

February 8, 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 TJX Companies, Inc.*  
*Shareholder Proposal of the NorthStar Asset Management, Inc.*  
*Funded Pension Plan*  
*Securities Exchange Act of 1934—Rule 14a-8*

Ladies and Gentlemen:

This letter is to inform you that our client, The TJX Companies, Inc. (the “Company”), intends to omit from its proxy statement and form of proxy for its 2021 Annual Meeting of Shareholders (collectively, the “2021 Proxy Materials”) a shareholder proposal (the “Proposal”), including statements in support thereof (the “Supporting Statement”), 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 of TJX Companies urge the Board of Directors to produce a report to shareholders evaluating whether the company is supporting systemic racism through undetected supply chain prison labor.

**SUPPORTING STATEMENT:** Shareholders recommend that the report be prepared at reasonable cost and omitting proprietary information, and include at the board and management's discretion:

- Annual quantitative metrics regarding the number of supplier audits completed by the Company or third party auditors that evaluated the extent to which prison labor is present in the supply chain, as well as the summary of those audits' results and the racial makeup of any prison labor workforces detected;
- Assessment of the effectiveness of current company policies and practices in preventing the utilization of prison labor in the company's supply chain;
- Evaluation of any risks to finances, operations, and reputation linking the company to systemic racism from detected or undetected uses of prison labor in the TJX supply chain.

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

## BASIS FOR EXCLUSION

We hereby respectfully request that the Staff concur in our view that the Proposal may be excluded from the 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 for purposes of Rule 14a-8.

## BACKGROUND

The 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

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meaning of Rule 14a-8(i)(7) and is excludable because it focuses on the Company's policies pertaining to all manner of prison labor in the Company's supply chain, which necessarily includes voluntary, paid labor occurring under safe working conditions. The Proposal recognizes that the Company already has a policy that "prohibits 'voluntary or involuntary prison labor.'" However, the Proposal appears to question whether the Company adequately monitors for and reports on compliance with such prohibition and other existing supplier standards addressing ordinary business matters such as general worker compensation, working conditions, and workplace safety.

The Company believes in the importance of ethical sourcing in its supply chain and is committed to responsible business practices. The Company's merchandise vendors are required to comply with the Company's Vendor Code of Conduct (the "Code"), which is the foundation of the Company's Global Social Compliance Program, pursuant to the terms of the Company's purchase order terms and conditions.<sup>1</sup> The Code requires that goods the Company sells be manufactured in accordance with all applicable laws and regulations, and it reflects the Company's high standards, embracing internationally recognized principles designed to protect the interests of the workers who manufacture products for sale in the Company's stores. The Code specifically addresses the issue of forced labor and expressly prohibits prison labor (both voluntary and involuntary), indentured labor, bonded labor, labor acquired through slavery or human trafficking, and all other forms of involuntary or forced labor. These prohibitions and all other requirements in the Code apply even if a vendor maintains its own code of conduct, monitoring, or ethical sourcing guidelines.

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

The Company's 2020 Global Corporate Responsibility Report (the "Report")<sup>2</sup> describes how the Company addresses these ordinary business matters relating to its supply chain through its Global Social Compliance Program, including a number of the Company's measures in place to support compliance with its business and ethics

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<sup>1</sup> Available at <https://www.tjx.com/responsibility/responsible-business/social-compliance/vendor-code-of-conduct>.

<sup>2</sup> Available at <https://www.tjx.com/docs/default-source/corporate-responsibility/tjx-2020-global-corporate-responsibility-report.pdf>.

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standards. For example, the Company's Social Compliance Committee, which includes senior leadership from the U.S., Canada, the U.K., and Europe, meets on a regular basis to oversee the Company's ethical sourcing initiatives.<sup>3</sup> The Report provides information regarding the Company's auditing and compliance efforts, including, among other things, the Company's process for conducting and receiving regular audits of factories manufacturing products the Company designs and has manufactured; the Company's training sessions, which it conducts on a regular basis, to educate the Company's buyers, buying agents, vendors, and factory management on the Company's social compliance standards, including the Code; and the Company's grievance mechanisms for Company employees and external stakeholders, including vendor personnel.<sup>4</sup> With respect to the Company's auditing processes, as noted in the Report, during fiscal year 2020, the Company audited or received audit reports from more than 2,000 factories, with approximately 700 of those audits having been conducted by the Company in conjunction with its third-party auditors, and with the remaining audits conducted by industry-accepted, accredited third-party sources.<sup>5</sup>

## ANALYSIS

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

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

#### *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

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<sup>3</sup> *Id.* at 78.

