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

DIVISION OF
CORPORATION FINANCE

February 21, 2025

Helena K. Grannis
Cleary Gottlieb Steen & Hamilton LLP

Re: Levi Strauss & Co. (the "Company")
Incoming letter dated December 19, 2024

Dear Helena K. Grannis:

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 Company consider abolishing its DEI program, policies, department and goals.

We are unable to concur in your view that the Company may exclude the Proposal under Rule 14a-8(i)(3). We do not believe that the Proposal, taken as a whole, is so vague or indefinite that it is rendered materially misleading.

We are unable to concur in your view that the Company may exclude the Proposal under Rule 14a-8(i)(7). In our view, based on the information you have presented, the Company has not demonstrated that the Proposal relates to its ordinary business operations. In addition, in our view, the Proposal does not seek to micromanage the Company.

We are unable to concur in your view that the Company may exclude the Proposal under Rule 14a-8(i)(10). In our view, the Company has not substantially implemented the Proposal.

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/2024-2025-shareholder-proposals-no-action.

Sincerely,

Rule 14a-8 Review Team

cc: Stefan Padfield
National Center for Public Policy Research

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December 19, 2024

VIA ONLINE SHAREHOLDER PROPOSAL FORM

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. Submitted by National Center for Public Policy Research

Ladies and Gentlemen:

On behalf of Levi Strauss & Co. (the "*Company*"), we are submitting this letter pursuant to Rule 14a-8(j) promulgated under the Securities Exchange Act of 1934, as amended (the "*Exchange Act*"), to request that the Staff of the Division of Corporation Finance (the "*Staff*") of the U.S. Securities and Exchange Commission (the "*Commission*") concur with the Company's view that, for the reasons stated below, the Company may exclude the stockholder proposal and supporting statement (the "*Proposal*") submitted by the National Center for Public Policy Research (the "*Proponent*") from the proxy materials to be distributed by the Company in connection with its 2025 annual meeting of stockholders (the "*2025 Proxy Materials*").

In accordance with relevant Staff guidance, we are submitting this letter and its attachments to the Staff via the online Shareholder Proposal Form located on the Commission's website. In accordance with Rule 14a-8(j), 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 2025 Proxy Materials.

Rule 14a-8(k) and Section E of Staff Legal Bulletin No. 14D (Nov. 7, 2008) provide that shareholder proponents are required to send companies a copy of any correspondence that the shareholder proponents elect to submit to the Commission or the Staff. Accordingly, we are taking this opportunity to remind the Proponent that if it submits correspondence to the Commission or the Staff with respect to the Proposal, a copy of that correspondence should concurrently be furnished to the undersigned on behalf of the Company.

THE PROPOSAL

The Proposal provides as follows:

Request to Cease DEI Efforts

SUPPORTING STATEMENT:

Last year, the US Supreme Court ruled in *SFFA v. Harvard* that discriminating on the basis of race in college admissions violates the equal protection clause of the 14th Amendment.[1] As a result, the legality of corporate Diversity, Equity and Inclusion (DEI) programs was called into question[2] and 13 Attorneys General warned that *SFFA* implicated corporate DEI programs.[3]

This year, those implications widened when the Supreme Court ruled in *Muldrow v. City of St. Louis* that Title VII of the Civil Rights Act protected against discriminatory job transfers.[4] The ruling also lowered the bar for employees to successfully sue their employers for discrimination,[5] and is therefore likely to lead to an increase in discrimination claims.

Since *SFFA*, a number of DEI-related lawsuits have been filed. Starbucks was successfully sued for discrimination by an employee for $25.6 million,[6] and the risk of being sued for such discrimination is rising.[7]

Sensibly, many major companies have responded by rolling back their DEI commitments and laying off DEI departments.[8] Alphabet and Meta cut DEI staff and DEI-related investments;[9] and Microsoft and Zoom laid off their entire DEI

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[1] https://www.scotusblog.com/case-files/cases/students-for-fair-admissions-inc-v-president-fellows-of-harvard-college/

[2] https://freebeacon.com/democrats/starbucks-hired-eric-holder-to-conduct-a-civil-rights-audit-the-policies-he-blessedgot-the-coffee-maker-sued/

[3] https://ag.ks.gov/docs/default-source/documents/corporate-racial-discrimination-multistate-letter.pdf?sfvrsn=968abc1a_2

[4] https://www.supremecourt.gov/opinions/23pdf/22-193_q86b.pdf

[5] https://www.skadden.com/insights/publications/2024/06/quarterly-insights/supreme-court-lowers-the-bar; https://www.dailysignal.com/2024/04/17/supreme-court-just-made-easier-sue-employers-dei-policies/

[6] https://www.foxbusiness.com/features/starbucks-manager-shannon-phillips-wins-25-million-lawsuit-fired-white-donte-robinson-rashon-nelson

[7] https://aflegal.org/america-first-legal-files-class-action-lawsuit-against-progressive-insurance-for-illegal-racial-discrimination/; https://aflegal.org/afl-files-federal-civil-rights-complaint-against-activision-for-illegal-racist-sexist-and-discriminatory-hiring-practices-and-sends-letter-to-activision-board-demanding-they-end-unlawful-dei-polici/; https://aflegal.org/america-first-legal-files-federal-civil-rights-complaint-against-kelloggs-warns-management-that-its-violating-fiduciary-duties/

[8] https://techcrunch.com/2024/07/29/dei-backlash-stay-up-to-date-on-the-latest-legal-and-corporate-challenges/

[9] https://www.cnbc.com/2023/12/22/google-meta-other-tech-giants-cut-dei-programs-in-2023.html

teams.[10] Since *Muldrow*, John Deere publicly halted DEI-related policies[11] after Tractor Supply explicitly stated that it "eliminate[d] DEI roles and retire[d] our current DEI goals;"[12] Lowe's and Ford ended their participation in the Human Rights Campaign's Corporate Equality (CEI);[13] Harley Davidson ceased its DEI efforts;[14] Jack Daniels ended both its DEI efforts and CEI participation;[15] and Boeing got rid of its DEI department.[16]

DEI poses risks to companies, and therefore risks to their shareholders, and therefore further risks to companies for not abiding by their fiduciary duties.

Despite these obvious risks, the *SFFA* and *Muldrow* decisions and the wave of corporate DEI retreats, Levi Strauss still has a DEI program,[17] which includes: considering and valuing race and sex in hiring and promotion decisions[18] and in picking suppliers;[19] Employee Resource Groups for some groups (only those arbitrarily deemed "diverse"), but not for others;[20] and contributing shareholder money to organizations that advance DEI.[21]

With over 19,000 employees,[22] Levi Strauss likely has thousands of employees who are potentially victims of this type of discrimination. If even only a fraction of them file suit, and only some of those prove successful, the cost to the Company could be substantial.

RESOLVED: Shareholders request that the Company consider abolishing its DEI program, policies, department and goals.

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[10] https://www.businessinsider.com/microsoft-layoffs-dei-leader-email-2024-7; https://www.bloomberg.com/news/articles/2024-02-06/zoom-dei-workers-fired-in-recent-round-of-job-cuts
[11] https://x.com/JohnDeere/status/1813318977650847944
[12] https://corporate.tractorsupply.com/newsroom/news-releases/news-releases-details/2024/Tractor-Supply-Company-Statement/default.aspx
[13] https://www.nbcnews.com/business/business-news/lowes-becomes-later-paring-back-dei-efforts-rcna168380; https://www.cbsnews.com/news/lowes-dei-harley-davidson-john-deere-tractor-supply/
[14] https://x.com/harleydavidson/status/1825564138032234994
[15] https://www.foxnews.com/lifestyle/jack-daniels-renounces-woke-agenda-latest-iconic-us-brand-bring-sanity-back-business
[16] https://www.bloomberg.com/news/articles/2024-10-31/boeing-dismantles-diversity-team-as-pressure-builds-on-new-ceo
[17] https://www.levistrauss.com/work-with-us-old/life-at-lsco/diversity-inclusion/
[18] https://www.levistrauss.com/work-with-us-old/life-at-lsco/diversity-inclusion/dei-impact-report/; https://www.levistrauss.com/wp-content/uploads/2024/07/DEI_IR_2023_FINAL_Web.pdf
[19] https://www.levistrauss.com/how-we-do-business/indirect-supplier-information-portal/
[20] https://www.levistrauss.com/work-with-us-old/life-at-lsco/ergs/
[21] https://www.levistrauss.com/wp-content/uploads/2024/07/DEI_IR_2023_FINAL_Web.pdf#page=13
[22] https://www.levistrauss.com/who-we-are/company/

BASES FOR EXCLUSION

The Company hereby respectfully requests that the Staff concur with its view that the Proposal may be excluded from the 2025 Proxy Materials pursuant to:

- Rule 14a-8(i)(3) because the Proposal makes materially false statements, makes materially misleading statements, and is impermissibly vague, indefinite and susceptible to various interpretations so as to be inherently misleading in violation of the proxy rules;

- Rule 14a-8(i)(7) because the Proposal deals with matters relating to the Company's ordinary business operations; and

- Rule 14a-(8)(i)(10) because the Company has already substantially implemented the Proposal.

BACKGROUND

The Company received the Proposal via email on November 14, 2024, accompanied by a cover letter from the Proponent dated the same date stating, "[a] proof of ownership letter is forthcoming." On November 20, 2024, the Company sent a letter to the Proponent via email and FedEx requesting a written statement from the record holder of the Proponent's shares verifying that the Proponent beneficially owned the requisite number of shares of the Company's Class A Common Stock continuously for at least the requisite period preceding and including the date of submission of the Proposal (the "*Deficiency Letter*"). The Deficiency Letter also clearly explained the proof of ownership requirements of Rule 14a-8(b) and how the Proponent may satisfy those requirements.

