April 9, 2021

Elizabeth A. Ising
Gibson, Dunn & Crutcher LLP
shareholderproposals@gibsondunn.com

Re: The TJX Companies, Inc.
    Incoming letter dated February 8, 2021

Dear Ms. Ising:

This letter is in response to your correspondence dated February 8, 2021, concerning the shareholder proposal (the “Proposal”) submitted to The TJX Companies, Inc. (the “Company”) by NorthStar Asset Management, Inc. Funded Pension Plan (the “Proponent”) for inclusion in the Company’s proxy materials for its upcoming annual meeting of security holders. We also have received correspondence on the Proponent’s behalf dated March 8, 2021. Copies of all of the correspondence on which this response is based will be made available on our website at https://www.sec.gov/corpfin/2020-2021-shareholder-proposals-no-action.

Sincerely,

Dorrie Yale
Special Counsel

Enclosure

cc: Mari Schwartzer
    mschwartzer@northstarasset.com
Response of the Office of Chief Counsel  
Division of Corporation Finance  

Re: The TJX Companies, Inc.  
Incoming letter dated February 8, 2021  

The Proposal in essence seeks more information about the Company’s monitoring of its suppliers’ compliance with the Company’s policy that prohibits “voluntary or involuntary prison labor.”

There appears to be some basis for your view that the Company may exclude the Proposal under Rule 14a-8(i)(7) as the Proposal does not transcend the Company’s ordinary business operations. In this regard, we note that although the Proposal refers to systemic racism through undetected supply chain prison labor, the Proposal acknowledges that the Company already prohibits prison labor and does not otherwise explain how its compliance program raises a significant issue for the Company. Accordingly, we will not recommend enforcement action to the Commission if the Company omits the Proposal from its proxy materials in reliance on rule 14a-8(i)(7).

Sincerely,

Liz Packebusch  
Attorney-Adviser
March 8, 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 TJX Companies Inc. Regarding Systemic Racism and Prison Labor on Behalf of NorthStar Asset Management Inc. Funded Pension Plan

Ladies and Gentlemen:

NorthStar Asset Management Inc. Funded Pension Plan (the “Proponent”) is beneficial owner of common stock of TJX Companies Inc. (the “Company”) and has submitted a shareholder proposal (the “Proposal”) to the Company. I have been asked by the Proponent to respond to the letter dated February 8, 2021 ("Company Letter") sent to the Securities and Exchange Commission by Elizabeth Ising of Gibson Dunn. In that letter, the Company contends that the Proposal may be excluded from the Company’s 2021 proxy statement. A copy of this letter 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:

- 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.

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 Proposal addresses the Company’s potential participation in systemic racism through the possible existence of
incarcerated workers in the supply chain. This is a significant policy issue with a nexus to the Company especially in light of the Company’s statements asserting antiracism.

The Company Letter implies that the issue of prison labor in the supply chain is effectively managed by existing policies. Yet, the existing audit processes described in the Company report relates to products designed by and manufactured for the company – a very small portion of the company’s products sold to customers. Most of the products sold in the Company’s stores are brand-name merchandise, not items designed for the Company, and therefore most of the items sold are not required to be audited in the manner described in the Company’s Global Corporate Responsibility Report. Nexus is further confirmed by investor support for the 2019 shareholder proposal by the proponent on prison labor in the supply chain, which received nearly 38% support of shareholders. Although inventory turnover is frequent, research indicates that some types of products sold by the Company have been evidenced 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

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 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.

ANALYSIS

The legal framework for Rule 14a-8(i)(7) developed by the Commission, Staff and the courts, including under the Staff Legal Bulletin 14H, 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. 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.

We will demonstrate below that the current proposal transcends ordinary business because it is related to a significant policy issue with a nexus to the Company, and there is no assertion that the Proposal micromanages.

**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 large, appropriately-scoped 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 TJX supply chain, these are human rights issues that transcend ordinary business.

