February 27, 2020
Via electronic mail

Office of Chief Counsel
Division of Corporation Finance
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549

Re: Shareholder Proposal to The TJX Companies, Inc. Regarding Shareholder Proposal of the NorthStar Asset Management, Inc. Funded Pension Plan, Seeking Report and Analysis Related to Use of Prison Labor in the Company’s Supply Chain

Ladies and Gentlemen:

I am writing on behalf of beneficial owner, NorthStar Asset Management, Inc. Funded Pension Plan (“the Proponent”) of common stock of The TJX Companies, Inc. (the “Company”) that has submitted a shareholder proposal (the “Proposal”) to the Company. I am in receipt of a letter dated February 3, 2020 (“Company Letter”) sent to the Securities and Exchange Commission by Elizabeth Ising on behalf of TJX. In that letter, the Company contends that the Proposal may be excluded from the Company’s 2020 proxy statement. A copy of this reply is being emailed concurrently to Elizabeth Ising.

SUMMARY

The Company seeks exclusion of the Proposal on the basis of Rule 14a-8(i)(7), claiming that the Proposal relates to the Company's ordinary business operations. Specifically, the Company argues that the Proposal 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 therefore that it does not focus on a significant policy issue that transcends the Company's ordinary business operations.

To the contrary, the Proposal clearly focuses upon the significant policy issue of human rights abuses in the prison labor industry, and how the use of prison labor may generate material risk for the Company. Accordingly, the Proposal requests increased disclosure by the Company on the presence of prison labor in the supply chain, and evaluation of related risks — matters appropriate for shareholder concern. For these reasons, we believe the Proposal is not excludable on the basis of Rule 14a-8(i)(7).
THE PROPOSAL

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 incarcerated worker mistreatment and is frequently compared to modern slavery. 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 a variety of 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; and in some prison industries, incarcerated people may be coerced into working by threat of punishment for declining work;

Prompted by our shareholder engagement, TJX modified its Vendor Code of Conduct to clarify that it prohibits both involuntary (forced) and voluntary prison labor. However, beyond the select few factories that TJX uses to manufacture products that TJX designs, it is the understanding of the Proponent that there is no routine auditing process or verification that suppliers adhere to this company policy. Shareholders are concerned that TJX does not have a routine audit mechanism for preemptive detection of prison labor in the greater network of vendors;

Other retailers have experienced severe public backlash and boycotting when prison labor was publicly identified in their supply chains. TJX may only be notified of supply chain issues when they reach a crisis level;

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

**RESOLVED:** Shareholders of TJX Companies urge the Board of Directors to produce an annual report to shareholders on prison labor, at reasonable cost and omitting proprietary information, assessing the effectiveness of current company policies for preventing 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 TJX supply chain including from undetected uses of prison labor in the supply chain.

**BACKGROUND**

**Human Rights Concerns Related to Prison Labor**

In the U.S., prison labor is explicitly allowed by the 13th Amendment of the U.S. Constitution, which states, "neither slavery nor involuntary servitude, except as a punishment for a crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction." ¹ This allows a form of “legal slavery” to be used as punishment for committing a crime. The U.S. leads the world in incarceration, and there are over 2 million people incarcerated in this country. According to prison rights organizations, prison labor effectively perpetuates the racism of “slave labor” given the overrepresentation of people of color in U.S. prisons compared to representation in the general population.²

Thus, while there are many cases where prison labor is legal in the U.S., the fact that this form of labor is inherently coercive, sometimes mandatory and unpaid, alongside our country’s deep and abiding entrenchment with racism creates great concern for the violation of incarcerated people’s human rights.

The Proponent believes that exposure to any form of prison labor in the Company’s supply chain poses a risk to shareholder value, as evidenced by other retailers and manufacturers like Whole Foods, Wal-Mart, and Victoria’s Secret, which each faced significant backlash after association with prison labor became publicly known. Given the material risks associated with use of prison labor in the supply chain, the Proponent believes that shareholders would be best served by a

¹ U.S. Constitution, 13th Amendment.
commitment from the Company to evaluate whether current Company policies are effective at prohibiting the material risk of prison labor.

