



DIVISION OF  
CORPORATION FINANCE

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

March 8, 2024

Helena K. Grannis  
Cleary Gottlieb Steen & Hamilton LLP

Re: Levi Strauss & Co. (the "Company")  
Incoming letter dated December 22, 2023

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 board of directors create a board committee on corporate financial sustainability to oversee and review the impact of the Company's policy positions, advocacy, partnerships and charitable giving on social and political matters, and the effect of those actions on the Company's financial sustainability and that the Company issue a public report on the committee's findings.

We are unable to concur in your view that the Company may exclude the Proposal under Rule 14a-8(i)(3). We are unable to conclude that you have demonstrated objectively that the Proposal is materially false or misleading and 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, the Proposal does not address ordinary business matters.

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/2023-2024-shareholder-proposals-no-action>.

Sincerely,

Rule 14a-8 Review Team

cc: Scott Shepard  
National Center for Public Policy Research

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RESIDENT COUNSEL

December 22, 2023

## 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 2024 annual meeting of stockholders (the “*2024 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 2024 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:

### Corporate Financial Sustainability Report

**Whereas:** The Company’s policy positions, advocacy, partnerships and charitable giving on significant social policy and political matters should not alienate consumers, decrease sales, or diminish shareholder value.

The Company takes public and politically divisive positions over issues of significant social policy concern, including advocating for anti-Second Amendment policies and decrying laws designed to increase integrity and confidence in elections as “racist.”<sup>1</sup>

The Company does not protect employees based on viewpoint and even forced out a top executive over her views regarding school closures during COVID-19, wearingly describing it, too, as racist.<sup>2</sup>

The Company partners with divisive organizations such as the Human Rights Campaign (HRC), which seeks to indoctrinate elementary school children as young as 5-years-old with radical gender ideology and instruction on sexual orientation by pushing books and lesson plans in schools. The Company also has a 100 percent rating on the HRC’s “Corporate Equality Index.” Earning that score requires spending shareholder assets to embrace highly partisan positions on hot-button issues.

The Company donates to divisive organizations such as the American Civil Liberties Union and Planned Parenthood, and pledged \$37 million to the Black Lives Matter movement and related causes proven to squander assets and support racism and antisemitism.<sup>3</sup>

The Company also supports a variety of other leftwing causes and organizations through the related Levi Strauss Foundation. For instance, 44 percent of the Foundation’s 2020 grants went to so-called “social justice” organizations that support partisan and unpopular objectives and undermine law enforcement.<sup>4</sup> The Company supports these law enforcement-undermining

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<sup>1</sup> <https://www.levistrauss.com/2021/04/02/standing-up-for-voting-rights/>; <https://fortune.com/2020/09/01/levi-strauss-ceo-racial-inequality-voter-disenfranchisement/>

<sup>2</sup> <https://www.foxbusiness.com/politics/levis-brand-president-quits-says-she-was-forced-out-over-her-views-against-school-closures>; <https://1792exchange.com/company/levi-strauss/>

<sup>3</sup> <https://1792exchange.com/company/levi-strauss/>

<sup>4</sup> <https://levistrauss.com/wp-content/uploads/2021/09/LSF-2020-Year-In-Review.pdf>

organizations despite its “urgent concern” over the impact of “smash and grab” retail crime on business.<sup>5</sup>

**Supporting Statement:** The Company supports divisive organizations and takes public stances on divisive issues that alienate current and prospective consumers despite declining sales and a 22 percent drop in its Americas market.<sup>6</sup>

Recent events have made clear that company bottom-lines, and therefore value to shareholders, drop when companies take overtly political and divisive positions that alienate consumers. Following Bud Light’s embrace of partisanship and disparagement of its customer base, its revenue fell \$395 million in North America when compared to the same time a year ago.<sup>7</sup> This amounts to roughly 10 percent of its revenue in the months following its leap into contentious politics.<sup>8</sup> Target Corporation’s market cap fell over \$15 billion amid backlash for similar actions.<sup>9</sup> And Disney stock fell 44 percent in 2022 – its worst performance in nearly 50 years – amid its decision to put extreme partisan agendas ahead of parents’ rights.<sup>10</sup>

**Resolved:** Shareholders request that the Board of Directors create a board committee on corporate financial sustainability to oversee and review the impact of the Company’s policy positions, advocacy, partnerships and charitable giving on social and political matters, and the effect of those actions on the Company’s financial sustainability. The Company should issue a public report on the committee’s findings by the end of 2024.

## BASES FOR EXCLUSION

The Company hereby respectfully requests that the Staff concur with its view that the Proposal may be excluded from the 2024 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;

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<sup>5</sup> <https://www.rila.org/focus-areas/asset-protection/retail-ceos-call-on-congress-address-retail-crime>; <https://www.foxbusiness.com/retail/retail-companies-support-police-reform-2020-ask-congress-increase-measures-retail-theft>

<sup>6</sup> <https://www.wsj.com/articles/levi-strauss-swings-to-loss-americas-sales-drop-22-31f9266>

<sup>7</sup> <https://www.cnn.com/2023/08/03/business/anheuser-busch-revenue-bud-light-intl-hnk/index.html>;

<sup>8</sup> <https://www.theguardian.com/business/2023/aug/03/bud-light-revenue-sales-anheuser-busch>

<sup>9</sup> <https://www.foxbusiness.com/media/target-market-cap-losses-hit-15-7-billion-share-near-52-week-low-amid-woke-backlash>; <https://nypost.com/2023/05/23/target-to-remove-some-lgbtq-merchandise-after-facing-customer-backlash/?dicbo=v2-x4CMNW0>

<sup>10</sup> <https://www.washingtonexaminer.com/policy/economy/disney-has-lost-50-billion-in-value-since-war-with-florida-began>; <https://www.hollywoodreporter.com/business/business-news/disney-stock-2022-1235289239/>; <https://markets.businessinsider.com/news/stocks/disney-stock-price-decline-bob-iger-pandemic-inflation-recession-streaming-2022-12>; <https://www.foxnews.com/media/disneys-decline-shows-woke-focus-alienating-fans-wsj-column>

- 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 substantially implemented the Proposal.