PART I. SYSTEMIC RACISM IN TJX 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 situated to address 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 potentially misleading 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 hundreds of years of systemic racism and oppression 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?”
In recent years, scholars have made it clear that the economy of the United States was built on the free labor of enslaved Black people and continues to be strengthened through the oppression of people of color:

Slavery was undeniably a font of phenomenal wealth… Cotton grown and picked by enslaved workers was the nation’s most valuable export. The combined value of enslaved people exceeded that of all the railroads and factories in the nation… What made the cotton economy boom in the United States, and not in all the other far-flung parts of the world with climates and soil suitable to the crop, was our nation’s unflinching willingness to use violence on nonwhite people and to exert its will on seemingly endless supplies of land and labor…

Nearly two average American lifetimes (79 years) have passed since the end of slavery, only two. It is not surprising that we can still feel the looming presence of this institution, which helped turn a poor, fledgling nation into a financial colossus. The surprising bit has to do with the many eerily specific ways slavery can still be felt in our economic life. “American slavery is necessarily imprinted on the DNA of American capitalism,” write the historians Sven Beckert and Seth Rockman. The task now, they argue, is “cataloging the dominant and recessive traits” that have been passed down to us, tracing the unsettling and often unrecognized lines of descent by which America’s national sin is now being visited upon the third and fourth generations.¹

Efforts to encourage companies – a driver of our current economy – 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 Black people and other people of color, from historic slavery to current mass incarceration and related prison labor. A leading organization fighting human trafficking has even posited the question of whether prison labor should be considered labor trafficking: “The United States defines labor trafficking as the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery. Prison labor often fits this description.”²

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.

¹ https://www.nytimes.com/interactive/2019/08/14/magazine/slavery-capitalism.html
The Commission has long made it clear that as 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.

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 current 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, 2021 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**

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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 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 criminal legal 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 Black Americans. This overincarceration of Black men, women, and children ensures that human rights issues in the criminal justice system disproportionately affect Black Americans. The Company’s potential linkage to prison labor from products sold at TJX 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." 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.

The U.S. leads the world in incarceration as there are over 2 million people incarcerated in this country. According to prisoner 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.5

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 sentences6 and African Americans are incarcerated at a rate of more than five times that of whites,7 but “whites and blacks engage in drug offenses, possession, and sales at roughly comparable rates.”8 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.9

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:

[EXCEPTIONS 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 ENRTENCED 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]

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4 Constitution of the United States of America, 13th Amendment.  
http://www.alternet.org/story/151732/21st-century_slaves%3A_how_corporations_exploit_prison_labor  
7 “Criminal Justice Fact Sheet.” NAACP, www.naacc.org/criminal-justice-fact-sheet/  
www.alternet.org/story/151732/21st-century_slaves%3A_how_corporations_exploit_prison_labor  
skilled tasks, and are more likely to be customer-facing. The result is that companies 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.10

**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 image below):

![Image Source: Visualizing the racial disparities in mass incarceration | Prison Policy Initiative](image-url)

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-

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

Notably, the Company neither asserts directly that the proposal is *insignificant to the Company* nor that it is *substantially implemented*. Instead, the implication of the Company Letter seems to be that the issue is so well-managed that there is no remaining transcendent policy issue facing the Company. Yet, examination of the Company’s disclosures, risks and practices demonstrates a substantial area of valid concern for investors, with the issue of systemic racism as important to the Company and inadequate disclosure and monitoring to ensure that prison labor is not present in the supply chain.

Systemic racism is important to the Company. TJX’s “Inclusion and Diversity” website makes clear the Company’s commitments to inclusion and diversity:

> We believe that the diversity of our Associates makes us a stronger Company and better able to serve our customers around the world. We also believe that creating an inclusive environment in which Associates are engaged and empowered strengthens our business and fosters a culture where Associates are inspired to work hard, challenge themselves, and be innovative in their thinking. At TJX, inclusion and diversity are both important to us.

Furthermore, TJX CEO Ernie Herman has written on the Company’s website regarding his stance on racial justice, sentiments that are repeated on the Company’s official diversity webpage:

> For our country and the world, the ongoing social unrest and the tragic killing of many Black people has brought to the forefront the significant racial injustice that still exists. While inclusion and diversity have long been a priority at TJX, in these serious times, we recognize more than ever that we need to continue working to do better. At TJX, we stand with Black Associates, customers, and communities, and we stand for racial justice.