<sup>4</sup> *See generally id.* at 85-94.

<sup>5</sup> *Id.* at 81.

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business exclusion is “to confine the resolution of ordinary business problems to management and the board of directors, since it is impracticable for shareholders to decide how to solve such problems at an annual shareholders meeting.”

The 1998 Release further distinguishes proposals pertaining to ordinary business matters from those involving “significant social policy issues” (citing Exchange Act Release No. 12999 (Nov. 22, 1976)). While “proposals . . . focusing on sufficiently significant social policy issues (e.g., significant discrimination matters) generally would not be considered excludable,” the Staff has indicated that proposals relating to both ordinary business matters and significant social policy issues may be excludable in their entirety in reliance on Rule 14a-8(i)(7) if they do not “transcend the day-to-day business matters” discussed in the proposals. 1998 Release. In this regard, when assessing proposals under Rule 14a-8(i)(7), the Staff considers “both the proposal and the supporting statement as a whole.” Staff Legal Bulletin No. 14C, part D.2 (June 28, 2005).

Moreover, framing a shareholder proposal in the form of a request for a report does not change the nature of the proposal. The Commission has stated that a proposal requesting the dissemination of a report may be excludable under Rule 14a-8(i)(7) if the subject matter of the report is within the ordinary business of the issuer. *See* Exchange Act Release No. 20091 (Aug. 16, 1983); *see also Johnson Controls, Inc.* (avail. Oct. 26, 1999) (“[Where] the subject matter of the additional disclosure sought in a particular proposal involves a matter of ordinary business . . . it may be excluded under [R]ule 14a-8(i)(7).”).

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

The Proposal requests a report relating to “undetected supply chain prison labor.” As noted in the recitals immediately preceding the “Resolved” clause (the “Recitals”), the Proponent believes that “the Company would benefit from more robust reporting related to prison labor identified in the supply chain.” Notably, the Proposal does not seek to alter the Company’s existing policies pertaining to its suppliers or modify its supply chain standards. Rather, the Proposal recognizes that “the [C]ompany prohibits ‘voluntary or involuntary prison labor’” and that the Company has an existing auditing program in place. Thus, as demonstrated in the “Resolved” clause, the Supporting Statement, and the Recitals cited below, the Proposal focuses on the issue of all forms of prison labor (both voluntary and involuntary) and the Company’s existing policies and practices for monitoring supplier compliance with the Company’s policies related to prison labor in the Company’s supply chain. For example, the Recitals state:

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- “[The Company] does not, to the Proponent’s knowledge, verify vendor compliance with [the Company’s prohibition of all forms of prison labor] other than with the manufacturers of private label products – a percentage not disclosed publicly but previously described by [the Company] as a ‘small amount’ of total vendors.”
- “Prison labor – voluntary and forced – is allowed in the United States.”
- “In the U.S., sometimes incarcerated individuals work in unsafe or unhealthy conditions” and some “are forced to work for no pay.”
- There is potential for “long-term brand name and reputation harm from a connection to prison labor” that can “pose financial and operational risks . . . including supply chain disruption, litigation, and reputational damage.”

Further, the Supporting Statement concerns ordinary business matters, namely, enhanced disclosure regarding the Company’s existing policies and practices for monitoring and evaluating supplier compliance, including disclosure of: “[a]nnual quantitative metrics regarding the number of supplier audits completed by the Company or third party auditors that evaluated the extent to which prison labor is present in the supply chain”; an “[a]ssessment of the effectiveness of current [C]ompany policies and practices in preventing the utilization of prison labor”; and an assessment of “any risks to finances, operations, and reputation . . . from detected or undetected uses of prison labor in [the Company’s] supply chain.”