## BACKGROUND

The Company received the Proposal via FedEx on November 7, 2023, accompanied by a cover letter from the Proponent, dated November 6, 2023, stating “[a] proof of ownership letter is forthcoming.” On November 9, 2023, the Company sent a letter to the Proponent via 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 15, 2023, the Company received via FedEx a written statement, dated November 14, 2023, 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 9, 2023, 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, 2020 and November 9, 2023 (the “*Broker Letter*”).

Copies of the Proposal, the cover letter dated November 6, 2023, the Deficiency Letter, the Proponent's written statement dated November 14, 2023 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 Makes Materially False Statements and Is So Impermissibly Vague, Indefinite and Susceptible to Various Interpretations So As To Be Inherently Misleading in Violation of the Proxy Rules.*

*1. Background On Rule 14a-8(i)(3).*

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.”

In Staff Legal Bulletin No. 14B (Sept. 15, 2004) (“*SLB 14B*”), the Staff articulated that “reliance on rule 14a-8(i)(3) to exclude or modify a statement may be appropriate where...the company demonstrates objectively that a factual statement is materially false or misleading.” Staff precedent indicates that when the premise of a proposal is based on an objectively false or materially misleading statement, total exclusion of the proposal is warranted. *See, e.g., Ferro Corp.* (Mar. 17, 2015) (concurring in the exclusion of a proposal requesting that the company reincorporate in Delaware based on misstatements of Ohio law, which improperly suggested that the shareholders would have increased rights if Delaware law governed the company); *General Electric Co.* (Jan. 6, 2009) (concurring with exclusion of a proposal that falsely summarized the company’s certificate of incorporation by stating that the company had plurality voting for director nominations when in actuality the company had majority voting for director nominations); *Johnson & Johnson* (Jan. 31, 2007) (concurring in the exclusion of a proposal where the proposal concerned an advisory vote to approve the compensation committee report because it contained misleading implications about Commission rules concerning the contents of the report); and *State Street Corp.* (Mar. 1, 2005) (concurring in the exclusion of a proposal requesting shareholder action pursuant to a section of state law that had been recodified and was thus no longer applicable).

The Staff has also interpreted Rule 14a-8(i)(3) to include shareholder proposals that are vague and indefinite, and the Staff has consistently concurred with exclusion of shareholder proposals on the basis that “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.” *SLB 14B*. In addition, the Staff has noted that a proposal may be excludable 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 Staff has also noted that a proposal may be excludable under Rule 14a-8(i)(3) to the extent that the proposal fails to define key terms. *See, e.g., The Walt Disney Co. (Grau)* (Jan. 19, 2022) (concurring with the exclusion under Rule 14a-8(i)(3) as vague and indefinite a proposal that requests a prohibition on communications by or to cast members, contractors, management or other supervisory groups within the Company of “politically charged biases regardless of content or purpose,” where the Staff stated that “in applying this proposal to the [c]ompany, neither shareholders nor the [c]ompany would be able to determine with reasonable certainty exactly what actions or measures the [p]roposal requests”); *The Boeing Company* (Feb. 23, 2021)\* (permitting 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) (permitting exclusion of a proposal seeking to “improve guiding principles of executive compensation” that did not provide an explanation or definition of the key term

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

“executive compensation”); *eBay Inc.* (Apr. 10, 2019) (permitting 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,” and that, therefore, “the [p]roposal, taken as a whole, is so vague and indefinite that it is rendered materially misleading”); *Cisco Systems, Inc.* (Oct. 7, 2016) (permitting exclusion under Rule 14a-8(i)(3) 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) (permitting 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 Co.* (Feb. 3, 2011) (allowing 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) (allowing 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) (allowing exclusion of a proposal where the proposal failed to define certain critical terms, such as “Industry Peer group” and “relevant period of time”).

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)).

2. *The Proposal may be excluded pursuant to Rule 14a-8(i)(3) because it makes materially false statements.*

The Proposal states in its supporting statement that “[t]he Company donates to divisive organizations such as the American Civil Liberties Union and Planned Parenthood, and pledged \$37 million to the Black Lives Matter movement and related causes proven to squander assets and support racism and antisemitism” (footnote omitted).

First, with respect to the first clause of the aforementioned statement, the Company did not make any corporate donations to Planned Parenthood in 2020, 2021, 2022 or 2023. Moreover, any employee matching gifts were funded out of the Levi Strauss Foundation. The Proposal cites to a webpage<sup>11</sup> that fails to provide any evidence that the Company donated to Planned Parenthood. In fact, that webpage itself, in asserting erroneously that the Company donates to Planned Parenthood, cites to three webpages that fail to prove that the Company donated to Planned Parenthood. The first webpage, dated August 24, 2020<sup>12</sup> (over three years old), indicates that the Levi Strauss *Foundation*—not the Company—donates to the International Planned Parenthood Federation. The second webpage, dated May 2020<sup>13</sup> (over three years old), does not even mention

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<sup>11</sup> See *Levi Strauss, Corporate [sic] Bias Ratings*, available at <https://1792exchange.com/company/levi-strauss/>.

<sup>12</sup> See *Levi Strauss Foundation Supports Reproductive Justice*, available at <https://www.levistrauss.com/2020/08/24/levi-strauss-foundation-supports-reproductive-justice/>.

<sup>13</sup> See *Why ‘Not Being Racist’ Is Not Enough*, available at [https://www.levi.com/US/en\\_US/blog/article/why-not-being-racist-is-not-enough](https://www.levi.com/US/en_US/blog/article/why-not-being-racist-is-not-enough).