On November 22, 2024, the Company received via email a written statement of proof of the Proponent's beneficial ownership of the Company's Class A Common Stock in connection with the Proponent's submission of the Proposal or in response to the Deficiency Letter. This written statement was accompanied by a letter from Wells Fargo Advisors, dated November 22, 2024, regarding the Proponent's ownership of at least $2,000 of shares of Company Class A Common Stock for a continuous period between November 1, 2021 and November 22, 2024 (the "*Broker Letter*").

Copies of the cover letter dated November 14, 2024, the Proposal, the Deficiency Letter, the Proponent's written statement dated November 22, 2024 and the Broker Letter are attached hereto as Exhibit A.

ANALYSIS

A. *The Proposal may be excluded under Rule 14a-8(i)(3) because it is so impermissibly vague, indefinite and susceptible to various interpretations so as to be inherently misleading in violation of the proxy rules.*

Pursuant to Rule 14a-8(i)(3), the Company may exclude a shareholder proposal from its proxy materials "[i]f the proposal or supporting statement is contrary to any of the Commission's proxy rules, including § 240.14a-9 [Rule 14a-9], which prohibits materially false or misleading statements in proxy soliciting materials." Specifically, Rule 14a-9(a) provides that "[n]o solicitation subject to this regulation shall be made by means of any proxy statement, form of proxy, notice of meeting or other communication, written or oral, containing any statement which, at the time and in the light of the circumstances under which it is made, is false or misleading with respect to any material fact, or which omits to state any material fact necessary in order to make the statements therein not false or misleading or necessary to correct any statement in any earlier communication with respect to the solicitation of a proxy for the same meeting or subject matter which has become false or misleading."

Further, the Staff takes the view that a proposal may be excluded pursuant to Rule 14a-8(i)(3) on the basis that the proposal is so vague and indefinite as to be misleading where "neither the stockholders voting on the proposal, nor the company in implementing the proposal (if adopted), would be able to determine with any reasonable certainty exactly what actions or measures the proposal requires." Staff Legal Bulletin No. 14B (Sept. 15, 2004). In addition, the Staff has noted that a proposal may be materially misleading as vague and indefinite when the "meaning and application of terms and conditions…in the proposal would have to be made without guidance from the proposal and would be subject to differing interpretations" such that "any action ultimately taken by the [c]ompany upon implementation [of the proposal] could be significantly different from the actions envisioned by shareholders voting on the proposal." *See Fuqua Industries, Inc*. (Mar. 12, 1991). The courts have also ruled on this issue, finding that "[s]hareholders are entitled to know precisely the breadth of the proposal on which they are asked to vote" (*New York City Employees' Retirement System v. Brunswick Corp.*, 789 F. Supp. 144, 146 (S.D.N.Y. 1992)).

The Proposal requests that the Company "consider abolishing its DEI program, policies, department and goals" and defines "DEI" as Diversity, Equity and Inclusion, but does not explain what programs, policies, department and goals actually fall into that classification. The Proposal's key terms "program," "policies," "department" and "goals" are vague and indefinite, and any interpretation of what these terms encompass could be subject to differing interpretations by the Company and shareholders voting on the Proposal. In addition, none of the lawsuits and other sources cited to in the Proposal contain a clear definition such that the Company and its shareholder could surmise the full scope of the Proposal beyond the specific limited examples cited in the Proposal, such as the Company's employee-established affinity groups (the "*Employee Resource Groups*"), contributions to the Levi Strauss Foundation and a Company portal that allows prospective vendors that are minority-owned companies to submit their information (without, to be clear, any corresponding commitment by the Company to hire such vendors). Further, the Proposal also references the Company's DEI webpage,[1] which describes the Company's approach to an inclusive workspace, including its Employee Resource Groups, and reporting on workplace demographics, but otherwise does not detail specific programs, policies, departments or goals

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[1] *See Levi Strauss & Co.*, *Diversity, Equity and Inclusion at LS&Co.*, available at https://www.levistrauss.com/work-with-us-old/life-at-lsco/diversity-inclusion/.

which the Proposal argues should be abolished. The Company's 2023 impact report[2] (the "*Impact Report*"), also cited in the Proposal, similarly does not define these broad-based terms. This lack of clear defined terms coupled with citations to sources that describe cases involving differing fact patterns and numerous different initiatives of the Company and other companies renders the Proposal vague and indefinite instead of clarifying what would be expected of the Company if required to implement the Proposal; it is wholly unclear what DEI programs, policies and goals the proposal refers to and exactly what activities and roles should be considered to be abolished.

One example of a program that could be viewed differently by different shareholders relates to the Employee Resource Groups, which the Proponent targets for potential elimination since it views them as being only for groups "arbitrarily deemed 'diverse'"; however, since any employee group with similar interest can apply to create an Employee Resource Group and they are open to all employees, shareholders may view them as non-DEI initiatives. Other examples of policies, programs and initiatives that could be viewed by certain shareholders as DEI policies but are primarily viewed by the Company as pertaining to regular personnel policies and initiatives include: the Company's code of conduct and policies promoting equal pay for equal jobs, since such policies are grounded in compliance with laws, including the Equal Pay Act of 1963; flexible work arrangements to support work-life balance that are broadly recognized as workforce trends rather than specific DEI initiatives, although they each may cater to certain groups of employee's needs; and anti-discrimination, harassment and retaliation policies and trainings, which align with fostering a healthy, inclusive culture but are also essential for legal compliance.

Extensive precedent confirms that the Proposal is impermissibly vague and misleading. For example, the Staff has consistently allowed the exclusion of proposals that fail to provide any guidance on implementation and "would be subject to differing interpretation both by shareholders voting on the proposal and the [c]ompany's board in implementing the proposal, if adopted, with the result that any action ultimately taken by the [c]ompany could be significantly different from the action envisioned by shareholders voting on the proposal." *Exxon Corporation* (January 29, 1992). In *The Walt Disney Company (Grau)* (Jan. 19, 2022), the Staff found that a shareholder proposal requesting a prohibition on certain communications of "politically charged biases regardless of content or purpose" as being "political polemics" was vague and indefinite as neither the company nor its shareholders would be able to determine with reasonable certainty what exacts or measures the proposal requested. *See, e.g., The Boeing Company* (Feb. 23, 2021)[*] (concurring in exclusion of a proposal requiring that 60% of the company's directors "must have an aerospace/aviation/engineering executive background" where such phrase was undefined); *Apple Inc*. (Dec. 6, 2019) (concurring in exclusion of a proposal seeking to "improve guiding principles of executive compensation" that did not provide an explanation or definition of the key term "executive compensation"); *eBay Inc*. (Apr. 10, 2019) (concurring in exclusion of a proposal requesting that the company "reform the company's executive compensation committee" because "neither shareholders nor the Company would be able to determine with any reasonable certainty the nature of the 'reform' the [p]roposal is requesting"); *Cisco Systems, Inc*. (Oct. 7, 2016)

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[2] *See Levi Strauss & Co.*, *LS&Co. 2023 Diversity ,Equity and Inclusion Impact Report*, available at https://www.levistrauss.com/work-with-us-old/life-at-lsco/diversity-inclusion/dei-impact-report/.

[*] Citations marked with an asterisk indicate Staff decisions issued without a letter.

(concurring in exclusion of a proposal requesting that the board "not take any action whose primary purpose is to prevent the effectiveness of shareholder vote without a compelling justification for such action," where it was unclear what board actions would "prevent the effectiveness of [a] shareholder vote" and how the essential terms "primary purpose" and "compelling justification" would apply to board actions); *AT&T Inc*. (Feb. 21, 2014) (concurring in exclusion of a proposal requesting a review of policies and procedures related to the "directors' moral, ethical and legal fiduciary duties and opportunities," where such phrase was undefined); *International Paper Company* (Feb. 3, 2011) (concurring in exclusion of a proposal requesting the adoption of a particular executive stock ownership policy because it did not sufficiently define "executive pay rights"); *General Electric Company* (Jan. 21, 2011) (concurring in exclusion of a proposal requesting implementation of more long-term incentives because it was impermissibly vague in explaining how the program would work in practice, including the "'[f]inancial [m]etric(s)'" that would be used in implementing the proposal); and *Verizon Communications Inc.* (Feb. 21, 2008) (concurring in exclusion of a proposal where the proposal failed to define certain critical terms, such as "Industry Peer group" and "relevant period of time").

The Proposal requests that the Company "consider abolishing" its DEI program, policies, department and goals. Like the Staff's above-cited decisions in *Apple Inc*. and *eBay Inc*., the Proposal here does not provide specific guidance on what "consider abolishing" means, particularly in the context of the regular review by the Compensation and Human Capital Committee of the board of directors of the Company ("*Board*") of its human capital policies, including the implementation and effectiveness of any "diversity and inclusion" factors.[3] Shareholders could interpret "consider abolishing" as a formal, one-time assessment for permanent elimination or as an additional ordinary, periodic and regular review.

The Proposal also requests only the *consideration* of eliminating DEI programs, policies, departments and goals; however, in light of the language used, it is reasonable to expect shareholders would mistakenly believe they are voting for the elimination of such policies, programs, department and goals altogether rather than simply the procedural step of "considering" them, as the Proposal actually requests. This Proposal would therefore impermissibly mislead shareholders by asking them to vote for a proposal that does not clearly explain what action additional to the current review of policies by the Compensation and Human Capital Committee the Company would be compelled to take if it were approved.