The foregoing demonstrates that the Proposal focuses on the Company’s existing policies and practices with respect to its supply chain standards and how it monitors and verifies compliance therewith. Notably, as highlighted above, the Company already has an existing supplier standard of conduct (the Code) that reflects the Company’s own high standards and embraces internationally recognized principles designed to protect the interests of the workers who manufacture products for sale in the Company’s business; expressly prohibits prison labor, whether voluntary or involuntary; and requires that merchandise vendors be transparent and honest in all communications with the Company, its auditors, and its agents. The Company also has auditing efforts devoted to products it designs and has manufactured, as that is where the Company believes its efforts will be most likely to have a meaningful impact.<sup>6</sup> When the Company sources these products, it requires buying agents and vendors that are involved to identify any active factories they

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<sup>6</sup> Report, at 80.

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use, or intend to use, to produce such merchandise.<sup>7</sup> As described in the Report, on-site audits generally include, without limitation, the following components:

- an interview with factory management (opening meeting);
- policy, payroll, and documentation review, including confirmation that factory management has verified the ages of job applications before hiring to protect against potential hiring of child labor;
- a factory walk-through;
- health and safety inspections;
- confidential worker interviews; and
- closing meeting with factory management.<sup>8</sup>

Moreover, there are several issues the Company considers to be “zero tolerance” issues. The Company’s policy is to immediately terminate use of a factory found to be in violation of certain aspects of the Company’s Global Social Compliance Program, including for example, prison, or slave labor; human trafficking; and failure to pay any wages.<sup>9</sup>

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 to the Company by the Proponent in *The TJX Companies, Inc.* (avail. Mar. 20, 2020) (“*TJX 2020*”), which requested a report “assessing the effectiveness of current [C]ompany policies for preventing prison labor in the [C]ompany’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 *TJX 2020*, here the Proposal also raises the

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<sup>7</sup> *Id.*

<sup>8</sup> *Id.* at 81.

<sup>9</sup> *Id.* at 82.

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potential for “reputation harm from a connection to prison labor,” further asserting that such connection “can pose financial and operational risks for companies.” As in *TJX 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.*, “quantitative metrics regarding the number of supplier audits completed by the Company or third party auditors that evaluated the extent to which prison labor is present in the supply chain”). Because the Proposal likewise focuses on the Company’s supplier relationships, including policies and standards relating thereto, like *TJX 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 specifically requested information relating to: “[t]he extent to which company codes of conduct are applied to apparel suppliers and sub-contractors”; “[p]rocess and procedures for monitoring compliance with corporate codes of conduct by apparel suppliers and sub-contractors”; and “[p]rocess and procedures that the company has in place for dealing with code non-compliance by apparel suppliers and sub-contractors.” The company argued that the proposal sought to “influence the manner in which the [c]ompany monitors the conduct of its suppliers and their subcontractors” and that “[t]he extent to which a company applies and enforces its code of conduct on suppliers and their subcontractors” was an ordinary business matter. In concurring with exclusion, the Staff noted “the proposal relates broadly to the manner in which the company monitors the conduct of its suppliers and their subcontractors.” *See also The Home Depot, Inc.* (avail. Mar. 20, 2020) (concurring with exclusion under Rule 14a-8(i)(7) of a substantially similar proposal to *TJX 2020*); *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”).

As in *TJX 2020* and *Foot Locker*, the Proposal seeks to influence the manner in which the Company monitors its supplier relationships. In this regard, the Proposal focuses on almost all of the same issues that were the focus of the proposal in *TJX 2020*: the Company’s existing prohibition of both “voluntary or involuntary’ prison labor”; the

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potential undetected use of prison labor within the Company's supply chain; auditing of the Company's suppliers; alleged unsafe or unhealthy working conditions; pay practices for "[c]orrectional industries workers" (which is nearly identical to the discussion in *TJX 2020* of pay practices for such workers); coercive practices where "some may be coerced into working by threat of punishment for declining work" (which is similar to the statement in the *TJX 2020* proposal that "people may be coerced into working by threat of punishment for declining work"); and potential financial, operational, and reputational harm in connection with prison labor. As discussed below, and as was the case in *TJX 2020* and *Foot Locker* and the other precedent discussed above, the fact that the Proposal may touch upon a significant policy issue is insufficient to preclude relief where the Proposal relates to the ordinary business matters of the Company's relationships with its vendors and how the Company monitors compliance with its existing Code.

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

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directors to revise the existing code of corporate conduct because it related “to the [c]ompany’s ordinary business operations (*i.e.* the particular topics to be addressed in the company’s code of conduct”).

