



DIVISION OF  
CORPORATION FINANCE

UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

February 10, 2022

Jodie M. Bourdet  
Cooley LLP

Re: Levi Strauss & Co. (the "Company")  
Incoming letter dated December 10, 2021

Dear Ms. Bourdet:

This letter is in response to your correspondence concerning the shareholder proposal (the "Proposal") submitted to the Company by the National Center for Public Policy Research for inclusion in the Company's proxy materials for its upcoming annual meeting of security holders.

The Proposal requests that the board commission a racial-equity audit analyzing the Company's impacts on civil rights and non-discrimination, and the impacts of those issues on the Company's business.

We are unable to concur in your view that the Company may exclude the Proposal under Rule 14a-8(i)(7). In our view, the Proposal transcends ordinary business matters.

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/2021-2022-shareholder-proposals-no-action>.

Sincerely,

Rule 14a-8 Review Team

cc: Scott Shepard  
National Center for Public Policy Research



Jodie M. Bourdet  
T: +1 415 693 2054  
jbourdet@cooley.com

December 10, 2021

**Via E-mail to [shareholderproposals@sec.gov](mailto:shareholderproposals@sec.gov)**

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

**Re: Shareholder Proposal to Levi Strauss & Co.**

Ladies and Gentlemen:

On behalf of Levi Strauss & Co. (the “*Company*”), we are submitting this letter pursuant to Rule 14a-8(j) under the Securities Exchange Act of 1934, as amended (the “*Exchange Act*”), to notify the Securities and Exchange Commission (the “*Commission*”) of the Company’s intention to exclude from the proxy materials for its 2022 annual meeting of shareholders (the “*2022 Proxy Materials*”) a shareholder proposal (the “*Proposal*”) submitted by the National Center for Public Policy Research (the “*Proponent*”). We also request confirmation that the staff of the Division of Corporation Finance (the “*Staff*”) will not recommend enforcement action to the Commission if the Company omits the Proposal from the 2022 Proxy Materials for the reasons discussed below.

In accordance with Section C of Staff Legal Bulletin No. 14D (Nov. 7, 2008), we are emailing this letter to the Staff at [shareholderproposals@sec.gov](mailto:shareholderproposals@sec.gov). In addition, we are simultaneously sending a copy of this letter and its attachments to the Proponent as notice of the Company’s intent to omit the Proposal from the 2022 Proxy Materials. Likewise, we take this opportunity to inform the Proponent that if it elects to submit any correspondence to the Commission or the Staff with respect to the Proposal, a copy of that correspondence should be provided concurrently to the undersigned on behalf of the Company.



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## THE PROPOSAL

The Proposal and Supporting Statement (attached hereto as Exhibit A) provide in pertinent part as follows:

### **Civil Rights and Non-Discrimination Audit Proposal**

**RESOLVED**, Shareholders of Levi Strauss & Co. (“the Company”) request that the Board of Directors commission a racial-equity audit analyzing the Company’s impacts on civil rights and non-discrimination, and the impacts of those issues on the Company’s business. The audit may, in the Board’s discretion, be conducted by an independent and unbiased third party with input from civil rights organizations, public-interest litigation groups, employees, communities in which the Company operates and other stakeholders, of all viewpoints and perspectives. A report on the audit, prepared at reasonable cost and omitting confidential or proprietary information, should be publicly disclosed on the Company’s website.

**SUPPORTING STATEMENT:** Tremendous public attention has focused recently on workplace and employment practices. All agree that employee success should be fostered and that no employees should face discrimination, but there is much disagreement about what non-discrimination means.

Concern stretches across the ideological spectrum. Some have pressured companies to adopt “anti-racism” programs that seek to establish “racial equity,” which appears to mean the distribution of pay and authority on the basis of race, sex, orientation and ethnic categories rather than by merit.<sup>1</sup> Where adopted, however, such programs raise significant objection, including concern that the “anti-racist” programs are themselves deeply racist and otherwise discriminatory.<sup>2</sup>

Many companies have been found to be sponsoring and promoting overtly and implicitly discriminatory employee-training and other employment and advancement programs,

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<sup>1</sup> <https://www.sec.gov/Archives/edgar/data/1048911/000120677421002182/fdx3894361-def14a.htm#StockholderProposals88>; <https://www.sec.gov/divisions/corpfin/cf-noaction/14a-8/2021/asyousownike051421-14a8-incoming.pdf>; <https://www.sec.gov/divisions/corpfin/cf-noaction/14a-8/2021/nyscrfamazon012521-14a8-incoming.pdf>;  
[https://www.sec.gov/Archives/edgar/data/1666700/000119312521079533/d108785ddef14a.htm#rom108785\\_58](https://www.sec.gov/Archives/edgar/data/1666700/000119312521079533/d108785ddef14a.htm#rom108785_58)

<sup>2</sup> <https://www.americanexperiment.org/survey-says-americans-oppose-critical-race-theory/>;  
<https://www.newsweek.com/majority-americans-hold-negative-view-critical-race-theory-amid-controversy-1601337>; <https://www.newsweek.com/coca-cola-facing-backlash-says-less-white-learning-plan-was-about-workplace-inclusion-1570875>; <https://nypost.com/2021/08/11/american-express-tells-its-workers-capitalism-is-racist/>; <https://www.city-journal.org/verizon-critical-race-theory-training>



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including Bank of America, American Express, Verizon, Pfizer, CVS and Levi Strauss itself.<sup>3</sup>

This disagreement and controversy create massive reputational, legal and financial risk. If the Company is, in the name of equity, diversity and inclusion, committing illegal or unconscionable discrimination against employees deemed “non-diverse,” then the Company will suffer in myriad ways – all of them both unforgivable and avoidable.

In developing the audit and report, the Company should consult civil-right and public-interest law groups – but it must not compound error with bias by relying only on left-leaning organizations. Rather, it must consult groups across the spectrum of viewpoints. This includes right-leaning civil-rights groups representing people of color, such as the Woodson Center<sup>4</sup> and Project 21,<sup>5</sup> and groups that defend the rights and liberties of *all* Americans, not merely the ones that many companies label “diverse.” All Americans have civil rights; to behave otherwise is to invite disaster.

Similarly, when including employees in its audit, the Company must allow employees to speak freely without fear of reprisal or disfavor, and in confidential ways. Too many employers have established company stances that themselves chill contributions from employees who disagree with the company’s asserted positions, and then have pretended that the employees who have been empowered by the companies’ partisan positioning represent the true and only voice of all employees. This by itself creates a deeply hostile workplace for some groups of employees, and is both immoral and likely illegal.

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<sup>3</sup> <https://www.city-journal.org/bank-of-america-racial-reeducation-program>; <https://www.city-journal.org/verizon-critical-race-theory-training>; <https://nypost.com/2021/08/11/american-express-tells-its-workers-capitalism-is-racist/>; <https://www.foxbusiness.com/politics/cvs-inclusion-training-critical-race-theory>; <https://www.msn.com/en-us/money/other/pfizer-sets-race-based-hiring-goals-in-the-name-of-fighting-systemic-racism-gender-equity-challenges/ar-AAOiSwJ>;

<https://www.levistrauss.com/sustainability-report/community/diversity-equity-inclusion/>;

<https://www.levistrauss.com/sustainability-report/community/employee-support-and-development/>;

<https://www.levistrauss.com/work-with-us/life-at-lsco/diversity-inclusion/>;

<https://www.bloomberg.com/news/videos/2021-06-17/levi-s-bergh-and-morrison-on-advancing-diversity-equity-and-inclusion-video>.

<sup>4</sup> <https://woodsoncenter.org/>

<sup>5</sup> <https://nationalcenter.org/project-21/>



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## BASIS FOR EXCLUSION

The Company hereby respectfully requests that the Staff concur in its view that the Company may exclude the Proposal from the 2022 Proxy Materials pursuant to Rule 14a-8(i)(7) because the subject matter of the Proposal directly concerns the Company's ordinary business operations.

## ANALYSIS

### A. Background

Rule 14a-8(i)(7) permits the exclusion of shareholder proposals dealing with matters relating to a company's "ordinary business operations." The Commission has stated that the underlying policy of the ordinary business exclusion is "to confine the resolution of ordinary business problems to management and the board of directors, since it is impracticable for shareholders to decide how to solve such problems at an annual shareholders meeting." *Exchange Act Release No. 34-40018* (May 21, 1998) (the "1998 Exchange Act Release"). The term "ordinary business" in this context refers to "matters that are not necessarily 'ordinary' in the common meaning of the word, and is rooted in the corporate law concept providing management with flexibility in directing certain core matters involving the company's business and operations." *Id.* In the 1998 Exchange Act Release, the Commission described the two "central considerations" for the ordinary business exclusion. The first, and relevant consideration here, is that certain tasks are "so fundamental to management's ability to run a company on a day-to-day basis" that they could not be subject to direct shareholder oversight. The second related to the "degree to which the proposal seeks to "micro-manage" the company by probing too deeply into matters of a complex nature upon which shareholders, as a group, would not be in a position to make an informed judgment."