Accordingly, we ask that the Staff concur that the Company may exclude the Proposal from its 2025 Proxy Materials under Rule 14a-8(i)(3) on the basis that the Proposal is misleading,

[3] As described in further detail below, the Compensation and Human Capital Committee of the Board regularly reviews the "development, implementation and effectiveness of the Company's policies and strategies relating to its human capital management function, including … those policies and strategies regarding culture, recruiting, retention, career development and progression, talent planning and *diversity and inclusion*". Part of this assessment includes understanding the effectiveness of any implementation of "diversity and inclusion" aspects to human capital policies.

inherently vague and indefinite, in violation of Rule 14a-9, and, thus, the shareholders would not know what they would be voting for.

B. *The Proposal may be excluded under Rule 14a-8(i)(7) because it deals with matters relating to the Company's ordinary business operations.*

Under Rule 14a-8(i)(7), a shareholder proposal may be excluded from a company's proxy materials "[i]f the proposal deals with a matter relating to the company's ordinary business operations." In Exchange Act Release No. 34-40018 (May 21, 1998) (the "*1998 Release*"), the Commission stated that "[t]he policy underlying the ordinary business exclusion rests on two central considerations." The first consideration "relates to the subject matter of the proposal," recognizing that "[c]ertain 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." 1998 Release. The second "relates 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." 1998 Release.

1. *The Proposal may be excluded pursuant to Rule 14a-8(i)(7) because it seeks to affect the day-to-day management of the Company.*

Shareholder proposals that concern relations between a company and its employees are excludable under Rule 14a-8(i)(7) because they affect the day-to-day management of a company's operations. *Bank of America Corporation* (Feb. 14, 2012). A company's relationship with its employees rests at the heart of conducting ordinary business operations. In the 1998 Release, the Commission recognized that "management of the workforce" is "fundamental to management's ability to run a company on a day-to-day basis." When a shareholder proposal seeks to infringe upon the relationship between a company's management and its employees, it is interfering with the management's right to conduct its routine business practices and, consequently, is excludable at the management's discretion. In *United Technologies Corporation* (Feb. 19, 1993), the Staff stated that "[a]s a general rule, [it] views proposals directed at a company's employment policies and practices with respect to its non-executive workforce to be uniquely matters relating to the conduct of the company's ordinary business operations." Moreover, 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*." *Id.* (emphasis added). *See also Donaldson Company, Inc.* (Sept. 13, 2006) (concurring in exclusion of a proposal regarding the establishment of appropriate ethical standards related to employee relations) and *American Brands, Inc.* (Feb. 3, 1993) (concurring in exclusion of a proposal regarding the work environment, employees and smoking).

For example, in *CVS Health Corporation* (Feb. 27, 2015) ("*CVS*"), the Commission granted the exclusion of a proposal that sought to require the company to amend its equal employment opportunity policy, finding that the proposal related to the company's policies concerning its employees. One year prior to that, in *The Walt Disney Company (NCPPR)* (Oct. 21,

2014) ("*Disney*"), the Commission also granted the exclusion of a shareholder proposal of the Proponent that sought to modify the company's antidiscrimination policies to protect employee participation in political processes and activities. The Commission found that policies regarding political participation form part of a company's relationship with its employees. *Id.* Hence, the Commission reasoned that the company had the requisite authority pursuant to Rule 14a-8(i)(7) to exclude the proposal because the company's relationship with its employees is a component of ordinary management of business operations. *Id.*

Here, the Proposal goes one step further than in *CVS* and *Disney* by requesting that the Company consider abolishing altogether programs, policies, departments and goals. As discussed in Section A above, the Proposal is not clear what these key terms mean; however, for purposes of this section, we assume the Proponent is referring to the initiatives discussed in the Impact Report, which include investments in education, attracting interns, supporting transitioning veterans and sponsoring Employee Resource Groups. By proposing that Company consider abolishing these initiatives, the Proposal, like in *CVS* and *Disney*, sets out to change the relationship between management and employees by requiring a change in how management interacts with its more than 19,000 employees around the world. Furthermore, the Proposal seeks to change how employees engage with the Company. The Proposal is so broad based that it potentially touches on such a large array of employee-related programs, policies and initiatives—as highlighted above—as to require the Company to essentially review every aspect of its employee relations, a clear overreach into the ordinary business management of the Company toward its employees' day-to-day professional interaction with the Company.

2. *The Proposal may be excluded under 14a-8(i)(7) as the Proposal seeks to micro-manage the Company's business operations.*

Certain tasks are so essential to management's ability to run a business that they could not, as a practical matter, be subject to the direct oversight of shareholders. Exchange Act Release No. 40018 (May 21, 1998). When proposals seek to probe too deeply into complex matters for which shareholders, as a group, would not be in a position to make an informed judgment, the proposals are micro-managing the company and, therefore, are excludable pursuant to Rule 14a-8(i)(7). *Id.*

For example, in *Costco Wholesale Corporation* (Sept. 26, 2014) ("*Costco*"), the Commission found that a shareholder proposal was excludable when it requested that the board of directors adopt an antidiscrimination policy to protect the employee's rights to engage in political processes. The proposal sought to change the company's code of ethics and other policies. The Commission reasoned that the proposal related to the conduct of routine business operations under Rule 14a-8(i)(7) because it involved the relationship between employees and management, a matter beyond the purview of shareholders.

In this case, the Proposal is similar to the proposal made in *Costco* in that, rather than requesting the company adopt a policy affecting the rights of employees, it seeks to compel the Company to *eliminate* similar policies. The Company maintains an array of workplace policies and personnel procedures that could be implicated by this Proposal, covering a wide range of topics, from fair and equitable hiring and promotion processes, to ensuring pay equity among employees, and to fostering a safe and respectful workplace free from harassment, discrimination and retaliation. The fact that the Company's workplace policies seek to manage the workplace, employee relations and the Company's recruiting activities is indicative of the fundamental nature of those activities to management's ability to run the business and ensure compliance with workplace laws and regulations. Thus, analogous to *Costco*, the Proposal seeks to probe excessively into the relationship between the Company's management and its employees, and employees with the Company, matters too complex for shareholders to decide and which would inevitably result in the micro-management of the Company. Longstanding precedent has established that the relationship between employees and management is a matter beyond the purview of shareholders, which if directly subjected to shareholder proposals would result in the micro-management of a company.

For these reasons, the Company respectively submits that the Proposal may be excluded pursuant to Rule 14a-8(i)(7).

C. *The Proposal may be excluded under Rule 14a-8(i)(10) because the Company has already substantially implemented the Proposal.*

1) *Rule 14a-8(i)(10) Background*

Pursuant to Rule 14a-8(i)(10), a shareholder proposal may be excluded if the company has already substantially implemented the proposal. The purpose of this rule, as set forth by the Commission, is to "avoid the possibility of shareholders having to consider matters which already have been favorably acted upon by the management." *See* Exchange Act Release No. 34-20091 (Aug. 15, 1983) (the "*1983 Release*"); Exchange Act Release No. 34-12598 (July 7, 1976). The Commission has clarified that the proposal's requested actions do not need to be "fully effected" or implemented exactly as presented for a company to exclude the proposal under Rule 14a-8(i)(10); instead, the actions called for by the proposal need only be "substantially implemented." *See* 1983 Release. Whether a proposal has been "substantially implemented" by a company "depends on whether its particular policies, practices and procedures compare favorably with the guidelines of the proposal." *Texaco, Inc.* (Mar. 28, 1991).

The Staff has consistently allowed for the exclusion of proposals under Rule 14a-8(i)(10) where a company's actions have substantially addressed the "essential objective" and underlying concerns of the proposal, even if the specific actions may not be exactly as requested or required by the proposal. For example, the Staff in *Visa Inc.* (Oct. 11, 2019) concurred that the exclusion of a proposal requesting the company's compensation committee reform its executive compensation program to include social factors was substantially implemented because the company's philosophy was tied to its seven strategic pillars, which included social issues.

In addition, the Staff has concurred that, when substantially implementing a shareholder proposal, companies can address aspects of implementation in ways that may differ from the manner in which the shareholder proponent would implement the proposal. The Staff has concurred that proposals may be excluded when the company has implemented the proposal's purported goals, even if somewhat differently than the proposal requests. *See Exxon Mobil Corp.*

(Mar. 20, 2024) (concurring in the exclusion of a shareholder proposal seeking to amend the company's incentive pay recoupment policy to a higher standard than that already implemented by the company); *Progressive Corp.* (Mar. 5, 2021) (concurring in the exclusion of a shareholder proposal which requested the disclosure of "director ideologies" when the company had already disclosed significant biographical information on its directors); *Apple Inc.* (Dec. 11, 2014) (concurring in the exclusion of a proposal that requested the establishment of a Public Policy Committee where the company had existing systems and controls, including an audit and finance committee, designed to oversee the matters listed in the proposal); and *Entergy Corp.* (Feb. 14, 2012) (concurring in the exclusion of a proposal that requested establishment of a committee to conduct a special review of certain nuclear matters when the company had an existing nuclear committee responsible for the proposed matters).

2) *The Proposal may be omitted because the Company has already substantially implemented the proposal through the Company's annual review of human resources policies.*

The language in the Proposal asks that the Company consider abolishing its DEI program, policies, department and goals. As previewed above, the Company has already substantially implemented the Proposal by its annual review of its policies and strategies relating to its human capital management function, including talent recruiting and retention, career development and progression and diversity and inclusion—all matters seemingly implicated by the Proposal. Therefore, the Proposal's essential objective has thereby been satisfied—policies are considered each year, including, implicitly, for retention, modification or discontinuation (or "abolishing" in the words of the Proponent).