Planned Parenthood, let alone offer evidence that the Company donates to the organization. The third webpage, dated March 24, 2022<sup>14</sup> (over 20 months old), fails to draw any connection between the Company and donations to Planned Parenthood. See below under Section A.3. for a discussion of the Levi Strauss Foundation as a separate organization from the Company. In short, the Proposal puts forward objective falsehoods.

Second, with respect to the second clause of the statement above, the Company did not make any corporate donations to the Black Lives Matter Foundation in 2020, 2021, 2022 or 2023. Moreover, any employee matching gifts were funded out of the Levi Strauss Foundation. The Proposal cites to a webpage<sup>15</sup> that, in turn, cites to two webpages that fail to demonstrate that the Company donated or pledged \$37 million. The first webpage, dated June 2020<sup>16</sup> (over three years old), states that “[o]ver the past five years, our company *and the Levi Strauss Foundation together* have invested more than \$37 million in organizations advancing social justice and equality in the U.S.” (emphasis added).<sup>17</sup> How the Proposal uses this statement is false and misleading for two reasons. First and foremost, it fails to provide a breakdown of how much the Company has donated as compared to the Foundation; therefore a shareholder would not be able to determine with any reasonable certainty how much the Company is donating. Second, the webpage is over three years old and references a date range that spans five years before that. The data thus does not accurately reflect how much the Company may or may not donate presently. The second webpage<sup>18</sup> claims that “Levi’s”<sup>19</sup> has donated “\$37,200,000”<sup>20</sup> to “BLM Movement & Related Causes.”<sup>21</sup> However, the source that this website provides is actually the first webpage<sup>22</sup> to which the original webpage<sup>23</sup> cited. In other words, the sources that the Proposal relies on are circular, false and misleading.

*3. The Proposal may be excluded pursuant to Rule 14a-8(i)(3) because it makes materially misleading statements.*

The Proposal states in its supporting statement that “[t]he Company also supports a variety of other leftwing causes and organizations through the related Levi Strauss Foundation.” This statement is materially misleading because the Levi Strauss Foundation is distinct from the Company and “is not a consolidated entity of the Company.”<sup>24</sup> In fact, the Levi Strauss Foundation

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<sup>14</sup> See *How Big U.S. Companies Are Creating a Brand New Abortion Benefit*, available at <https://www.bloomberg.com/news/articles/2022-03-24/u-s-employers-add-abortion-travel-benefits-as-states-limit-access>.

<sup>15</sup> See *Levi Strauss, Corporate [sic] Bias Ratings*, available at <https://1792exchange.com/company/levi-strauss/>.

<sup>16</sup> See *Levi Strauss & Co.’s Diversity Problem — And Our Plan To Fix It*, available at [https://www.levi.com/US/en\\_US/blog/article/levi-strauss-co-s-diversity-problem-and-our-plan-to-fix-it](https://www.levi.com/US/en_US/blog/article/levi-strauss-co-s-diversity-problem-and-our-plan-to-fix-it).

<sup>17</sup> See *Levi Strauss & Co.’s Diversity Problem — And Our Plan To Fix It*, available at [https://www.levi.com/US/en\\_US/blog/article/levi-strauss-co-s-diversity-problem-and-our-plan-to-fix-it](https://www.levi.com/US/en_US/blog/article/levi-strauss-co-s-diversity-problem-and-our-plan-to-fix-it).

<sup>18</sup> See *BLM Funding Database*, available at [https://claremont.shinyapps.io/BLM\\_Funding/](https://claremont.shinyapps.io/BLM_Funding/).

<sup>19</sup> See *BLM Funding Database*, available at [https://claremont.shinyapps.io/BLM\\_Funding/](https://claremont.shinyapps.io/BLM_Funding/).

<sup>20</sup> See *BLM Funding Database*, available at [https://claremont.shinyapps.io/BLM\\_Funding/](https://claremont.shinyapps.io/BLM_Funding/).

<sup>21</sup> See *BLM Funding Database*, available at [https://claremont.shinyapps.io/BLM\\_Funding/](https://claremont.shinyapps.io/BLM_Funding/).

<sup>22</sup> See *Levi Strauss & Co.’s Diversity Problem — And Our Plan To Fix It*, available at [https://www.levi.com/US/en\\_US/blog/article/levi-strauss-co-s-diversity-problem-and-our-plan-to-fix-it](https://www.levi.com/US/en_US/blog/article/levi-strauss-co-s-diversity-problem-and-our-plan-to-fix-it).

<sup>23</sup> See *Levi Strauss, Corporate [sic] Bias Ratings*, available at <https://1792exchange.com/company/levi-strauss/>.

<sup>24</sup> See *Levi Strauss & Co. 2022 Annual Report*, available at [https://s23.q4cdn.com/172692177/files/doc\\_financials/2022/ar/LS-Co-2022-annual-report-final.pdf](https://s23.q4cdn.com/172692177/files/doc_financials/2022/ar/LS-Co-2022-annual-report-final.pdf).

has its own distinct board of directors, which makes charitable grants at its own “discretion,”<sup>25</sup> and 10 of the 11 members of the Levi Strauss Foundation’s board of directors—comprising over 90% of the board of director’s voting power—are not members of the Company’s board of directors.<sup>26</sup> To assert that the Company works “through” the Levi Strauss Foundation erroneously and misleadingly implies that the Company’s board of directors actively directs and controls the Levi Strauss Foundation, its decision making and funding priorities.

The Proposal also claims in its supporting statement—without citation to a single source—that “[t]he Company also has a 100 percent rating on the HRC’s ‘Corporate Equality Index.’ Earning that score *requires* spending shareholder assets to embrace highly partisan positions on hot-button issues” (emphasis added). This statement is a sweeping, wholly unsupported and highly misleading claim. The distinct lack of information or data supporting the conclusion that the Company’s score directly correlates with an “embrace [of] highly partisan positions” significantly undermines the Proposal’s veracity and, thus, could directly mislead shareholders and other stakeholders as it offers no benchmark of any kind for shareholders and other stakeholders to assess the extent to which the Company “spend[s] shareholder assets” on donations compared to its peers and how such spending correlates with its HRC score.