When examining whether a proposal may be excluded under the "ordinary business" standard, it is also critical to determine whether the proposal raises any significant social policy issue. If the proposal focuses on a "significant social policy issue," the proposal "generally would not be excludable, because the proposal would transcend the day-to-day business matters and raise policy issues so significant that it would be appropriate for a shareholder vote." *Exchange Act Release No. 34-12999* (Nov. 22, 1976) (the "1976 Exchange Act Release"). Conversely, a proposal that does not rise to the level of a "significant social policy issue," but rather focuses on those tasks that are integral to management's ability to run the day-to-day business of a company, may properly be excluded pursuant to Rule 14a-8(i)(7). *Id.* See also *Staff Legal Bulletin No. 14E* (Oct. 27, 2009) ("SLB 14E") and *Staff Legal Bulletin No. 14L* (Nov. 3, 2021) ("SLB 14L").



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The Proposal and the Proposal's supporting statement (the "*Supporting Statement*") clearly focus on two integral parts of the Company's ordinary business operations as the Proposal relates (i) to the Company's management of its workforce and (ii) to its legal compliance program.

*B. The Proposal is Excludable under Rule 14a-8(i)(7) Because It Relates to the Company's Management of its Workforce*

The Proposal is excludable in reliance on Rule 14a-8(i)(7) because the Proposal relates to managing the Company's workforce, in particular, the ordinary business matter of training the Company's workforce. While the Proposal itself broadly touches upon topics of civil rights and non-discrimination, the Supporting Statement makes clear that the heart of the Proposal's focus is on the ordinary business topic of employee training and, in particular, the Proponent's objection to the content of the Company's employee training materials and programs. For example, the Supporting Statement provides "[m]any companies have been found to be sponsoring and promoting overtly and implicitly discriminatory employee-training and other employment and advancement programs, including Bank of America, American Express, Verizon, Pfizer, CVS and Levi Strauss itself." A further review of the Supporting Statement further demonstrates the Proponent's focus on the content of the Company's employee training materials and programs. The Supporting Statement provides that "[s]ome have pressured companies to adopt "anti-racism" programs that establish "racial equity," which appears to mean the distribution of pay and authority on the basis of race, sex, orientation and ethnic categories rather than by merit. Where adopted, however, such programs raise significant objection, including concern that the "anti-racist" programs are themselves deeply racist and otherwise discriminatory." The Supporting Statement further provides "[i]f the Company is, in the name of equity, diversity and inclusion, committing illegal or unconscionable discrimination against employees deemed "non-diverse," then the Company will suffer in myriad ways – all of them both unforgiveable and avoidable."

The Commission and Staff have long held that shareholder proposals may be excluded under Rule 14a-8(i)(7) where, as here, they relate to the company's management of its workforce. In *United Technologies Corp.* (Feb. 19, 1993), the Staff provided the following examples of excludable ordinary business categories: "employee health benefits, general compensation issues not focused on senior executives, management of the workplace, employee supervision, labor-management relations, employee hiring and firing, conditions of the employment and employee training and motivation." Subsequently, the Commission recognized in the 1998 Exchange Act Release that "management of the workforce" is "fundamental to management's ability to run a company on a day-to-day basis" and since then has concurred with countless company requests to exclude proposals that relate to a company's management of its workforce. See e.g., *Walmart, Inc.* (Apr. 8, 2019) (concurring with the exclusion of a proposal requesting that "the board prepare a report to evaluate the risk of discrimination that may result from the [c]ompany's policies and practices for hourly workers taking absences from work for personal or family illness" as relating to "management of its workforce"); *Merck & Co., Inc.*



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(Mar. 7, 2002) (concurring with the exclusion of a proposal requesting that the company keep shareholders informed regarding the resolution of employment disputes as it related to the company's "management of the workforce"). *See also AT&T, Inc.* (Dec. 28, 2015) (concurring with the exclusion of a proposal requesting that the company set up an education program for their employees about HIV/AIDS because the proposal "relate[d] to the establishment of an employee education program" and was therefore excludable under Rule 14a-8(i)(7)).

Similar to the proposals discussed in the no-action requests above, the Proposal relates to the Company's relationship with its workforce, and more specifically, the training of its employees. The Company's decisions with respect to the topics, content and form of its employee training programs are fundamental to the management of the Company's business and inherently implicate the day-to-day operations of the Company. As of November 29, 2020, the Company employed approximately 14,800 people, approximately 6,100 of whom were located in the Americas, 4,600 were located in Europe, and 4,100 were located in Asia. The Company's employees spread across the world perform diverse and complex corporate, customer, manufacturing and distribution functions. The Company's training programs seek to provide its employees with the tools they need to perform their work, the materials to understand and learn about the Company's values and culture and the materials to mitigate certain compliance risks to the Company. Accordingly, the Company's training programs are tailored to different geographic regions and job functions and include reference to a number of topics, which include: relationships with customers and dealers, the Company's diverse, equitable and inclusive culture, compliance with the Company's Worldwide Code of Business Conduct, compliance with anti-bribery/corruption, compliance with management of private data and cybersecurity, compliance with conflicts of interest, discrimination and workplace harassment policies and sexual harassment policies. These programs and their purpose are so fundamental to Company management's ability to run the operations of the Company on a day-to-day basis that they could not, as a practical matter, be subject to direct shareholder oversight.

In addition, the Proposal seeks to direct the Company's communications with investors with respect to matters relating to non-discrimination training in the management of the Company's workforce. The Proposal's Supporting Statement states that "[i]n developing the audit and report, the Company should consult civil-rights and public interest law groups – but it must not compound error with bias by relying only on left-leaning organizations. Rather, it must consult groups across the spectrum of viewpoints." The Supporting Statement goes on to provide that "when including employees in its audit, the Company must allow employees to speak freely without fear of reprisal or disfavor, and in confidential ways. Too many employers have established company stances that themselves chill contributions from employees who disagree with the company's asserted positions...[t]his by itself creates a deeply hostile workplace for some groups of employees, and is both immoral and likely illegal." In *Moody's Corp.* (Feb. 23, 2021), the Staff concurred with the exclusion of a proposal under Rule 14a-8(i)(7) that requested the company annually publish on its website its EEO-1 Report. In its request for no-action relief, the company stated that "[t]he [c]ompany's decisions with respect to how it reports to investors on the management of its workforce and what disclosures it provides



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to attract, retain, and engage with its employees, are fundamental to the management of the [c]ompany's business and inherently implicate the day-to-day operations of the [c]ompany." *Id.*

Accordingly, consistent with the no-action letters cited above, the Proposal deals with the management of the Company's workforce, an ordinary business operation, and therefore, is excludable under Rule 14a-8(i)(7).

*C. The Proposal is Excludable under Rule 14a-8(i)(7) Because It Relates to the Company's Legal Compliance Program*

The Proposal is excludable in reliance on Rule 14a-8(i)(7) because the Proposal relates to the Company's legal compliance program. As noted above, the Proposal and the Supporting Statement implicate the Company's compliance with legal and regulatory requirements and Company internal policy. Specifically, the Proposal requests a "racial-equity audit analyzing the Company's impacts on civil rights and non-discrimination." In addition, the Supporting Statement alludes to the Company's potential "immoral and likely illegal" and "unconscionable discrimination against employees deemed "non-diverse."

The Staff has consistently taken the position that proposals relating to a company's legal compliance program relate to ordinary business matters and are excludable under Rule 14a-8(i)(7). For example, in *JPMorgan Chase & Co.* (Mar. 13, 2014), the Staff allowed exclusion of a proposal requesting that the board evaluate opportunities for clarifying and enhancing implementation of board members' and officers' fiduciary, moral and legal obligations to shareholders and other stakeholders. The company argued that fiduciary obligations, legal obligations, and "standards for directors' and officers' conduct and company oversight" are governed by state law, federal law, and New York Stock Exchange listing standards. The Staff concurred with the Company's omission of the proposal, noting that "[p]roposals that concern a company's legal compliance program are generally excludable under rule 14a-8(i)(7)." In addition, in *General Electric Co.* (Jan. 4, 2005), the proposal requested a report detailing whether NBC's broadcast television stations' activities met public interest obligations. The company argued the proposal infringed on a core management function, i.e., the general conduct of the company's legal compliance program. The Staff agreed and granted exclusion of the proposal under Rule 14a-8(i)(7). Further, in *Halliburton Co.* (Mar. 10, 2006), the Staff permitted exclusion of a proposal requesting a report evaluating the potential impact of certain violations and investigations on the company's reputation and stock price, as well as the company's plan to prevent further violations as "relating to [the company's] ordinary business operations (i.e., general conduct of a legal compliance program)." *See also Navient Corp.* (Mar. 26, 2015)(permitting exclusion of a proposal under Rule 14a-8(i)(7) that requested a report on the company's internal controls over its student loan servicing operations, including a discussion of the actions taken to ensure compliance with applicable federal and state laws, as concerning the company's "legal compliance program"); *Sprint Nextel Corp.* (Mar. 16, 2010) (permitting exclusion of a proposal requesting an explanation as to why the company had not adopted an ethics code that would promote ethical conduct and compliance with securities laws by its chief



executive officer and noting that proposals seeking “adherence to ethical business practices and the conduct of legal compliance programs” are generally excludable under Rule 14a-8(i)(7)); *H&R Block Inc.* (Aug. 1, 2006) (permitting exclusion of a proposal seeking implementation of a legal compliance program with respect to lending policies); and *Norfolk Southern Corporation* (Feb. 12, 2020) (permitting exclusion of a proposal requesting that the company’s board of directors review company compliance with a specific federal statute and to develop a program to reduce delays to passenger trains operating on the company’s right of way).