The Proposal at its core seeks disclosure to shareholders on whether the Company’s policies effectively track the risks associated with prison labor in the supply chain. There is ample evidence to suggest that an assumption that there is no prison labor in the supply chain is unreliable. Prison labor is a “billion-dollar industry,” illustrating the potentially pervasive nature of prison labor in the supply chain. State and federal prisons have been contracting with private companies for decades to provide incarcerated worker labor for manufacturing with very little public acknowledgment of those relationships. Given that, to the Proponent’s knowledge, the Company does not have a routine process in place to verify adherence to its Vendor Code of Conduct (and specifically related to the Company’s prohibition on usage of prison labor) beyond the presumably small portion of products that are manufactured for and designed by the Company, the Proponent is concerned that the Company’s existing policies and procedures do not allow shareholders to be confident that risks associated with prison labor have been eliminated from the Company’s supply chain. The fact that over 37% of shareholders supported this proposal at the 2019 annual meeting indicates that they are also concerned about this issue.

The Proponent’s research indicates that as many as 6% of incarcerated individuals in state prisons and over 17,000 incarcerated people in federal prisons are employed in correctional industry jobs, including those that specifically offer for-profit companies manufacturing and services by incarcerated workers at extremely low wages. There are indications that these statistics will grow in future years, increasing the likelihood that the Company may unknowingly source products from suppliers using prison labor. A recent Vox article noted that the federal government is “market[ing] its prisoner workforce to the private sector… In marketing brochures, the Department of Justice touts its ‘cost-effective labor pool’ and a workforce with ‘Native English and Spanish language skills.’” The UNICOR (federal prison industry) 2019 annual report indicates a continued effort to “repatriate” jobs, noting that “through the fiscal year, nearly 300 companies have been contacted to discuss potential opportunities.”

The Vox article also noted that “prison labor is so cheap, federal and state governments can sell prison-made goods and services to private companies at rock-bottom prices, creating a labor-market incentive for mass incarceration.” Incarcerated people that work in prison industries jobs often make $0.23 to $1.15 per hour. In several states of the U.S., incarcerated workers are forced to work for little or no pay, and watchdog organizations have reported inhumane working conditions. In 2019, incarcerated individuals in 17 states pursued a strike in protest of “what they consider ‘modern-day slavery’ in America’s correctional facilities.”

Furthermore, because prison labor is unpopular with the public, and because there are no

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5 https://www.prisonpolicy.org/blog/2017/04/10/wages/
widespread regulations requiring disclosure of incarcerated worker-made goods, contractors may not always divulge that the labor force is comprised of incarcerated people when proposing bids to a buyer company. While some suppliers intentionally seek out prison labor programs, other companies like Victoria’s Secret were taken by surprise when the existence of prison labor is uncovered and made public.

ANALYSIS

I. **The Proposal is not excludable on the basis of Rule 14a-8(i)(7).**

   A. *The Proposal concerns the significant human rights issue of human rights abuses of prison laborers, which is a significant policy issue affecting the Company.*

The Proposal is narrowly focused upon on the rights of incarcerated people, a human rights topic that the Staff has considered a significant policy issue. See, e.g., *Corrections Corporation of America* (avail. Feb. 10, 2012) cited by the Company (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). As such, the Proposal concerns a significant policy issue that transcends the ordinary business of the Company, and is not excludable on the basis of Rule 14a-8(i)(7).

**Protection of the Rights of Incarcerated People, Particularly with Regards to Labor, is a Human Rights Concern**

Individuals being managed by the criminal legal system, such as incarcerated people or defendants sent to diversion programs, comprise a vulnerable population at heightened risk of abuse and exploitation. Investigative reporting has revealed that many so-called “diversion” programs intended to offer a rehabilitative alternative to prison more often than not turn out to be *work camps*, where individuals are forced to work in substandard conditions for little to no pay. Christian Alcoholics & Addicts in Recovery (CAAIR) is one such program: a faith-based “work program” where people were told they would receive drug treatment and counseling alongside work training.