As disclosed in the Company's proxy statement for its 2024 annual meeting of shareholders,[4] the Compensation and Human Capital Committee is responsible for assisting the Board in its oversight responsibilities related to human resources programs, including the "review[of any] policies and strategies relating to culture, recruiting, retention, career development and progression, talent planning and diversity and inclusion." The Compensation and Human Capital Committee charter[5] similarly requires that the committee "[r]eview annually the development, implementation and effectiveness of the Company's policies and strategies relating to its human capital management function, including but not limited to those policies and strategies regarding culture, recruiting, retention, career development and progression, talent planning and diversity and inclusion." The charter also requires that the Compensation and Human Capital Committee review reports on the Company's workforce and workplace management and training programs as part of its review of the effectiveness of any Company human capital programs.

As a result of the above process, the Board and the Compensation and Human Capital Committee already annually consider whether the programs, policies and goals that might relate

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[4] *See Levi Strauss & Co.*, *2024 Notice of Annual Meeting of Shareholders and Proxy Statement.*, available at https://d18rn0p25nwr6d.cloudfront.net/CIK-0000094845/f940eb0a-b061-4aa4-adfd-b5ba3284071b.pdf.

[5] *See Levi Strauss & Co.*, *Charter of the Compensation and Human Capital Committee of the Board of Directors*, available at https://s23.q4cdn.com/172692177/files/doc_downloads/gov/2023/12/levi-strauss-compensation-and-human-capital-committee-final.pdf.

to DEI remain appropriate and in the best interest of shareholders, general market practice, shareholder input and any applicable legal and regulatory developments. To gauge appropriate stakeholder feedback, the Board and the Nominating, Governance and Corporate Citizenship Committee of the Board regularly engage with stakeholders, including shareholders, to determine that the policies implemented by the Company are appropriate for its success.[6] The Staff has allowed exclusion of proposals even if the company addressees aspects of implementation in ways that may differ from the manner in which the shareholder proponent would implement the proposal. In this instance, the Company may exclude the Proposal because it has already undertaken the requested process, even though the outcome of that process may not be what the Proponent had hoped.

In light of the Staff's decisions cited above regarding substantial implementation, the annual review by the Compensation and Human Capital Committee of the Company's human capital and resources policies, including any diversity and inclusion policies, and the Company's engagement with stakeholder feedback, it is unnecessary to submit the Proposal to shareholders for their consideration as the Proposal has already been substantially implemented.

CONCLUSION

Based upon the foregoing analysis, we respectfully request that the Staff concur that the Company may exclude the Proposal from the 2025 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 Helena K. Grannis of Cleary Gottlieb Steen & Hamilton LLP at hgrannis@cgsh.com. If we can be of any further assistance in this matter, please do not hesitate to call me at (212) 225-2376.

Sincerely,
Cleary Gottlieb Steen & Hamilton LLP

/s/ Helena K. Grannis
Helena K. Grannis

Attachment

cc:

David Jedrzejek, Levi Strauss & Co.
Nanci Prado, Levi Strauss & Co.

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[6] *See Levi Strauss & Co.*, *2024 Notice of Annual Meeting of Shareholders and Proxy Statement.*, available at https://d18rn0p25nwr6d.cloudfront.net/CIK-0000094845/f940eb0a-b061-4aa4-adfd-b5ba3284071b.pdf.

Ethan Peck, National Center for Public Policy Research
Scott Shepard, National Center for Public Policy Research
Stefan Padfield, National Center for Public Policy Research

Exhibit A

November 14, 2024

Via email to:

Priscilla Duncan-Tannous
Assistant General Counsel
Levi Strauss & Co.
1155 Battery Street
San Francisco, CA 94111
[redacted]

Dear Ms. Duncan-Tannous,

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 Deputy Director of the Free Enterprise Project of the National Center for Public Policy Research, which has continuously owned Company stock with a value exceeding $2,000 for at least 3 years prior to and including the date of this Proposal and which intends to hold these shares through the date of the Company's 2025 annual meeting of shareholders. A proof of ownership letter is forthcoming.

Pursuant to interpretations of Rule 14(a)-8 by the Securities & Exchange Commission staff, I initially propose as a time for a recorded meeting in person or via teleconference to discuss this proposal December 5 or December 6, 2024, from 1-4 p.m. eastern. If that proves inconvenient, I hope you will suggest some other times within the window proposed by Rule 14(a)-8(b)(iii) to talk. Please feel free to contact me at [redacted] so that we can determine the mode and method of that discussion.

As you know, SEC guidance has admonished corporations against seeking no-action “relief” on grounds that could have been resolved by clear and open correspondence between the parties and a good-faith willingness on both sides to reach a mutually satisfactory resolution and to implement whatever emendations may have been agreed. We herewith express our openness to consideration in good faith of any specific objections to this proposal that you might wish to raise, and a commitment to work earnestly toward an acceptable adjustment in all instances in which the objections raised are demonstrably supported by SEC regulation, staff guidance, or other relevant explications of specific rules governing the situation at hand.

Copies of correspondence or a request for a “no-action” letter should be sent to me at the National Center for Public Policy Research, 2005 Massachusetts Ave. NW, Washington, DC 20036 and emailed to [redacted]

Sincerely,

Ethan Peck

Ethan Peck

cc: Scott Shepard, NCPPR General Counsel
Stefan Padfield, FEP Director
Enclosure: Shareholder Proposal

Request to Cease DEI Efforts

SUPPORTING STATEMENT:

Last year, the US Supreme Court ruled in *SFFA v. Harvard* that discriminating on the basis of race in college admissions violates the equal protection clause of the 14th Amendment.[1] As a result, the legality of corporate Diversity, Equity and Inclusion (DEI) programs was called into question[2] and 13 Attorneys General warned that *SFFA* implicated corporate DEI programs.[3]

This year, those implications widened when the Supreme Court ruled in *Muldrow v. City of St. Louis* that Title VII of the Civil Rights Act protected against discriminatory job transfers.[4] The ruling also lowered the bar for employees to successfully sue their employers for discrimination,[5] and is therefore likely to lead to an increase in discrimination claims.

Since *SFFA*, a number of DEI-related lawsuits have been filed. Starbucks was successfully sued for discrimination by an employee for $25.6 million,[6] and the risk of being sued for such discrimination is rising.[7]

Sensibly, many major companies have responded by rolling back their DEI commitments and laying off DEI departments.[8] Alphabet and Meta cut DEI staff and DEI-related investments;[9] and Microsoft and Zoom laid off their entire DEI teams.[10] Since *Muldrow*, John Deere publicly

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1 https://www.scotusblog.com/case-files/cases/students-for-fair-admissions-inc-v-president-fellows-of-harvard-college/

2 https://freebeacon.com/democrats/starbucks-hired-eric-holder-to-conduct-a-civil-rights-audit-the-policies-he-blessed-got-the-coffee-maker-sued/

3 https://ag.ks.gov/docs/default-source/documents/corporate-racial-discrimination-multistate-letter.pdf?sfvrsn=968abc1a_2

4 https://www.supremecourt.gov/opinions/23pdf/22-193_q86b.pdf

5 https://www.skadden.com/insights/publications/2024/06/quarterly-insights/supreme-court-lowers-the-bar; https://www.dailysignal.com/2024/04/17/supreme-court-just-made-easier-sue-employers-dei-policies/

6 https://www.foxbusiness.com/features/starbucks-manager-shannon-phillips-wins-25-million-lawsuit-fired-white-donte-robinson-rashon-nelson

7 https://aflegal.org/america-first-legal-files-class-action-lawsuit-against-progressive-insurance-for-illegal-racial-discrimination/; https://aflegal.org/afl-files-federal-civil-rights-complaint-against-activision-for-illegal-racist-sexist-and-discriminatory-hiring-practices-and-sends-letter-to-activision-board-demanding-they-end-unlawful-dei-polici/; https://aflegal.org/america-first-legal-files-federal-civil-rights-complaint-against-kelloggs-warns-management-that-its-violating-fiduciary-duties/

8 https://techcrunch.com/2024/07/29/dei-backlash-stay-up-to-date-on-the-latest-legal-and-corporate-challenges/

9 https://www.cnbc.com/2023/12/22/google-meta-other-tech-giants-cut-dei-programs-in-2023.html

10 https://www.businessinsider.com/microsoft-layoffs-dei-leader-email-2024-7; https://www.bloomberg.com/news/articles/2024-02-06/zoom-dei-workers-fired-in-recent-round-of-job-cuts

halted DEI-related policies[11] after Tractor Supply explicitly stated that it "eliminate[d] DEI roles and retire[d] our current DEI goals;"[12] Lowe's and Ford ended their participation in the Human Rights Campaign's Corporate Equality (CEI);[13] Harley Davidson ceased its DEI efforts;[14] Jack Daniels ended both its DEI efforts and CEI participation;[15] and Boeing got rid of its DEI department.[16]

DEI poses risks to companies, and therefore risks to their shareholders, and therefore further risks to companies for not abiding by their fiduciary duties.

Despite these obvious risks, the *SFFA* and *Muldrow* decisions and the wave of corporate DEI retreats, Levi Strauss still has a DEI program,[17] which includes: considering and valuing race and sex in hiring and promotion decisions[18] and in picking suppliers;[19] Employee Resource Groups for some groups (only those arbitrarily deemed "diverse"), but not for others;[20] and contributing shareholder money to organizations that advance DEI.[21]

With over 19,000 employees,[22] Levi Strauss likely has thousands of employees who are potentially victims of this type of discrimination. If even only a fraction of them file suit, and only some of those prove successful, the cost to the Company could be substantial.

RESOLVED: Shareholders request that the Company consider abolishing its DEI program, policies, department and goals.