As reported in the Company’s Worldwide Code of Business Conduct, the Company does “not tolerate discrimination of any kind by any employee. Every employee has the right to a fair work environment free of discrimination [and harassment] based on their: race, color, creed, religion, national origin, citizenship, age, sex, sexual orientation, gender identity, marital status, mental or physical disability and other individual attribute or status protected under local law.”<sup>6</sup> The Company’s Worldwide Code of Business Conduct also provides that the Company “encourage[s] employees at all levels of the company to raise concerns regarding potential violations of this Code, harassment, discrimination, or ethical business matters. [The Company] prohibits retaliation against any employee who, in good faith, reports potential misconduct.” Further, the Company’s 2020 Sustainability Report (the “2020 Sustainability Report”) states that the Company conducts an independent pay equity audit every other year in order to ensure fair and equitable pay among its employees.<sup>7</sup> The 2020 Sustainability Report provides that the last two pay equity audit reports conducted in 2018 and 2020, with both audits conducted by an independent outside firm and considering job level, performance, experience and other factors, “found no systemic pay differences across gender and ethnicity.” Thus, despite the Proponent’s assertion that the Company could have “anti-racism” programs in place that appear to “mean the distribution of pay and authority on the basis of race, sex, orientation and ethnic categories rather than by merit,” the Company has current policies and practices in place that expressly prohibit the implementation of discriminatory actions by employees and the Company as a whole.

The Company’s practices to ensure compliance with laws, regulations and internal Company policies which govern the Company’s business, including determination of the appropriate means by which to comply with such laws, regulations and policies, are fundamental elements of management’s responsibility for the day-to-day operation of the Company’s business and cannot, as a practical matter, be subject to direct shareholder oversight. The Company operates in a very competitive industry and is continually in pursuit of seeking, hiring and retaining employees that seek to promote the highest integrity and values of the Company. As a result, the Company’s management is in the best position to determine if, and when, a review of the Company’s policies and legal compliance program as a whole is necessary. Consistent with the no-action letters cited above the Proposal deals with the conduct of the Company’s legal

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<sup>6</sup> <https://www.levistrauss.com/wp-content/uploads/2020/06/Code-of-Conduct-English.pdf>

<sup>7</sup> <https://www.levistrauss.com/wp-content/uploads/2021/09/LSCo.-2020-Sustainability-Report.pdf>



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compliance program, an ordinary business operation, and therefore, is excludable under Rule 14a-8(i)(7).

*D. The Proposal Does Not Focus on Issues that Transcend the Ordinary Business Matters Upon Which the Proposal is Focused on*

As noted in the 1976 Exchange Act Release, SLB 14E and SLB 14L, a proposal generally will not be excludable under Rule 14a-8(i)(7) if the underlying subject matter transcends the day-to-day business of the company and raises policy issues so significant that the proposal would be appropriate for a shareholder vote. However, as discussed throughout this request, the Company is committed to a diverse, equitable and inclusive culture that celebrates diversity among its employees. As noted above, the Company has in place a Worldwide Code of Business Conduct, where the Company specifically highlights the value of diversity (welcoming personnel of all types of diversity), equity (ensuring equal and fair treatment of all employees) and inclusion (appreciating and recognizing people's unique contributions). Additionally, in the 2020 Sustainability Report, the Company emphasizes that having the right mix of talent is vital to the Company's continued growth and innovation and highlights various Employee Resource Groups that foster diversity across a variety of interests and issues showcasing the Company's broad view of diversity. The Company also recognizes that investors' interest in issues of employee diversity, equity and inclusion, and disclosures on such topics, have greatly expanded over the past decade. However, that does not mean that every proposal that touches on diversity, equity and inclusion issues raises a significant policy issue that transcends a company's ordinary business.

The Staff has recognized that a wide variety of proposals touching upon potential or perceived employee discrimination in the workplace relate to the management of a company's workforce and are excludable under Rule 14a-8(i)(7). See *Walmart, Inc.* (Apr. 8, 2019) (discussed above). See also *PG&E Corp.* (Mar. 7, 2016) (concurring in exclusion under Rule 14a-8(i)(7) of a proposal requesting that the board institute a policy banning discrimination based on race, religion, donations, gender or sexual orientation in hiring vendor contracts or customer relations, as relating to the company's ordinary business operations); *CVS Health Corp.* (Feb. 27, 2015) (concurring in exclusion under Rule 14a-8(i)(7) of a proposal requesting the company "to amend its equal employment opportunity policy . . .to explicitly prohibit discrimination based on political ideology, affiliation or activity," as relating to the company's "policies concerning its employees"); *Bristol-Myers Squibb Co.* (Jan. 7, 2015) (concurring in exclusion under Rule 14a-8(i)(7) of a proposal requesting adoption of antidiscrimination principles "that protect employees' human right to engage, on their personal time, in legal activities relating to the political process. . .without retaliation in the workplace" as "relating to [the company's] ordinary business operations" and in particular "policies concerning [the company's] employees").

As described above, the Proposal relates to tasks that are integral to management's ability to run the day-to-day business of the Company: (i) management of the Company's workforce and (ii) compliance with legal and regulatory requirements. Each of these are critical parts of the



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Company's day-to-day business and operations, and the Proposal's underlying subject matter does not focus on a significant policy issue that transcends the Company's ordinary business or its day-to-day operations. Accordingly, the Proposal is excludable under Rule 14a-8(i)(7).

### CONCLUSION

Based upon the foregoing analysis, we respectfully request that the Staff concur that the Company may exclude the Proposal from the 2022 Proxy Materials. Should the Staff disagree with the conclusions set forth in this letter, or should you require any additional information in support of our position, we would welcome the opportunity to discuss these matters with you as you prepare your response. Any such correspondence should be sent to Jodie Bourdet of Cooley LLP at [jbourdet@cooley.com](mailto:jbourdet@cooley.com). If we can be of any further assistance in this matter, please do not hesitate to call me at (415) 693-2054.

Very truly yours,

*Jodie Bourdet*

Jodie M. Bourdet

cc:

Seth Jaffe, Levi Strauss & Co.  
Nanci Prado, Levi Strauss & Co.  
Scott Shepard, National Center for Public Policy Research  
Eric Jensen, Cooley LLP  
Natalie Karam, Cooley LLP  
Reid Hooper, Cooley LLP

**Exhibit A**

Cover Letter and Proposal



November 5, 2021

**Via FedEx to**

Corporate Secretary  
Levi Strauss & Co.  
1155 Battery Street  
San Francisco, CA 94111.

Dear Sir/Madam,

I hereby submit the enclosed shareholder proposal ("Proposal") for inclusion in the Levi Strauss & Co. (the "Company") proxy statement to be circulated to Company shareholders in conjunction with the next annual meeting of shareholders. The Proposal is submitted under Rule 14(a)-8 (Proposals of Security Holders) of the United States Securities and Exchange Commission's proxy regulations.

I submit the Proposal as the Director of the Free Enterprise Project of the National Center for Public Policy Research, which has continuously held at least \$2,000 in market value of Levi Strauss & Co. stock since January 4, 2020 and which intends to hold these shares through the date of the Company's 2022 annual meeting of shareholders. A Proof of Ownership letter is forthcoming and will be delivered to the Company.

Pursuant to interpretations of Rule 14(a)-8 by the Securities & Exchange Commission staff, I initially propose as a time for a telephone conference to discuss this proposal November 17, 2021 from 2-5 p.m. eastern. If that proves inconvenient, I hope you will suggest some other times to talk. Please feel free to contact me at [sshepard@nationalcenter.org](mailto:sshepard@nationalcenter.org) so that we can determine the mode and method of that discussion.

Copies of correspondence or a request for a "no-action" letter should be sent to me at the National Center for Public Policy Research, 20 F Street, NW, Suite 700, Washington, DC 20001 and emailed to [sshepard@nationalcenter.org](mailto:sshepard@nationalcenter.org).

Sincerely,

A handwritten signature in black ink, appearing to read "Scott Shepard", with a long horizontal flourish extending to the right.

Scott Shepard

Enclosure: Shareholder Proposal

## Civil Rights and Non-Discrimination Audit Proposal

**Resolved:** Shareholders of Levi Strauss & Co. (“the Company”) request that the Board of Directors commission a racial-equity audit analyzing the Company’s impacts on civil rights and non-discrimination, and the impacts of those issues on the Company’s business. The audit may, in the Board’s discretion, be conducted by an independent and unbiased third party with input from civil rights organizations, public-interest litigation groups, employees, communities in which the Company operates and other stakeholders, of all viewpoints and perspectives. A report on the audit, prepared at reasonable cost and omitting confidential or proprietary information, should be publicly disclosed on the Company’s website.

**Supporting Statement:** Tremendous public attention has focused recently on workplace and employment practices. All agree that employee success should be fostered and that no employees should face discrimination, but there is much disagreement about what non-discrimination means.