Mr. Herman’s statement concludes by asserting that the Company “can do more” and “will” do more on matters of racial justice: “Action is necessary to make a difference and as an organization, we know we can do more, and you have our commitment that we will.”

Yet instead of claiming it has fulfilled the proposal for purposes of Rule 14a-8(i)(10) and

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11 [Alabama Incarcerates Blacks More Than Three Times Rate of Whites; DOJ Lawsuit Says State Prisons Fail to Adequately Protect Inmates](http://atlantablackstar.com)


established transparency on systemic racism related to these supply chain risks, the Company Letter instead seems to imply that the issues are sufficiently managed and transparent that the current proposal merely addresses ordinary business. The Company Letter notes:

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. 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.

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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 TJX Vendor Code of Conduct (VCOC), which it requires all vendors to sign, states “Our vendors must not use voluntary or involuntary prison labor, indentured labor, bonded labor, labor acquired through slavery or human trafficking, or any forms of involuntary or forced labor.” The Company fails to note in its letter that while it requires that all vendors sign its VCOC, the Company does not complete any follow-up with the majority of vendors to verify that the vendor has, indeed, adhered to the company VCOC.

Instead, as noted in the Letter, the audit process of the company is limited to the fraction of products sold in its stores that are designed by and manufactured for the company.

The Company’s own Responsible Sourcing webpage\(^\text{14}\) notes that its value offering for investors is through:

“offering ever-changing selections of high quality, fashionable, brand name, and designer merchandise at prices generally 20% to 60% below full-price retailers’ (including department, specialty, and major online retailers) regular prices on comparable merchandise, every day.

The majority of product we sell in our stores is brand-name merchandise. To obtain this

\(^{14}\) https://www.tjx.com/responsibility/responsible-business/responsible-sourcing
merchandise, we work closely with our vendors and take advantage of a wide variety of opportunities, which can include department store cancellations, a manufacturer making up too much product, or a closeout deal when a vendor wants to clear merchandise at the end of a season.”

The page goes on further to note the fraction of products sold that are manufactured and design for the company:

… some merchandise is designed by our own fashion and style experts and manufactured just for us, particularly when what we are seeing in the marketplace is not the right value for our customers, meaning the right combination of brand, fashion, price, and quality.

The periodic audits mentioned in the Company Letter only apply to the select few factories that TJX uses to manufacture products which TJX designs. These periodic audits do not apply to the vast majority of TJX products that are purchased from the Company’s worldwide network of 18,000 vendors. While the percentage of company-designed products is not shared publicly, news reports indicate that “as much as 85 percent of the company’s merchandise [are] purchased directly from suppliers.”

With this in mind, we can assume that up to 85% of goods sold at TJX Companies stores are not audited or required to show evidence that they have adhered to the Company’s VCOC.

The Proponent’s research indicates that a variety of types of products sold to customers in TJX Companies’ stores may be manufactured by incarcerated workers through prison labor programs throughout the United States. In the United States alone, over 2.2 million people are incarcerated in state, federal, and private prisons or jails, and the majority of those people are required to work in some fashion. While many perform essential duties to manage the upkeep of the prison or jail (such as cleaning, cooking, and maintenance), research indicates that as many as 7% of eligible incarcerated people in state prisons and 18% of those in federal prisons are employed by for-profit companies. In 2015, the estimated value of prison-made goods was more than $2 billion.

Incarcerated workers are known to make a wide variety of products (such as agricultural products, cable assemblies, lingerie, furniture, and even “music boxes, drawings, and paintings”) and provide several services (such as moving labor and call center services). A variety of name-brand and generic products have been alleged as being somehow related to prison labor by various news reporters, as well as nonprofit organizations or activists. The complex nature of supply chains and the opacity of correctional industries and their customer lists create a situation in which shareholders have no way of knowing whether any products made incarcerated workers are being sold on TJX store shelves.

