

SANFORD J. LEWIS, ATTORNEY

February 16, 2021
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 Home Depot, Inc. Seeking Report on Systemic Racism
Associated with Prison Labor in the Company's Supply Chain

Ladies and Gentlemen:

I am writing on behalf of NorthStar Asset Management Inc. Funded Pension Plan, beneficial owner ("the Proponent") of common stock of The Home Depot, Inc. (the "Company") which has submitted a shareholder proposal (the "Proposal") to the Company. I am in receipt of a letter dated January 15, 2020 ("Company Letter") sent to the Securities and Exchange Commission by Elizabeth Ising of Gibson Dunn on behalf of The Home Depot. In that letter, the Company contends that the Proposal may be excluded from the Company's 2021 proxy statement. A copy of this reply is being emailed concurrently to Elizabeth Ising.

SUMMARY

The Proposal urges the Board of Directors to issue a report evaluating opportunities to address the Company's role in systemic racism by enhancing its policies applicable to any suppliers utilizing incarcerated workers.

The supporting statement further clarifies that shareholders recommend that the report examine, at the board and management's discretion, the benefits and drawbacks of enhancing supplier policies such as requiring:

- Payment to workers of local prevailing wage and transparency of wage payments for incarcerated workers;
- Additional company or independent mechanisms for verification of voluntariness of labor;
- Programs to support prisoner transitions to the workforce following incarceration, such as counseling on careers, job applications, and interview preparation.

The Company seeks exclusion of the Proposal on the basis of Rule 14a-8(i)(7), asserting that it does not address a significant policy issue and merely relates to the Company's ordinary business decisions, specifically decisions regarding suppliers including enforcement of standards of conduct and workplace conditions.

The Proponent asserts, contrary to the Company Letter, that the Company's potential

participation in systemic racism through incarcerated workers in the supply chain represents an issue that is appropriate for the Company to address in light of its statements asserting antiracism. It is one way that the issues of systemic racism can be addressed within the Company's sphere of influence.

The Company's pronouncements on this issue are currently inconsistent and lack transparency regarding the extent of verification of the absence of prison labor in U.S.-based supply chains. Moreover, research indicates that some products sold by the Company are suspected to have forced or prison labor in the supply chain. As a result, there is a clear nexus for the Proposal topic.

The Proposal is focused solely on the issue of examining the manner in which the company can reduce the degree that its prison labor related policies support systemic racism, an issue of transcendent public concern and controversy. Therefore, it transcends ordinary business.

Even if the Proposal were construed to simply address prison labor supply chain, the 2020 Staff determination at the Company merits reconsideration in light of current circumstances because the rationale and logic of the decision were muddled in the absence of a written decision, and were inconsistent with other staff rulings. In particular, it was unclear whether the Staff had determined that the issue is not a significant policy issue or not significant to the Company. We urge rigorous reconsideration of the issue in light of the current issues of systemic racism and the present proposal.

The Proposal is not excludable under Rule 14a-8(i)(7).

THE PROPOSAL

Report on Prison Labor

WHEREAS:

Prison labor – voluntary and forced – is allowed in the United States due to an exception in the 13th amendment to the Constitution: “Neither slavery nor involuntary servitude, except as a punishment for crime...”;

Modern prison labor is an outgrowth of slavery in the U.S. The Brennan Center for Justice explains that after slavery was abolished, “Southern states codified punitive laws, known as the Black Codes, to arbitrarily criminalize the activity of their former slaves.” Soon after, formerly enslaved African Americans comprised 70% of the prison population. Then, “desperate for cheap labor and revenue,” Southern states began to lease convicts out to private parties for physical labor. To the present day, prison labor remains inextricably linked to systemic racism;

The Proponent recognizes that the Company's 2020 Responsible Sourcing Report states

that it prohibits forced labor as well as “involuntary or exploitative prison labor” and that it appears that the Company has revised its policies to include requiring responsible sourcing audits of at least some manufacturers in the United States;

Because the company prohibits “involuntary or exploitative prison labor,” the Proponent presumes that prison labor deemed “voluntary and non-exploitative” will be permitted in the Company’s supply chain. The Company’s Responsible Product Standards states that the use of prison labor “must be consistent with the laws where the products are manufactured”;

In the U.S., despite its legality, sometimes incarcerated individuals work in unsafe or unhealthy conditions. Reports indicate that some may be coerced into working by threat of punishment for declining work. Correctional industries workers may be paid as little as \$0.33-\$1.41 per hour. In some states, incarcerated people are forced to work for no pay;

Regardless of the legal nature of prison labor in the U.S., companies have experienced public backlash, boycotts, and long-term brand name and reputation harm from a connection to prison labor. This can pose financial and operational risks for companies including supply chain disruption, litigation, and reputational damage;

The Proponent believes that the Company would benefit from strengthening of policies related to prison labor identified in the supply chain.

RESOLVED: Shareholders urge the Board of Directors to issue a report evaluating opportunities to address the company’s role in systemic racism by enhancing its policies applicable to any suppliers utilizing incarcerated workers.

SUPPORTING STATEMENT: Shareholders recommend that the report examine, at the board and management's discretion, the benefits and drawbacks of enhancing supplier policies such as requiring:

- Payment to workers of local prevailing wage and transparency of wage payments for incarcerated workers;
- Additional company or independent mechanisms for verification of voluntariness of labor;
- Programs to support prisoner transitions to the workforce following incarceration, such as counseling on careers, job applications, and interview preparation.

ANALYSIS

The legal framework for Rule 14a-8(i)(7) developed by the Commission, Staff and the courts, including under the Staff Legal Bulletin 14I, comprises a four-part test:

Question 1. **Ordinary Business.** Is the subject matter one of “ordinary business”? That is, is it a topic that is integral to the day-to-day management and operations of the company? Staff Legal Bulletin 14H published in 2015 described ordinary business in terms of the “nitty gritty” of corporate management: “a proposal may transcend a company's ordinary business operations even if the significant policy issue relates to the “nitty-gritty of its core business.”

Question 2. **Significant Policy Issue.** If the answer to Question 1 is yes, is the subject matter nevertheless a significant policy issue -- a subject of widespread public debate? In those cases in which a proposal's underlying subject matter transcends the day-to-day business matters of the company and raises policy issues so significant that it would be appropriate for a shareholder vote, the proposal generally will not be excludable under Rule 14a-8(i)(7) as long as a sufficient nexus exists between the nature of the proposal and the company. Staff Legal Bulletin No. 14E (October 27, 2009).

On what topics does a proposal address a significant policy issue that transcends ordinary business? Staff decisions have made it clear that this inquiry concerns whether the proposal addresses an issue of widespread public debate. Examples recognized by the Commission and the Staff include such topics as environmental impact, human rights, climate change, discrimination, as well as virtually all issues of corporate governance.

Question 3. **Nexus.** If the answer to Question 2 is yes, the next question is: Is there a nexus of the subject matter to the Company -- does the subject matter of widespread public debate relate significantly to the company's business or strategy?

In recent years, Staff Legal Bulletin 14 K suggested that one way of responding to this issue of nexus is for a board of directors to demonstrate that an issue is insignificant for the company. Unfortunately, it is predictable that some Boards of Directors may “find” a subject matter insignificant merely because it is trying to find grounds to exclude a proposal. Therefore, it is also necessary for the proponent to provide any evidence that contradicts the board's finding of insignificance.

Ultimately, the determination of nexus to a company is the obligation of the Staff, the Commission, or the courts. If there is a reasonable basis for concluding that a significant policy issue has a connection to a company, it transcends ordinary business at the company.

Question 4. **Micromanagement.** Finally, if all of the above are true, does the form of the proposal micromanage? Even if the proposal's subject matter transcends ordinary business (number two) and has a connection to the company (number three), the proposal still may be excludable if the approach of the proposal micromanages the company's business.

A TWO-PART RESPONSE

The Company Letter asserts alternatively that the proposal relates to excludable ordinary business because it relates to supply chain management and issues related to overall workplace safety and working conditions, or that it does not relate to a significant policy issue that transcends the Company's ordinary business operations.

The Company Letter appears to take it as a given that if the Proposal *were* to be focused on systemic racism, it would transcend ordinary business, but because the Company argues that the proposal is *only* addressing *prison labor*, it does not transcend ordinary business, and merely relates to the *supply chain* and *worker issues* that are excludable ordinary business.

Yet, reading the text of the proposal, to the extent that the Proposal requests discussion of those nitty-gritty matters, it is only in the context of a large, appropriately scoped proposal that asks questions about significant policy issues that are appropriate for a shareholder proposal.

We will respond to argument in two parts.

First, in Part I, we will document that the Proposal addresses systemic racism related to incarcerated workers in the supply chain, that these issues transcend ordinary business, and that the focus on ordinary business matters of supply chain relations and worker issues are transcended in the current proposal, such that it is not excludable under Rule 14a-8(i)(7).

Second, in Part II we will argue in the alternative that even if the proposal were construed to simply address the rights and interests of incarcerated workers in the Home Depot supply chain, these are human rights issues that transcend ordinary business, and to the extent that the 2020 unwritten determination allowing exclusion is considered applicable to the current matter, it is timely and appropriate for reconsideration.

PART I. SYSTEMIC RACISM IN HOME DEPOT SUPPLY CHAIN RELATED TO PRISON LABOR IS A SIGNIFICANT POLICY ISSUE AT THE COMPANY, NOT EXCLUDABLE UNDER RULE 14a-8(i)(7)

A. The subject matter of the Proposal is squarely addressed to systemic racism implications of prison labor in the Company's supply chain.