Concern stretches across the ideological spectrum. Some have pressured companies to adopt “anti-racism” programs that seek to establish “racial equity,” which appears to mean the distribution of pay and authority on the basis of race, sex, orientation and ethnic categories rather than by merit.<sup>1</sup> Where adopted, however, such programs raise significant objection, including concern that the “anti-racist” programs are themselves deeply racist and otherwise discriminatory.<sup>2</sup>

Many companies have been found to be sponsoring and promoting overtly and implicitly discriminatory employee-training and other employment and advancement programs, including Bank of America, American Express, Verizon, Pfizer, CVS and Levi Strauss itself.<sup>3</sup>

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<sup>1</sup> <https://www.sec.gov/Archives/edgar/data/1048911/000120677421002182/fdx3894361-def14a.htm#StockholderProposals88>; <https://www.sec.gov/divisions/corpfin/cf-noaction/14a-8/2021/asyousownike051421-14a8-incoming.pdf>; <https://www.sec.gov/divisions/corpfin/cf-noaction/14a-8/2021/nyscrfamazon012521-14a8-incoming.pdf>; [https://www.sec.gov/Archives/edgar/data/1666700/000119312521079533/d108785ddef14a.htm#rom108785\\_58](https://www.sec.gov/Archives/edgar/data/1666700/000119312521079533/d108785ddef14a.htm#rom108785_58)

<sup>2</sup> <https://www.americanexperiment.org/survey-says-americans-oppose-critical-race-theory/>; <https://www.newsweek.com/majority-americans-hold-negative-view-critical-race-theory-amid-controversy-1601337>; <https://www.newsweek.com/coca-cola-facing-backlash-says-less-white-learning-plan-was-about-workplace-inclusion-1570875>; <https://nypost.com/2021/08/11/american-express-tells-its-workers-capitalism-is-racist/>; <https://www.city-journal.org/verizon-critical-race-theory-training>

<sup>3</sup> <https://www.city-journal.org/bank-of-america-racial-reeducation-program>; <https://www.city-journal.org/verizon-critical-race-theory-training>; <https://nypost.com/2021/08/11/american-express-tells-its-workers-capitalism-is-racist/>; <https://www.foxbusiness.com/politics/cvs-inclusion-training-critical-race-theory>; <https://www.msn.com/en-us/money/other/pfizer-sets-race-based-hiring-goals-in-the-name-of-fighting-systemic-racism-gender-equity-challenges/ar-AAOI5wJ>; <https://www.levistrauss.com/sustainability-report/community/diversity-equity-inclusion/>; <https://www.levistrauss.com/sustainability-report/community/employee-support-and-development/>; <https://www.levistrauss.com/work-with-us/life-at-lsco/diversity-inclusion/>; <https://www.bloomberg.com/news/videos/2021-06-17/levi-s-bergh-and-morrison-on-advancing-diversity-equity-and-inclusion-video>.

This disagreement and controversy create massive reputational, legal and financial risk. If the Company is, in the name of equity, diversity and inclusion, committing illegal or unconscionable discrimination against employees deemed “non-diverse,” then the Company will suffer in myriad ways – all of them both unforgivable and avoidable.

In developing the audit and report, the Company should consult civil-rights and public-interest law groups – but it must not compound error with bias by relying only on left-leaning organizations. Rather, it must consult groups across the spectrum of viewpoints. This includes right-leaning civil-rights groups representing people of color, such as the Woodson Center<sup>4</sup> and Project 21,<sup>5</sup> and groups that defend the rights and liberties of *all* Americans, not merely the ones that many companies label “diverse.” All Americans have civil rights; to behave otherwise is to invite disaster.

Similarly, when including employees in its audit, the Company must allow employees to speak freely without fear of reprisal or disfavor, and in confidential ways. Too many employers have established company stances that themselves chill contributions from employees who disagree with the company’s asserted positions, and then have pretended that the employees who have been empowered by the companies’ partisan positioning represent the true and only voice of all employees. This by itself creates a deeply hostile workplace for some groups of employees, and is both immoral and likely illegal.

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<sup>4</sup> <https://woodsoncenter.org/>

<sup>5</sup> <https://nationalcenter.org/project-21/>





**UBS Financial Services Inc.**  
1000 Harbor Boulevard  
Weehawken, NJ 07086  
Tel. 877-827-7870  
FAX 877-785-8404

**UBS Wealth Advice Center**

[www.ubs.com](http://www.ubs.com)

Corporate Secretary  
Levi Strauss & Co.  
1155 Battery Street  
San Francisco, CA 94111

November 17, 2021

**Confirmation: Information regarding the account of The National Center for Public Policy Research**

To whom it may concern,

The following client has requested UBS Financial Services Inc. to provide you with a letter of reference to confirm its banking relationship with our firm.

The National Center for Public Policy Research has been a valued client of ours since October 2002. The National Center for Public Research held, and has held continuously at least \$2,000 in market value of a Levi Strauss stock since January 4, 2020 through and including November 5, 2021. UBS continues to hold said stock.

Please be aware this account is a securities account not a "bank" account. Securities, mutual funds, and other non-deposit investment products are not FDIC-insured or bank guaranteed and are subject to market fluctuation.

**Questions**

If you have any questions about this information, please contact Benjamin Valdes at (877) 827-7870.

UBS Financial Services is a member firm of the Securities Investor Protection Corporation (SIPC).

Sincerely

*Benjamin Valdes*

Benjamin Valdes  
Financial Advisor  
UBS Financial Services Inc.



January 7, 2022

**Via email: [shareholderproposals@sec.gov](mailto:shareholderproposals@sec.gov)**

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

**RE: Stockholder Proposal of the National Center for Public Policy Research, Securities Exchange Act of 1934 – Rule 14a-8**

Ladies and Gentlemen,

This correspondence is in response to the letter of Jodie M. Bourdet on behalf of Levi Strauss & Co. (the “Company”) dated December 10, 2021, requesting that your office (the “Commission” or “Staff”) take no action if the Company omits our shareholder proposal (the “Proposal”) from its 2022 proxy materials for its 2022 annual shareholder meeting.

### **RESPONSE TO LEVI STRAUSS & CO.’S CLAIMS**

Our Proposal asks the Board of Directors to

commission a racial-equity audit analyzing the Company’s impacts on civil rights and non-discrimination, and the impacts of those issues on the Company’s business. The audit may, in the Board’s discretion, be conducted by an independent and unbiased third party with input from civil rights organizations, public-interest litigation groups, employees, communities in which the Company operates and other stakeholders, of all viewpoints and perspectives. A report on the audit, prepared at reasonable cost and omitting confidential or proprietary information, should be publicly disclosed on the Company’s website.

The Company seeks to exclude the Proposal from the 2022 Proxy Materials pursuant to Rule 14a-8(i)(7) because it claims the subject matter of the Proposal directly concerns the Company's ordinary business operations.

Under Rule 14a-8(g), the Company bears the burden of persuading the Staff that it may omit our Proposal. The Company has failed to meet that burden.

## Analysis

### *Part I. Rule 14a-8(i)(7).*

The Company seeks to prevent action on our Proposal via Rule 14a-8(i)(7), the ordinary business exception. The exception, in its entirety, permits exclusion of a proposal “[i]f the proposal deals with a matter relating to the company’s ordinary business operations.”<sup>1</sup>

The initial rule does not flesh out this provision at all. It has, though, been amended. One of those amendments, made in 1998, was restated and explained in a Staff Legal Bulletin (SLB) in 2002. There the Staff explained that:

[t]he fact that a proposal relates to ordinary business matters does not conclusively establish that a company may exclude the proposal from its proxy materials. ...[P]roposals that relate to ordinary business matters but that focus on ‘sufficiently significant social policy issues ... would not be considered to be excludable because the proposals would transcend the day-to-day business matters.’<sup>2</sup>

As the amendment itself explained, in detail particularly relevant to our considerations here:

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**

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<sup>1</sup> 17 C.F.R. § 240.14a-8(i)(7).

<sup>2</sup> *Staff Legal Bulletin* No. 14A (July 12, 2002) (quoting *Amendments to Rules on Shareholder Proposals*, *Exchange Act Release* No. 40018 (May 21, 1998), available at <https://www.sec.gov/rules/final/34-40018.htm>) (last accessed Jan. 3, 2022).

**raise policy issues so significant that it would be appropriate for a shareholder vote.<sup>3</sup>**

There matters stood until 2017. That fall, Staff issued a bulletin (“SLB 14I”) recognizing that corporate boards would likely have some insight into whether issues raised in shareholder proposals were of sufficiently substantial importance to transcend the category of ordinary business operations.<sup>4</sup> It therefore invited corporations, in arguing for an ordinary business exception, to include in support of their claims details of their boards’ analyses of the shareholder proposals and the underlying policy significance of those proposals.<sup>5</sup> Staff expanded this guidance further in 2018 (“SLB 14J”) and suggested that in demonstrating its board’s analysis of the substantiality of an issue, a company should be expansive in its communications with the Staff.<sup>6</sup> In doing so, Staff welcomed details about particulars such whether the company had already addressed the issue in some manner, including the difference – or the delta – between the proposal’s specific request and the actions the company has already taken, and an analysis of whether the delta presented a significant policy issue for the company.<sup>7</sup> Additional Staff guidance appeared again in the fall of 2019 (“SLB 14K”), wherein Staff underscored the value of the 2018 “delta analysis.”<sup>8</sup>

Then most recently, on November 3, 2021, Staff reverted to the aforementioned 1998 guidance by rescinding SLB 14I, SLB 14J, and SLB 14K following “a review of staff experience applying the guidance in them.”<sup>9</sup> Relevantly, of the rescinded bulletins, Staff said an “undue emphasis was placed on evaluating the significance of a policy issue to a particular company at the expense of whether the proposal focuses on a significant social policy....” Staff went on to explain that it was prospectively realigning its “approach for determining whether a proposal relates to ‘ordinary business’ with the standard the Commission initially articulated in 1976, which

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<sup>3</sup> *Amendments to Rules on Shareholder Proposals*, Exchange Act Release No. 40018 (May 21, 1998) (emphasis added), available at <https://www.sec.gov/rules/final/34-40018.htm> (last accessed Jan. 3, 2022).