According to the Center for Investigative Reporting, such programs “supply plants with a cheap and captive labor force,” creating “lucrative work camps for private industry.” Journalists found that “[t]he beneficiaries of these programs span the country, from Fortune 500 companies to factories and local businesses.” With the example of CAAIR, individuals work full time for

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8 Amy Julia Harris and Shoshana Walter, “They thought they were going to rehab. They ended up in chicken plants., *Center for Investigative Reporting*, October 4, 2017. https://www.revealnews.org/article/they-thought-they-were-going-to-rehab-they-ended-up-in-chicken-plants/.
9 Amy Julia Harris and Shoshana Walter, “They thought they were going to rehab. They ended up in chicken plants,” *Center for Investigative Reporting*, October 4, 2017. https://www.revealnews.org/article/they-thought-they-
Simmons Foods Inc., slaughtering and processing chickens for Walmart, KFC, and Popeye’s, and making pet food for PetSmart. Reports describe how, according to the workers:

“…their hands became gnarled after days spent hanging thousands of chickens from metal shackles. One man said he was burned with acid while hosing down a trailer. Others were maimed by machines or contracted serious bacterial infections. Those who were hurt and could no longer work often were kicked out of CAAIR and sent to prison, court records show. Most men worked through the pain, fearing the same fate.

“They work you to death. They work you every single day,” said Nate Turner, who graduated from CAAIR in 2015. “It’s a work camp. They know people are desperate to get out of jail, and they’ll do whatever they can do to stay out of prison.”

Where the “choice” to work is the only alternative to incarceration, the context of making this “choice” is inherently coercive. It is reported that incarcerated workers have to make similar coerced decisions between working and further punishment. For this reason, prison labor simply is not a regular employer-employee relationship, and incarcerated workers are not regular workers. Aside from the dangers of being compelled to work in dangerous industries with inadequate workplace safety protection, incarcerated workers are also not entitled to workers’ compensation in the event of injury, nor can they organize to seek improved conditions. A former worker at CAAIR reported that communication with advocates outside the program was extremely limited, and that “because of CAAIR and DARP’s restrictions, [he] did not have a way to make complaints about the conditions while [he] was there.”

In another example that clearly shows prison labor as a human rights issue, a news article reported on “abusive conditions at a key [retail] supplier.” That story reports that the Arizona Department of Corrections (ADC) “has sent its prisoners to work for private agricultural businesses for almost 20 years,” where a former worker on the crew reported having to work in “blazing sun” without water or sunscreen when they ran out, being denied medical care, and that incarcerated people were sent to work regardless of their medical conditions. Another worker relayed a story: “There was one woman that is on oxygen, in a wheelchair, has an IV line and cancer that they sent to the gate to work on the farm … The captain asked if she could stand. She said yes. His reply was if you can stand, you can farm. She told him no and was issued a disciplinary ticket.”

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10 Amy Julia Harris and Shoshana Walter, “They thought they were going to rehab. They ended up in chicken plants,” Center for Investigative Reporting, October 4, 2017. https://www.revealnews.org/article/they-thought-they-were-going-to-rehab-they-ended-up-in-chicken-plants/.
11 Affidavit of Mark Fochtman, former participant in CAAIR Program, part of litigation against CAAIR for being forced to work without pay. https://assets.documentcloud.org/documents/4117278/Mark-Fochtman-Affidavit.pdf
These examples provide only a few instances of the human rights abuses in the system that sends people controlled by the criminal legal system to work for private companies. Because companies across the United States benefit from prison labor, prison labor and related human rights concerns are a significant policy issue affecting the economy.

B. The Proposal Clearly Focuses Upon the Human Rights of Incarcerated People, and Human Rights Abuses in the Prison Labor Industry

The Company argues in its letter that because the Proposal addresses “all manner of prison labor” in addition to illegal, involuntary, or exploitative prison labor, the concerns of the Proposal stretch beyond concern for the human rights of incarcerated workers into the ordinary business matters of workforce management, compliance with company standards, and supply chain oversight. However, the Company itself states in its letter that it is aware that:

“the Staff, in the past, has been unable to concur with the exclusion of proposals focused 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).” Company Letter, page 15.