The Company Letter's argument is built around the idea that the Proposal addresses no significant policy issue, and but merely addresses excludible ordinary business concerns such as supply chain management or worker health and safety.

In fact, the Proposal is focused on the systemic racism implications of prison labor in the company's supply chain, an issue which is a significant policy issue of major concern and interest to investors as well as the general public, and on which the Company currently displays confusing and incomplete indicators, disclosures, and actions. There is more than sufficient basis examining the Company's disclosures to believe that investor engagement through a shareholder proposal is appropriate.

B. There is no doubt that a proposal directed to evaluating the role of a company in systemic racism issues such as those raised by the proposal addresses a significant policy issue.

The Black Lives Matter protests of 2020 elevated the sense of urgency of finding redress for the unequal treatment of Black people, including the school to prison pipeline. Many individuals and institutions of society are in a time of deep self-examination on the issues of racism. They are asking more carefully and deeply, "am I part of the problem? How can I use my sphere of influence to be part of the solution?"

Efforts to encourage companies to address systemic racism, wherever it may be found, address a significant policy issue. It is already well established that "discrimination" and "harassment" matters are significant policy issues, as are significant issues of human rights. At the forefront of U.S. human rights issues are the treatment of Blacks and other people of color, from historic slavery to current mass incarceration and related prison labor.

The recent Staff determination in *Johnson & Johnson* (February 12, 2021) (unwritten decision) confirmed that these activities are appropriate under Rule 14a-8(i)(7). It is not ordinary business for shareholders to request that a Company rigorously assess the racial impact of the company's policies, practices, products and/or services. Nor is it ordinary business to seek recommendations for improving the company's racial impact.

The Commission as long made it clear that so long as a proposal focuses on a significant

social policy issue confronting the company, it is permissible for the proposal to also relate to ordinary (i.e., day-to-day) matters such as supply chain relations or workplace conditions. The language of the 1998 Interpretive release is very clear on this point:

The policy underlying the ordinary business exclusion rests on two central considerations. The first relates to the subject matter of the proposal. Certain tasks are so fundamental to management's ability to run a company on a day-to-day basis that they could not, as a practical matter, be subject to direct shareholder oversight. Examples include the management of the workforce, such as the hiring, promotion, and termination of employees, decisions on production quality and quantity, and the retention of suppliers. However, proposals relating to such matters but focusing on sufficiently significant social policy issues (e.g., significant discrimination matters) generally would not be considered to be excludable, because the proposals would transcend the day-to-day business matters and raise policy issues so significant that it would be appropriate for a shareholder vote. [emphasis added]

It has long been established, at least since *ACTWU v. Wal-Mart*, 821 F. Supp. 877 (S.D.N.Y. 1993) that such issues transcend ordinary business. In that case, the shareholder proposal focused on the ordinary business matter of employee hiring, firing, recruitment, promotion and retention – perhaps one of the most fundamental ordinary business aspects to running a company. The court concluded that because the proposal also focused on a significant policy issue – *the impacts of racial discrimination* – it transcended the ordinary business of Wal-Mart and was appropriate for shareholder consideration in the proxy.

As such, the present proposal is in line with this understanding that the particular human rights issues of America's Black population represent a human rights issue and an issue of disparate impact squarely within the ambit of "transcendent policy issue."

We note, in addition, that President Biden's Executive Order on racial equity of January 20, 2021¹ urges federal agencies to look for opportunities to advance racial equity, including whether new policies, regulations, or guidance documents may be necessary to advance equity in agency actions and programs. This further confirms that the subject matter of the proposal addresses a significant policy issue.

About the Proponent

Given the history of the proponent NorthStar Asset Management Inc. Funded Pension Plan in filing proposals on prison labor, it is clear that 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

¹ <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/20/executive-order-advancing-racial-equity-and-support-for-underserved-communities-through-the-federal-government/>

other retailers and manufacturers like Whole Foods, Wal-Mart, and Victoria's Secret. These companies faced significant backlash after publicity regarding prison labor in their supply chains.

The Proponent has come to recognize and foreground issues of systemic racism. The fact that prison labor is sometimes mandatory, coerced, and/or unpaid, alongside our country's deep and abiding entrenchment with racism, makes the use of prison labor a focal point of human rights concern. Prison labor is a direct descendent of America's early slavery traditions. While some advocates for prison labor programs assert that they can involve training that readies people for integration into society after release, others assert that the training and reintegration aspects are often minimal and that prison labor can merely entail exploitation of a captive population with variable levels of "voluntariness" to their labor.

C. Reading the text of the current proposal it is clear that it foregrounds issues of systemic racism.

We believe that anyone other than a corporate lawyer reading this proposal would say that it was about systemic racism. From the start, the Proposal is focused on the relationship between America's history of slavery and the systemic racism that is fundamental to the justice and incarceration system today.

The Proponent believes that the Proposal's current focus on systemic racism is clear and sufficient to connect the proposal to the significant policy issue. Everything that may be unfair or problematic about the prison labor system is inherently connected to systemic racism because of the disproportionate incarceration of African-Americans. This overincarceration of Black men, women, and children ensures that human rights issues in the criminal justice system disproportionately affect African-Americans. The Company's potential linkage to prison labor from products sold at The Home Depot stores demonstrates that its reputation and role in systemic racism could easily be spotlighted. Current practices and available information suggest that there may still be products on the Company's shelves that were produced through prison labor, and that the degree of verification that prison labor is not deployed in the supply chain is not transparent from Company reporting.

D. SYSTEMIC RACISM: "Prison Labor as a Lawful Form of Race Discrimination"

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."² Some would say that this amendment allows a form of "legal slavery" to be used as punishment for committing a crime, or at a minimum, perpetuates racial discrimination.

² Constitution of the United States of America, 13th Amendment.

The U.S. leads the world in incarceration as 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.³

Not only does the U.S. have an extremely high incarceration rate, but the racially-skewed nature of our criminal justice system becomes apparent when we learn that white offenders have been convicted less and given shorter sentences⁴ and African Americans are incarcerated at a rate of more than five times that of whites,⁵ but “whites and blacks engage in drug offenses, possession, and sales at roughly comparable rates.”⁶ Author Michelle Alexander explains in *The New Jim Crow* that more Black men “are in prison or jail, on probation or on parole than were enslaved in 1850,” in great part due to the War on Drugs.⁷

The role of the current system of prison labor as part and parcel of systemic racism was clearly articulated by Katherine E. Leung, a field attorney with the National Labor Relations Board in a 2018 article in the Harvard Civil Rights-Civil Liberties Law Review “**Prison Labor as a Lawful Form of Race Discrimination.**” She summarized her thesis as follows:

[E]xceptions to the Fair Labor Standards Act permitting the use of prison labor at sub-minimum wages are a form of legalized race discrimination. This discrimination is the result of: firmly entrenched structures of oppression that lead to the incarceration of people of color, particularly men of color, at markedly higher rates than white people; prison job training programs that exploit prisoners’ labor for the benefit of corporations without noticeably improving prisoners’ job prospects upon their release; and hiring trends outside of prison that clearly disfavor formerly incarcerated and non-white workers. Corporations that choose to use prison labor generally compartmentalize tasks performed by prison workers and those performed by civilian workers along the same lines used to classify “white” and “non-white” jobs prior to the enactment of Title VII. The tasks reserved for prisoners under this system are generally lower wage, lower skilled manufacturing jobs, while those reserved for civilian workers come with higher wages, more skilled tasks, and are more likely to be customer-facing. The result is that companies

³ <http://www.pewresearch.org/fact-tank/2018/01/12/shrinking-gap-between-number-of-blacks-and-whites-in-prison/>

⁴ Rania Khalek. “21st-Century Slaves: How Corporations Exploit Prison Labor.” AlterNet.

http://www.alternet.org/story/151732/21st-century_slaves%3A_how_corporations_exploit_prison_labor

⁵ “Criminal Justice Fact Sheet.” NAACP, www.naacp.org/criminal-justice-fact-sheet/

⁶ Rania Khalek. “21st-Century Slaves: How Corporations Exploit Prison Labor.” AlterNet.

www.alternet.org/story/151732/21st-century_slaves%3A_how_corporations_exploit_prison_labor

⁷ Alexander, Michelle. *The New Jim Crow: Mass Incarceration in the Age of Colorblindness*. New York: New Press, 2010. (179-180)

frequently choose to assign the least desirable, most menial tasks to prison workers, a group primarily made up of people of color, while these same companies hire predominantly white civilian workers to perform higher-skill jobs. This trend is actually magnified in jurisdictions that have “banned the box,” where employers are hiring fewer Black and Latinx workers than they hired when permitted to ask about criminal records on application paperwork. This amplifies the discriminatory effects of this statutory loophole. This counterintuitive outcome suggests that, rather than providing additional opportunities for formerly incarcerated workers, employers are reacting to these laws by treating race as a proxy for criminal history.⁸

Racial disparities in incarceration

Despite making up only 13% of the U.S. population (source: [U.S. Census Bureau QuickFacts: United States](#)), Black people make up nearly 40% of the U.S. prison population (see images):

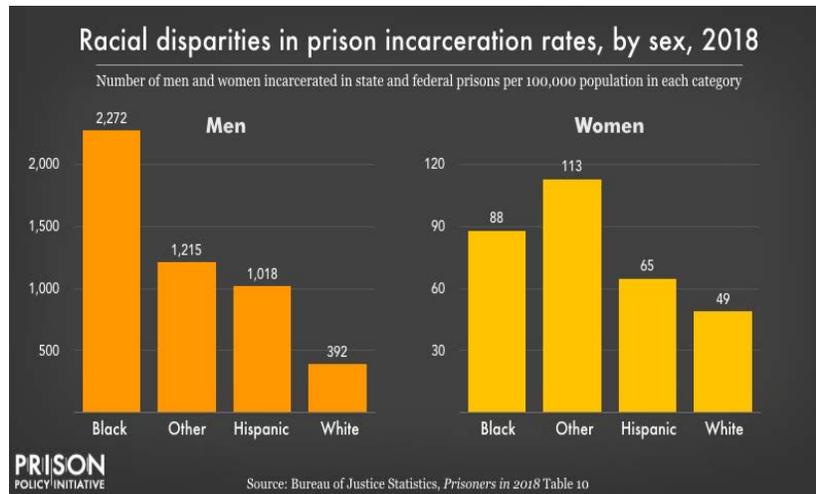


Image Source: [Visualizing the racial disparities in mass incarceration | Prison Policy Initiative](#)

Considering that Black people make up nearly 40% of the prison population, it is reasonable to conclude they comprise at least 40% of incarcerated workers participating in prison labor.