<sup>4</sup> See *Staff Legal Bulletin* No. 14I (Nov. 17, 2017), available at <https://www.sec.gov/interps/legal/cfs1b14i.htm> (Feb. 20, 2020) (“A board acting in this capacity and with the knowledge of the company’s business and the implications for a particular proposal on that company’s business is well situated to analyze, determine and explain whether a particular issue is sufficiently significant because the matter transcends ordinary business and would be appropriate for a shareholder vote.”).

<sup>5</sup> See *id.* (“Accordingly, going forward, we would expect a company’s no-action request to include a discussion that reflects the board’s analysis of the particular policy issue raised and its significance. That explanation would be most helpful if it detailed the specific processes employed by the board to ensure that its conclusions are well-informed and well-reasoned.”).

<sup>6</sup> See *Staff Legal Bulletin* No. 14J (Oct. 23, 2018), available at <https://www.sec.gov/corpfin/staff-legal-bulletin-14j-shareholder-proposals> (last accessed Jan. 3, 2022).

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

<sup>8</sup> See *Staff Legal Bulletin* No. 14K (Oct. 16, 2019), available at <https://www.sec.gov/corpfin/staff-legal-bulletin-14k-shareholder-proposals> (last accessed Jan. 3, 2022).

<sup>9</sup> See *Staff Legal Bulletin* No. 14L (Nov. 3, 2021), available at <https://www.sec.gov/corpfin/staff-legal-bulletin-14l-shareholder-proposals> (last accessed Jan. 3, 2022).

provided an exception for certain proposals that raise significant social policy issues, and which the Commission subsequently reaffirmed in the 1998 Release.”<sup>10</sup>

***Part II. The non-omissibility of our Proposal is fully established by the Staff’s decision in Amazon.com, Inc. (avail. April 7, 2021).***

Our Proposal is substantially indistinguishable, for Staff-review purposes, from the proposal that was found non-omissible in *Amazon.com, Inc.* (avail. April 7, 2021). The resolution of our Proposal is based on and is materially indistinguishable from the *Amazon.com* proposal. The supporting statements of each proposal cover similar territory in explaining the very similar concerns that animated submission of the proposals. The only distinction between our Proposal and the one submitted in *Amazon.com* is that ours seeks an audit and report looking into concerns about discrimination against groups that the relevant company has not honored with the label “diverse,” while the latter sought the same products looking into concerns about discrimination against groups that it and the relevant company had honored with that label. But the Staff may not permit or deny omission of proposals on the grounds of the Staff’s personal attitude toward the focus of otherwise identical proposals. As a result, *Amazon.com* is determinative in this case.

As we have noted, the resolution of our Proposal asks the Company’s Board of Directors to

commission a racial-equity audit analyzing the Company’s impacts on civil rights and non-discrimination, and the impacts of those issues on the Company’s business. The audit may, in the Board’s discretion, be conducted by an independent and unbiased third party with input from civil rights organizations, public-interest litigation groups, employees, communities in which the Company operates and other stakeholders, of all viewpoints and perspectives. A report on the audit, prepared at reasonable cost and omitting confidential or proprietary information, should be publicly disclosed on the Company’s website.

The proposal in *Amazon.com, Inc.* asked that Amazon.com:

commission a racial equity audit analyzing the Company’s impacts on civil rights, equity, diversity and inclusion, and the impacts of those issues on the Company’s business. The audit may, in the board’s discretion, be conducted by an independent third party with input from civil rights organizations, employees, communities in which the Company operates and other stakeholders. A report on the audit, prepared at reasonable cost and omitting confidential or proprietary information, should be publicly disclosed on the Company’s website.

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<sup>10</sup> *Id.*

These proposals are nearly identical. Each raises issues of workplace discrimination on protected grounds. Each implicates *the very same* issues of substantial social policy that transcend ordinary business. The *Amazon.com* proposal having been found non-omissible, so must our Proposal be.

Additionally, each supporting statement explains the concerns that motivate the proposal in materially equivalent ways. Like our Proposal, the *Amazon.com* proposal cited potential illegalities arising from company conduct. Like our Proposal, the *Amazon.com* proposal cited specific problematic company behaviors and activities. And like our Proposal, the *Amazon.com* proposal provided guidance about how a proper audit and report should be conducted. Yet none of this content was deemed to have intruded into ordinary business operations in a way that rendered the proposal inadmissible. And nor can it in this proceeding.

***Part III. The Proposal does not relate to the Company's ordinary business operations.***

Using the ordinary business exception, the Company first seeks to exclude our Proposal because it relates to the Company's management of its workforce. The Company, however, misses or ignores the clear intent of the Proposal. Rather than seeking to manage the Company's workforce, "in particular, the ordinary business matter of training the Company's workforce" as alleged by the Company in its December 10 request, the Proposal merely seeks to ascertain the *impacts* of the Company's actions.

And, of course, it does not seek to interfere in the Company's ordinary business operations in any way that is at all different than the interference – or not – sought by the *Amazon.com* proposal, which was found non-omissible less than a year ago.

***A. The Proposal does not seek to manage the Company's workforce.***

As its plain language states, the Proposal requests the Company to "commission a racial-equity audit analyzing the Company's impacts on civil rights and non-discrimination, and the impacts of those issues on the Company's business." Nowhere, despite the Company's claims to the contrary, does the Proposal seek to manage the Company's workforce by instructing how it must conduct its training or its hiring or advancement initiatives (or in any other way). If following such an audit the Company elects to change certain practices, that is a wholly separate matter left up to the Company. The mere practice of ascertaining information on the impact of the Company's actions on civil rights and non-discrimination, however, does not seek to direct business operations themselves, but rather seeks a review of the impacts or effects thereof. Our Proposal simply asks the company for a report about what it is already doing, and the potential risks and effects associated with that behavior.

In this regard, our Proposal is, as ever, indistinguishable from the proposal in *Amazon.com*. In that proceeding Amazon argued that as a result of issues of concern raised in the supporting statement

[i]n essence, the Proposal focuses on how the Company is managing and responding operationally to the impacts of the cited social issues on its business. Like *Netflix, Inc.* and the proposals in the other precedents cited above, and as described above, the impact on the Company's business and operations of these important social issues implicate a wide range of matters that are fundamental to management's ability to run the Company on a day-to-day basis, and the Proposal may therefore be excluded pursuant to Rule 14a-8(i)(7).<sup>11</sup>

Here, the Company asserts that “[w]hile the Proposal itself broadly touches upon topics of civil rights and non-discrimination, the Supporting Statement makes clear that the heart of the Proposal's focus is on the ordinary business topic of employee training and, in particular, the Proponent's objection to the content of the Company's employee training materials and programs.” This is wrong. We made passing reference to the Company's employee-training materials in order to help to illustrate why we think that the concerns about discrimination against groups deemed “non-diverse” by the Company is very real. While SLB 14L clarifies that when proposals raise issues of human-capital management, as ours does, company-specific reasons for concern need not be demonstrated. It does not say that they *may not* be demonstrated. And nothing in this reference in the supporting statement alters the clear intention of our Proposal or renders it inappropriately focused on any specific facet of ordinary business.

In the *Amazon.com* proceeding, as here, the companies attempted to argue that *evidence* of troubling behavior provided in the supporting statement somehow creates an undo interference with the subject matter of the evidence. But the argument was found incoherent and insufficient in *Amazon.com*, and must be here.

In arguing that our Proposal unduly interferes with the management of the Company's workforce, the Company relies on *United Technologies Corp.* (avail. Feb. 19, 1993), but that proceeding is irrelevant to this one. The proposal in *United* contained a laundry list of “nine MacBride Principles” that the Board would have had to either implement or increase activity on. These “principles” included very specific management dictates such as “[i]ncreasing the representation of individuals from underrepresented religious groups in the workforce...banning of provocative religious or political emblems from the workplace...[and] the development of training programs that will prepare substantial numbers of current minority employees for skilled jobs....” Upon reviewing the proposal and arguments presented in *United*, Staff set forth the view that “proposals directed at a company's employment policies and practices with respect to its non-executive workforce [are] uniquely matters related to the conduct of the company's ordinary business operations.” Then Staff proceeded to list several examples of such ordinary business categories (*e.g.*, employee health benefits, management of the workplace, and employee hiring and firing, to name a few). Our Proposal, however, does not seek to interfere with any employment policy or practice; it merely seeks an audit of the impact of the Company's actions.

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<sup>11</sup> *Amazon.com, Inc.* (avail. April 7, 2021), Company no-action request, at 11-12 (pp. 30-31 of proceeding file), available at <https://www.sec.gov/divisions/corpfin/cf-noaction/14a-8/2021/nyscrfamazon040721-14a8.pdf>.