Human rights abuses exist both in legal prison labor as well as illegal/forced/exploitative prison or diversion program labor. In 2018, representatives of Jailhouse Lawyers Speak, “a group of prisoners providing mutual help and legal training to other inmates,” demanded “an immediate end to prison slavery” and, in a statement, explained that “Fundamentally, [prisoner rights is] a human rights issue… Prisoners understand they are being treated as animals. Prisons in America are a warzone. Every day prisoners are harmed due to conditions of confinement.”

After citing these cases, the Company argues that the present Proposal does not make enough

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reference to allegations of human rights violations in the Company’s supply chain and does not make enough references to involuntary prison labor to actually focus upon the protection of the rights of incarcerated people as a human rights concern that is a significant policy issue for the Company.

In spite of the Company’s efforts to misconstrue the request of the Proposal, it is not difficult to understand from the plain text of the Proposal that the Proponents are concerned about the human rights of incarcerated people in the prison labor industry. The Proposal clearly presents the potential abuse of the human rights of incarcerated workers as a significant policy issue for the Company. The language of the Proposal includes the following statements:

- “Prison labor (both voluntary and involuntary) is often deployed in a manner that involves incarcerated worker mistreatment”
- “[Prison labor] is frequently compared to modern slavery”
- “Correctional industries workers may be paid as little as $0.33 - $1.41 per hour”
- “[Correctional industry work] sometimes occurs in unsafe or unhealthy conditions”
- “[In some prison industries, incarcerated people may be coerced into working by threat of punishment for declining work”

It is plain from this language that the concern of the Proposal is the human rights of incarcerated people who may be producing products or performing services for suppliers of the Company.

It bears repeating that, as described above, the fact that incarcerated individuals are a vulnerable population at drastically increased risk of experiencing human rights abuses, and that prison labor occurs in a context where the so-called “choice” to work is the only alternative to incarceration or further punishment; workforce issues applied to prison labor are not a matter of ordinary business. The human rights abuses of incarcerated people being forced or coerced into working in unsafe conditions for inadequate or no pay and who are unable to access appropriate medical care for fear of retaliation transcend ordinary business. As such, the Company’s references to other cases addressing workplace safety, conditions, and minimum wage violations are irrelevant — especially as none of the proposals cited address workers’ rights violations with respect to prison labor, as does the present Proposal.

Human rights have long been considered by the Division to constitute a significant social policy issue. The Division has consistently declined to allow exclusion on ordinary business grounds of proposals dealing with human rights. See, e.g., Bank of America (Feb. 29, 2008) (review the implications of company policies for human rights); Abbott Laboratories (Feb. 28, 2008) (amend human rights policy to address human right of access to medicines); Kroger Co. (Feb. 23, 2011) (adopt, implement and enforce a revised company-wide code of conduct, inclusive of suppliers and subcontractors, based on the International Labor Organization’s conventions and report to shareholders). Staff guidance has made clear that when a proposal seeks an evaluation of risk, its excludability depends on the underlying subject matter of the requested report. Staff Legal Bulletin 14E, section B (Oct. 27, 2009).
The Company argues that the Proposal is excludable, citing the fact that the Proposal relates to employment policies, relationships with suppliers, and compliance with existing policies, as well as various examples to this effect. **But the Proposal addresses those concerns only as they relate to the underlying subject matter of human rights risk,** whereas the proposals in the determinations the Company cites dealt with those topics outside the context of human rights or another significant social policy issue. Precedent indicates that proposals addressing relationships with suppliers, sale of products and services, or employment policies are not excludable when they are raised **wholly within** the context of human rights. Therefore, the Company’s reliance on those determinations is misplaced.

Instead, the present Proposal is similar to that in *Amazon.com* (March 25, 2015), where proponents sought a human rights risk assessment intended to identify and analyze the company’s human rights risks. The proposal urged the board to report to shareholders on Amazon’s process for comprehensively identifying and analyzing potential and actual human rights risks of Amazon’s entire operations and supply chain. Amazon argued that the proposal was excludable for addressing ordinary business because the proposal related to Amazon’s use of labor contractors/subcontractors, temporary staffing agencies or similar employment arrangements, and provided examples of labor abuses. The proponents successfully argued that the human rights focus was overarching, and that the business matters raised as example were offered only in the context of assessing human rights risk in the supply chain. The Staff noted in its no-action letter, “the proposal focuses on the significant policy issue of human rights. Accordingly, we do not believe that Amazon may omit the proposal from its proxy materials in reliance on rule 14a-8(i)(7).”

