concur with the exclusion of a proposal requesting a report on the company's process for identifying and analyzing potential and actual human rights risks of the company's entire operations and supply chain, addressing, among other things, human rights principles used to frame the assessment and actual and/or potential human rights risks identified in the course of the human rights risk assessment); *Chevron Corp.* (avail. Mar. 28, 2011) (unable to concur with the exclusion of a proposal requesting an amendment to the bylaws to establish a human rights board committee because "the proposal focuses on the significant policy issue of human rights"); *Wal-Mart Stores, Inc*. (avail. Mar. 29, 2011) (*"Wal-Mart 2011*") (unable to concur with the exclusion of a proposal requesting that the board require suppliers to annually publish an independently verifiable sustainability report, assessing, among other things, human and worker rights); and *Abercrombie & Fitch Co.* (avail. Apr. 12, 2010) (unable to concur with

the exclusion of a proposal requesting that the board adopt and disclose a code of vendor conduct based on certain worker and human rights standards expressed in the International Labor Organization ("ILO") Conventions). In contrast to those proposals, however, where the concerns pertaining to human rights were central to the thrust of those proposals, here the Proposal does not focus on human rights issues. Unlike in *Amazon* and *Chevron*, where every paragraph was devoted to human rights issues, or *Abercrombie*, where four of the five supporting statement paragraphs specifically identified ILO Conventions that expressly related to significant policy issues (*e.g.*, discrimination, forced labor, and child labor), the Proposal does not make reference to any allegations of human rights violations in the Company's supply chains and its references to involuntary prison labor are not preponderant. Additionally, in *Wal-Mart 2011*, the resolved clause specifically addressed human rights and statements elsewhere in the proposal demonstrated a sustained focus on human rights concerns (*e.g.*, asking suppliers to "establish performance goals on human and workers' rights" and noting there is a "significant gap between general policies against labor and human rights abuse and more detailed standards and enforcement mechanism required to carry them out"). Unlike the foregoing precedent, the Proposal never uses the term "human rights" or focuses on involuntary prison labor or any other issue that may raise a significant policy issue.

As described above, the Proposal applies generally to all forms of prison labor and concerns compliance with the Company's existing policies and standards pertaining to ethical business practices in its supply chain, all matters that have historically been excludable as relating to a company's ordinary business matters. In this regard, the Proposal is comparable to cited precedent including *Foot Locker*, *Pilgrim's Pride*, *Mattel, PetSmart* and *Wal-Mart 1999*, and is properly excludable 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. Correspondence regarding this letter should be sent to shareholderproposals@gibsondunn.com. If we can be of any further assistance in this matter,

please do not hesitate to call me at (202) 955-8287 or Stacy S. Ingram, the Company's Associate General Counsel and Deputy Corporate Secretary, at (770) 384-2858.

Sincerely,

Elizabeth A. Ising

Enclosures

cc: Stacy S. Ingram, The Home Depot, Inc.
Julie N.W. Goodridge, NorthStar Asset Management, Inc. Funded Pension Plan

EXHIBIT A

December 9, 2019

Teresa Wynn Roseborough
Corporate Secretary
The Home Depot, Inc.
2455 Paces Ferry Road, Building C-22
Atlanta, GA 30339
Via email (teresa_roseborough@homedepot.com) and FedEx

Dear Ms. Roseborough:

In the United States, there are over 2.2 million incarcerated individuals, the vast majority of which are employed during their incarceration, and many of which work for outside, for-profit corporations. While prison labor is legal in the U.S, where The Home Depot sources some products and services, incarcerated people are often forced to work for little to no compensation, sometimes under circumstances that are inhumane, posing a risk to shareholder value for any company found associated with suppliers or service providers using prison labor.

Therefore as the beneficial owner, as defined under Rule 13(d)-3 of the General Rules and Regulations under the Securities Act of 1934, of more than $2,000 worth of shares of The Home Depot common stock held for more than one year, the NorthStar Asset Management Funded Pension Plan is submitting for inclusion in the next proxy statement, in accordance with Rule 14a-8 of the General Rules, the enclosed shareholder proposal. The proposal requests that the company produce an annual report to shareholders on prison labor.

As required by Rule 14a-8, the NorthStar Asset Management, Inc. Funded Pension Plan has held these shares for more than one year and will continue to hold the requisite number of shares through the date of the next stockholders' annual meeting. Proof of ownership will be provided within 15 business days. I or my appointed representative will be present at the annual meeting to introduce the proposal.

A commitment from The Home Depot to report to shareholders as described in the proposal will allow this proposal to be withdrawn. We believe that this proposal is in the best interest of our Company and its shareholders.