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11 https://x.com/JohnDeere/status/1813318977650847944

12 https://corporate.tractorsupply.com/newsroom/news-releases/news-releases-details/2024/Tractor-Supply-Company-Statement/default.aspx

13 https://www.nbcnews.com/business/business-news/lowes-becomes-later-paring-back-dei-efforts-rcna168380; https://www.cbsnews.com/news/lowes-dei-harley-davidson-john-deere-tractor-supply/

14 https://x.com/harleydavidson/status/1825564138032234994

15 https://www.foxnews.com/lifestyle/jack-daniels-renounces-woke-agenda-latest-iconic-us-brand-bring-sanity-back-business

16 https://www.bloomberg.com/news/articles/2024-10-31/boeing-dismantles-diversity-team-as-pressure-builds-on-new-ceo

17 https://www.levistrauss.com/work-with-us-old/life-at-lsco/diversity-inclusion/

18 https://www.levistrauss.com/work-with-us-old/life-at-lsco/diversity-inclusion/dei-impact-report/; https://www.levistrauss.com/wp-content/uploads/2024/07/DEI_IR_2023_FINAL_Web.pdf

19 https://www.levistrauss.com/how-we-do-business/indirect-supplier-information-portal/

20 https://www.levistrauss.com/work-with-us-old/life-at-lsco/ergs/

21 https://www.levistrauss.com/wp-content/uploads/2024/07/DEI_IR_2023_FINAL_Web.pdf#page=13

22 https://www.levistrauss.com/who-we-are/company/

1155 Battery Street
San Francisco, CA 94111

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November 20, 2024

BY EMAIL AND FEDERAL EXPRESS

Ethan Peck
National Center for Public
Policy Research
2005 Massachusetts Ave N.W.
Washington, D.C. 20036
[redacted]

RE: Notice of Deficiency, dated November 20, 2024

Dear Mr. Peck:

We are writing to acknowledge receipt on November 14, 2024 of a shareholder proposal (the "*Proposal*") submitted to Levi Strauss & Co. (the "*Company*") by you pursuant to Rule 14a-8 of the Securities Exchange Act of 1934, as amended (the "*Exchange Act*") for the Company's 2025 Annual Meeting of Shareholders (the "*Annual Meeting*").

We are writing to inform you of the following deficiency with respect to your Proposal under Rule 14a-8 of the Exchange Act:

- You have failed to demonstrate that you have continuously held the requisite amount of the Company's securities entitled to vote on your proposal for the requisite period of time to be eligible to submit a proposal as set forth in Rule 14a-8(b)(1) of the Exchange Act.

Under Rule 14a-8(b)(1), in order to be eligible to submit a shareholder proposal for the Annual Meeting, a proponent must have continuously held:

- at least $2,000 in market value of the Company's Class A Common Stock for at least three years, preceding and including the date that the shareholder proposal was submitted;

- at least $15,000 in market value of the Company's Class A Common Stock for at least two years, preceding and including the date that the shareholder proposal was submitted; or

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- at least $25,000 in market value of the Company's Class A Common Stock for at least one year, preceding and including the date that the shareholder proposal was submitted.

Further, Rule 14a-8(b)(1)(vi) of the Exchange Act provides that a proponent may not aggregate their holdings with those of another shareholder or group of shareholders to meet the requisite amount of securities necessary to be eligible to submit a shareholder proposal. Rule 14(a)-8(b)(2)(ii) provides also that a proponent that is not a registered holder must, at the time the proponent submits their proposal, prove their eligibility to the company in one of two ways. For your reference, a copy of Rule 14a-8 is attached to this letter as Exhibit A.

Our records indicate that you are not a registered holder of the Company's Class A Common Stock. Please advise whether you hold shares of Class A Common Stock as a beneficial holder and whether your aggregate holdings would satisfy any of the above-mentioned eligibility requirements.

Further to the above, please provide a written statement from the record holder of any beneficially owned shares (usually a bank or broker) you beneficially own and a participant in the Depository Trust Company ("*DTC*") verifying that, at the time you submitted the Proposal on November 14, 2024, you had beneficially held shares of the Company's Class A Common Stock in amount and for the period necessary to meet the requirements of Rule 14a-8(b)(1), as described above.

In order to determine if the record holder of your shares of the Company's Class A Common Stock (usually a bank or broker) is a DTC participant, you can check the DTC's participant list, which is currently available on the Internet at https://www.dtcc.com/client-center/dtc-directories. If the bank or broker holding your shares of the Company's Class A Common Stock is not a DTC participant, you also will need to obtain proof of ownership from the DTC participant through which their shares are held. You should be able to find out who this DTC participant is by asking your broker or bank. If the DTC participant knows your broker or bank's holdings, but does not know your holdings, you can satisfy Rule 14a-8 by obtaining and submitting two letters of proof of ownership statements verifying that, at the time the Proposal was submitted on November 14, 2024, the required amount of shares of the Company's Class A Common Stock were beneficially held for the requisite time period pursuant to the requirements of Rule 14a-8(b)(i), as described above – one from your broker or bank confirming your ownership, and the other from the DTC participant confirming the broker or bank's ownership. For additional information regarding the acceptable methods of proving your ownership of the minimum number of shares of the Company's Class A Common Stock, please see Rule 14a-8(b)(2) in Exhibit A.

Rule 14a-8(f) requires that you correct the deficiencies noted above in order to have your included in the Company's proxy materials for the Annual Meeting. The response to this letter and the appropriate documentation noted above must be postmarked or transmitted electronically to us no later than 14 calendar days from the date you receive this letter. Once we receive your response and documentation, we will be in a position to determine whether

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the Proposal is eligible for inclusion in the proxy materials for the Annual Meeting. Even if you remedy the defects noted above in a timely manner, the Company reserves the right to request that the Staff of the Division of Corporation Finance (the "*Staff*") of the U.S. Securities and Exchange Commission concur with the Company's view that, based on any objections that the Company may submit to the Staff pursuant to Rule 14a-8, the Company may exclude your from its proxy materials for the Annual Meeting.

Sincerely,

Priscilla Duncan-Tannous
Assistant General Counsel, Corporate

1155 Battery Street
San Francisco, CA 94111

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EXHIBIT A

Rule 14a-8 of the Securities Exchange Act of 1934

Title 17 —Commodity and Securities Exchanges
Chapter II —Securities and Exchange Commission
Part 240 —General Rules and Regulations, Securities Exchange Act of 1934
Subpart A —Rules and Regulations Under the Securities Exchange Act of 1934
Regulation 14A: Solicitation of Proxies

EDITORIAL NOTE ON PART 240

Editorial Note: Nomenclature changes to part 240 appear at 57 FR 36501, Aug. 13, 1992, and 57 FR 47409, Oct. 16, 1992.

§ 240.14a-8 Shareholder proposals.

This section addresses when a company must include a shareholder's proposal in its proxy statement and identify the proposal in its form of proxy when the company holds an annual or special meeting of shareholders. In summary, in order to have your shareholder proposal included on a company's proxy card, and included along with any supporting statement in its proxy statement, you must be eligible and follow certain procedures. Under a few specific circumstances, the company is permitted to exclude your proposal, but only after submitting its reasons to the Commission. We structured this section in a question-and-answer format so that it is easier to understand. The references to “you” are to a shareholder seeking to submit the proposal.

(a) *Question 1:* What is a proposal? A shareholder proposal is your recommendation or requirement that the company and/or its board of directors take action, which you intend to present at a meeting of the company's shareholders. Your proposal should state as clearly as possible the course of action that you believe the company should follow. If your proposal is placed on the company's proxy card, the company must also provide in the form of proxy means for shareholders to specify by boxes a choice between approval or disapproval, or abstention. Unless otherwise indicated, the word “proposal” as used in this section refers both to your proposal, and to your corresponding statement in support of your proposal (if any).

(b) *Question 2:* Who is eligible to submit a proposal, and how do I demonstrate to the company that I am eligible?

(1) To be eligible to submit a proposal, you must satisfy the following requirements:

(i) You must have continuously held:

(A) At least $2,000 in market value of the company's securities entitled to vote on the proposal for at least three years; or

(B) At least $15,000 in market value of the company's securities entitled to vote on the proposal for at least two years; or

(C) At least $25,000 in market value of the company's securities entitled to vote on the proposal for at least one year; or

(D) The amounts specified in paragraph (b)(3) of this section. This paragraph (b)(1)(i)(D) will expire on the same date that § 240.14a-8(b)(3) expires; and

(ii) You must provide the company with a written statement that you intend to continue to hold the requisite amount of securities, determined in accordance with paragraph (b)(1)(i)(A) through (C) of this section, through the date of the shareholders' meeting for which the proposal is submitted; and

(iii) You must provide the company with a written statement that you are able to meet with the company in person or via teleconference no less than 10 calendar days, nor more than 30 calendar days, after submission of the shareholder proposal. You must include your contact information as well as business days and specific times that you are available to discuss the proposal with the company. You must identify times that are within the regular business hours of the company's principal executive offices. If these hours are not disclosed in the company's proxy statement for the prior year's annual meeting, you must identify times that are between 9 a.m. and 5:30 p.m. in the time zone of the company's principal executive offices. If you elect to co-file a proposal, all co-filers must either:

(A) Agree to the same dates and times of availability, or

(B) Identify a single lead filer who will provide dates and times of the lead filer's availability to engage on behalf of all co-filers; and

(iv) If you use a representative to submit a shareholder proposal on your behalf, you must provide the company with written documentation that:

(A) Identifies the company to which the proposal is directed;

(B) Identifies the annual or special meeting for which the proposal is submitted;

(C) Identifies you as the proponent and identifies the person acting on your behalf as your representative;

(D) Includes your statement authorizing the designated representative to submit the proposal and otherwise act on your behalf;

(E) Identifies the specific topic of the proposal to be submitted;

(F) Includes your statement supporting the proposal; and

(G) Is signed and dated by you.