Similarly, the Proposal necessarily entails a review of the Company’s existing standards of ethical behavior applicable to its suppliers (*i.e.*, the Code) by seeking a report related to the use of “undetected supply chain prison labor” and suggesting that the report include “[a]nnual quantitative metrics regarding the number of supplier audits completed by the Company or third party auditors” that evaluate compliance with the Code and an “[a]ssessment of the effectiveness of current [C]ompany policies and practices in preventing the utilization of prison labor in the [C]ompany’s supply chain.” Developing and maintaining relationships with vendors and determining how best to manage those relationships, including how the Company decides to encourage its suppliers to pursue or address the issues raised by the Recitals, are important management responsibilities. As described in the “Background” section above, the Company already requires its merchandise vendors to comply with a wide variety of business and ethical standards, including the Code, and, as explained in the Report, the Code requires that merchandise vendors agree to be transparent and honest in all communications with the Company, its auditors and agents. Further, as noted above and as acknowledged by the Proposal, the Company’s existing practices already prohibit the use of both involuntary and voluntary prison labor in its supply chain. The Code also requires that merchandise vendors ensure that all subcontractors and any other third parties they use in the production or distribution of goods offered for sale by the Company comply with the Code’s principles. In addition, as noted above and in the Report, the Company, in conjunction with its third-party auditors, regularly performs audits of factories manufacturing products designed by and manufactured for the Company, and such audits, among other things, include an assessment of the use of prison labor. In addition, the Company routinely trains its buyers, buying agents, vendors, and factory management on its policies, including the Company’s policy prohibiting prison labor. Thus, similar to *Mattel*, by seeking to require the Company to report on its suppliers’ compliance with the Code, the Proposal delves into the terms of the Company’s relationships with its suppliers and compliance with its existing policies such that it is properly excludable under Rule 14a-8(i)(7).

The extent to which a company oversees, applies, and enforces compliance with its supplier code of conduct (such as the Code) involves decisions that are fundamental to the company’s day-to-day operations and entails a variety of ordinary business considerations. The underlying subject matter of the Proposal addresses standards set forth in the Code, which involve the Company’s oversight of its merchandise vendors and their workforces. Such considerations are complex and cannot, as a practical matter, be subject to shareholder oversight. As such, consistent with *TJX 2020*, *Foot Locker*, *Mattel*, and the other well-established precedent discussed above, the Proposal is properly excludable

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under Rule 14a-8(i)(7) because it seeks a report concerning general adherence to the Company's existing ethical business practices and policies applicable to its merchandise vendors (*i.e.*, the Code), which relate to the Company's ordinary business operations.

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

Based on the language of the Proposal, taken as a whole, the Proposal appears concerned with a hypothetical subset of workers (*i.e.*, those who may be incarcerated notwithstanding the Company's express prohibition of all forms of prison labor), including such workers' level of compensation, health and safety, and working conditions, each of which has been recognized by the Staff as an ordinary business matter properly excludable under Rule 14a-8(i)(7). In this regard, the Recitals make broad references to the fact that "sometimes incarcerated individuals work in unsafe or unhealthy conditions" and that "[c]orrectional industries workers may be paid as little as \$0.33-\$1.41 per hour for work that sometimes occurs in unsafe or unhealthy conditions."

The Staff has recognized that proposals relating to workplace safety and working conditions are a matter of ordinary business and excludable under Rule 14a-8(i)(7).<sup>10</sup> For example, as discussed above, in *TJX 2020*, the proposal addressed a number of the same issues addressed in the Proposal, including "unsafe or unhealthy [working] conditions," worker coercion, and wage and compensation issues. In addition to the basis described above, in *TJX 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 the exclusion of the proposal 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*

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<sup>10</sup> 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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(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 request is similar to the Proposal’s request for a report on “the effectiveness of current [C]ompany policies for preventing prison labor in the [C]ompany’s supply chain” as well as “quantitative metrics regarding the number of supplier audits completed by the Company . . . that evaluated whether prison labor is present in the supply chain . . .” Additionally, the *Pilgrim’s Pride* proposal asserted that “detailed reporting would[] strengthen Pilgrim’s ability to assess and improve working conditions for its employees . . .” and “enable shareholders to better understand potential regulatory, legal, reputational and financial risks relating to [occupational health and safety].” That same reasoning is echoed in the Proposal, where it suggests that “the Company would benefit from more robust reporting related to prison labor identified in the supply chain” because of perceived “risk to [C]ompany brand name and shareholder value.” Similar to the proposals in the precedent cited above, the Proposal implicates a broad array of day-to-day workforce issues.