A final materially misleading statement put forward in the Proposal was the declaration that “[t]he Company donates to divisive organizations such as the American Civil Liberties Union and Planned Parenthood, and pledged \$37 million to the Black Lives Matter movement and related causes *proven* to squander assets and support racism and antisemitism” (footnote omitted) (emphasis added). First, the Proposal does not define or identify in any way the “related causes” that this statement refers to. Second, the statement fails to provide any indication of how or by what metric the claim was “prove[d]” and any identification of who or what “prove[d]” the claim. In fact, the omitted footnote cites to a webpage<sup>27</sup> that fails to make any assertion whatsoever about the effectiveness of the Company’s donations in support of the American Civil Liberties Union (the “*ACLU*”), Planned Parenthood and Black Lives Matter (“*BLM*”) and, more importantly, that fails to offer any semblance of proof with respect to any of these organizations “squander[ing] assets and support[ing] racism and antisemitism.” At bottom, this sweeping assertion has no grounding in data or other evidence and is therefore deeply and materially misleading.

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

In this instance, the Proposal requests that the Company “create a board committee on corporate financial sustainability to oversee and review the impact of the Company’s policy positions, advocacy, partnerships and charitable giving on social and political matters, and the effect of those actions on the Company’s financial sustainability.” The Proposal is inherently

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<sup>25</sup> See *Levi Strauss Foundation, Independent Auditors’ Report and Financial Statements, November 30, 2022 and 2021*, available at <https://www.levistrauss.com/wp-content/uploads/2023/09/Levi-Strauss-Foundation-2022-Financial-Statements.pdf>.

<sup>26</sup> See *Levi Strauss Foundation, Who We Are: Board of Directors*, available at <https://www.levistrauss.com/values-in-action/levi-strauss-foundation/board/>; see *Levi Strauss & Co., Who We Are: Leadership*, available at <https://www.levistrauss.com/who-we-are/leadership/>.

<sup>27</sup> See *Levi Strauss, Corprate [sic] Bias Ratings*, available at <https://1792exchange.com/company/levi-strauss/>.

vague and misleading as it fails to define several key terms, rendering it likely impossible for shareholders and the Company to reach a consensus as to what the Proposal seeks to accomplish. First, the Proposal focuses on the Company’s “corporate financial sustainability”—a term which is inherently vague and confusing and could be interpreted by shareholders and the Company in any number of ways, including to cover matters ranging from the Company’s environmental sustainability and energy transition pathway and outlook to the Company’s financial performance and strategy over the near-, medium- or long-term. Second, the Proposal asks the Company to form a “board committee on corporate financial sustainability” which, too, can be interpreted by shareholders and the Company in a number of ways to encompass Board oversight of a wide range of distinct and unrelated matters. Third, the Proposal adds a further layer of confusion by asking the Board to focus on “social and political matters,” a task which first requires clarity as to exactly the kinds of and which specific matters the request relates to. Fourth, adding further to the confusion is the concern about “partnerships,” a supremely imprecise term which could encompass any parties with which the Company interacts and conducts business, from major conglomerates to a small local contractor. Such language only further adds to the myriad of ways the Proposal could be interpreted by shareholders and the Company. Last, in the supporting statement, the Proposal employs highly vague and imprecise language: “The Company...takes public stances on divisive issues that *alienate* current and prospective consumers” (emphasis added). The Proposal does not attempt to explain or provide a footnoted source to explain how, when or to what extent the Company’s actions “alienate.”

Accordingly, we ask that the Staff concur that the Company may exclude the Proposal from its 2024 Proxy Materials under Rule 14a-8(i)(3) on the basis that the Proposal makes materially misleading statements and is 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.*

*1. Background On Rule 14a-8(i)(7).*

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.

More recently, in Staff Legal Bulletin No. 14L (Nov. 3, 2021) (“*SLB 14L*”), the Staff stated that it will look to whether the policy issues raised in a shareholder proposal may have “a broad societal impact, such that they transcend the ordinary business of the company,” regardless of “the nexus between a policy issue and the company.” The Staff also provided in *SLB 14L* guidance on its position on micromanagement when evaluating requests to exclude a proposal on that basis

under the ordinary business exception. The Staff stated that it “recogniz[es] that proposals seeking detail or seeking to promote timeframes or methods do not per se constitute micromanagement.” SLB 14L. Instead, the Staff “will focus on the level of granularity sought in the proposal and whether and to what extent it inappropriately limits discretion of the board or management” and may look to “references to well-established national or international frameworks” in considering what level of detail may be “‘too complex’ for shareholders.” SLB 14L. The Staff also noted that it will look to “the sophistication of investors generally on the matter, the availability of data, and the robustness of public discussion and analysis on the topic” in considering whether a proposal’s matter is “‘too complex’ for shareholders, as a group, to make an informed judgment.” SLB 14L.

2. *The Proposal may be excluded pursuant to Rule 14a-8(i)(7) because it relates to the ordinary business matter of the Company’s charitable contributions to, support for and partnerships with specific types of organizations.*

The Commission has stated that a proposal requesting the dissemination of a report or the creation of a board committee is excludable under Rule 14a-8(i)(7) if the substance of the proposal is within the ordinary business of the company. *See* Exchange Act Release No. 34-20091 (Aug. 16, 1983) (“[T]he staff will consider whether the subject matter of the special report or the committee involves a matter of ordinary business; where it does, the proposal will be excludable under Rule 14a-8(c)(7).”); *see also Netflix, Inc.* (Mar. 14, 2016) (permitting exclusion under Rule 14a-8(i)(7) of a proposal that requested a report describing “how company management identifies, analyzes, and oversees reputational risks related to offensive and inaccurate portrayals of Native Americans, American Indians and other indigenous peoples, how it mitigates these risks and how the company incorporates these risk assessment results into company policies and decision-making,” noting that the proposal related to the ordinary business matter of the “nature, presentation and content of programing and film production”); *see also The AES Corporation* (Jan. 9, 2007) (permitting exclusion under Rule 14a-8(i)(7) of a proposal that requested “the board create an ethics oversight committee...to monitor the company’s compliance with applicable laws, rules and regulations of the federal, state, local governments, and the AES [the company’s] Code of Business Conduct and Ethics” as relating to the company’s “ordinary business operations (i.e., general conduct of a legal compliance program”).