(v) The requirements of paragraph (b)(1)(iv) of this section shall not apply to shareholders that are entities so long as the representative's authority to act on the shareholder's behalf is apparent and self-evident such that a reasonable person would understand that the agent has authority to submit the proposal and otherwise act on the shareholder's behalf.

(vi) For purposes of paragraph (b)(1)(i) of this section, you may not aggregate your holdings with those of another shareholder or group of shareholders to meet the requisite amount of securities necessary to be eligible to submit a proposal.

(2) One of the following methods must be used to demonstrate your eligibility to submit a proposal:

(i) If you are the registered holder of your securities, which means that your name appears in the company's records as a shareholder, the company can verify your eligibility on its own, although you will still have to provide the company with a written statement that you intend to continue to hold the requisite amount of securities, determined in accordance with paragraph (b)(1)(i)(A) through (C) of this section, through the date of the meeting of shareholders.

(ii) If, like many shareholders, you are not a registered holder, the company likely does not know that you are a shareholder, or how many shares you own. In this case, at the time you submit your proposal, you must prove your eligibility to the company in one of two ways:

(A) The first way is to submit to the company a written statement from the “record” holder of your securities (usually a broker or bank) verifying that, at the time you submitted your proposal, you continuously held at least $2,000, $15,000, or $25,000 in market value of the company's securities entitled to vote on the proposal for at least three years, two years, or one year, respectively. You must also include your own written statement that you intend to continue to hold the requisite amount of securities, determined in accordance with paragraph (b)(1)(i)(A) through (C) of this section, through the date of the shareholders' meeting for which the proposal is submitted; or

(B) The second way to prove ownership applies only if you were required to file, and filed, a Schedule 13D (§ 240.13d-101), Schedule 13G (§ 240.13d-102), Form 3 (§ 249.103 of this chapter), Form 4 (§ 249.104 of this chapter), and/or Form 5 (§ 249.105 of this chapter), or amendments to those documents or updated forms, demonstrating that you meet at least one of the share ownership requirements under paragraph (b)(1)(i)(A) through (C) of this section. If you have filed one or more of these documents with the SEC, you may demonstrate your eligibility to submit a proposal by submitting to the company:

(*1*) A copy of the schedule(s) and/or form(s), and any subsequent amendments reporting a change in your ownership level;

(*2*) Your written statement that you continuously held at least $2,000, $15,000, or $25,000 in market value of the company's securities entitled to vote on the proposal for at least three years, two years, or one year, respectively; and

(*3*) Your written statement that you intend to continue to hold the requisite amount of securities, determined in accordance with paragraph (b)(1)(i)(A) through (C) of this section, through the date of the company's annual or special meeting.

(c) ***Question 3:*** How many proposals may I submit? Each person may submit no more than one proposal, directly or indirectly, to a company for a particular shareholders' meeting. A person may not rely on the securities holdings of another person for the purpose of meeting the eligibility requirements and submitting multiple proposals for a particular shareholders' meeting.

(d) ***Question 4:*** How long can my proposal be? The proposal, including any accompanying supporting statement, may not exceed 500 words.

(e) ***Question 5:*** What is the deadline for submitting a proposal?

(1) If you are submitting your proposal for the company's annual meeting, you can in most cases find the deadline in last year's proxy statement. However, if the company did not hold an annual meeting last year, or has changed the date of its meeting for this year more than 30 days from last year's meeting, you can usually find the deadline in one of the company's quarterly reports on Form 10-Q (§ 249.308a of this chapter), or in shareholder reports of investment companies under § 270.30d-1 of this chapter of the Investment Company Act of 1940. In order to avoid controversy, shareholders should submit their proposals by means, including electronic means, that permit them to prove the date of delivery.

(2) The deadline is calculated in the following manner if the proposal is submitted for a regularly scheduled annual meeting. The proposal must be received at the company's principal executive offices not less than 120 calendar days before the date of the company's proxy statement released to shareholders in connection with the previous year's annual meeting. However, if the company did not hold an annual meeting the previous year, or if the date of this year's annual meeting has been changed by more than 30 days from the date of the previous year's meeting, then the deadline is a reasonable time before the company begins to print and send its proxy materials.

(3) If you are submitting your proposal for a meeting of shareholders other than a regularly scheduled annual meeting, the deadline is a reasonable time before the company begins to print and send its proxy materials.

(f) ***Question 6:*** What if I fail to follow one of the eligibility or procedural requirements explained in answers to Questions 1 through 4 of this section?

(1) The company may exclude your proposal, but only after it has notified you of the problem, and you have failed adequately to correct it. Within 14 calendar days of receiving your proposal, the company must notify you in writing of any procedural or eligibility deficiencies, as well as of the time frame for your response. Your response must be postmarked, or transmitted electronically, no later than 14 days from the date you received the company's notification. A company need not provide you such notice of a deficiency if the deficiency cannot be remedied, such as if you fail to submit a proposal by the company's properly determined deadline. If the company intends to exclude the proposal, it will later have to make a submission under § 240.14a-8 and provide you with a copy under Question 10 below, § 240.14a-8(j).

(2) If you fail in your promise to hold the required number of securities through the date of the meeting of shareholders, then the company will be permitted to exclude all of your proposals from its proxy materials for any meeting held in the following two calendar years.

(g) ***Question 7:*** Who has the burden of persuading the Commission or its staff that my proposal can be excluded? Except as otherwise noted, the burden is on the company to demonstrate that it is entitled to exclude a proposal.

(h) ***Question 8:*** Must I appear personally at the shareholders' meeting to present the proposal?

(1) Either you, or your representative who is qualified under state law to present the proposal on your behalf, must attend the meeting to present the proposal. Whether you attend the meeting yourself or send a qualified representative to the meeting in your place, you should make sure that you, or your representative, follow the proper state law procedures for attending the meeting and/or presenting your proposal.

(2) If the company holds its shareholder meeting in whole or in part via electronic media, and the company permits you or your representative to present your proposal via such media, then you may appear through electronic media rather than traveling to the meeting to appear in person.

(3) If you or your qualified representative fail to appear and present the proposal, without good cause, the company will be permitted to exclude all of your proposals from its proxy materials for any meetings held in the following two calendar years.

(i) ***Question 9:*** If I have complied with the procedural requirements, on what other bases may a company rely to exclude my proposal?

(1) Improper under state law: If the proposal is not a proper subject for action by shareholders under the laws of the jurisdiction of the company's organization;

> Note to paragraph (i)(1): Depending on the subject matter, some proposals are not considered proper under state law if they would be binding on the company if approved by shareholders. In our experience, most proposals that are cast as recommendations or requests that the board of directors take specified action are proper under state law. Accordingly, we will assume that a proposal drafted as a recommendation or suggestion is proper unless the company demonstrates otherwise.

(2) ***Violation of law:*** If the proposal would, if implemented, cause the company to violate any state, federal, or foreign law to which it is subject;

> Note to paragraph (i)(2): We will not apply this basis for exclusion to permit exclusion of a proposal on grounds that it would violate foreign law if compliance with the foreign law would result in a violation of any state or federal law.

(3) ***Violation of proxy rules:*** If the proposal or supporting statement is contrary to any of the Commission's proxy rules, including § 240.14a-9, which prohibits materially false or misleading statements in proxy soliciting materials;

(4) ***Personal grievance; special interest:*** If the proposal relates to the redress of a personal claim or grievance against the company or any other person, or if it is designed to result in a benefit to you, or to further a personal interest, which is not shared by the other shareholders at large;

(5) ***Relevance:*** If the proposal relates to operations which account for less than 5 percent of the company's total assets at the end of its most recent fiscal year, and for less than 5 percent of its net earnings and gross sales for its most recent fiscal year, and is not otherwise significantly related to the company's business;

(6) ***Absence of power/authority:*** If the company would lack the power or authority to implement the proposal;

(7) ***Management functions:*** If the proposal deals with a matter relating to the company's ordinary business operations;

(8) ***Director elections:*** If the proposal:

(i) Would disqualify a nominee who is standing for election;

(ii) Would remove a director from office before his or her term expired;

(iii) Questions the competence, business judgment, or character of one or more nominees or directors;

(iv) Seeks to include a specific individual in the company's proxy materials for election to the board of directors; or

(v) Otherwise could affect the outcome of the upcoming election of directors.

(9) ***Conflicts with company's proposal:*** If the proposal directly conflicts with one of the company's own proposals to be submitted to shareholders at the same meeting;

> Note to paragraph (i)(9): A company's submission to the Commission under this section should specify the points of conflict with the company's proposal.

(10) ***Substantially implemented:*** If the company has already substantially implemented the proposal;

> Note to paragraph (i)(10): A company may exclude a shareholder proposal that would provide an advisory vote or seek future advisory votes to approve the compensation of executives as disclosed pursuant to Item 402 of Regulation S-K (§ 229.402 of this chapter) or any successor to Item 402 (a "say-on-pay vote") or that relates to the frequency of say-on-pay votes, provided that in the most recent shareholder vote required by § 240.14a-21(b) of this chapter a single year (*i.e.,* one, two, or three years) received approval of a majority of votes cast on the matter and the company has adopted a policy on the frequency of say-on-pay votes that is consistent with the choice of the majority of votes cast in the most recent shareholder vote required by § 240.14a-21(b) of this chapter.

(11) ***Duplication:*** If the proposal substantially duplicates another proposal previously submitted to the company by another proponent that will be included in the company's proxy materials for the same meeting;

(12) ***Resubmissions.*** If the proposal addresses substantially the same subject matter as a proposal, or proposals, previously included in the company's proxy materials within the preceding five calendar years if the most recent vote occurred within the preceding three calendar years and the most recent vote was:

(i) Less than 5 percent of the votes cast if previously voted on once;

(ii) Less than 15 percent of the votes cast if previously voted on twice; or

(iii) Less than 25 percent of the votes cast if previously voted on three or more times.