Likewise, the Staff has consistently recognized that shareholder proposals addressing minimum wage concerns are excludable as relating to ordinary business matters. See, e.g., *CVS Health Corp.* (avail. Mar. 1, 2017) (concurring with the exclusion of a proposal urging the board to adopt and publish principles for minimum wage reform as “relating to ordinary business operations” and, specifically, “general compensation matters”); *CVS Health Corp.* (avail. Feb. 23, 2016, *recon. denied* Mar. 8, 2016) (same); and *Chipotle Mexican Grill, Inc.* (avail. Feb. 23, 2016, *recon. denied* Mar. 8, 2016) (same). Similar to such proposals, the Proposal mentions “incarcerated people [who] are forced to work for no pay” and asserts that “[c]orrectional industries workers [who] may be paid as little as \$0.33-\$1.41 per hour.” Like the cited precedent, the Proposal’s minimum wage concerns fall squarely within the realm of ordinary business matters, and render the Proposal properly excludable under Rule 14a-8(i)(7).

The Company agrees that the issues raised in the Proposal are important. The Company’s Code incorporates human rights, labor rights, and anti-corruption standards and is grounded in a commitment to respecting the rights of all workers. Further, the Company, through the factory audit process it conducts in conjunction with its third-party auditors, audits factories manufacturing merchandise designed by and manufactured for the Company on a periodic basis, including with respect to prison labor. In addition, the

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Company routinely trains its buyers, buying agents, vendors, and factory management in various locations around the world on the Company's policies, including its policy against prison labor. However, because the Proposal focuses on matters deemed to be within the realm of ordinary business operations, consistent with *TJX 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 discussed above, the plain language of the Proposal, including the Recitals and the Supporting Statement, is focused on the Company's policies and practices as they relate to the undetected use by suppliers of incarcerated workers, including monitoring supplier compliance with the Code and evaluating financial, operational, and reputational risk to the Company "from detected or undetected uses of prison labor in [the Company's] supply chain," all of which are relevant to uncoerced, paid labor, and thus implicate a host of ordinary business matters. While the Proposal attempts to reframe the scope of the Proposal by including limited references to "systemic racism" (one in the Recitals, one in the "Resolved" clause and one in the Supporting Statement), these references neither shift the underlying thrust and focus of the Proposal nor do they transcend the Company's ordinary business operations. As noted above, the Company agrees that the issues raised in the Proposal are important. Further, the Company is committed to taking purposeful action to support racial justice and equity, including taking action to broaden the Company's giving strategy to provide more direct support to Black communities<sup>11</sup> and to further strengthen the Company's inclusion and diversity programs.<sup>12</sup> However, the Proposal remains squarely focused on the Company's policies relating to the theoretical use of prison labor in its supply chain.

The Proposal does not directly allege human rights abuse or discrimination within the Company's supply chain, and it does not request that the Company alter its policies pertaining to its suppliers. Additionally, nothing in the Proposal ties the concerns regarding "systemic racism" to the Company or its actions. The Proposal asserts that prison labor is "inextricably linked to systemic racism," but the Proposal provides no evidence in support of this assertion. Moreover, aside from a sweeping theoretical generalization that could apply to any company operating in today's social and political climate, the Proposal does not explain how the purported link is relevant or specific to the Company's policies or practices, particularly in light of the Company's prohibition of all

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<sup>11</sup> See A Message from Ernie Herrman, CEO and President of The TJX Companies, Inc. (June 2020), available at <https://www.tjx.com/docs/default-source/default-document-library/a-message-on-racial-justice.pdf>.

<sup>12</sup> See Report, at 19.

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forms of prison labor in its supply chain—an existing prohibition that the Proposal readily acknowledges.