In some states, the proportion of Black Americans in the prison population is even higher. For example, “Black inmates account for 56 percent of Alabama’s prison population despite African-Americans representing about 27 percent of the state’s overall make up.”⁹

⁸ <https://harvardcrcl.org/wp-content/uploads/sites/10/2018/11/Leung.pdf>

⁹ [Alabama Incarcerates Blacks More Than Three Times Rate of Whites; DOJ Lawsuit Says State Prisons Fail to](#)

E. Systemic racism from supply chain prison labor is significant to the Company.

The Company Letter notes that the Company “already has an existing supplier standard of conduct that prioritizes ethical sourcing, emphasizes ethical responsibility standards and expressly prohibits involuntary and exploitive 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.”

Notably, in making this remark, the Company neither asserts directly that the proposal is *insignificant to the Company* nor that it is *substantially implemented*.

Yet, the implication seems to be that the issue is so well-managed that there is no remaining transcendent policy issue facing the Company. Examination of the Company’s disclosures, risks and practices demonstrates a substantial area of valid concern for investors.

The Home Depot, prison labor and systemic racism

The Company’s CEO, in June 2020, like so many other CEOs, made a powerful commitment to antiracism:

MESSAGE FROM CRAIG MENEAR – RACIAL EQUALITY & JUSTICE FOR ALL

June 01, 2020

We are all confronting deep pain and anguish over the senseless killing of George Floyd, Ahmaud Arbery and other unarmed Black men and women in our country. We cannot ignore that their deaths are part of a pattern of racism and reflect the harsh reality that as a nation we are much too far from fulfilling the promise of equal justice for all. We must stand with all who are committed to change that will bring us closer to realizing an end to discrimination and hatred....

Diversity and respect for all people are core to who we are as an Orange-Blooded family. We do not support discrimination in any form, period. We are all hurting, but none more acutely than those in our African American communities. Please know that you are not alone. We must work together and more urgently.

With the CEO's powerful statement, he seemed to make clear that his company is going to stand with Black communities and do its part to dismantle systemic racism. Major social issues such as the school-to-prison pipeline, three strikes laws, and the "war on drugs," as well as the resultant overincarceration of Black Americans who often become incarcerated workers, are part of "pattern of racism" to which CEO Menear refers. Because prison labor is an issue of systemic racism that is within the sphere of influence of the Company, the current proposal is appropriate.

Gaps in Home Depot Investor Accountability on Prison Labor Issues

Instead of claiming it has fulfilled the proposal and established transparency on this issue, the Company Letter instead seems to imply that the issues are adequately well managed and sufficiently transparent. **In fact, current company efforts on prison labor are confusing and lacking in transparency.**

The Ambiguity of Voluntariness. When The Home Depot asserts that only voluntary prison labor may be used in the supply chain, there is no guidance and little monitoring that we are aware of to apply a definition to "voluntary."¹⁰ For instance, in some states and in the Federal prison system **all able-bodied federal prisoners are required to work.** It is not voluntary. And in some state prisons, failure to "volunteer" for prison jobs can lead to solitary confinement as an "incentive" to encourage the prisoner to work. Another possible legalistic interpretation of voluntary could be that prisoner's working is not voluntary, but the *choice of job* is voluntary. Given these questions, it is clear that if the Company applied this criterion to its supply chain monitoring would face a slippery slope of legalisms in any determination as to whether the rule is enforced.

Erratic and inconsistent company policy statements

The Company has in place a variety of policies and reports that mention the topic of prison labor in its supply chain. The Company website contains documents with *inconsistent* discussion of prison labor that merit both general investor concern and the current proposal that seeks clarification and further action to reduce the systemic racism impacts of the Company's practices.

For instance, the Company Letter cites the Responsible Sourcing Standards. We downloaded those standards on February 10, 2021¹¹ and note that they permit prison labor. The document

¹⁰ The Company Letter asserts that the Proposal is "focused on the Company's policies relating to the potential use of lawful, uncoerced prison labor in its supply chain, including its supply chain standards and monitoring and verifying compliance therewith." Company Letter page 6.

¹¹ https://ir.homedepot.com/~/_/media/Files/H/HomeDepot-IR/documents/ESG%20Page/Responsible%20Product%20Standard%2004-04-19.pdf

states on Page 7:

+ **Forced Labor**

- Suppliers must not use forced, bonded (including debt bondage) or indentured labor, involuntary or exploitative prison labor, nor shall suppliers participate in slavery or trafficking of persons. This includes transporting, harboring, recruiting, transferring or receiving persons by means of threat, force, coercion, abduction or fraud for labor or services. The 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.

Note the mention in this Responsible Sourcing Standard providing that “use of prison or convict labor cannot be forced and must be consistent with the laws or products are manufactured and the laws where it is imported.”¹²

The above Responsible Sourcing Standard links to another document, *Social and Environmental Responsibility Standards*¹³ accessed February 12, 2021, which states:

Forced Labor

Suppliers will not use of any form of involuntary labor including forced, prison, indentured, bonded, slave, or human trafficked labor.

This document can be construed to disallow “*involuntary*” prison labor. As noted above, the term voluntary is subject to extraordinary wiggle room in the context of prison labor and would need to be defined.

Still another document on the website labeled Responsible Sourcing Standards and published February 1, 2021 states that:

Forced Labor

Suppliers must not use forced, bonded (including debt bondage) or indentured labor, or prison labor, nor shall suppliers participate in slavery or trafficking of persons. This includes transporting, harboring, recruiting, transferring or receiving persons by means of threat, force, coercion, abduction or fraud for labor or services.

2/01/2021

Under one possible construction, this new language might be construed as a full ban on “prison labor.” However, because the prohibition appears under the header of “Forced Labor” this document, as well as other related documents on the company’s website, are inconsistent with such an interpretation. This language could also be understood as applying only to “forced” prison labor.

Accordingly, an investor or supplier visiting the website would currently face uncertainty about

¹² Notably, this provision would seemingly preclude federal prison labor, since federal law requires that all able-bodied incarcerated people work. Yet, there is recent historic evidence that products produced through the federal prison labor program may be in the company’s supply chain.

¹³ <http://ecooptions.homedepot.com/wp-content/uploads/Social-and-Environmental-Responsibility-Standards.pdf>

the degree to which the Company allows prison labor in the supply chain.

Lack of transparency on monitoring US suppliers

Based upon the information available in the Company's Responsible Sourcing Report and other publicly available policy documents, it is unclear the extent to which the Company routinely monitors **suppliers or factories in the U.S. or Canada**.¹⁴ The Company's 2020 Responsible Sourcing Report notes that "All non-Canada and U.S. factories producing private brand and direct import products for The Home Depot are required to receive a Responsible Sourcing audit prior to selling product to The Home Depot."

We note the ambiguity in this phrase, does the phrase mean "non-Canada and non-U.S. factories" are required to receive the audit, or does it mean any factories outside of Canada?

In an improvement from the prior year's report, the map of where supply chain audits are conducted now includes the U.S., but given the concerns about the U.S. supply chain, it is notable that there is no breakdown as to how many audits are conducted at U.S. operations. Since 70% of the Company's goods are sourced in the U.S.,¹⁵ the potential lack of oversight and detection of prison labor in the supply chain should be of significant concern to investors. Moreover, even where audits are conducted, they do not appear to result in public disclosures regarding to what degree legal employment of prison labor is utilized in the supply chain, domestically or abroad.

The Proponent believes that, currently, the Company and its shareholders cannot feel confident that the Company is not exposed to prison labor or other supply chain risks related to products sourced from U.S. suppliers. In fact, it is clear from the strong result (30% support) on a vote on a proposal on prison labor at the Company's 2019 annual meeting that investors are particularly concerned about this risk for The Home Depot.

The Home Depot has been linked to at least one product made through forced labor — the 2017 Hendren Plastics scandal.

In 2017, news broke that "one of Arkansas's top politicians, State Senate Majority Leader Jim Hendren, a Republican, is using unpaid, forced inmate labor to work at his plastics company, which makes dock floats for Home Depot and Walmart."¹⁶ Hendren Plastics contracted with a drug and alcohol recovery program where defendants can be sent in lieu of prison; however, a recent investigation found that "there is no treatment or counseling" and that the program

¹⁴ The Home Depot *Responsible Sourcing Report*, page 15.