As in *Amazon.com*, this human rights proposal focuses on a significant policy issue of prison labor, and touches upon business matters only in the context of that significant policy issue.

**CONCLUSION**

Based on the above demonstration that the Proposal concerns a significant policy issue that transcends the Company's ordinary business operations, the Proponents respectfully request that the Staff decline the Company’s request for exclusion of the Proposal on the basis of Rule 14a-8(i)(7).

Sincerely,

Sanford Lewis

Cc: Elizabeth Ising
February 3, 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 TJX Companies, 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 TJX Companies, 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 TJX Companies urge the Board of Directors to produce an annual report to shareholders on prison labor, at reasonable cost and omitting proprietary information, assessing the effectiveness of current company policies for preventing 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 TJX 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) in its request for an assessment of the Company’s policies relating to its supply chain, which necessarily includes voluntary, paid labor occurring under safe working conditions. The Proposal itself recognizes that the Company already has a policy that “prohibits both involuntary (forced) and voluntary prison labor” and instead, as evidenced by the statement in the recitals expressing “concern[] that [the Company] does not have a routine audit mechanism for preemptive detection of prison labor,” 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 believes in the importance of ethical sourcing in its supply chain and is committed to responsible business practices. As part of the Company’s purchase order terms and conditions, its merchandise vendors are required to comply with the Company’s Vendor Code of Conduct (the “Code”), which is the foundation of the Company’s global social compliance program. The Code requires that goods the Company sells be manufactured in accordance with all applicable laws and regulations, and it reflects the Company’s high standards, which embrace internationally recognized principles designed to protect the interests of the workers who manufacture products for sale in the Company’s stores. The Code specifically prohibits prison labor (both voluntary and involuntary), indentured labor, bonded labor, labor acquired through slavery or human trafficking, and all forms of involuntary or forced labor. These prohibitions and all other requirements of the Code apply even if a vendor maintains its own code of conduct, monitoring, or ethical sourcing guidelines.

The Company partners with several organizations that have extensive experience and expertise in the field of ethical sourcing. These organizations, which include UL LLC, Intertek Group PLC, and Omega Compliance Ltd., assist the Company with program development, supplier education and training, and compliance monitoring. In addition, the Company is a member of the National Retail Federation, the Retail Industry Leaders Association, Ethisphere’s Business Ethics Leadership Alliance, Boston College Center for Corporate Citizenship, and the Ethics & Compliance Officer Association, and the Company participates in industry conferences in order to keep abreast of the latest developments in social compliance and ethical sourcing.

Notably, the Code is not limited to prison labor, but also establishes the minimum requirements that merchandise vendors must meet in order to conduct business with the Company. For example, the Code addresses compliance with all applicable laws and regulations and ordinary workforce matters pertaining to health and safety, wages and benefits, working hours, harassment or abuse, discrimination, freedom of association, environment, and subcontractors. The Proposal addresses several of the foregoing matters with respect to the Company’s supply chain.

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1 *Available at [https://www.tjx.com/responsibility/responsible-business/social-compliance/vendor-code-of-conduct](https://www.tjx.com/responsibility/responsible-business/social-compliance/vendor-code-of-conduct).*

The Company’s 2019 Global Corporate Responsibility Report (the “Report”)³ describes how the Company addresses these ordinary business matters relating to its supply chain through its global social compliance program. The Report also describes a number of the Company’s measures in place to support compliance with its business and ethics standards. For example, the Company’s Social Compliance Committee, which includes senior leadership from the U.S., Canada, and Europe, meets on a regular basis to oversee the Company’s ethical sourcing initiatives.⁴ In addition, the Company established in 2018 the Global Corporate Responsibility Executive Steering Committee comprised of senior personnel across several departments, which has responsibility for overseeing the Company’s global corporate responsibility efforts across functions and geographies, facilitating information exchange, recommending additional program efforts to potentially undertake, and regularly reporting to the Company’s senior management.⁵ The Report also provides information regarding the Company’s auditing and compliance efforts, including, among other things, the Company’s process for conducting and receiving regular audits of factories manufacturing products the Company designs and has manufactured; the Company’s training sessions, which it conducts on a regular basis, to educate the Company’s buying agents, vendors, and factory management on the Company’s social compliance standards, including the Code; and the Company’s grievance mechanisms for Company employees and external stakeholders, including vendor personnel.⁶