Consistent with the 1998 Release, the Staff routinely concurs with the exclusion of proposals that relate to ordinary business decisions even where the proposal 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, which is an ordinary business matter. Neither the Proposal’s three limited references to “systemic racism” nor its request to prepare a report evaluating “undetected supply chain prison labor” would implicate any alleged “support[] [of] 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 business matters. Here, the Proposal presents an even more compelling case for exclusion, as the Proposal includes only three 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”) and *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

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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 *TJX 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, Inc.* (avail. Mar. 3, 2017) (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”); and *Papa John’s International, Inc.* (avail. Feb. 13, 2015) (concurring with the exclusion of a proposal requesting the company to include more vegan offerings in its restaurants, despite the proponent’s assertion that the proposal would promote animal welfare—a significant policy issue).

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 *TJX 2020* and

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*Walt Disney 2021*, each of which the Staff recently concurred as excludable under Rule 14a-8(i)(7) notwithstanding references to forced prison labor and racial injustice, respectively. Like in *TJX 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 primarily concerns the potential undetected use of uncoerced, lawful prison labor and compliance with the Company's existing policies and standards pertaining to ethical business practices in its supply chain, all matters that have historically been excludable as relating to a company's ordinary business matters. In this regard, the Proposal is comparable to cited precedent including *TJX 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](mailto:shareholderproposals@gibsondunn.com). If we can be of any further assistance in this matter, please do not hesitate to call me at (202) 955-8287 or Alicia C. Kelly, Executive Vice President, General Counsel and Secretary at the Company, at (508) 390-6527.

Sincerely,



Elizabeth A. Ising

Enclosures

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

**EXHIBIT A**

## Jill DiGiovanni

---

**From:** Mari Schwartzer <mschwartzer@northstarasset.com>  
**Sent:** Thursday, December 17, 2020 3:37 PM  
**To:** Alicia Kelly  
**Cc:** Jill DiGiovanni  
**Subject:** [External] Proposal for 2021 proxy  
**Attachments:** TJX-2021-CL.pdf; final-TJX\_2021-proposal.pdf

Dear Ms. Kelly,

Attached, please find a shareholder proposal intended for the 2021 proxy. A hard copy will be sent concurrently, but I'd appreciate confirmation of receipt of this email. Proof of ownership will follow as soon as I receive it from our custodian.

We look forward to engaging your company again on this issue.

Sincerely,  
Mari

Mari Schwartzer (she/her)  
*Director of Shareholder Activism and Engagement*

**NORTHSTAR**  
ASSET MANAGEMENT

P.O. Box 301840 | Boston, MA 02130  
Tel: (617) 522-2635

"Where creative shareholder engagement is a positive force for change."<sup>TM</sup>

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December 17, 2020

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

Dear Ms. Kelly:

In the United States, there are over 2.2 million incarcerated individuals, the vast majority of which are employed during their incarceration, and many of which work for outside, for-profit corporations. Incarcerated people often work for little to no compensation, sometimes under circumstances that are inhumane, forced, or coerced – situations that pose a risk to shareholder value for any company found associated with suppliers using prison labor.

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

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

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

Sincerely,



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

Encl.: shareholder resolution

## Report on Prison Labor

### WHEREAS:

Prison labor – voluntary and forced – is allowed in the United States due to an exception in the 13<sup>th</sup> 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 United States. 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;

In the U.S., 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;

The company prohibits “voluntary or involuntary prison labor” but does not, to the Proponent’s knowledge, verify vendor compliance with this policy other than with the manufacturers of private label products – a percentage not disclosed publicly but previously described by TJX as “a small amount” of total vendors. Therefore, shareholders can assume that only “a small amount” of TJX vendors are verified as not using prison labor;

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. Therefore, the Proponent believes that risk to company brand name and shareholder value exist if prison labor is found in the Company’s supply chain;

The Proponent believes that the Company would benefit from more robust reporting related to prison labor identified in the supply chain.

**RESOLVED:** Shareholders of TJX Companies urge the Board of Directors to produce a report to shareholders evaluating whether the company is supporting systemic racism through undetected supply chain prison labor.

**SUPPORTING STATEMENT:** Shareholders recommend that the report be prepared at reasonable cost and omitting proprietary information, and include at the board and management's discretion:

- Annual quantitative metrics regarding the number of supplier audits completed by the Company or third party auditors that evaluated the extent to which prison labor is present in the supply chain, as well as the summary of those audits' results and the racial makeup of any prison labor workforces detected;
- Assessment of the effectiveness of current company policies and practices in preventing the utilization of prison labor in the company's supply chain;
- Evaluation of any risks to finances, operations, and reputation linking the company to systemic racism from detected or undetected uses of prison labor in the TJX supply chain.