¹⁵ According to the Company's *Responsible Sourcing Report*, "70 percent of our goods are sourced in the U.S. ..." (page 3 of PDF; page 5 of report)

¹⁶ https://www.opednews.com/articles/Prison-Labor-Camps-Are-Not-by-John-Kiriakou-Labor-Rights_Labor-Sweatshops_Prison-Slave-Labor_Work-171121-319.html

participants “serve simply as free labor for private industry.”¹⁷ An affidavit filed along with a recent lawsuit against Hendren Plastics states that “the environment was very caustic working around melted plastics.”¹⁸ An article reporting on the lawsuit states that if “workers got hurt on the job and couldn't work, they were kicked out of the program and sent to prison. Others just worked through the pain to avoid prison.”¹⁹ Hendren Plastics dock floats have been sold by The Home Depot despite the Company’s stated responsible sourcing program.

The Proponent believes that if the Company had examined its domestic U.S. supply chain for evidence of prison labor or forced labor, the Hendren Plastics situation might have been flagged and may have provided the opportunity for the Company to take preemptive action.

Suppliers of concern

While the market continues to vary, recent research by the Proponent using the National Correctional Industry Association’s quarterly reporting indicated that the following companies may have used prison labor and supplied products to The Home Depot:

- [Shaw Industries](#), through a subsidiary Standard Plywood, uses prison labor to [manufacture some of its hardwood flooring](#); Shaw hardwood flooring [is sold at Home Depot](#)
- [SemahTronix](#) uses prison labor to make wire harnesses and cable assemblies for numerous companies including General Electric (GE), Sears Seating, and Philips.
 - Home Depot sells GE appliances;
 - John Deere products use Sears Seating supplies; Deere tractors are sold at Home Depot;
 - Home Depot sells various Philips audio electronics and cables; light fixtures; and surge protectors;
- [Seat King LLC](#) uses prison labor to produce seating for lawnmowers. Its partners include Toro and Ariens, brands that are [sold](#) by Home Depot.

Prison labor may affect many aspects of the Company’s business.

Nonprofit researchers and journalists have reported the existence of prison labor in supply chains of many product categories including (but not limited to) electrical wiring, furniture, packaging materials, wood flooring, fiberglass tanks, metal fabrication, park tables and grills, and much more. The failure to detect and manage prison labor in the Company’s supply chain could have severe repercussions on The Home Depot’s brand name and shareholder value. Other companies

¹⁷ https://www.opednews.com/articles/Prison-Labor-Camps-Are-Not-by-John-Kiriakou-Labor-Rights_Labor-Sweatshops_Prison-Slave-Labor_Work-171121-319.html

¹⁸ <https://assets.documentcloud.org/documents/4117278/Mark-Fochtman-Affidavit.pdf>

¹⁹ https://www.opednews.com/articles/Prison-Labor-Camps-Are-Not-by-John-Kiriakou-Labor-Rights_Labor-Sweatshops_Prison-Slave-Labor_Work-171121-319.html

that use correctional industries suppliers have already experienced backlash in the face of news stories that the retailers had sold products to customers without disclosing prison labor sourcing.

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.'"²⁰ 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.²¹ In several states of the U.S., inmates 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."²²

Reputational harm from association with prison labor may linger indefinitely.

Companies that have been connected to prison labor are often associated with prison labor long-term, even if that association ended decades ago. Victoria's Secret learned in the 1980s that one of its vendors had used prison labor to produce some of its apparel. Despite severing the relationship with the vendor, Victoria's Secret is still routinely associated with prison industries in news articles and website listings. The Proponent believes that examining the Company's suppliers would offer an opportunity to The Home Depot to manage the risk proactively. This is preferable to a reactive response to a reputational crisis that may otherwise result if it comes to light that the Company sources from suppliers that use prison labor. In the opinion of the Proponent, failure to monitor the extent of prison labor in the company's U.S. supply chain could reflect a failure of due diligence by the board and management. It does not protect shareholder value.

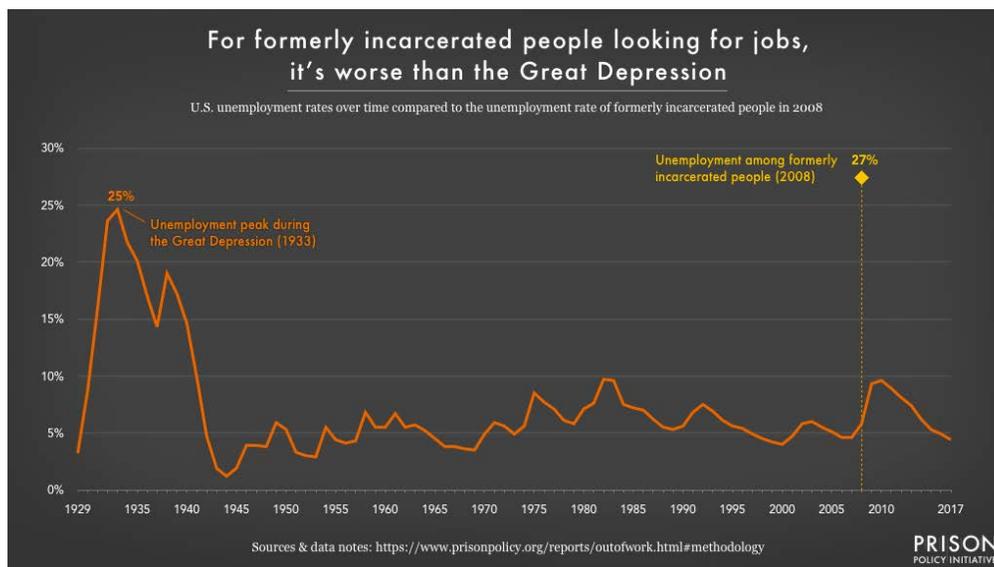
Is any prison labor in the Home Depot supply chain more like a carryover from the exploitation and cruelty of slavery, or a nonexploitive system that reintegrates prisoners to society? The analyses and disclosure suggested in the supporting statement of the Proposal focus on these issues and therefore suggests consideration of:

²⁰ <https://www.vox.com/2018/8/24/17768438/national-prison-strike-factory-labor>

²¹ <https://www.prisonpolicy.org/blog/2017/04/10/wages/>

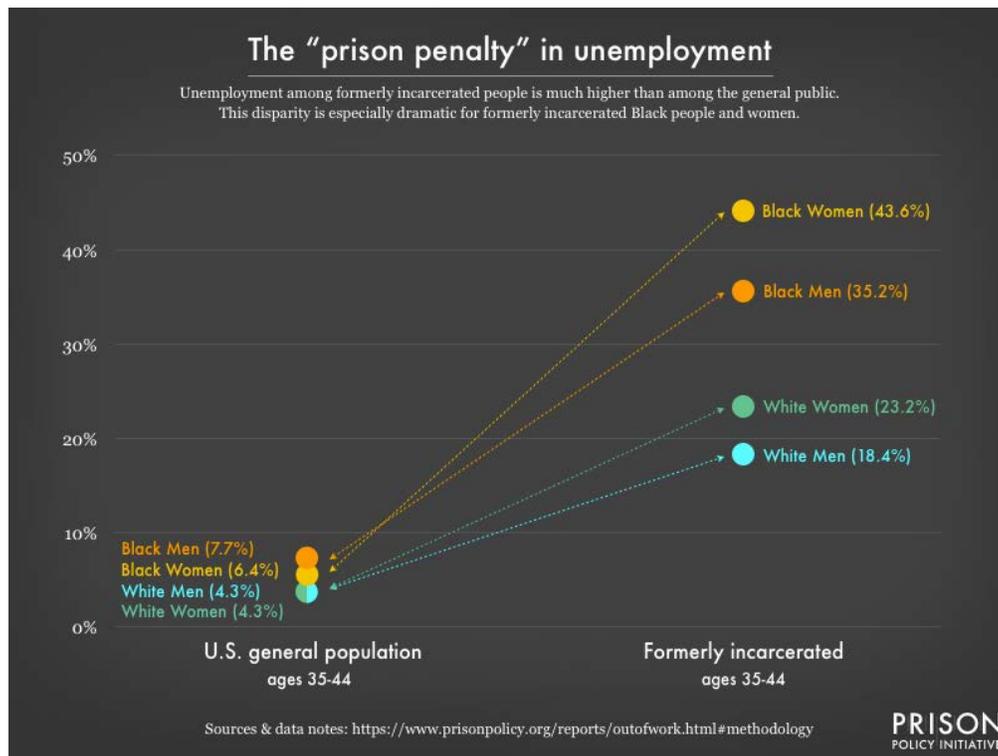
²² <https://www.vox.com/2018/8/24/17768438/national-prison-strike-factory-labor>

- Payment of local prevailing wage and transparency of wage payments. For instance, the information published by the company currently says that payments to prisoners must be consistent with the law, and it is clear that prisoners are permitted by many laws to be paid quite minimally.²³
- Mechanisms for verification of voluntariness. The degree to which prison labor is considered voluntary is a subject of considerable complexity and controversy. Able-bodied federal prisoners are required to work. A question might be raised as to whether such a prisoner's choice to work in a manufacturing setting rather in the prison or other work options be considered "voluntary" because they choose the manufacturing operation?²⁴
- Development of programs related to post-incarceration support and counseling. Part of the rationale for many prison labor programs is that it is a training ground for prisoners allowing them to leave prison workforce ready. Yet the evidence shows that formerly incarcerated Black men have particular difficulty reentering the workforce. Evaluation is appropriate as to whether modifications of any employment of prisoners is accompanied by transitional programs to ensure that prison laborers ultimately get a job when released from prison. See chart below:



²³ <https://www.prisonpolicy.org/blog/2017/04/10/wages/>

²⁴ "This highlights another problem with prison labor in the U.S. Even though, in a lot of cases, it is technically voluntary, there can be serious consequences for people who refuse to work or who advocate for better working conditions because a lot of prisoners use working as a way of having their sentences reduced. And so if they can't work, that can't happen. And so they have to serve a longer period of time than they otherwise would have." Planet Money, [npr.org/transcripts/884989263](https://www.npr.org/transcripts/884989263), June 29, 2020.