In addition, as part of the Company’s factory audit process, which is a requirement for factories manufacturing merchandise that the Company designs and has manufactured, the Company has published and distributed the Global Social Compliance Manual which contains, among other important guidance, an audit procedure outline and factory evaluation checklist to help prepare the factory for the audit process.⁷ This tool is available in seven languages and offers detailed information designed to help the Company’s agents, vendors, and factory management better understand the expectations of the Code, as well as the Company’s auditing and corrective action processes.

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⁴ Id. at 78.
⁵ Id.
⁶ See generally id. at 69-81.
⁷ Id. at 71.
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) the subjects of 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” (citing Exchange Act Release 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. 1998 Release. 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 “assessing the effectiveness of current [C]ompany policies for preventing 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 [Company] suppliers are consistent with Company policies and minimize risks to [the Company]’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’s “Vendor Code of Conduct . . . prohibits both involuntary (forced) and voluntary prison labor” and that the Company has an existing auditing program in place. 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 there is no routine auditing process or verification that suppliers adhere to this [C]ompany policy.” However, as noted above, the Company already has an existing supplier standard of conduct (the Code) that reflects the Company’s own high standards, which embrace internationally recognized principles designed to protect the interests of the workers who manufacture products for sale in the Company’s business, expressly prohibits prison labor, whether voluntary or involuntary, and requires that merchandise vendors be transparent and honest in all communications with the Company, its auditors, and its agents. The Company also has auditing efforts devoted to products it designs and has manufactured, as that is where the Company believes its efforts will be most likely to have a meaningful impact.8 When the Company sources these products, it requires buying agents and vendors that are involved to identify any active factories they use, or intend to use, to produce such merchandise.9 As described in the Report, on-site audits generally include the following components:

- an interview with factory management (opening meeting);
- policy, payroll, and documentation review, including confirmation that factory management has verified the ages of job applications before hiring to protect against potential hiring of child labor;
- factory walk-through;
- health and safety inspection;

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8 Report, at 71.
9 Id.
chemical and hazardous materials review, including usage information and verification of Material Safety Data Sheets, chemical safety, and hazardous waste programs;

- confidential worker interviews; and

- closing meeting with factory management.\(^{10}\)

Moreover, there are several issues the Company considers to be “zero tolerance” issues. The Company’s policy is to immediately terminate use of a factory found to be in violation of certain aspects of the Company’s social compliance program, including for example, prison, or slave labor; human trafficking; and failure to pay any wages.\(^{11}\)

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

\(^{10}\) *Id.* at 72.

\(^{11}\) *Id.* at 73.
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 [Company’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 vendors and how the Company monitors compliance with its existing Code.

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 [company’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 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 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 Code) by seeking both a report “assessing the effectiveness of current [C]ompany policies for preventing 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 Code. Developing and maintaining relationships with vendors and determining how best to manage those relationships is an important management responsibility. As described in the “Background” section, the Company already requires its merchandise vendors to comply with a wide variety of business and ethical standards, including the Code, and, as explained in the Report, the Code requires that merchandise vendors agree to be transparent and honest in all communications with the Company, its auditors and agents. Further, as noted above and as acknowledged by the Proponent, the Company’s existing practices already prohibit the use of both involuntary and voluntary prison labor in its supply chain. The Code also requires that merchandise vendors ensure that all subcontractors and any other third parties they use in the production or distribution of goods offered for sale by the Company comply with the Code’s principles. In addition, as noted above and in the Report, the Company regularly performs audits of factories manufacturing products designed by and manufactured for the Company, and such audits, among other things, include an assessment of the use of prison labor. In addition, the Company routinely trains its buying agents, vendors, and factory management on its policies, including the Company’s policy prohibiting prison labor. Thus, similar to Mattel, by seeking to require the Company to report on its suppliers’ compliance with the Code, the Proposal delves into the terms of the Company’s relationships 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 Code) 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 Code, which involve the Company’s oversight of its merchandise vendors and their workforces. 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 merchandise vendors (i.e., the Code), 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 hypothetical subset of workers (i.e., those who may be incarcerated notwithstanding the Company’s express prohibition of all forms of prison labor), 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 note “[p]rison 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 Staff has recognized that proposals relating to workplace safety and working conditions are a matter of ordinary business and excludable under Rule 14a-8(i)(7). 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 company 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).