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16 https://www.naacp.org/criminal-justice-fact-sheet/
17 https://investigate.afsc.org/tags/prison-labor
The failure to detect and manage prison labor in the Company’s supply chain could have severe repercussions on TJX’s brand name and shareholder value. Other companies 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.

**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 TJX 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 TJX 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:

- 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.\(^{19}\)

- Mechanisms for verification of voluntariness. The degree to which prison labor is considered voluntary is a subject of considerable complexity and controversy. Most 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 were able to choose which work they performed, when they were required to work in some way?\(^{20}\) In another example, is work considered “voluntary” if the alternative to declining work is solitary confinement or an extension to one’s prison sentence?\(^{21,22}\)

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\(^{19}\) [https://www.prisonpolicy.org/blog/2017/04/10/wages/](https://www.prisonpolicy.org/blog/2017/04/10/wages/)

\(^{20}\) “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://npr.org/transcripts/884989263), June 29, 2020.

\(^{21}\) [https://www.npr.org/transcripts/884989263](https://www.npr.org/transcripts/884989263)

- 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 charts below:
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. 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 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.

23 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 subcontractors, 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.
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.

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 TJX Companies, 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.\(^{24}\)

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

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\(^{24}\) The proponent has joined with other investors in urging the Staff to rethink where unwritten determinations are appropriate.
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 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 incarcerated worker mistreatment and is frequently compared to modern slavery. Although companies benefit from low overhead expenses when incarcerated people work for the company or its suppliers, companies have experienced public backlash, boycotts, and long-term brand name and reputation harm from a connection to prison labor;

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

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

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

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

Careful review of our supply chain for voluntary and involuntary prison labor would help ensure that TJX suppliers are consistent with Company policies and minimize risks to TJX’s reputation and shareholder value.
RESOLVED: Shareholders of TJX Companies urge the Board of Directors to produce an annual report to shareholders on prison labor, at reasonable cost and omitting proprietary information, assessing the effectiveness of current company policies for preventing prison labor in the company’s supply chain.

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

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

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 were 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 – a vulnerable population – 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 38% of investors voted in favor.

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 nearly 38% of shareholders voting supported the proposal the second year it was presented. Moreover, we note that the staff decisions in the recent years assessing significance to the company have found even a vote of 30% to be a very significant indicator.

Assessing the significance of a 38% vote for a second-time proposal is fairly straightforward. 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.

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.

25 In 2018 the proposal received 7% support. In 2019 support rose to 37.6%.

26 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).

Sincerely,

Sanford Lewis

cc: Elizabeth Ising
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.
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
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.1 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”)2 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

1 Available at https://www.tjx.com/responsibility/responsible-business/social-compliance/vendor-code-of-conduct.
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.3 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.4 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.5

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

3 Id. at 78.
4 See generally id. at 85-94.
5 Id at 81.
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:
“[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. 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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*6 Report, at 80.*
use, or intend to use, to produce such merchandise.\textsuperscript{7} 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.\textsuperscript{8}

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.\textsuperscript{9}

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 \textit{The TJX Companies, Inc.} (avail. Mar. 20, 2020) (“\textit{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 \textit{TJX 2020}, here the Proposal also raises the

\textsuperscript{7} \textit{Id.}
\textsuperscript{8} \textit{Id.} at 81.
\textsuperscript{9} \textit{Id.} at 82.
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 subcontractors”; 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
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
directors to revise the existing code of corporate conduct because it related “to the
company’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]nual 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 Company policies and practices in
preventing the utilization of prison labor in the Company’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
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
cconcerned 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).10 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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10 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
(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”).
(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
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.


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 communities11 and to further strengthen the Company’s inclusion and diversity programs.12 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

12 See Report, at 19.
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 impinging 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 “[d]id 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
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
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. 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
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

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

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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
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 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.
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

Hi Jill and Alicia,

I’m attaching here proof of ownership for the proposal.

Best wishes,
Mari

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

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

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

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

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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. Thank you in advance for your attention to this matter.

Sincerely,

Mari C. Schwartzer  
Director of Shareholder Activism and Engagement

Encl.: proof of ownership
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,

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.