Images source: [Out of Prison & Out of Work | Prison Policy Initiative](#)

Supply chain, workplace conditions and exclusions

When a supply chain on which a company has substantial leverage poses substantial societal impacts that amount to a significant policy issue, the proposal is not excludable.

The Company Letter asserts that the focus of the proposal on the supply chain or workplace conditions renders it excludable ordinary business.

While a proposal simply focused on supply chain management would be considered to address “nitty-gritty” ordinary business, a proposal that focuses on improving the scale and pace of management of water pollution impacts addresses a significant policy issue.

Much of the Company Letter is devoted to arguments that the focus of the current Proposal on the Company’s supply chain renders it excludable on the basis of Rule 14a-8(i)(7). Yet, review of Staff precedents demonstrates that when the focus of a proposal is on *substantial environmental or social impacts of a company’s supply chain* and the *company has clear leverage to address the issue (nexus)*, a proposal relating to supply chain relations does not lead to exclusion.

Rite Aid Corporation (April 23, 2018), the Staff did not allow exclusion of a proposal requesting a sustainability report describing the Company’s environmental, social and governance (ESG) risks and opportunities, including customer and worker safety, privacy and security, environmental management, including energy and waste minimization, *and supply-chain risks*. The Staff ruled against exclusion under rule 14a-8(i)(7) without a written decision. In *Northrop*

Grumman Corporation (March 19, 2019), the Staff did not allow exclusion of a proposal requesting that the board prepare a report on the Company's management systems and processes to implement its human rights policy. The Staff ruled against exclusion under rule 14a-8(i)(7). The proposal asked that the Board of Directors prepare a report, at reasonable cost and omitting proprietary information, on Northrop Grumman's management systems and processes to implement its Human Rights Policy, and in the supporting statement asked that the report include discussion of systems to embed respect for human rights into business decision-making processes for its operations, contracts, and supply chain. In *Nucor* (March 6, 2008), the Staff did not allow Rule 14a-8(i)(7) exclusion of a proposal requesting that the board of directors review Nucor's policies and practices related to its global operations and supply chain to assess areas where Nucor needs to adopt and implement additional policies to ensure the protection of fundamental human rights and report its findings to shareholders.

In contrast, the precedents cited by the Company Letter as demonstrating the applicability of an ordinary business exclusion to proposals addressing the supply chain generally either focused on an issue that was not found to address a significant policy issue, or included both a significant policy issue and ordinary business, micromanaged by dwelling on minutia, or otherwise emphasized day-to-day business considerations over the environmental impacts. None of these issues apply to the present proposal.

In *Abercrombie & Fitch Co.* (April 12, 2010), the Staff did not allow exclusion of a proposal requesting that the board **adopt and disclose a code of vendor conduct based on ILO standards**, establish an independent monitoring process, and prepare an annual report on adherence to the code.²⁵ The Staff ruled against exclusion under rule 14a-8(i)(7), noting that “[i]n our view, the proposal focuses primarily on the significant policy issue of human rights and does not seek to micromanage the company to such a degree that exclusion of the proposal would be appropriate.” In this instance, global recognition of lapses in clothing supply chain management leading to human rights scandals and disasters around the world led the proponents to conclude that it was appropriate for the company to manage such risks by asking vendors to raise labor standards, citing the growing number of companies that have adopted codes of conduct for suppliers, addressing such issues as child labor, forced labor, and freedom of association. Therefore, requesting that the board of directors adopt and disclose a code of vendor conduct, based on the International Labour Organization (“ILO”) standards was found not excludable under the ordinary business exclusion. This included a request to establish an independent monitoring process that assesses adherence to these standards and to prepare an annual report. The ILO standards cited in the proposal included those that require: 1. All workers have the right to form and join trade unions and to bargain collectively. (ILO Conventions 87 and 98); 2. Worker representatives shall not be the subject of discrimination and shall have access to all workplaces necessary to enable them to carry out their representation functions. (ILO Convention 135); 3. There shall be no discrimination or intimidation in employment. Equality of

²⁵ Same result in *The Kroger Co.* (April 6, 2011), the Staff did not allow exclusion of a proposal requesting that the board adopt, implement, and enforce a revised company-wide code of conduct, inclusive of suppliers and sub-contractors, based on the International Labor Organization's conventions, including the four principles set forth in the proposal, and prepare a report concerning the implementation and enforcement of the policy.

opportunity and treatment shall be provided regardless of race, color, sex, religion, political opinion, age, nationality, social origin, or other distinguishing characteristics. (ILO Convention 100 and 111); 4. Employment shall be freely chosen. There shall be no use of force, including bonded or prison labor. (ILO Convention 29 and 105); 5. There shall be no use of child labor. (ILO Convention 138 and 182). This ILO proposal has been found non-excludable by the Staff at numerous other companies against company ordinary business claims.

In contrast, the precedents cited by the Company Letter as demonstrating the applicability of an ordinary business exclusion to proposals addressing the supply chain generally either focused on an issue that was not found to address a significant policy issue, or included both a significant policy issue and ordinary business, micromanaged by dwelling on minutia, or otherwise emphasized day-to-day business considerations over the environmental impacts. None of these issues apply to the present proposal. For example, consider the Company's citation of *Foot Locker* (Mar. 3, 2017). In that instance, the resolved clause and supporting statement of the proposal was narrowly framed around an ordinary business issue - monitoring the use of subcontractors by the company's overseas apparel suppliers. Even though the background section of the proposal discussed the impact on human rights, the narrow focus of the resolved clause and supporting statement crossed the line into ordinary business, an inappropriate focus on decisions about whether and when its suppliers use subcontractors, which is an issue within the management's expertise and discretion. Similarly, transcendent significant policy issues were not found to exist in *Alaska Air Group, Inc.* (Mar. 8, 2010) involved the maintenance and security standards used by the company's aircraft contract repair stations. Despite the proponent's efforts to assert that these were significant policy issues, the Staff did not recognize this issue as a significant policy issue. *The Southern Co.* (Jan. 19, 2011) ("strive to purchase a very high percentage" of "Made in USA" goods and services on the grounds that it concerned "decisions relating to supplier relationships"); and *Seaboard Corp.* (avail. Mar. 3, 2003) (requesting a report discussing its suppliers' use of antibiotics in hog facilities, but see the later reconsideration and *Tyson* discussed above).

PART II. EVEN IF THE FOCUS OF THE PROPOSAL IS ON PRISON LABOR, IT
ADDRESSES A SIGNIFICANT HUMAN RIGHTS TOPIC THAT IS A
SIGNIFICANT POLICY ISSUE

The Company Letter cites last year's proposal by the proponent, and exclusion by the Staff in *The Home Depot, Inc.* (March 20, 2020) to justify exclusion of the current proposal. Although we assert the Proposal is appropriately focused upon on systemic racism and incarcerated workers' rights, to respond to the Company's argument that prison labor discussed in the proposal does not address significant policy issue, we will turn to the 2020 decision to discuss whether a proposal focused on prison labor and human rights is excludable under the Rule.

We respectfully urge the staff to consider that last year's exclusion is due for reconsideration

in light of the elevated societal focus on systemic racism over the last year. We note that last year's Staff determination allowing exclusion of the proposal was an unwritten determination which means that the Staff did not publish the rationale.²⁶

The 2020 decision is an important example of where a written determination seemed necessary for accountability of the decision and as guidance to investors and issuers alike. Through the unwritten determination of 2020, both investor and issuer stakeholders were left unable to ascertain whether the Staff views the issue of workers' rights associated with prison labor as itself not a significant policy issue despite decades of decisions finding proposals that effectively banned the use of prison labor to be non-excludable. The ILO Code proposals such as *Abercrombie & Fitch Co.* (April 12, 2010) asked companies to adopt a code of conduct that included as the first of several requirements "There shall be no use of force, including bonded or prison labor."

If the Staff decision was not intended to reverse the long-standing position that a proposal focused on prison labor addressed a human rights issue, then the further question for the proponent and others is whether the Staff found in this instance that the issue was not significant for the Company.

The Company's 2020 no-action request did not assert that the proposal was substantially implemented, nor directly assert that the proposal was not a significant issue for the Company. If it had made such an assertion, it would have implicated Staff Legal Bulletins 14I and J, in which board opinions have been solicited by the Staff, to provide the board's assessment as to whether the proposal addresses a significant issue for the company. Thus by only indirectly asserting that the proposal's request was insignificant to the company, the company did not provide a "delta" analysis.

The 2020 letter from the Company also acknowledged and attempted to distinguish the proposal as against the long history of staff decisions allowing proposal addressing human rights:

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

²⁶ The proponent has joined with other investors in urging the Staff to rethink where unwritten determinations are appropriate.

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).

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

The Company’s purported distinction from those rulings was the extent to which the proposals expressly used the term “human rights.” For instance the Company wrote “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.”

The Prison Labor Proposals are Human Rights Proposals

The words “human rights” are not required words to address whether a proposal addresses a significant discrimination matter or a question of whether human dignity and rights are being respected. Despite the effort the company’s argument, the 2020 proposal clearly addressed human rights:

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.