In accordance with the policy considerations underlying the ordinary business exclusion, the Staff has consistently permitted exclusion under Rule 14a-8(i)(7) of shareholder proposals that focus on contributions to specific organizations or types of organizations. For example, in *The Walt Disney Co.* (Nov. 20, 2014), the Staff permitted exclusion under Rule 14a-8(i)(7) of a proposal requesting that the company “preserve the policy of acknowledging the Boy Scouts of America as a charitable organization to receive matching contributions” as relating to the ordinary business matter of “charitable contributions to a specific organization.” *See also, e.g., PG&E Corp.* (Feb. 4, 2015) (permitting exclusion under Rule 14a-8(i)(7) of a proposal requesting the company “form a committee to solicit feedback on the effect of anti-traditional family political and charitable contributions” as relating to the ordinary business matter of “contributions to specific types of organizations”); *PepsiCo., Inc.* (Feb. 24, 2010) (permitting exclusion under Rule 14a-8(i)(7) of a proposal to prohibit support of organizations that “either reject or support homosexuality,” noting that the proposal related to “charitable contributions directed to specific types of organizations”); *Target Corporation* (Mar. 31, 2010) (permitting exclusion under Rule 14a-8(i)(7) of a proposal requesting a report on charitable donations and a “‘feasibility’” study of

“policy changes, including minimizing donations to charities that fund animal experiments,” noting that the proposal related to “charitable contributions directed to specific types of organizations”); and *Wachovia Corp.* (Jan. 25, 2005) (permitting exclusion under Rule 14a-8(i)(7) of a proposal recommending that “the board disallow the payment of corporate funds to Planned Parenthood and any other organizations involved in providing abortion services” as relating to the company’s “ordinary business operations (i.e., contributions to specific types of organizations)”).

In addition, the Staff has permitted exclusion under Rule 14a-8(i)(7) of shareholder proposals that relate to contributions where the proposal itself is facially neutral, but the supporting statement appears directed at a particular organization or type of organization. In particular, the Staff recently permitted exclusion under Rule 14a-8(i)(7) of multiple proposals submitted by the Proponent in which the underlying focus of such proposals were similar in nature to the instant Proposal. For example, in *Netflix, Inc.* (Apr. 9, 2021)\*, *Facebook, Inc.* (Mar. 26, 2021)\*, *McDonald’s Corporation* (Mar. 26, 2021)\*, *AT&T Inc.* (Jan. 15, 2021)\* and *Starbucks Corp.* (Dec. 23, 2020)\*, the same Proponent submitted nearly identical proposals with a “Resolved” clause in each that requested an intricately detailed but facially neutral report regarding those companies’ general charitable giving activities. Specifically, the proposals requested a wide-ranging report listing and analyzing charitable contributions made or committed during the prior year, including identifying organizational and individual recipients of donations in excess of \$500. However, the supporting statements in the aforementioned proposals included thinly veiled references, including through online articles hyperlinked in footnotes, to each company’s support for or contributions to organizations supportive of or sympathetic to BLM. In the supporting statement of the instant Proposal, as discussed in more detail below, the Proponent similarly includes thinly veiled references, including through online articles hyperlinked in footnotes, critiquing a number of “divisive organizations,” “so-called ‘social justice’ organizations” and “extreme partisan agendas” supported by the Company and by, as one of the articles cited in a footnote states, other “‘woke’ corporations.”<sup>28</sup> In fact, the Proponent in our current Proposal takes the supporting statement beyond the scope of the aforementioned proposals by targeting specific recipients of the Company’s charitable contributions: the ACLU, Planned Parenthood and BLM.

In each of the aforementioned proposals, the companies argued, among other things, that the proposals, when read together with the supporting statements and accompanying footnotes, did not have a general and neutral objective with regard to the specific recipients of the companies’ charitable contributions. Instead, the companies argued, the proposals were seemingly directed at contributions to specific organizations that support particular racial justice movements, most prominently, BLM. *See The Walt Disney Co.* (Dec. 23, 2020)\* (permitting exclusion under Rule 14a-8(i)(7) of a proposal requesting a report listing and analyzing charitable contributions made or committed during the prior year where the supporting statement referred to “highly divisive” charitable commitments, including the National Association for the Advancement of Colored People (“NAACP”) and “unspecified organizations” that support social justice, as relating to the company’s ordinary business matters); *see also JPMorgan Chase & Co.* (Feb. 28, 2018) (permitting exclusion under Rule 14a-8(i)(7) of a proposal requesting an annual report concerning the company’s charitable contributions where the supporting statement referenced contributions

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<sup>28</sup> *See Bud Light brewer reports sharp drop in US revenue after rightwing backlash*, available at <https://www.theguardian.com/business/2023/aug/03/bud-light-revenue-sales-anheuser-busch>.

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

to specific organizations as relating to “contributions to specific types of organizations”); *Starbucks Corp.* (Jan. 4, 2018) (permitting exclusion under Rule 14a-8(i)(7) of a proposal requesting a semiannual report concerning the company’s charitable contributions where the supporting statement referred to certain organizations as “problematic,” as relating to “contributions to specific types of organizations”); *Home Depot, Inc.* (Mar. 18, 2011) (permitting exclusion under Rule 14a-8(i)(7) of a proposal requesting a listing of “recipients of corporate charitable contributions or merchandise vouchers of \$5,000 or more” where the supporting statement referenced contributions to organizations that support same-sex marriage because the proposal related to “contributions to specific types of organizations”); *Johnson & Johnson* (Feb. 12, 2007) (permitting exclusion under Rule 14a-8(i)(7) of a proposal requesting that the company disclose all recipients of corporate charitable contributions where the proposal’s preamble and supporting statement referred in some way to abortion or same-sex marriage, as relating to “ordinary business operations (i.e., contributions to specific types of organizations)”); *Pfizer Inc.* (Feb. 12, 2007) (same); and *Wells Fargo & Co.* (Feb. 12, 2007) (same).