## Jill DiGiovanni

---

**From:** Jill DiGiovanni  
**Sent:** Tuesday, December 22, 2020 4:37 PM  
**To:** Mari Schwartzter  
**Cc:** Alicia Kelly  
**Subject:** RE: Proposal for 2021 proxy

Hi Mari,

Thank you very much for providing this to us.

Best regards,  
Jill

**JILL A. DIGIOVANNI**

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



---

**From:** Mari Schwartzter <mschwartzter@northstarasset.com>  
**Sent:** Tuesday, December 22, 2020 4:35 PM  
**To:** Jill DiGiovanni <jill\_digiovanni@tjx.com>  
**Cc:** Alicia Kelly <Alicia\_Kelly@tjx.com>  
**Subject:** [External] RE: Proposal for 2021 proxy

Hi Jill and Alicia,  
I'm attaching here proof of ownership for the proposal.

Best wishes,  
Mari

Mari Schwartzter (she/her)  
*Director of Shareholder Activism and Engagement*

**NORTHSTAR**  
ASSET MANAGEMENT | P.O. Box 301840 | Boston, MA 02130  
Tel: (617) 522-2635

"Where creative shareholder engagement is a positive force for change."<sup>TM</sup>

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**From:** Jill DiGiovanni <[jill\\_digiovanni@tjx.com](mailto:jill_digiovanni@tjx.com)>  
**Sent:** Thursday, December 17, 2020 3:56 PM  
**To:** Mari Schwartzter <[mschwartzter@northstarasset.com](mailto:mschwartzter@northstarasset.com)>  
**Cc:** Alicia Kelly <[Alicia\\_Kelly@tjx.com](mailto:Alicia_Kelly@tjx.com)>  
**Subject:** RE: Proposal for 2021 proxy

Hi Mari,

On behalf of Alicia Kelly, I am confirming receipt of your email.

We hope that you and your family are staying safe and healthy during these challenging times.

Best regards,  
Jill

**JILL A. DIGIOVANNI**

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



---

**From:** Mari Schwartzter <[mschwartzter@northstarasset.com](mailto:mschwartzter@northstarasset.com)>  
**Sent:** Thursday, December 17, 2020 3:37 PM  
**To:** Alicia Kelly <[Alicia\\_Kelly@tjx.com](mailto:Alicia_Kelly@tjx.com)>  
**Cc:** Jill DiGiovanni <[jill\\_digiovanni@tjx.com](mailto:jill_digiovanni@tjx.com)>  
**Subject:** [External] Proposal for 2021 proxy

Dear Ms. Kelly,

Attached, please find a shareholder proposal intended for the 2021 proxy. A hard copy will be sent concurrently, but I'd appreciate confirmation of receipt of this email. Proof of ownership will follow as soon as I receive it from our custodian.

We look forward to engaging your company again on this issue.

Sincerely,  
Mari

Mari Schwartzter (she/her)  
*Director of Shareholder Activism and Engagement*

**NORTHSTAR**  
ASSET MANAGEMENT

P.O. Box 301840 | Boston, MA 02130  
Tel: (617) 522-2635

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December 22, 2020

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

Dear Ms. Kelly:

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

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

Should you need anything further, do not hesitate to contact me at [mschwartz@northstarasset.com](mailto: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

**Wealth Management**  
35 Village Road, Suite 601  
Middleton, MA 01949  
tel 978 739 9600  
fax 978 739 9650

# Morgan Stanley

December 22, 2020

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

Dear Ms. Kelly:

Morgan Stanley Wealth Management, a DTC participant, acts as the custodian for the NorthStar Asset Management, Inc. Funded Pension Plan. On December 17, 2020, the NorthStar Asset Management, Inc. Funded Pension Plan held 1392 shares of TJX Companies common stock valued at \$93,973.92. Morgan Stanley Wealth Management has continuously held those shares on behalf of the NorthStar Asset Management Funded Pension Plan since December 17, 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 2:48 pm, Dec 22, 2020*

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

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