Moreover, the Staff decision in *United Technologies Corp.* belies SLB 14L when it comes to the question of social policy significance. Staff in that case took the now-defunct position that social policy concerns cannot override the ordinary business exception and instead determined that the employment-based nature of the proposal is alone controlling. The Staff decision in that case reads:

[T]he Division has determined that the fact that a shareholder proposal concerning a company's employment policies and practices for the general workforce is tied to a social issue will no longer be viewed as removing the proposal from the realm of ordinary business operations of the registrant. Rather, determinations with respect to any such proposals are properly governed by the employment based nature of the proposal.

The conclusion reached in *United Technologies Corp.*, therefore, is inapplicable to the Proposal at hand, as it has been abrogated by the plain language of SLB 14L – as well as the 1998 Amendments that SLB 14L is premised upon. *Walmart, Inc.* (avail. Apr. 8, 2019) likewise issued before the substantial changes instituted by SLB 14L, changes which significantly privilege proposals that seek to address concerns of workforce management and potential discrimination such as those raised in our Proposal.

***B. The Proposal does not relate to the Company's legal compliance program.***

Next the Company seeks to exclude the Proposal because it alleges the Proposal relates to the Company's legal compliance program and therefore relates to the ordinary business matters of the Company. But this, too, is incorrect. While our Proposal notes that some of the Company's policies may raise legal-liability risks, it does not seek a legal analysis of the Company's practices. Rather, it appropriately seeks a risk analysis of those practices – which sort of analysis is routinely found appropriate by the Staff.

In this way, as in all others, our Proposal is materially indistinguishable from the proposal in *Amazon.com*. That proposal pointed out company activities that had led to lawsuits and presented litigation risk, just as ours flags similar litigation risks. But this provision of evidence did not and does not provide grounds for finding the proposal omissible.

In support of its contention the Company once again cites inappropriate precedent. For instance, the Company cites to *JPMorgan Chase & Co.* (avail. Mar. 13, 2014), in which a proposal requested that “the board of directors prepare a policy review...evaluating opportunities for clarifying and enhancing implementation of Board members' and officers' fiduciary, moral and legal obligations to shareholders and other stakeholders.” In doing so, the proponent of that proposal expressly sought an evaluation of “legal obligations” by the board of directors. Our Proposal does no such thing. While our Supporting Statement notes concern that some of the



Company's activities may be illegal, the Proposal does not require preparation of an analysis of legal obligations by the Company.

Another case cited by the Company is *General Electric Co.* (avail. Jan. 4, 2005). The proposal in that case would have required the Board of Directors to "prepare a report...detailing GE subsidiary NBC Universal Television, Inc.'s broadcast television stations' current activities to meet their public interest obligations." The proposal also would have specifically required the report to "include quantitative and qualitative information about public service announcements (PSAs), public affairs programming, news programs, children's programs and ascertainment." That is a legal compliance analysis, in that it would have specifically required the board to develop a detailed report outlining how the company's current activities meet its "public interest obligations" and include information about specific programming requirements. Rather than effectively requiring a legal analysis to ensure compliance with particular "obligations" as the proposal in *General Electric* would have done, our Proposal seeks a standard and uniformly non-omissible risk assessment.

Similarly, the additional cases cited by the Company – *Halliburton Co.* (avail. Mar. 10, 2006), *Navient Corp.* (avail. Mar. 26, 2015), *Sprint Nextel Corp.* (avail. Mar. 16, 2010), and *Norfolk Southern Corporation* (avail. Feb. 12, 2020) – all concern requests for express compliance reviews or reviews otherwise in avoidance of further established violations (except for *H&R Block Inc.* (avail. Aug. 1, 2006), which does not expressly list legal compliance as grounds for omission at all)).

The decisions relied upon by the Company are irrelevant to this proceeding. Our Proposal merely seeks to ascertain the impacts of – and therefore the potential risks and effects associated with – the Company's actions. Our Proposal has nothing to do with the Company's internal legal compliance program, as it does not seek an accounting of affirmative actions taken to ensure compliance with certain laws or otherwise seek to ensure compliance where there has already been previously established violations. While an audit stemming from the Proposal may provide insight into potential risks and liabilities that the Company's lawyers may (or may not) want to consider, unlike the precedent cited by the Company, our Proposal seeks no compliance review of specific laws nor requires any action be taken by the Company other than commissioning the audit, the details of which it leaves to the Board's discretion.

***C. The Proposal does not seek to direct the Company's communications with investors.***

The Company also claims that "the Proposal seeks to direct the Company's communications with investors" because of exhortatory assertions in the supporting statement. But as the resolution of our Proposal makes clear, our Proposal *advises* how a sensible company genuinely interested in ensuring that it does not discriminate against *any* employees would proceed in such an audit, and hopes it will follow that course – just as did the proposal found non-omissible in *Amazon.com*, in which proceeding the company also claimed that the proposal impermissibly

interfered with “communications with shareholders and other constituents.”<sup>12</sup> It does not instruct the Company to communicate the findings of its audit in any specific way, or follow any specified form. This renders the Company’s reliance on *Moody’s Corp.* (avail. Feb. 23, 2021) – in which the relevant proposal sought publication of the Company’s EEO-1 report itself – inapposite, even if that precedent has not been effectively superseded by SLB 14L.

Accordingly, despite claims by the Company to the contrary, our Proposal neither manages the Company’s workforce, its legal compliance program, nor anything else having to do with the Company’s ordinary business operations that would warrant a Staff exception in this instance. Rather, our Proposal merely examines the *effects* of the Company’s practices via an audit. If the Company elects to take subsequent action to address any concerns arising from such an audit, the action would not have been compelled by the Proposal or even the audit itself, but rather by the independent judgment of the Company that such successive action was warranted by the results.

***Part III. Even if Staff find that the Proposal relates to the Company’s ordinary business operations, the Proposal fits squarely in the significant social policy exception.***

As alluded to in Part I, the Commission first articulated the significant social policy exception to the ordinary business exception in 1976, which it subsequently reaffirmed in 1998 and announced its adherence to in SLB 14L.<sup>13</sup> As described by Staff in SLB 14L, the significant social policy exception “is essential for preserving shareholders’ right to bring important issues before other shareholders by means of the company’s proxy statement, while also recognizing the board’s authority over most day-to-day business matters.” As a result, the Staff explained that when analyzing whether a proposal raises an issue of social policy significance it:

will no longer focus on determining the nexus between a policy issue and the company, but will instead focus on the social policy significance of the issue that is the subject of the shareholder proposal. In making this determination, the staff will consider whether the proposal raises issues with a broad societal impact, such that they transcend the ordinary business of the company.<sup>14</sup>

In particular, Staff emphasized that “proposals squarely raising human capital management issues with a broad societal impact would not be subject to exclusion solely because the proponent did not demonstrate that the human capital management issue was significant to the company.”<sup>15</sup> Our proposal raises exactly such an issue of broad societal impact: whether the Company’s actions impact civil rights and non-discrimination, and the impacts of those issues on the Company’s business, and therefore meets the significant social policy exception to the ordinary business operations grounds of exclusion.

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<sup>12</sup> *Id.* at 11 (30).

<sup>13</sup> See Division of Corporation Finance, Shareholder Proposals: Staff Legal Bulletin No. 14L (Nov. 3, 2021).

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

***A. The impact of the Company's policies and practices on racial and other equity, equality, civil rights and non-discrimination considerations are surely of substantial policy interest, as is well established by Staff precedent.***

As we noted above, the matter of whether our Proposal raises issues of significant social policy is already settled precedent. In the *Amazon.com, Inc.* (avail. April 7, 2021) proceeding, the Staff established that proposals that raise issues of workplace discrimination – certainly on the grounds of race and other federally suspect characteristics – implicate issues of substantial social policy that transcend ordinary business. There, the proponents offered a proposal that sought that Amazon.com:

commission a racial equity audit analyzing the Company's impacts on civil rights, equity, diversity and inclusion, and the impacts of those issues on the Company's business. The audit may, in the board's discretion, be conducted by an independent third party with input from civil rights organizations, employees, communities in which the Company operates and other stakeholders. A report on the audit, prepared at reasonable cost and omitting confidential or proprietary information, should be publicly disclosed on the Company's website.

Our Proposal likewise seeks disclosures to shareholders that will allow them to evaluate whether the Company is engaging in racially discriminatory or otherwise discriminatory behavior in its human capital management policies and programs. In fact, of course, our Proposal was explicitly modeled on the language and the import of the *Amazon.com* Proposal that the Staff found non-excludable even under the review regime that was in place prior to the issuance of Staff Bulletin 14L.