(13) ***Specific amount of dividends:*** If the proposal relates to specific amounts of cash or stock dividends.

(j) ***Question 10:*** What procedures must the company follow if it intends to exclude my proposal?

(1) If the company intends to exclude a proposal from its proxy materials, it must file its reasons with the Commission no later than 80 calendar days before it files its definitive proxy statement and form of proxy with the Commission. The company must simultaneously provide you with a copy of its submission. The Commission staff may permit the company to make its submission later than 80 days before the company files its definitive proxy statement and form of proxy, if the company demonstrates good cause for missing the deadline.

(2) The company must file six paper copies of the following:

(i) The proposal;

(ii) An explanation of why the company believes that it may exclude the proposal, which should, if possible, refer to the most recent applicable authority, such as prior Division letters issued under the rule; and

(iii) A supporting opinion of counsel when such reasons are based on matters of state or foreign law.

(k) ***Question 11:*** May I submit my own statement to the Commission responding to the company's arguments?

Yes, you may submit a response, but it is not required. You should try to submit any response to us, with a copy to the company, as soon as possible after the company makes its submission. This way, the Commission staff will have time to consider fully your submission before it issues its response. You should submit six paper copies of your response.

(l) ***Question 12:*** If the company includes my shareholder proposal in its proxy materials, what information about me must it include along with the proposal itself?

(1) The company's proxy statement must include your name and address, as well as the number of the company's voting securities that you hold. However, instead of providing that information, the company may instead include a statement that it will provide the information to shareholders promptly upon receiving an oral or written request.

(2) The company is not responsible for the contents of your proposal or supporting statement.

(m) ***Question 13:*** What can I do if the company includes in its proxy statement reasons why it believes shareholders should not vote in favor of my proposal, and I disagree with some of its statements?

(1) The company may elect to include in its proxy statement reasons why it believes shareholders should vote against your proposal. The company is allowed to make arguments reflecting its own point of view, just as you may express your own point of view in your proposal's supporting statement.

(2) However, if you believe that the company's opposition to your proposal contains materially false or misleading statements that may violate our anti-fraud rule, § 240.14a-9, you should promptly send to the Commission staff and the company a letter explaining the reasons for your view, along with a copy of the company's statements opposing your proposal. To the extent possible, your letter should include specific factual information demonstrating the inaccuracy of the company's claims. Time permitting, you may wish to try to work out your differences with the company by yourself before contacting the Commission staff.

(3) We require the company to send you a copy of its statements opposing your proposal before it sends its proxy materials, so that you may bring to our attention any materially false or misleading statements, under the following timeframes:

(i) If our no-action response requires that you make revisions to your proposal or supporting statement as a condition to requiring the company to include it in its proxy materials, then the company must provide you with a copy of its opposition statements no later than 5 calendar days after the company receives a copy of your revised proposal; or

(ii) In all other cases, the company must provide you with a copy of its opposition statements no later than 30 calendar days before its files definitive copies of its proxy statement and form of proxy under § 240.14a-6.

[63 FR 29119, May 28, 1998; 63 FR 50622, 50623, Sept. 22, 1998, as amended at 72 FR 4168, Jan. 29, 2007; 72 FR 70456, Dec. 11, 2007; 73 FR 977, Jan. 4, 2008; 76 FR 6045, Feb. 2, 2011; 75 FR 56782, Sept. 16, 2010; 85 FR 70294, Nov. 4, 2020]

[redacted]

From: [redacted]
Sent:
To:
Subject: Re: 2025 shareholder proposal
Attachments: NCPPR Levi.pdf

From: [redacted]
Sent: Friday, November 22, 2024 2:55 PM
To: [redacted]
Subject: Re: 2025 shareholder proposal

Hi Priscilla,

Received. Attached please find a proof of ownership letter in response.

Please confirm receipt.

Thanks,

Ethan

On Wed, Nov 20, 2024 at 6:13 PM [redacted] wrote:

> Mr. Peck,
>
> Please find attached correspondence from LS&Co. The attached was also sent via FedEx.
>
> Best,
>
> Priscilla
>
> Priscilla Duncan-Tannous
>
> Assistant General Counsel, Corporate
>
> Levi Strauss & Co.

WELLS FARGO Advisors

1650 Tysons Boulevard
Suite 500
McLean, Virginia 22102

Tel: 703.893.5700
Fax: 703.448.0406

11/22/2024

National Center for Public Policy Research Inc
2005 Massachusetts Avenue NW
Washington DC 20036-1030

RE: Verification of Assets for Account Number ending in [redacted]

To Whom It May Concern:

In connection with your recent request regarding the verification of certain information about your investment account relationship with Wells Fargo Clearing Services, LLC ("Wells Fargo Advisors"), we are providing this letter as confirmation that:

(i) You maintain a Brokerage Cash Service account with Wells Fargo Advisors, number ending in [redacted].

(ii) As of November 22, 2024, National Center for Public Policy Research held, and has held continuously since November 1, 2021, $2,000 of Levi Strauss & Co common stock. This continuous ownership was established as part of the cost-basis data that UBS transferred to us along with this and other NCPPR holdings. This information routinely transfers when assets are transferred. Wells Fargo N.A. is record owner of these shares.

This letter is provided for informational purposes and does not represent future Account value, if this said Account will remain with Wells Fargo Advisors in the future, any purposes not mentioned in this letter, or the creditworthiness of the person(s) referenced within. Wells Fargo Advisors will have no liability with any party's reliance on this letter or the information within. This report is not the official record of your account. However, it has been prepared to assist you with your investment planning and is for informational purposes only. Your Wells Fargo Advisors Client Statement is the official record of your account. Therefore, if there are any discrepancies between this report and your Client Statement, you should rely on the Client Statement and call your local Sales Location Manager with any questions. Cost data and acquisition dates provided by you are not verified by Wells Fargo Advisors. Transactions requiring tax consideration should be reviewed carefully with your accountant or tax advisor. Unless otherwise indicated, market prices/values are the most recent closing prices available at the time of this report and are subject to change. Prices may not reflect the value at which securities could be sold. Past performance does not guarantee future results.

Sincerely,

Patricia Chapple
CRG Divisional Governance Specialist
Baltimore-Washington Market
MAC H3415-090
Tel [redacted]

Investment and Insurance Products are:

- **Not Insured by the FDIC or Any Federal Government Agency**
- **Not a Deposit or Other Obligation of, or guaranteed by, the Bank or Any Bank Affiliate**
- **Subject to Investment Risks, Including Possible Loss of the Principal Amount Invested**

NATIONAL CENTER FOR PUBLIC POLICY RESEARCH

January 2, 2025

<u>Via Online Shareholder Proposal Form</u>

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

Re: No-Action Request from Levi Strauss & Co. Regarding a Shareholder Proposal by the National Center for Public Policy Research ("Proponent" or "NCPPR")

Ladies and Gentlemen:

This correspondence is in response to the letter of Helena K. Grannis on behalf of Levi Strauss & Co. (the "Company") dated December 19, 2024, requesting that your office (the "Commission" or "Staff") take no action if the Company omits Proponent's shareholder proposal (the "Proposal") from its 2025 proxy materials for its 2025 annual shareholder meeting.

BACKGROUND

The Company argues that the Proposal should be excluded based on three main points:

1. the Proposal is impermissibly vague and misleading,

2. the Proposal deals with matters relating to the company's ordinary business operations, and

3. the Company has already substantially implemented the proposal.

These arguments are rebutted below.

ANALYSIS

I. *The Proposal is not impermissibly vague, indefinite or so susceptible to various interpretations as to be inherently misleading in violation of the proxy rules.*

The Company claims the Proposal's key terms like "program," "policies," "department," and "goals" are vague and indefinite, leading to differing interpretations. However, the proposal clearly targets the company's DEI initiatives, which are described on their website and in their 2023 impact report.

The proposal is not vague since it targets the DEI program, the policies related to that program, the department that implements the program, and the goals of that program.

The Company contends that shareholders might mistakenly believe they are voting for the elimination of DEI policies, rather than simply considering their elimination. However, the resolution clearly states that shareholders are requesting that the Company "consider abolishing" its DEI program, which is different than a mandate that it be abolished.

The Company argues that the proposal lacks a clear definition of DEI and that the cited lawsuits do not provide a clear definition. However, the proposal uses the term "Diversity, Equity and Inclusion (DEI)" which is a well-understood term in the corporate context and is clearly described by the Company on its website.[1] Either the relevant terms are clear enough for shareholder comprehension or the Company is itself misleading shareholders by acting like those terms have substance.

The Company suggests that employee resource groups (ERGs) are not necessarily DEI initiatives, but the proposal questions whether some of these groups are arbitrarily deemed "diverse," indicating a concern about their purpose within the DEI framework. The proposal does not mandate eliminating ERGs, but asks the company to consider abolishing them, as part of the larger DEI effort.