Sincerely,

Julie N.W. Goodridge
President and CEO
Trustee, NorthStar Asset Management, Inc. Funded Pension Plan

Encl.: shareholder resolution

Report on Prison Labor in the Supply Chain

WHEREAS: The use of services derived from or sale of goods produced through correctional industries (prison labor) can pose financial and operational risks including supply chain disruption, litigation, and reputational damage;

Prison labor (both voluntary and involuntary) is often deployed in a manner that involves worker mistreatment. Although companies benefit from low overhead expenses when incarcerated people work for the company or its suppliers, companies have experienced public backlash, boycotts, and long-term brand name and reputation harm from a connection to prison labor;

While prison labor in the United States is legal, it has been described as "ill-regulated and ill-understood. It is also becoming ever more central to America's massive criminal justice apparatus" and "at its heart coercive";

Incarcerated workers are involved in producing products such as furniture, circuit boards, packaging materials, and electronic equipment; they also provide services such as call center or shipping services. Correctional industries workers may be paid as little as $0.33-$1.41 per hour for work that sometimes occurs in unsafe or unhealthy conditions. In some circumstances, people may be coerced into working by threat of punishment for declining work;

While our Company publishes policies stating that it prohibits forced labor as well as "involuntary or exploitative prison labor," and reports on its response process for issues of noncompliance at certain manufacturers, it is the understanding of the Proponent that Home Depot does not routinely verify compliance with this policy for suppliers in the United States;

In 2017, a lawsuit was filed against a U.S. supplier alleging that dock floats sold by Home Depot and other retailers were made using "unpaid workers from a local drug rehabilitation program." Given that it appears that Home Depot does not require third party audits of products made in the United States, this example illustrates the need for a full review of our company's supply chain for exposure to this risk;

Careful review of our supply chain for voluntary and involuntary prison labor would help ensure that Home Depot suppliers are consistent with Company policies and minimize risks to Home Depot's reputation and shareholder value.

RESOLVED: Shareholders of The Home Depot urge the Board of Directors to produce an annual report to shareholders on prison labor, at reasonable cost and omitting proprietary information, summarizing the extent of known usage of prison labor in the company's supply chain.

SUPPORTING STATEMENT: Shareholders recommend that the report, at the board and management's discretion:

- Provide annual quantitative metrics regarding the number of supplier audits completed by the Company or third party auditors that evaluated whether prison labor is present in the supply chain, as well as the summary of those audits' results.
- Evaluate any risks to finances, operations, and reputation related to prison labor in the Home Depot supply chain including from undetected uses of prison labor in the supply chain.

December 13, 2019

Teresa Wynn Roseborough
Corporate Secretary
The Home Depot, Inc.
2455 Paces Ferry Road, Building C-22
Atlanta, GA 30339

Dear Ms. Roseborough:

This letter is regarding the shareholder proposal filed for the next proxy statement by the NorthStar Asset Management Funded Pension Plan. Enclosed, please find a letter from our brokerage, Morgan Stanley Wealth Management (a DTC participant), verifying that the NorthStar Funded Pension Plan has held the requisite amount of common stock in The Home Depot, Inc. for more than one year prior to filing the shareholder proposal. As previously stated, we intend to continue to hold these shares through the next shareholder meeting.

Please note that we are submitting this proof of ownership on a timely basis consistent with Rule 14a-8. In the event that you find any defect in this documentation, we request that you notify us promptly of any concerns or deficiencies.

Should you need anything further, do not hesitate to contact me at mschwartzer@northstarasset.com. Thank you in advance for your attention to this matter.

Sincerely,

Mari C. Schwartzer

Mari C. Schwartzer
Director of Shareholder Activism and Engagement

Encl.: proof of ownership

Wealth Management
35 Village Road, Suite 601
Middleton, MA 01949
direct 978 739 9600
fax 978 739 9650
toll free 800 730 3326

Morgan Stanley

December 12, 2019

Teresa Wynn Roseborough
Corporate Secretary
The Home Depot, Inc.
2455 Paces Ferry Road, Building C-22
Atlanta, GA 30339

Dear Ms. Roseborough:

Morgan Stanley Wealth Management, a DTC participant, acts as the custodian for the NorthStar Asset Management, Inc. Funded Pension Plan. On December 9, 2019, the NorthStar Asset Management, Inc. Funded Pension Plan held 318 shares of The Home Depot, Inc. common stock valued at $68,856.54. Morgan Stanley Wealth Management has continuously held those shares on behalf of the NorthStar Asset Management Funded Pension Plan since December 9, 2018.

We are presenting the information contained herein pursuant to our Client's request. It is valid as of the date of issuance. Morgan Stanley does not warrant or guarantee that such identified securities, assets or monies will remain in the Client's Account(s). The Client has the ability to withdraw assets from the Account(s) at any time.

Sincerely,

Stephen A. Calderara CFP®
Family Wealth Advisor
Financial Advisor
Morgan Stanley Wealth Management
NMLS # 1401593

Investments and Services are offered through Morgan Stanley Smith Barney LLC & accounts carried by Morgan Stanley & Co. Incorporated. Member SIPC

The information contained herein is based upon data obtained from sources believed to be reliable. However, such data is not guaranteed as to its accuracy or completeness and is for informational purposes only. Clients should refer to their confirmations and statements for tax purposes as the official record for their account.

THE ABOVE SUMMARY/QUOTE/STATISTICS CONTAINED HEREIN HAVE BEEN OBTAINED FROM SOURCES BELIEVED RELIABLE BUT ARE NOT NECESSARILY COMPLETE AND CANNOT BE GUARANTEED. ERRORS AND OMISSIONS EXCEPTED.