In this instance, as in the precedent described above, the Proposal and the supporting statement, when read together, focus primarily on the Company’s contributions to specific types of organizations—namely, “extreme partisan agendas” and “so-called ‘social justice’ organizations.” In this regard, the declarations in the Proposal that the Company, in addition to supporting or partnering with the Human Rights Campaign, the ACLU, Planned Parenthood and BLM, “supports a variety of other leftwing causes and organizations,” “supports these law enforcement-undermining organizations despite its ‘urgent concern’ over the impact of ‘smash and grab’ retail crime on business” (footnote omitted) and “supports divisive organizations and takes public stances on divisive issues that alienate current and prospective consumers” are neither generic nor lacking context. Rather, the underlying subject matter of the Proposal is made clear in the grouping of the Company with other companies who endorse “overtly political and divisive positions that alienate consumers” and an “embrace of partisanship.” In fact, the aforementioned omitted footnote includes reference to an online news article titled “‘Woke’ retailers who asked Congress for help amid smash-and-grabs supported left-wing police reforms”<sup>29</sup> describing recent protests for racial and social justice, and charitable contributions by the Company and others in support of these movements, including the ACLU and BLM. Furthermore, the Proposal references in a footnote a webpage<sup>30</sup> hosted on a website that states on its “About” page that its “mission is to develop policy and resources to protect and equip non-profits, small businesses and philanthropy from ‘woke’ corporations, to educate Congress and stakeholder organizations about the dangers of ESG (environmental, social, and governance) policies, and to help steer public companies in the United States back to neutral on ideological issues so they can best serve their shareholders and customers with excellence and integrity”<sup>31</sup> (emphasis added). In Section D of Staff Legal Bulletin No. 14G (Oct. 16, 2012) (“*SLB 14G*”), the Staff made clear that the information contained on websites that are referenced in shareholder proposals are part of the shareholder proposal. As a result, the aforementioned news article and website, and those described below, should be read as included in the supporting statement of the Proposal.

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<sup>29</sup> See *‘Woke’ retailers who asked Congress for help amid smash-and-grabs supported left-wing police reforms*, available at <https://www.foxbusiness.com/retail/retail-companies-support-police-reform-2020-ask-congress-increase-measures-retail-theft>.

<sup>30</sup> See *Levi Strauss, Corporate [sic] Bias Ratings*, available at <https://1792exchange.com/company/levi-strauss/>.

<sup>31</sup> See *1792 Exchange, About*, available at <https://1792exchange.com/about/>.

In arguing that the proposal was specifically focused on the company's support for BLM in *McDonald's Corporation*, the company noted, among other things, that "although the [s]upporting [s]tatement does not explicitly identify the targeted contributions, the [p]roposal includes footnotes containing hyperlinks to online publications, including Brietbart.com, criticizing BLM-related protests and reporting on the [c]ompany's charitable activities aimed at advancing social justice and equality, including a \$1 million donation announced by the [c]ompany to the National Association for the Advancement of Colored People ('NAACP') and the National Urban League." In this instance, the Proposal's supporting statement is similarly replete with supplemental information via footnotes containing hyperlinks demonstrating that the Proposal is specifically focused on the Company's efforts to be a "'woke' corporation"<sup>32</sup> and its support for "extreme partisan agendas," "so-called 'social justice' organizations" and "divisive organizations." However, unlike *McDonald's Corporation*, the Proposal's supporting statement goes a step further in that it specifically references the Company's donations to the ACLU and Planned Parenthood and the Company's pledge to donate "\$37 million to the Black Lives Matter movement and related causes proven to squander assets and support racism and antisemitism" (footnote omitted). Against that backdrop, in the next paragraph, the Proposal's supporting statement argues that "[t]he Company also supports a variety of other leftwing causes and organizations through the related Levi Strauss Foundation," citing that "44 percent of the Foundation's 2020 grants went to so-called 'social justice' organizations that support partisan and unpopular objectives and undermine law enforcement" (footnote omitted).

Finally, the references in the concluding paragraph of the Proposal's supporting statement to "disparagement of its customer base," "leap into contentious politics" and "extreme partisan agendas" clearly demonstrate that the Proposal is not addressed generally to the Company's policies toward charitable giving and specific types of organizations, but instead is intended to serve as a shareholder referendum on Company contributions to, support for and partnerships with organizations that are affiliated with or supportive of a specific social and political movement—social justice organizations. The fact that the Proposal's resolution is facially neutral does not change the foregoing.

In addition, the Proponent has publicly voiced its objection to the Company's support of organizations focused on social justice. An article on the Proponent's website titled "Investors Denounce Levi Strauss CEO Chip Bergh for 'Partisan Toxicity'" questions whether the Company should be classified as "[a] [f]ar-[l]eft [p]olitical [a]ction [c]ommittee."<sup>33</sup> Another article on the Proponent's website titled "Ultra-Woke CEO Chip Bergh Turned Levi's Into A Leftist Think Tank" takes issue with the Company's support for a number of social justice-oriented causes and organizations and cites to the 2022 edition of "Balancing the Boardroom: How Conservatives Can Combat Corporate Wokeness" by the Free Enterprise Project<sup>34</sup> in furthering its viewpoint that the Company supports an "increasingly far-left agenda."<sup>35</sup> Moreover, the Proponent has published a number of articles on its website opposing social justice organizations and criticizing the "defund-

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<sup>32</sup> See *1792 Exchange, About*, available at <https://1792exchange.com/about/>.