The Company cites several no-action letters to support its argument that the Proposal is impermissibly vague and misleading and should be excluded. However, these letters are distinguishable because they deal with proposals that were far more ambiguous and lacked clear objectives compared to the present case. Conversely, Proponent's Proposal specifically targets the company's DEI program, policies, department, and goals, which are sufficiently defined by the company's own public statements. The cited letters and their distinctions are:

- **The Walt Disney Company (Grau) (Jan. 19, 2022)**: In this case, the Staff concurred with excluding a proposal that sought to prohibit certain communications of "politically charged biases regardless of content or purpose" as being "political polemics." The proposal was arguably vague because it did not define what constituted "politically charged biases". In contrast, the Proposal is specific in targeting the DEI program, an existing company program, and not a vague concept like "politically charged biases".
- **The Boeing Company (Feb. 23, 2021)**: The Staff concurred with the exclusion of a proposal requiring that 60% of the company's directors "must have an aerospace/aviation/engineering executive background" where such phrase was undefined. The proposal was vague because it did not define what constituted "an aerospace/aviation/engineering executive background". By contrast, the Proposal uses the well-understood term "DEI" and refers to the company's own DEI program.
- **Apple Inc. (Dec. 6, 2019)**: The Staff concurred with the exclusion of a proposal seeking to "improve guiding principles of executive compensation" that did not provide an explanation or definition of the key term "executive compensation". The proposal was arguably vague

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[1] https://www.levistrauss.com/work-with-us-old/life-at-lsco/diversity-inclusion/ ; https://www.levistrauss.com/work-with-us-old/life-at-lsco/diversity-inclusion/dei-impact-report-2022/

because it did not define how "executive compensation" was to be improved. By contrast, the Proposal uses the well-understood term "DEI," and the company's DEI program is already in place and accessible on the company website. The Apple proposal sought to change something without specifying how. By contrast, the Proposal seeks to have the company consider eliminating something.

- **eBay Inc. (Apr. 10, 2019)**: The Staff concurred with the exclusion of a proposal requesting that the company "reform the company's executive compensation committee" because "neither shareholders nor the Company would be able to determine with any reasonable certainty the nature of the 'reform' the [p]roposal is requesting". The proposal was arguably vague because it did not define what it meant to "reform the company's executive compensation committee". The Proposal does not require a company to change its practices without specifying what changes would be necessary. Rather, it asks the company to consider whether a change is necessary.
- **Cisco Systems, Inc. (Oct. 7, 2016)**: The Staff concurred with the exclusion of a proposal requesting that the board "not take any action whose primary purpose is to prevent the effectiveness of shareholder vote without a compelling justification for such action," where it was arguably unclear what board actions would "prevent the effectiveness of [a] shareholder vote" and how the essential terms "primary purpose" and "compelling justification" would apply to board actions. The Cisco proposal was arguably vague because it did not specify what actions would be a violation and it would be hard to know when a board action has the primary purpose of preventing the effectiveness of a shareholder vote. The Proposal is specific in asking the company to consider abolishing its DEI program, which is readily identifiable and known to the company and shareholders.
- **AT&T Inc. (Feb. 21, 2014)**: The Staff concurred with the exclusion of a proposal requesting a review of policies and procedures related to the "directors' moral, ethical and legal fiduciary duties and opportunities," where such phrase was undefined. The proposal was arguably vague because it did not define what was meant by "directors' moral, ethical and legal fiduciary duties and opportunities". By contrast, the Proposal targets the DEI program, which is, as previously explained, not an amorphous concept.
- **International Paper Company (Feb. 3, 2011)**: The Staff concurred with the exclusion of a proposal requesting the adoption of a particular executive stock ownership policy that arguably did not sufficiently define "executive pay rights". The proposal was arguably vague because it did not specify what constituted "executive pay rights". The Proposal, on the other hand, uses a term commonly used by the Company itself, "DEI," and targets a specific company program, which makes it clear what the company should be considering.
- **General Electric Company (Jan. 21, 2011)**: The Staff concurred with the exclusion of a proposal requesting implementation of more long-term incentives where the proposal was arguably impermissibly vague in explaining how the program would work in practice, including the "'[f]inancial [m]etric(s)'" that would be used in implementing the proposal. The proposal was arguably vague because it did not explain how the long-term incentives would be implemented, or which metrics would be used. The Proposal does not require the Company to set up a new program, but simply to consider abolishing an existing one.

- **Verizon Communications Inc. (Feb. 21, 2008)**: The Staff concurred with the exclusion of a proposal where the proposal failed to define certain critical terms, such as "Industry Peer group" and "relevant period of time". The proposal was arguably vague because it did not define critical terms. The Proposal is not vague or indefinite because it uses the widely understood term "DEI," and asks the company to consider abolishing its DEI program, policies, department and goals.

In summary, the no-action letters cited by the Company involve proposals that were significantly more ambiguous and undefined than the Proposal. The Proposal is specific in its target: the company's DEI program, which is a concrete and existing set of initiatives. The cited no-action letters therefore do not control this case.

II. *The Proposal does not impermissibly deal with matters relating to the Company's ordinary business operations.*

A. *The Proposal does not impermissibly impact the day-to-day management of the Company.*

The Company argues that the Proposal interferes with the day-to-day management of the Company by seeking to change the relationship between management and employees. However, the Proposal focuses on the high-level strategic direction of the company's DEI program and not on the daily interactions between employees and management. Arguments set forth in part II.C. below may also be relevant here.

B. *The Proposal involves a significant social policy issue that transcends the Company's ordinary business.*

The Company surely recognizes that transcendent social significance trumps ordinary business concerns in this context, yet it does not even attempt to argue that this should not be the case here – likely because it so obviously is the case here.

One need only open a newspaper (or scroll through one's daily news feed) to recognize that DEI has become one of the most significant social policy issues of our time, clearly transcending the ordinary business of the Company. While arguably unnecessary, what follows are just a few headlines to drive home the point.

- *Corporate America Drew Back From DEI. The Upheaval Isn't Over.* (Dec. 28, 2024, Wall Street Journal article noting that "Trump's second administration is gearing up to end diversity, equity and inclusion, or DEI.")[2]
- *Rep. Cloud's Dismantle DEI Act Passes Out of House Oversight Committee* (Nov 21, 2024)[3]

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[2] https://www.wsj.com/business/corporate-dei-policy-changes-pull-back-33fdab87
[3] https://cloud.house.gov/posts/release-rep-clouds-dismantle-dei-act-passes-out-of-house-oversight-committee

- *Death of Nasdaq Diversity Rule Signals More Trouble for DEI* (Dec. 13, 2024)[4]

Notably, in SLB 14L, the Staff noted 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."

C. *The Proposal does not seek to impermissibly micro-manage the Company's business operations.*

Proponent believes the issue of micromanagement should be controlled by *The Walt Disney Company (National Center)* (Jan. 19, 2022), wherein the Staff rejected micromanagement as a basis for excluding a proposal requesting "that the board commission a workplace non-discrimination audit analyzing the [c]ompany's impacts, including the impacts arising from [c]ompany sponsored or promoted employee training, on civil rights and non-discrimination in the workplace, and the impacts of those issues on the Company's business." The subject matter obviously overlaps, and the proposal in *Disney* was clearly more "granular."[5]

The Company claims the proposal seeks to micro-manage business operations. However, the proposal addresses a major policy issue, the legal and financial risks of DEI programs, that has been the subject of major litigation and corporate changes at the highest levels as referenced in the supporting statement.

The Company argues that the Proposal seeks to change how employees engage with the company. However, this should not be viewed as the proper standard for assessing impermissible micromanagement because, among other things, such a standard would cast far too wide a net. Essentially any proposal even remotely impacting employees could be excluded under such a standard. Instead, appropriate questions include whether the Company's DEI initiatives are essential to management's ability to run the business. One need only review the list of companies recently dropping their DEI programs in whole or part to easily conclude that DEI is not essential. Another relevant question is whether the Proposal probes too deeply into complex matters for which shareholders, as a group, would not be in a position to make an informed judgment. The Staff can take objective notice of the fact that DEI has become such a commonly discussed and debated issue in our elections, schools, and corporations that only a perspective completely contrary to the entire notion of a shareholder franchise could rationally conclude shareholders aren't positioned to make an informed judgment on the Proposal.

III. *The Company has not substantially implemented the Proposal.*

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[4] https://www.bloomberg.com/news/articles/2024-12-13/death-of-nasdaq-diversity-rule-signals-more-trouble-for-dei

[5] In Staff Legal Bulletin No. 14L (Nov. 3, 2021) ("SLB 14L"), the Staff stated that in considering arguments for exclusion based on micromanagement, the Staff "will focus on the level of granularity sought in the proposal."

The Company asserts that it has already substantially implemented the proposal through its annual review of human resource policies. However, simply reviewing policies is not the same as considering abolishing them. The Staff should reject the Company's argument that abolishing programs is included "implicitly" in its current reviews. There is no limit to the games companies could play with shareholders if they can argue after that fact that something as distinct as abolishing programs was "implied" by governance focused on "the development, implementation and effectiveness of the Company's policies." Accordingly, the company's regular reviews do not meet the specific request of the proposal to consider abolishing its DEI program, policies, department, and goals.

The company contends that the Board and the Compensation and Human Capital Committee already annually consider whether DEI programs remain appropriate. However, this consideration is not explicitly focused on abolishing the DEI program as requested by the proposal. The proposal asks that the company consider abolishing its DEI program, not simply consider its effectiveness.

The company argues that the proposal's essential objective is satisfied because policies are considered each year. However, the proposal's essential objective is to have the company evaluate the DEI programs for potential abolishment, not simply for effectiveness, as the company's board already does.

CONCLUSION

In conclusion, the arguments presented by the Company for excluding the Proposal are not convincing. The Proposal is not impermissibly vague, does not impermissibly interfere with daily business operations, and has not been substantially implemented by the Company. The Proposal should be included in the proxy materials for the 2025 annual meeting.

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 spadfield@nationalcenter.org.

Rule 14a-8(k) and Section E of Staff Legal Bulletin No. 14D (Nov. 7, 2008) provide that companies are required to send proponents a copy of any correspondence that they elect to submit to the Commission or the Staff. Accordingly, we remind the Company that if it were to submit correspondence to the Commission or the Staff or individual members thereof with respect to our Proposal or this proceeding, a copy of that correspondence should concurrently be furnished to us.

Sincerely,

Stefan Padfield

FEP Director
National Center for Public Policy Research

cc: Helena K. Grannis