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 **prisoner mistreatment**”
- “[Prison labor] is **frequently compared to modern slavery**”
- “U.S. prisoners may be **paid as little as \$0.23 - \$1.15 per hour**
- “[Prisoner work] sometimes **occurs in unsafe or unhealthy conditions**
- [I]n some prison industries inmates may be **coerced into working by threat of punishment** for declining work

This leads us back to the possible conclusion that the Staff had concluded that the issue was not significant for the company. If so, and without requesting a board opinion, no fulsome debate on the topic was engaged. If the issue had been addressed directly, it would have been germane to the discussion that the prior year, 2019, shareholders had voted on a similar proposal, one which was more directive than the reporting proposal at issue in 2020, and on **which 30% of investors voted in favor:**

RESOLVED: Shareholders of 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:

- Include annual quantitative metrics regarding the number of supplier audits conducted by the Company which evaluated whether prison labor is present in the supply chain, as well as the summary of those results.
- Evaluate any risks to finances, operations, and reputation related to prison labor in the Home Depot supply chain.

If then the issue of “significance to the company” was essentially the focus of the exclusion decision, the voting record of the prior year would have surely caused the staff to deny the exclusion.

Fortunately, the Staff’s position on significant policy issues evolves from year to year as issues debated by society evolve in prominence. The events of the last year justifies non-exclusion of the present proposal.

If the decision last year was based on whether the issue was **significant to the company**, we note that with regard to this year's no-action request, and unremarked on last year, that the evidence for such a conclusion seemed extremely thin. The prior year, 2019, shareholders voted on a proposal very much like the one excluded in 2020 and 30% of shareholders voting supported the proposal. Moreover, we note that the staff decisions in the recent years assessing significance to the company have found a vote of 30% to be a very significant indicator.

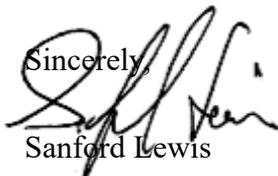
Assessing the significance of a 30% vote for a first-time proposal is fairly straightforward.²⁷ Staff decisions have made it clear that a prior 25% vote is significant enough that it merits special explanation from the board of directors if they are claiming that a proposal is not significant to the company. Decisions the prior year at both *Eli Lilly* (March 2, 2018) and *Citigroup* (March 6, 2018) had barred exclusion of proposals under Rule 14a-8(i)(7) and Rule 14a-8(i)(5) based on the failure of the board to explain away a 25% prior vote in support of the proposals.²⁸

Thus, the many inconsistencies and lack of clarity presented by the unwritten determination of 2020 merit a rigorous re-examination and a written ruling, regardless of whether the proposal is excludable or not, to clarify for stakeholders the position of the Staff.

In the present matter, we urge the Staff to include in its written response that the current proposal addressing the "systemic racism implications of prison labor in the supply chain" addresses a significant policy issue, with sufficient nexus to the Company that exclusion is inappropriate under Rule 14a-8(i)(7).

CONCLUSION

For these reasons, we urgently staff to conclude that the Proposal is not excludable on the basis of Rule 14a-8(i)(7). As such, we respectfully request that the Staff inform the company that it is denying the no action letter request. If you have any questions, please contact me at 413 549-7333 or sanfordlewis@strategiccounsel.net.

Sincerely,

Sanford Lewis
cc: Elizabeth Ising

²⁷ For instance, such a vote is more than even the third-year threshold set for resubmission of proposals, 25%, under the controversial amendments to Rule 14a-8(i)(12).

²⁸ Citigroup <https://www.sec.gov/divisions/corpfin/cf-noaction/14a-8/2018/ctwinvestment030618-14a8.pdf>

January 15, 2021

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 2021 Annual Meeting of Shareholders (collectively, the “2021 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 2021 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 the Proposal, a copy of that correspondence should be furnished concurrently to the undersigned on behalf of the Company pursuant to Rule 14a-8(k) and SLB 14D.

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THE PROPOSAL

The Proposal states (in part):

RESOLVED: Shareholders urge the Board of Directors to issue a report evaluating opportunities to address the company's role in systemic racism by enhancing its policies applicable to any suppliers utilizing incarcerated workers.

SUPPORTING STATEMENT: Shareholders recommend that the report examine, at the board and management's discretion, the benefits and drawbacks of enhancing supplier policies such as requiring:

- Payment to workers of local prevailing wage and transparency of wage payments for incarcerated workers;
- Additional company or independent mechanisms for verification of voluntariness of labor;
- Programs to support prisoner transitions to the workforce following incarceration, such as counseling on careers, job applications, and interview preparation.

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 respectfully request that the Staff concur in our view that the Proposal may be excluded from the 2021 Proxy Materials pursuant to Rule 14a-8(i)(7) because the Proposal relates to the Company's ordinary business operations and does not focus on a significant policy issue.

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 makes limited references to "systemic racism," the Proposal does not focus on any significant policy issue under the meaning of Rule 14a-8(i)(7) and is excludable because it focuses on the Company's policies pertaining to lawful, uncoerced prison labor that may occur in the Company's supply chain. The Proposal itself recognizes that the Company currently has a policy that prohibits "involuntary and exploitative prison labor," and appears to question whether the Company's policy should be enhanced and if the Company adequately monitors for and reports on compliance with such prohibition and other existing supplier standards. To this end, the Supporting Statement specifically addresses not only the

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compensation of incarcerated workers and “mechanisms for verification of voluntariness of labor,” but also the development of programs relating to post-incarceration support and counseling.

The Company’s responsible sourcing program, including the Company’s current 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 currently 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 provide 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 these matters with respect to the Company’s supply chain.

The Company’s 2020 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 several Company measures in place to monitor and support compliance with its business and ethics standards. For example, the Audit Committee of the 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 conduct compliance

¹ Available at <https://corporate.homedepot.com/social-and-environmental-responsibility-standards>, as currently in effect as of January 15, 2021 and attached hereto as Exhibit B.

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 2020 Responsible Sourcing Report, available at https://corporate.homedepot.com/sites/default/files/THD_RS_Report.pdf, at 9, 11.

⁴ See *id.*

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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 1,354 factory audits in 2019 in 38 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 2019, 2018, and 2017 identified any use of prison labor.

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." *Id.*

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

⁵ Report at page 8.

⁶ *Id.* at page 11.

⁷ *Id.* at page 15.

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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 relating to “enhancing its policies applicable to any suppliers utilizing incarcerated workers.” As noted in the “Whereas” paragraphs (the “Recitals”) immediately preceding the “Resolved” clause, the “Proponent believes that the Company would benefit from strengthening of policies related to prison labor identified in the supply chain.” Thus the thrust and focus of the Proposal, as reiterated in the “Resolved” clause, Supporting Statement, and Recitals, as demonstrated below, are that the Company does not currently prohibit all prison labor and the Proposal’s corresponding request for the Company to therefore enhance its policies relating to prison labor. In this regard, the Proposal states:

- “Because the [C]ompany prohibits ‘involuntary or exploitative prison labor,’ the Proponent presumes that prison labor deemed ‘voluntary and non-exploitative’ will be permitted in the Company’s supply chain.”
- “In the U.S., despite its legality, sometimes incarcerated individuals work in unsafe or unhealthy conditions” and some may “work for no pay” or little pay.
- The Proposal also raises the potential for “reputational harm from a connection to prison labor,” including “financial and operational risk for companies including supply chain disruption, litigation, and reputational damage.”
- Notably, the “Resolved” clause focuses on “enhancing [the Company’s] policies applicable to any suppliers utilizing incarcerated works.”

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- Further, the Supporting Statement is focused on enhanced disclosure of how the Company can further strengthen: its policies relating to prison labor (by promoting payment of a “local prevailing wage”); enforcement of its existing policies (*i.e.*, “independent mechanisms for verification of voluntariness of labor”); and its provision of vocational support for prisoners transitioning into the workforce (“such as counseling on careers, job applications, and interview preparation”).

The foregoing reveals that the Proposal is focused on the Company’s policies relating to the potential use of lawful, uncoerced prison labor in its supply chain, including its supply chain standards, and monitoring and verifying compliance therewith. Notably, 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. Of particular relevance here is the Staff’s recent consideration of a similar proposal submitted by the Proponent in *The Home Depot, Inc.* (avail. Mar. 20, 2020) (“*Home Depot 2020*”), which requested a report “summarizing the extent of known usage of prison labor in the company’s supply chain.” The proposal’s supporting statements requested, among other things, metrics regarding the number of supplier audits completed by the Company or third-party auditors regarding the presence of prison labor in the Company’s supply chain and an evaluation of risks to the Company’s finances, operations and reputation related to prison labor in its supply chain. The Company argued that the proposal was excludable as ordinary business because, among other reasons, it related to decisions regarding the Company’s suppliers and enforcement of its existing standards of supplier conduct. The Staff concurred with exclusion under Rule 14a-8(i)(7). Like the proposal at issue in *Home Depot 2020*, here the Proposal also raises the potential for “reputational harm from a connection to prison labor,” further asserting that such connection “can pose financial and operational risks for companies.” As in *Home Depot 2020*, the Proposal focuses on the potential use of prison labor in the Company’s supply chain and on the manner in which the Company verifies compliance with its existing policies (*i.e.*, “mechanisms for verification of voluntariness of labor”). Because the Proposal likewise focuses on the Company’s supplier relationships, including policies and standards relating thereto, like *Home Depot 2020*, the Proposal is excludable pursuant to Rule 14a-8(i)(7).

Similarly, 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 requested information relating to “[t]he extent to which company codes of conduct are applied to apparel suppliers and subcontractors”; “[p]rocess and procedures for monitoring compliance with corporate codes of

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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 The TJX Companies, Inc.* (avail. Mar. 20, 2020) (concurring with exclusion of a substantially similar proposal to *Home Depot 2020* under Rule 14a-8(i)(7)); *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”); and *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”).