<sup>33</sup> See *Investors Denounce Levi Strauss CEO Chip Bergh for 'Partisan Toxicity'*, available at <https://nationalcenter.org/ncppr/2022/04/20/investors-denounce-levi-strauss-ceo-chip-bergh-for-partisan-toxicity/>.

<sup>34</sup> See *Balancing the Boardroom: How Conservatives Can Combat Corporate Wokeness*, available at <https://nationalcenter.org/wp-content/uploads/2022/03/BTB2022.pdf>.

<sup>35</sup> See *Ultra-Woke CEO Chip Bergh Turned Levi's Into A Leftist Think Tank*, available at <https://nationalcenter.org/ncppr/2022/04/13/ultra-woke-ceo-chip-bergh-turned-levis-into-a-leftist-think-tank/>.

the-police” movement<sup>36</sup> (or, as described by other social justice organizations, a reduction of the role of law enforcement in certain communities), such as “Why Defunding The Police Is A Bad Idea,”<sup>37</sup> “Real Criminal Justice Reform Doesn’t Defund The Police,”<sup>38</sup> “Liberal Blame Game Extends To Border Crisis And Defunding The Police”<sup>39</sup> and “Defunding The Police Creates A Lawless Society.”<sup>40</sup> This is not unlike the proposals in *McDonald’s Corporation* and *Netflix*, which involved the same Proponent and similar public statements in opposition to specific types of organizations that received contributions from McDonald’s Corporation and Netflix. For example, in *McDonald’s Corporation*, the same Proponent published several articles on its website demonstrating its opposition to BLM and advocating against those perceived to support BLM and related social justice movements, such as “How Woke CEOs Traded Our Future for BLM Approval,”<sup>41</sup> “Mastercard Unable to Defend its Support for Marxist Group ‘Black Lives Matter,’”<sup>42</sup> and “Civil Rights Movement Had a ‘Moral Authority’ Black Lives Matter Lacks.”<sup>43</sup> Similarly, in *Netflix*, the same Proponent published an article on its website titled “Netflix Blasted For Supporting Black Lives Matter While American Cities Burn” taking issue with Netflix’s support for BLM.<sup>44</sup> Thus, much like in *McDonald’s Corporation* and *Netflix*, the Proposal is designed to further the Proponent’s overarching agenda of condemning corporate support of social justice-oriented organizations. The Proposal, when read together with the supporting statement and the accompanying footnotes, and the additional context of the Proponent’s public objections to the Company’s support of organizations focused on social justice and to the “far-left agenda,”<sup>45</sup> demonstrates a clear intention to limit the Company’s charitable contributions with respect to specific types of organizations, most prominently, the ACLU and BLM. Further, the financial sustainability analyses requested by the Proposal is squarely within the purview of management and therefore relates to the ordinary business of the Company.

Last, we note that the fact a proposal may touch upon a significant policy issue, however, does not preclude exclusion under Rule 14a-8(i)(7). The Staff has consistently permitted exclusion of shareholder proposals where the proposal focused on ordinary business matters, even though it

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<sup>36</sup> See *Search Results For: Defund*, available at <https://nationalcenter.org/?s=defund>.

<sup>37</sup> See *Why Defunding The Police Is A Bad Idea*, available at <https://nationalcenter.org/ncppr/2022/09/20/why-defunding-the-police-is-a-bad-idea/>.

<sup>38</sup> See *Real Criminal Justice Reform Doesn’t Defund The Police*, available at <https://nationalcenter.org/project21/2022/04/18/real-criminal-justice-reform-doesnt-defund-the-police/>.

<sup>39</sup> See *Liberal Blame Game Extends To Border Crisis And Defunding The Police*, available at <https://nationalcenter.org/ncppr/2021/07/21/liberal-blame-game-extends-to-border-crisis-and-defunding-the-police/>.

<sup>40</sup> See *Defunding The Police Creates A Lawless Society*, available at <https://nationalcenter.org/project21/2021/06/29/defunding-the-police-creates-a-lawless-society/>.

<sup>41</sup> See *How Woke CEOs Traded Our Future for BLM Approval*, available at <https://nationalcenter.org/ncppr/2020/09/18/how-woke-ceos-traded-our-future-for-blm-approval/>.

<sup>42</sup> See *Mastercard Unable to Defend its Support for Marxist Group “Black Lives Matter”*, available at <https://nationalcenter.org/ncppr/2020/06/16/mastercard-unable-to-defend-its-support-for-marxist-group-black-lives-matter/>.

<sup>43</sup> See *Civil Rights Movement Had a “Moral Authority” Black Lives Matter Lacks*, available at <https://nationalcenter.org/project21/2020/08/12/civil-rights-movement-had-a-moral-authority-black-lives-matter-lacks/>.

<sup>44</sup> See *Netflix Blasted For Supporting Black Lives Matter While American Cities Burn*, available at <https://nationalcenter.org/ncppr/2020/06/05/netflix-blasted-for-supporting-black-lives-matter-while-american-cities-burn/>.

<sup>45</sup> See *Ultra-Woke CEO Chip Bergh Turned Levi’s Into A Leftist Think Tank*, available at <https://nationalcenter.org/ncppr/2022/04/13/ultra-woke-ceo-chip-bergh-turned-levis-into-a-leftist-think-tank/>.



also related to a potential significant policy issue. *See PetSmart, Inc.* (Mar. 24, 2011) (permitting exclusion when, although the proposal addressed the “significant policy issue” of “the humane treatment of animals,” it also requested that the company’s board require suppliers to provide certain certifications, an ordinary business matter); *CIGNA Corp.* (Feb. 23, 2011) (permitting exclusion under Rule 14a-8(i)(7) when, although the proposal addressed the potential significant policy issue of access to affordable health care, it also asked CIGNA to report on expense management, an ordinary business matter); and *Capital One Financial Corp.* (Feb. 3, 2005) (permitting exclusion when, although the proposal addressed the significant policy issue of outsourcing, it also asked the company to disclose information about how it manages its workforce, an ordinary business matter).