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12 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 company’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”).
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 effectiveness of current [C]ompany policies for preventing 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 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 [Company] suppliers are consistent with Company policies and minimize risks to [the Company’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.

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 “[c]orrectional industries workers [who] 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 how the Company monitors and encourages compliance with the Company’s existing Code (which already prohibits, among other things, all forms of prison labor, and addresses standards relating to general compensation, hours of work, health and safety, freedom of association, compliance with laws 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, which would reasonably be deemed to include uncoerced, paid labor occurring under safe working conditions, and therefore implicates ordinary business matters.

The Company agrees that the issues raised in the Proposal are important. The Company’s Code incorporates human rights, labor rights, and anti-corruption standards and is grounded in a commitment to respecting the rights of all workers. Further, the Company, through the factory audit process it conducts in conjunction with its third-party auditors, audits factories manufacturing merchandise designed by and manufactured for the Company on a periodic basis, including with respect to prison labor. In addition, the Company routinely trains its buying agents, vendors, and factory management in various locations around the world on the Company’s policies, including its policy against prison labor. However, because the Proposal focuses on matters deemed to be within the realm of ordinary business operations, 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.


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), presumably including 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 prison labor in the Company’s supply chain, and mechanisms for ensuring compliance with the Company’s existing standards which prohibit, among other things, voluntary and 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, all of which are ordinary business matters. In addition and unrelated to any significant policy issue, 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 “minimiz[ing] risks to [the Company’s] reputation and shareholder value,” despite the fact that the Company already
prohibits all forms of prison labor in its supply chain—an existing prohibition that the Proponent readily acknowledges.

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) (concursing 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) (concursing 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) (concursing 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) (concursing 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*, as discussed above, 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 the effectiveness of the Company’s existing prison labor-related policies, which reasonably can be viewed to encompass the use of voluntary, fairly compensated, and safe labor, as the Company prohibits voluntary prison labor, in addition to involuntary prison labor, and thus 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 the Code, 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 merchandise vendors’ compliance with existing policies, including the Code, is similar to *Mattel*. In *Mattel*, as discussed above, 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 exits, and safeguards on machinery.” Similarly, as noted above, the Code addresses a host of ordinary day-to-day worker and workplace considerations relevant to the Company’s merchandise vendors, such as matters pertaining to general compensation, hours of work, health and safety, freedom of association, compliance with laws, and subcontracting. Thus, similar to
Mattel, the Proposal is excludable as relating to the Company’s relationships with its suppliers, a well-recognized aspect of a company’s 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 chain and its references to involuntary prison labor are not preponderant. To the contrary, the Proponent acknowledges that the Company already prohibits all forms of prison labor (both voluntary and involuntary) in the Company’s supply chain. 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 Alicia C. Kelly, Executive Vice President, General Counsel and Secretary at the Company, at (508) 390-6527.

Sincerely,

Elizabeth A. Ising

Enclosures

cc: Alicia C. Kelly, The TJX Companies, Inc.
    Julie N.W. Goodridge, NorthStar Asset Management, Inc. Funded Pension Plan
EXHIBIT A
Dear Ms. Kelly:

Attached, please find a shareholder proposal intended for the 2020 proxy. A hard copy will follow concurrently, and proof of ownership will be sent separately in the coming days.