Like in *Home Depot 2020* and *Foot Locker*, the Proposal seeks to influence the manner in which the Company monitors its supplier relationships. In this regard, the Proposal addresses almost all of the same underlying issues that were raised in the proposal in *Home Depot 2020*: the potential use of prison labor (whether involuntary or voluntary) within the supply chain, auditing of the Company’s suppliers, alleged unsafe or unhealthy working conditions, coercive practices where “some may be coerced into working by threat of punishment for declining work” (which is similar to the statement in the *Home Depot 2020* proposal that “people may be coerced into working by threat of punishment for declining work”), and potential reputational harm in connection with prison labor. As previewed above, the Proposal is even more focused on ordinary business matters than the proposal in *Home Depot 2020* because the Supporting Statement and Recitals make clear that it is solely focused on “prison labor deemed ‘voluntary and non-exploitative.’” In this regard, the Supporting Statement addresses a number of issues that relate solely to non-coerced, compensated labor, such as “wage payments for incarcerated workers,” “verification of voluntariness of labor,” and “[p]rograms to support prisoner transitions to the workforce following incarceration, such as counseling on careers, job applications, and interview preparation.” As discussed below, and as was the case in *Home Depot 2020*, *Foot Locker* and the other precedent above, 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.

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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] 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 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 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 the company's code of conduct 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)"); and *NYNEX Corp.* (avail. Feb. 1, 1989) (concurring with the exclusion of a proposal related to the formation of a special committee of the board 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 relating to the Company's "policies applicable to any suppliers utilizing incarcerated workers" as well as an examination of "the benefits and drawbacks of enhancing supplier policies" regarding a number of issues that relate solely to non-coerced and compensated labor. As noted above, the Responsible Sourcing Standards currently include an express prohibition of forced labor and the use of any prison or convict labor that is inconsistent with applicable local laws and provide that suppliers must meet or exceed the minimum wage and compensation requirements as defined under applicable labor laws. Developing and maintaining relationships with suppliers and determining how best to manage those relationships are an important management responsibility, including how the Company decides to encourage its suppliers to pursue or address the issues raised by the Supporting Statement. As described in

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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, including requiring suppliers to meet or exceed the relevant minimum wage and compensation requirements, and the Company monitors and enforces the Responsible Sourcing Standards to which its suppliers must adhere. As noted above and in the Report, the Company regularly performs supplier audits, and such audits include an assessment of whether there is any use of prison labor. Thus, similar to *Mattel*, 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 *Home Depot 2020*, *Foot Locker*, *Mattel*, 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 make broad reference to “work in unsafe or unhealthy conditions,” and that “[c]orrectional industries workers may be paid as little as \$0.33-\$1.41 per hour.” 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.

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The Staff has recognized that proposals relating to workplace safety are a matter of ordinary business and excludable under Rule 14a-8(i)(7).⁸ For example, as discussed above, in *Home Depot 2020*, the proposal addressed a number of the same issues the Proposal such as “worker mistreatment,” wage and compensation issues, and “work that sometimes occurs in unsafe or unhealthy conditions.” In addition to the basis described above, in *Home Depot 2020*, the Company also argued that the proposal was excludable as relating to overall workplace safety, workplace conditions, and general worker compensation issues. The Staff concurred with exclusion under Rule 14a-8(i)(7). Similarly, 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 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.” This is similar to the Proposal’s request for “verification of voluntariness of labor” and “[p]rograms to support prisoner transitions to the workforce.” 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 raises concerns with respect to “reputational harm from a connection to prison labor” and generally seeks enhancement of the Company’s “policies applicable to any suppliers utilizing incarcerated workers.” 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.

⁸ 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”); 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”).

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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 mentions “incarcerated people [who] are forced to work for no pay” 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).

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, including those relating to relevant minimum wage and compensation requirements) relate to the Company’s ordinary business. Thus, consistent with *Home Depot 2020* and 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

As mentioned above, the plain language of the Proposal, including the Supporting Statement in particular, is focused on the Company’s policies and practices as they relate to suppliers’ potential use of incarcerated workers, including monitoring compliance therewith and developing and encouraging programs relating to the transitioning of former prisoners into the workforce; all of which are relevant to uncoerced, paid labor, and thus implicate a host of ordinary business matters. While the Proponent attempts to reframe the scope of the Proposal by including limited references to “systematic racism” (one in the Recitals and one in the “Resolved” clause), these references do not shift the foregoing focus of the Proposal or transcend the Company’s ordinary business operations. The Company agrees that these types of issues are important and is committed to supporting change “that will bring us closer to realizing an end to discrimination and hatred.”⁹ However, the Proposal remains focused on the Company’s policies relating to voluntary prison labor and, outside of the two limited references to “systematic racism,” does not otherwise address issues relating to race, ethnicity, diversity, inclusion, or discrimination.

⁹ *See, e.g.,* Message From Craig Menear – Racial Equality & Justice For All, available at <https://corporate.homedepot.com/newsroom/message-craig-menear-%E2%80%93-racial-equality-justice-all>.

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In fact, the Proposal does not use the phrase “human rights,” “abuse,” “ethnicity,” or “discrimination” in referring to the issues of “systematic racism” raised in the Proposal. The Proposal also makes no reference to allegations of human rights abuse or discrimination within the Company’s supply chain and takes issue instead with the fact that the Company has not, as of the date of this letter, prohibited the use of lawful, voluntary prison labor in its supply chain. Additionally, nothing in the Proposal ties the concerns regarding “systemic racism” to the Company or its actions. The Proposal makes a blanket assertion, with no factual support, that prison labor is “inextricably linked to systematic racism.” But the Proposal does not explain this assertion or how this link is relevant or specific to the Company’s policies or practices, as they relate to the potential use of incarcerated workers in the Company’s supply chain, beyond a broad, sweeping theoretical generalization that could apply to any company operating in today’s social and political climate. Moreover, although the Proposal suggests that “prison labor is an outgrowth of slavery in the U.S.,” the scope of the Proposal does not appear limited to the United States.

Consistent with the 1998 Release, the Staff routinely concurs with the exclusion of proposals that relate to ordinary business decisions even where the proposal may reference a significant policy issue. For example, in *Amazon.com, Inc. (Domini Impact Equity Fund)* (avail. Mar. 28, 2019), the proposal requested that the board annually report to shareholders “its analysis of the community impacts of [the company’s] operations, considering near- and long-term local economic and social outcomes, including risks, and the mitigation of those risks, and opportunities arising from its presence in communities.” In its no-action request, the company successfully argued that “[e]ven if some of [the] issues that would be addressed in the report requested by the [p]roposal could touch upon significant policy issues within the meaning of the Staff’s interpretation, the [p]roposal is not focused on those issues, but instead encompasses a wide range of issues implicating the [c]ompany’s ordinary business operations within the meaning of Rule 14a-8(i)(7), and therefore may properly be excluded under Rule 14a-8(i)(7).” The Staff concurred and granted no-action relief under Rule 14a-8(i)(7) noting that “the [p]roposal relates generally to ‘the community impacts’ of the [c]ompany’s operations and does not appear to focus on an issue that transcends ordinary business matters.” Similarly, and as demonstrated above, the focus of the Proposal is on the Company’s policies relating to its suppliers, an ordinary business matter, undiminished by two limited references to “systemic racism” in the abstract and in spite of the Proposal’s assumption that the Proposal’s request to enhance “its policies applicable to any suppliers utilizing incarcerated workers” would address any alleged “role in systemic racism.”

Additionally, in *The Walt Disney Co.* (avail. Jan. 8, 2021) (“*Walt Disney 2021*”), the proposal sought a report “assessing how and whether [the company] ensures [its] advertising policies are not contributing to violations of civil or human rights.” Despite concerns that the company’s policies were “contributing to the spread of racism, hate speech, and disinformation,” and notwithstanding references to recent events involving racial justice and Black Lives Matter, the Staff concurred that the proposal was excludable under Rule 14a-8(i)(7) as relating to ordinary

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business matters. Here, the Proposal presents an even more compelling case for exclusion, as the Proposal includes only two underdeveloped references to “systemic racism” that do not otherwise detract from the Proposal’s focus on ordinary business matters. *See also Walmart Inc.* (avail. Apr. 8, 2019) (concurring with the exclusion of a proposal requesting that the board prepare a report evaluating the risk of discrimination that may result from the company’s policies and practices for hourly workers taking absences from work for personal or family illness because it related to the company’s ordinary business operations, *i.e.*, the company’s management of its workforce, and “[did] not focus on an issue that transcends ordinary business matters”); *PetSmart, Inc.* (avail. Mar. 24, 2011) (concurring with the exclusion of a proposal requesting the board to require its suppliers to certify that they had not violated “the Animal Welfare Act, the Lacey Act, or any state law equivalents” noting that “[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.” Likewise, as discussed above, in *Home Depot 2020*, the proposal encompassed all manner of prison labor (voluntary and involuntary) and therefore broadly implicated day-to-day workforce issues that confront the Company’s suppliers. Despite the fact that the proposal touched on involuntary prison labor, the Staff concurred with exclusion under Rule 14a-8(i)(7). *See also Foot Locker* (concurring with the exclusion of a proposal entitled “Supplier Labor Standards” that took issue with violations of human rights in overseas operations, child labor and “sweatshop” conditions, where two out of four recitals addressed human rights in the company’s supply chain); *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

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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).