***B. Company actions raise significant concerns about risks arising from the Company's attitude toward and treatment of these substantial policy issues.***

Although under SLB 14L proponents are no longer required to demonstrate that a Company has itself undertaken policies or practices that underlie the concerns leading to the submission of a proposal dealing with human capital management issues, there is no doubt that worrying activities implicated by our Proposal are occurring at the company. All one must do is look at the Company's own website (at locations referenced in our Proposal) to see the social policy significance of an audit to analyze the Company's impacts on discrimination, including against employees it deems "non-diverse." For instance, the Company's "Diversity, Equity and Inclusion" webpage notes "[The Company's] total U.S. workforce is much more ethnically diverse than the U.S. population as a whole – driven by the diversity of our retail and distribution center employees. However, we have opportunity to diversify our corporate workforce, which is 55% white." Given U.S. Census data lists that the "[w]hite-alone, not Hispanic or Latino" population is at 60.1%,<sup>16</sup> a 55% white composition in the corporate workforce is already five

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<sup>16</sup> U.S. Census Bureau, *QuickFacts: United States*, available at <https://www.census.gov/quickfacts/fact/table/US/RHI825219> (last accessed Dec. 22, 2021).

percentage points lower than the proportion of whites in the total U.S. population. This does not suggest white overrepresentation in need of further diversification, and raises concerns about how additional overrepresentation of populations the Company deems “diverse” is going to be achieved, and whether discrimination against “non-diverse” populations will be involved in those efforts.

The declaration on the Company’s website that a particular race is overrepresented, thus requiring diversification of that segment of its workforce, despite the fact that the race is actually *underrepresented* as a portion of the U.S. population (as determined by U.S. Census data) underscores the concern embodied in our Proposal that such actions create massive risk for the Company. Are qualified candidates for corporate positions being passed up because they fail to meet the Company’s definition of diverse? Are qualified candidates not even applying because the Company has effectively told them they will not be hired due to a superficial surface characteristic such as race? These are issues of profound social policy significance.

Further underscoring the Proposal’s social policy significance: even as the Company effectively devalues white employees in comparison to non-white employees, it actively pursues additional female employees at the necessary expense of male employees even as women are already overrepresented in the Company’s workforce. As the Company notes on its “Diversity, Equity and Inclusion” webpage, “[l]ooking at gender data on a global, total company level our female population is quite strong. When we look at gender representation by function, women make up the majority of our workforce.”<sup>17</sup> In fact, the Company has greater female representation than the current proportion of females in the United States. While current U.S. Census data lists the female population of the entire United States at 50.8%,<sup>18</sup> the Company boasts an overall female workforce of 58%, with corporate female representation at 54% and retail/distribution center workforce at 60%—more than three and nine percentage points higher than female representation in the overall U.S. population, respectively.<sup>19</sup>

Rather than seeing this overrepresentation of females in its workforce as “an opportunity to diversify” its corporate workforce to include more males, the Company makes no note of its female workforce being too large. Instead, the Company homes in on what it deems the significant underrepresentation of females at the highest levels of leadership. This shifting concern about over- and underrepresentation based on the favored or non-favored status of the demographics involved, based on suspect racial and gender categories, is as worrying as the intense focus on such categories in the first place. Our Proposal seeks to ensure that the company is carefully evaluating what appears on the face of its own communications to be systemic

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<sup>17</sup> Levi Strauss & Co., *Diversity, Equity and Inclusion* webpage, available at <https://www.levistrauss.com/work-with-us/life-at-lsco/diversity-inclusion/> (last accessed Dec. 22, 2021).

<sup>18</sup> U.S. Census Bureau, *QuickFacts: United States*, available at <https://www.census.gov/quickfacts/fact/table/US/RHI825219> (last accessed Dec. 22, 2021).

<sup>19</sup> See, Levi Strauss & Co., *Diversity, Equity and Inclusion* webpage, available at <https://www.levistrauss.com/work-with-us/life-at-lsco/diversity-inclusion/> (last accessed Dec. 22, 2021); see also U.S. Census Bureau, *QuickFacts: United States*, available at <https://www.census.gov/quickfacts/fact/table/US/RHI825219> (last accessed Dec. 22, 2021).

discrimination against disfavored groups, and by suspect classifications. It is therefore exactly of the type of proposal “squarely raising human capital management issues with a broad societal impact” that staff guidance explicitly and repeatedly bars from omission.

### **Conclusion**

Our Proposal seeks only an assessment on the impact of the Company’s actions, not in any way the management of the Company, and it does so about issues that the Staff has unquestionably declared of significant social policy interest.

The Company has clearly failed to meet its burden that it may exclude our Proposal under Rule 14a-8(g). Therefore, based upon the analysis set forth above, we respectfully request that the Staff reject the Company’s request for a no-action letter concerning our Proposal.

A copy of this correspondence has been timely provided to the Company. If I can provide additional materials to address any queries the Commission may have with respect to this letter, please do not hesitate to call me at (202) 507-6398 or email me at [srehberg@nationalcenter.org](mailto:srehberg@nationalcenter.org).

Sincerely,



Sarah Rehberg  
National Center for Public Policy Research

cc: Scott Shepard ([sshepard@nationalcenter.org](mailto:sshepard@nationalcenter.org))  
Jodie M. Bourdet, Cooley LLP ([jbouret@cooley.com](mailto:jbouret@cooley.com))



Jodie M. Bourdet  
T: +1 415 693 2054  
jbourdet@cooley.com

January 20, 2022

**Via E-mail to [shareholderproposals@sec.gov](mailto:shareholderproposals@sec.gov)**

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

**Re: Shareholder Proposal to Levi Strauss & Co.**

Ladies and Gentlemen:

On behalf of Levi Strauss & Co. (the “*Company*”), we refer to our letter dated December 10, 2021 (the “*No-Action Request*”), pursuant to which we requested that the staff of the Division of Corporation Finance (the “*Staff*”) of the Securities and Exchange Commission (the “*Commission*”) concur with the Company that the shareholder proposal and supporting statement (the “*Proposal*”) submitted by the National Center for Public Policy Research (the “*Proponent*”) may be excluded from the proxy materials for the Company’s 2022 annual meeting of shareholders (the “*2022 Proxy Materials*”).

We are responding to the letter submitted by the Proponent, dated January 7, 2022 (the “*Proponent’s Response*”), and this letter supplements the No-Action Request. In accordance with Rule 14a-8(j) of the Securities Exchange Act of 1934 (the “*Exchange Act*”), a copy of this letter is also being sent to the Proponent.

**The Proposal May Be Omitted Under Rule 14a-8(i)(7) Because the Subject Matter of the Proposal Directly Concerns the Company’s Ordinary Business Operations.**

As described below and in the No-Action Request, because the Proposal deals with matters relating to the Company’s ordinary business operations, the Proposal is excludable from the 2022 Proxy Materials under Rule 14a-8(i)(7). The Proponent’s Response argues that the Proposal should not be excluded under Rule 14a-8(i)(7) because the company has failed to meet its burden of persuading the Staff that it may omit the Proposal. We disagree.



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The Proponent states that the “Proposal does not relate to the Company’s ordinary business operations,” and specifically “does not seek to manage the Company’s workforce” or “does not relate to the Company’s legal compliance program.” Despite the Proponent’s argument that the No-Action Request “misses or ignores the clear intent of the Proposal,” the Proposal’s Resolved clause, supported by the language in the Supporting Statement, make it clear that the heart of the Proposal’s focus is on the ordinary business matters addressed in the No-Action Request.

As provided in the No-Action Request, while the Proposal itself broadly touches upon topics of civil rights and non-discrimination, the Supporting Statement makes clear that the heart of the Proposal’s focus is on the ordinary business topic of managing the Company’s workforce and, in particular, the Proponent’s objection to the content of the Company’s employee training materials and programs. For example, the Supporting Statement provides “[m]any companies have been found to be sponsoring and promoting overtly and implicitly discriminatory employee-training and other employment and advancement programs, including Bank of America, American Express, Verizon, Pfizer, CVS and Levi Strauss itself.” The Supporting Statement further provides that “[s]ome have pressured companies to adopt “anti-racism” programs that establish “racial equity,” which appears to mean the distribution of pay and authority on the basis of race, sex, orientation and ethnic categories rather than by merit. Where adopted, however, such programs raise significant objection, including concern that the “anti-racist” programs are themselves deeply racist and otherwise discriminatory.” The Proponent’s Response claims that the Proposal does not seek to manage the Company’s workforce by instructing how it must conduct its training or its hiring or advancement initiatives. However, as noted above, the Proposal and Supporting Statement are clearly focused on the Company’s hiring and employment decisions. Decisions related to the topics, content and form of its employee training programs are fundamental to the management of the Company’s business and inherently implicate the day-to-day operations of the Company.

The Proponent cites to *Amazon.com, Inc.* (Apr. 7, 2021) for support of its argument that the Proposal is not excludable under Rule 14a-8(i)(7). However, the proposal in *Amazon* specifically requested a racial-equity audit analyzing the Company’s impacts on “*civil rights, equity, diversity and inclusion*,” and the impacts of those issues on the Company’s business. The supporting statement in *Amazon* referenced that “companies would benefit from assessing the risks of products, services and overall corporate practices that are or perceived to be discriminatory, racist, or increasing inequalities.” The *Amazon* supporting statement then provided examples of alleged company actions where company products or services were criticized for being discriminatory or racist. The Staff denied relief under Rule 14a-8(i)(7), presumably due to the underlying significant social policy of racial equity issues and discrimination that transcended the ordinary business matters alleged by the company. The Proposal, and most specifically the focus of the Supporting Statement, is distinguishable from the proposal in *Amazon*.