Sincerely,

Mari

Mari Schwartzer
Director of Shareholder Activism and Engagement
NorthStar Asset Management, Inc.
www.northstarasset.com
Pronouns: she/her

"Where creative shareholder engagement is a positive force for change."TM
December 11, 2019

Alicia Kelly
Secretary
TJX Companies
770 Cochituate Road
Framingham, MA 01701

Dear Ms. Kelly:

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. Incarcerated people often work for little to no compensation, sometimes under circumstances that are inhumane, forced, or coerced – situations that pose a risk to shareholder value for any company found associated with suppliers 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 TJX 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 a report related to 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 TJX to produce the report 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
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 incarcerated worker mistreatment and is frequently compared to modern slavery. 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 a variety of 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; and in some prison industries, incarcerated people may be coerced into working by threat of punishment for declining work;

Prompted by our shareholder engagement, TJX modified its Vendor Code of Conduct to clarify that it prohibits both involuntary (forced) and voluntary prison labor. However, beyond the select few factories that TJX uses to manufacture products that TJX designs, it is the understanding of the Proponent that there is no routine auditing process or verification that suppliers adhere to this company policy. Shareholders are concerned that TJX does not have a routine audit mechanism for preemptive detection of prison labor in the greater network of vendors;

Other retailers have experienced severe public backlash and boycotting when prison labor was publicly identified in their supply chains. TJX may only be notified of supply chain issues when they reach a crisis level;

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

RESOLVED: Shareholders of TJX Companies urge the Board of Directors to produce an annual report to shareholders on prison labor, at reasonable cost and omitting proprietary information, assessing the effectiveness of current company policies for preventing 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 TJX supply chain including from undetected uses of prison labor in the supply chain.
Mari,

On behalf of Alicia Kelly, I am writing to acknowledge receipt of your email. We look forward to receiving the proof of ownership.

Best regards,
Jill

Mari Schwartzer
Director of Shareholder Activism and Engagement
NorthStar Asset Management, Inc.
www.northstarasset.com
Pronouns: she/her

"Where creative shareholder engagement is a positive force for change."™

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Hi Mari,
Thanks for sharing. I can confirm we received it.
Best regards,
Jill

Mari Schwartzer
Director of Shareholder Activism and Engagement
NorthStar Asset Management, Inc.
www.northstarasset.com
Pronouns: she/her

"Where creative shareholder engagement is a positive force for change."™

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Mari,

On behalf of Alicia Kelly, I am writing to acknowledge receipt of your email. We look forward to receiving the proof of ownership.

Best regards,
Jill

JILL A. DIGIOVANNI
/ Senior Attorney - Securities and Governance
/ The TJX Companies, Inc.
/ 770 Cochituate Road, Framingham, Massachusetts 01701
/ T 508-390-2972
tjx.com

From: Mari Schwartz [mailto:mschwartz@northstarasset.com]
Sent: Wednesday, December 11, 2019 3:47 PM
To: Alicia Kelly <Alicia_Kelly@tjx.com>
Subject: [External] Proposal for 2020 Proxy

Dear Ms. Kelly:

Attached, please find a shareholder proposal intended for the 2020 proxy. A hard copy will follow concurrently, and proof of ownership will be sent in separately in the coming days.

Sincerely,
Mari

Mari Schwartz
Director of Shareholder Activism and Engagement
NorthStar Asset Management, Inc.
www.northstarasset.com
Pronouns: she/her

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December 13, 2019

Alicia Kelly
Secretary
TJX Companies
770 Cochituate Road
Framingham, MA 01701

Dear Ms. Kelly:

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 TJX Companies 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. Schwartz
Director of Shareholder Activism and Engagement

Encl.: proof of ownership
December 12, 2019

Alicia Kelly
Secretary
TJX Companies
770 Cochituate Road
Framingham, MA 01701

Dear Ms. Kelly:

Morgan Stanley Wealth Management, a DTC participant, acts as the custodian for the NorthStar Asset Management, Inc. Funded Pension Plan. On December 11, 2019, the NorthStar Asset Management, Inc. Funded Pension Plan held 1824 shares of TJX Companies common stock valued at $110,151.36. Morgan Stanley Wealth Management has continuously held those shares on behalf of the NorthStar Asset Management Funded Pension Plan since December 11, 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.

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