While the Proposal makes limited references to matters that may be significant policy issues, the overall text of the Proposal makes clear that it focuses on ordinary business matters. In this regard, the Proposal is similar to the proposals in *Home Depot 2020* and *Walt Disney 2021*, each of which the Staff recently concurred was excludable under Rule 14a-8(i)(7) notwithstanding references to forced prison labor and racial injustice, respectively. Like in *Home Depot 2020*, the Proposal is concerned with the manner in which the Company monitors its suppliers' conduct, including what practices the Company encourages its suppliers to pursue or address, particularly as they relate to the use of incarcerated workers, and is thus properly excludable under Rule 14a-8(i)(7).

In summary, the Proposal is primarily focused on the potential use of uncoerced, lawful prison labor and concerns compliance with the Company's related 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 *Home Depot 2020*, *Foot Locker*, *Pilgrim's Pride*, *Mattel*, 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 2021 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 3, 2020

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, incarcerated people sometimes work under circumstances that are inhumane and/or unpaid, posing a risk to shareholder value for any company found associated with suppliers or service providers using prison labor. We believe the Company may benefit from considering strengthening policies related to prison labor identified in the supply chain.

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 a report to shareholders on enhancements to policies related to suppliers using incarcerated workers.

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

WHEREAS:

Prison labor – voluntary and forced – is allowed in the United States due to an exception in the 13th amendment to the Constitution: “Neither slavery nor involuntary servitude, except as a punishment for crime...”;

Modern prison labor is an outgrowth of slavery in the U.S. The Brennan Center for Justice explains that after slavery was abolished, “Southern states codified punitive laws, known as the Black Codes, to arbitrarily criminalize the activity of their former slaves.” Soon after, formerly enslaved African Americans comprised 70% of the prison population. Then, “desperate for cheap labor and revenue,” Southern states began to lease convicts out to private parties for physical labor. To the present day, prison labor remains inextricably linked to systemic racism;

The Proponent recognizes that the Company’s 2020 Responsible Sourcing Report states that it prohibits forced labor as well as “involuntary or exploitative prison labor” and that it appears that the Company has revised its policies to include requiring responsible sourcing audits of at least some manufacturers in the United States;

Because the company prohibits “involuntary or exploitative prison labor,” the Proponent presumes that prison labor deemed “voluntary and non-exploitative” will be permitted in the Company’s supply chain. The Company’s Responsible Product Standards states that the use of prison labor “must be consistent with the laws where the products are manufactured”;

In the U.S., despite its legality, sometimes incarcerated individuals work in unsafe or unhealthy conditions. Reports indicate that some may be coerced into working by threat of punishment for declining work. Correctional industries workers may be paid as little as \$0.33-\$1.41 per hour. In some states, incarcerated people are forced to work for no pay;

Regardless of the legal nature of prison labor in the U.S., companies have experienced public backlash, boycotts, and long-term brand name and reputation harm from a connection to prison labor. This can pose financial and operational risks for companies including supply chain disruption, litigation, and reputational damage;

The Proponent believes that the Company would benefit from strengthening of policies related to prison labor identified in the supply chain.

RESOLVED: Shareholders urge the Board of Directors to issue a report evaluating opportunities to address the company’s role in systemic racism by enhancing its policies applicable to any suppliers utilizing incarcerated workers.

SUPPORTING STATEMENT: Shareholders recommend that the report examine, at the board and management's discretion, the benefits and drawbacks of enhancing supplier policies such as requiring:

- Payment to workers of local prevailing wage and transparency of wage payments for incarcerated workers;
- Additional company or independent mechanisms for verification of voluntariness of labor;
- Programs to support prisoner transitions to the workforce following incarceration, such as counseling on careers, job applications, and interview preparation.

December 9, 2020

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 by the NorthStar Asset Management Funded Pension Plan filed for the next proxy statement. 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 mschwartz@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

Morgan Stanley

December 7, 2020

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 3, 2020, the NorthStar Asset Management, Inc. Funded Pension Plan held 319 shares of The Home Depot, Inc. common stock valued \$85,536.66. Morgan Stanley Wealth Management has continuously held 318 of those shares valued at \$85,268.52 on behalf of the NorthStar Asset Management Funded Pension Plan since December 3, 2019.

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,

APPROVED

By Stephen Calderara at 12:56 pm, Dec 07, 2020

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

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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.

EXHIBIT B



More saving. More doing.™

RESPONSIBLE SOURCING STANDARDS

The Home Depot and its affiliates, divisions, and subsidiaries strive to conduct business in a responsible manner. As we expand our business activities and work with suppliers domestically and globally to meet customers' needs, it is important to preserve our collective commitment to human rights and safety in the workplace.

The Home Depot expects that all suppliers will abide by all applicable international and local laws, rules and regulations in the manufacture and distribution of merchandise or services provided to The Home Depot. All suppliers are strongly encouraged to exceed The Home Depot's guidelines and promote continuous improvement throughout their operations.

All suppliers must be able to demonstrate compliance with these requirements at the request of The Home Depot.

These guidelines provide an introduction to the minimum requirements that all Suppliers must meet in order to conduct business with The Home Depot. These requirements are part of all commercial agreements with The Home Depot.

Laws and Regulations

Suppliers must operate in full compliance with all applicable laws and regulations of the countries in which they operate.

Child Labor

Suppliers must not employ workers younger than the greater of 15 years of age -- or 14 where the local law allows such exception consistent with International Labor Organization guidelines -- or the age for completing compulsory education or the minimum age established by law in the country of manufacture.

In addition, Suppliers must comply with all local legal requirements for the work of authorized young workers, particularly those pertaining to hours of work, wages, and working conditions.

Forced Labor

Suppliers must not use forced, bonded (including debt bondage) or indentured labor, involuntary or exploitative prison labor, nor shall suppliers participate in slavery or trafficking of persons. This includes transporting, harboring, recruiting, transferring or receiving persons by means of threat, force, coercion, abduction or fraud for labor or services. The 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.

There shall be no unreasonable restrictions on workers' freedom of movement in the facility in addition to unreasonable restrictions on entering or exiting company provided facilities.

As part of the hiring process, workers must be provided with all documents relevant to their employment in a language they understand with a description of terms and conditions of employment prior to the worker departing from his or her country of origin, and there shall be no substitution or change(s) allowed in such documentation upon arrival in the receiving country unless these changes are made to meet local law and provide equal or better terms.

All work must be voluntary and workers shall be free to terminate their employment. Employers and agents may not hold or otherwise destroy, conceal, confiscate or deny access by employees to their identity or immigration documents, such as government-issued identification, passports or work permits, unless such holdings are required by law.

Foreign migrant factory workers should not be required to pay employers' or agents' recruitment fees or other related fees for the purpose of being hired or as a condition of employment.

Harassment and Abuse

Suppliers must treat all workers with respect and dignity. No worker shall be subject to corporal punishment, or physical, sexual, psychological or verbal harassment or abuse. In addition, Suppliers will not use monetary fines as a disciplinary practice.

Compensation

Suppliers must meet or exceed the minimum wage and compensation requirements as defined under applicable labor laws, applicable agreements and local regulations for regular work, overtime work, production rates and other elements of compensation and employee benefits.

Hours of Work

Suppliers must ensure that, except in extraordinary business circumstances, on a regularly scheduled basis, workers shall not be required to work more than the lesser of (a) sixty (60) hours per week, including overtime or (b) the limits on regular and overtime hours allowed by the law of the country of manufacture. In addition, except in extraordinary business circumstances, all workers shall be entitled to at least one day off in every consecutive seven day period.

Non Discrimination

Suppliers will ensure employment – including hiring, salary, benefits, advancement, discipline, termination, retirement, or any other terms and conditions of employment – should be based solely on the person's ability to perform the job requirements and not the person's beliefs or any other personal characteristics.

Freedom of Association and Collective Bargaining

Suppliers must recognize and respect the rights of workers to exercise lawful rights of free association, including joining or not joining any association. Suppliers must also respect the legal right of workers to bargain collectively.

Health and Safety

Suppliers must provide a safe and healthy working environment in accordance with applicable laws and regulations.

Environment

Suppliers must comply with all local environmental laws and regulations applicable to the workplace. Factories must conduct business in a manner which minimizes their impact on the environment.

Subcontracting

Suppliers must not use subcontractors in the manufacture of products or product components for The Home Depot without disclosing such information to The Home Depot, and only after the subcontractor has adequately demonstrated compliance with these Responsible Sourcing Standards.

Communication

Suppliers must communicate the provisions of The Home Depot Responsible Sourcing Standards to all workers and supervisors.

Business Ethics

Suppliers will conduct business with The Home Depot consistent with honesty and integrity and demonstrate the highest standards of business ethics. Suppliers will take no actions directed at improperly impacting the results of any audit including presentation of falsified records or coaching of employees. Consistent with The Home Depot Gift and Entertainment policy, Suppliers will not offer any incentives to The Home Depot's associates or audit firm representatives.

Monitoring and Compliance

The Home Depot will undertake affirmative measures, such as announced and unannounced on-site audits of production factories, to monitor compliance with these Responsible Sourcing Standards. Suppliers must maintain on site all documentation necessary to demonstrate compliance with the Responsible Sourcing Standards, and Suppliers must allow Associates and/or representatives from The Home Depot full access to production facilities, worker records, production records and workers for confidential interviews in connection with monitoring visits.

Suppliers are expected to take necessary corrective actions to promptly remediate any noncompliance. Suppliers are expected to actively engage in remediation – including timely preparation and presentation of a Corrective Action Preventative Action (CAPA) plan. The Home Depot reserves the right to terminate its business relationship with any Supplier who is unwilling to comply with these Responsible Sourcing Standards.