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Similar to *Amazon*, the Proposal requests a similar racial-equity audit analyzing the Company's impacts on civil rights and non-discrimination. However, unlike *Amazon*, the Supporting Statement, as noted above, has an entirely different focus of objecting to how the Company conducts the training, development and advancement of its employees. Unlike the proposal in *Amazon*, the Proposal does not focus on racism, diversity and inclusion on a broad societal basis. Here, the Proposal focuses on what appears to be the opposite of diversity and inclusion and relates to the Proponent's concern with how the Company manages its workforce and implements employment practices and policies across its business. Despite the Proponent's argument to the contrary, the underlying focus of the Proposal in the instance case differs from the proposal in *Amazon*, in that the widely accepted significant social policy issue of racial equity issues and discrimination present in *Amazon* are not present in the Proposal.

As discussed throughout the No-Action Request, the Company is committed to a diverse, equitable and inclusive culture that celebrates diversity among its employees. As noted above, the Company has in place a Worldwide Code of Business Conduct, where the Company specifically highlights the value of diversity (welcoming personnel of all types of diversity), equity (ensuring equal and fair treatment of all employees) and inclusion (appreciating and recognizing people's unique contributions). Additionally, in the 2020 Sustainability Report, the Company emphasizes that having the right mix of talent is vital to the Company's continued growth and innovation and highlights various Employee Resource Groups that foster diversity across a variety of interests and issues showcasing the Company's broad view of diversity.

As provided in the No-Action Request, the Company's employees are dispersed across the world and perform diverse and complex corporate, customer, manufacturing and distribution functions. The Company's training programs seek to provide its employees with the tools they need to perform their work, the materials to understand and learn about the Company's values and culture and the materials to mitigate certain compliance risks to the Company. Accordingly, the Company's training programs are tailored to different geographic regions and job functions and include reference to a number of topics, which include: relationships with customers and dealers, the Company's diverse, equitable and inclusive culture, compliance with the Company's Worldwide Code of Business Conduct, compliance with anti-bribery/corruption, compliance with management of private data and cybersecurity, compliance with conflicts of interest, discrimination and workplace harassment policies and sexual harassment policies. These programs and their purpose are so fundamental to Company management's ability to run the operations of the Company on a day-to-day basis that they could not, as a practical matter, be subject to direct shareholder oversight.

Accordingly, as demonstrated in the No-Action Request, the Proposal is excludable under Rule 14a-8(i)(7).





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## CONCLUSION

For the reasons stated above and in the No-Action Request, we respectfully request that the Staff concur that the Company may exclude the Proposal from the 2022 Proxy Materials. Should the Staff disagree with the conclusions set forth in this letter, or should you require any additional information in support of our position, we would welcome the opportunity to discuss these matters with you as you prepare your response. Any such correspondence should be sent to Jodie Bourdet of Cooley LLP at [jbourdet@cooley.com](mailto:jbourdet@cooley.com). If we can be of any further assistance in this matter, please do not hesitate to call me at (415) 693-2054.

Very truly yours,

*Jodie Bourdet*

Jodie M. Bourdet

cc:

Seth Jaffe, Levi Strauss & Co.  
Nanci Prado, Levi Strauss & Co.  
Scott Shepard, National Center for Public Policy Research  
Eric Jensen, Cooley LLP  
Natalie Karam, Cooley LLP  
Reid Hooper, Cooley LLP





January 28, 2022

**Via email: [shareholderproposals@sec.gov](mailto:shareholderproposals@sec.gov)**

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

**RE: Stockholder Proposal of the National Center for Public Policy Research, Securities Exchange Act of 1934 – Rule 14a-8**

Ladies and Gentlemen,

This correspondence is in response to the letter of Jodie M. Bourdet on behalf of Levi Strauss & Co. (the “Company”) dated January 20, 2022 (the “supplemental letter”), again requesting that your office (the “Commission” or “Staff”) take no action if the Company omits our shareholder proposal (the “Proposal”) from its 2022 proxy materials for its 2022 annual shareholder meeting. Our original no-action reply letter was dated January 7, 2022, responding to the December 10, 2021 no-action request by the Company.

#### **RESPONSE TO LEVI STRAUSS & CO.’S CLAIMS**

In its supplemental letter, the Company renews its argument that our Proposal implicates the ordinary business of the Company without transcending ordinary-business concerns because of the significant policy issues that our Proposal presents. In renewing its argument, the Company attempts to distinguish our Proposal from the proposal in *Amazon.com, Inc.* (avail. April 7, 2021) upon which it is explicitly modeled and from which it differs only with reference to the targets of discrimination upon which it focuses. Our Proposal focuses on discrimination against groups that the Company has not honored with the label “diverse,” while the *Amazon.com* proposal focused on the same concerns for groups that the proponents there had honored with that appellation.

The Company attempts to distinguish our Proposal from the *Amazon.com* proposal because our Proposal makes reference to employee training and policies as evidence of discrimination justifying our proposal.

This argument was raised and found insufficient in a recently concluded proceeding, *Walt Disney Company*, (avail. Jan. 19, 2022). That proceeding involved a proposal submitted by us to Disney that is materially the same as our Proposal here, except that the company-specific evidence of discrimination against “non-diverse” employee populations is necessarily different. The arguments made in favor of omission are materially indistinguishable. And so the result there – a finding that Disney could not omit – is controlling here.

The resolution of our Proposal to the Company here asks the Board of Directors to

commission a racial-equity audit analyzing the Company’s impacts on civil rights and non-discrimination, and the impacts of those issues on the Company’s business. The audit may, in the Board’s discretion, be conducted by an independent and unbiased third party with input from civil rights organizations, public-interest litigation groups, employees, communities in which the Company operates and other stakeholders, of all viewpoints and perspectives. A report on the audit, prepared at reasonable cost and omitting confidential or proprietary information, should be publicly disclosed on the Company’s website.

The resolution of our Proposal to the Company in *Disney* likewise asked the Board of Directors to

commission a workplace non-discrimination audit analyzing Disney’s impacts, including the impacts arising from Disney-sponsored or -promoted employee training, on civil rights and non-discrimination in the workplace, and the impacts of those issues on Disney’s business. A report on the audit, prepared at reasonable cost and omitting confidential or proprietary information, should be publicly disclosed on Disney’s website.

Both of the supporting statements then go on to frame the issues of concern to us – discrimination, particularly against groups that the companies do not honor with the label “diverse.” In each we set up the background concern about such discrimination, and provided evidence that it is occurring throughout corporate America. Then, as we noted in the *Disney* proceeding, we made reference to the Company’s own facially discriminatory behavior – behavior which we described in much greater detail in our original no-action reply of January 7, 2021, to which word limits did not obtain – in order to demonstrate why we think that the possibility of civil-rights violations and discrimination against groups deemed “non-diverse” by the Company is very real. (Note that while Staff Bulletin 14L clarifies that when proposals raise issues of human-capital management, as ours does, company-specific reasons for concern need not be demonstrated. It does not say that they *may not* be demonstrated.)

In its January 19, 2022 decision the Staff determined that “[w]e are unable to concur in your view that the Company may exclude the Proposal under Rule 14a-8(i)(7). In our view, the Proposal transcends ordinary business matters and does not seek to micromanage the Company.”

The Company is making materially the same arguments about materially the same proposal as arose in *Disney*. The result must now be the same in this proceeding as in *Disney*.

In passing, we note that in our original no-action reply we provided evidence that the Company is not only actively discriminating against “non-diverse” employee populations on suspect grounds, but is doing so even when the groups against whom it is discriminating are statistically underrepresented at the Company, undermining its own rationale and laying bare its wholly discriminatory intent. Moreover, it affirmatively brags about that behavior on its website. It’s hard to imagine clearer evidence that our Proposal calling for an audit and report analyzing this behavior is vital. And we note that the Company made no effort at all to counter the notion that it is actively discriminating in exactly the way that we have identified. It just wants the Staff to conclude that such discrimination is just ordinary business at Levi-Strauss. That it does indeed appear to be ordinary business there is exactly why substantial public-policy issues – like active and eager discrimination on suspect grounds – transcend ordinary-business considerations.

\*

The Company seeks to exclude the Proposal from the 2022 Proxy Materials pursuant to Rule 14a-8(i)(7) because it claims the subject matter of the Proposal directly concerns the Company’s ordinary business operations. Our Proposal seeks only an assessment of the impact of the Company’s actions, not in any way the management of the Company, and it does so about issues that the Staff has unquestionably declared of significant social policy interest.

Under Rule 14a-8(g), the Company bears the burden of persuading the Staff that it may omit our Proposal. The Company has failed to meet that burden. The Company has clearly failed to meet its burden that it may exclude our Proposal under Rule 14a-8(g). Therefore, based upon the analysis set forth above, we respectfully request that the Staff reject the Company’s request for a no-action letter concerning our Proposal.

Office of the Chief Counsel  
Division of Corporation Finance  
January 28, 2022  
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A copy of this correspondence has been timely provided to the Company. If I can provide additional materials to address any queries the Commission may have with respect to this letter, please do not hesitate to call me at (202) 507-6398 or email me at [sshepard@nationalcenter.org](mailto:sshepard@nationalcenter.org).

Sincerely,

A handwritten signature in black ink, appearing to read "Scott Shepard", with a long horizontal flourish extending to the right.

Scott Shepard  
Director  
Free Enterprise Project  
National Center for Public Policy Research

cc: Jodie M. Bourdet, Cooley LLP ([jbouret@cooley.com](mailto:jbouret@cooley.com))