In this instance, even if the Proposal were to touch on a potential significant policy issue, the Proposal could be interpreted to concern the Company’s “financial sustainability” and “partnerships,” definitively ordinary business matters.

Accordingly, for the reasons stated above, the Proposal—when read together with the supporting statement and the accompanying footnotes, and the additional context of certain of the Proponent’s public objections to social justice-related organizations and causes—clearly seeks to limit charitable contributions that are used to support particular types of charitable organizations, most prominently, the ACLU and BLM. Thus, consistent with the precedents cited above, by targeting specific Company charitable contributions, the Proposal’s request that the Company create a new board committee and issue a report on such committee’s findings relates directly to the well-recognized ordinary business matter of deciding which charitable organizations to support and, therefore, 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 Substantially Implemented the Proposal.*

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

Rule 14a-8(i)(10) permits a company to exclude a stockholder proposal from its proxy materials “[i]f the company has already substantially implemented the proposal.” The Commission stated in 1976 that the predecessor to Rule 14a-8(i)(10) was “designed to avoid the possibility of shareholders having to consider matters which already have been favorably acted upon by the management.” Exchange Act Release No. 34-12598 (Jul. 7, 1976). Originally, the Staff narrowly interpreted this predecessor rule and concurred with the exclusion of a proposal only when proposals were “‘fully’ effected” by the company. *See* Exchange Act Release No. 34-19135 (Oct. 14, 1982). By 1983, however, the Commission recognized that “the previous formalistic application of this provision [the Rule] defeated its purpose” because proponents were successfully avoiding exclusion by submitting proposals that differed from existing company policy in minor respects. Exchange Act Release No. 34-20091 at § II.E.6 (Aug. 16, 1983) (the “1983 Release”). Therefore, in the 1983 Release, the Commission adopted a revised interpretation of the rule “to permit the omission of proposals that have been ‘substantially implemented by the issuer,’” and the Commission codified this revised interpretation in the 1998 Release, at no. 30.

Applying this standard, the Staff has noted that “a determination that the [c]ompany has substantially implemented the proposal depends upon whether its [the company’s] particular

policies, practices and procedures compare favorably with the guidelines of the proposal.” *Texaco, Inc.* (Mar. 6, 1991, *recon. granted* Mar. 28, 1991). *See, e.g., Exxon Mobil Corp.* (Mar. 23, 2018, *recon. denied* Apr. 11, 2018) (permitting exclusion of a proposal requesting that the company issue a report “describing how the [c]ompany could adapt its business model to align with a decarbonizing economy by altering its energy mix to substantially reduce dependence on fossil fuels” where the company had previously issued a report providing examples of how the company was “adapting its business model to reduce societal greenhouse gas emissions”); *Lowe’s Companies, Inc.* (Mar. 2, 2017, *recon. granted* Mar. 24, 2017) (permitting exclusion of a proposal requesting that the board of directors “take the steps necessary to enable at least 50 shareholders to aggregate their shares” to satisfy the proxy access threshold where the company amended its bylaws to provide a procedure enabling “a group of up to 20 shareholders...to nominate and include in the [c]ompany’s annual meeting proxy materials director nominees constituting up to the greater of (i) two or (ii) 20% of the Board [of Directors]”); *Exxon Mobil Corp.* (Mar. 17, 2015, *recon. denied* Mar. 25, 2015) (permitting exclusion of a proposal requesting that “the company commit to increasing the [dollar] amount authorized for capital distributions to shareholders through dividends or share buybacks” where the “[c]ompany’s long-standing capital allocation strategy” and related “policies, practices and procedures compare[d] favorably with the guidelines of the proposal and...therefore, substantially implemented the proposal”). *See also IDACORP, Inc.* (Apr. 1, 2022); *Edison Int’l* (Feb. 23, 2022); *Devon Energy Corp.* (Apr. 1, 2020)\*; *Johnson & Johnson* (Jan. 31, 2020)\*; *Pfizer, Inc.* (Jan. 31, 2020)\*; *The Allstate Corp.* (Mar. 15, 2019); *Johnson & Johnson* (Feb. 6, 2019); *United Cont’l Holdings, Inc.* (Apr. 13, 2018); *eBay Inc.* (Mar. 29, 2018); *Kewaunee Scientific Corp.* (May 31, 2017); *Wal-Mart Stores, Inc. (Zhao)* (Mar. 16, 2017); *Dominion Resources, Inc.* (Feb. 9, 2016); *Ryder System, Inc.* (Feb. 11, 2015); and *Wal-Mart Stores, Inc.* (Mar. 27, 2014).

At the same time, a company need not implement a proposal in exactly the same manner set forth by the proponent. In *General Motors Corp.* (Mar. 4, 1996), the company observed that “the Staff has not required that a registrant implement the action requested [in a proposal] exactly in all details but has been willing to issue no-action letters under paragraph (c)(10) [the predecessor of Rule 14a-8(i)(10)] in situations where the essential objective of the proposal had been satisfied.” The company further argued that “[i]f the mootness requirement of paragraph (c)(10) [the predecessor rule] were applied too strictly, the intention of paragraph (c)(10) [the predecessor rule]—permitting exclusion of ‘substantially implemented’ proposals—could be evaded merely by including some element in the proposal that differs from the registrant’s policy or practice.” Thus, the Staff has concurred that a shareholder proposal may be excluded as “substantially implemented” if the company can demonstrate that it has already taken actions to address satisfactorily the “essential objective” of a shareholder proposal. *See, e.g., The Bank of New York Mellon Corp.* (Feb. 15, 2019); *Quest Diagnostics Inc.* (Mar. 17, 2016); *Exelon Corp.* (Feb. 26, 2010); *Exxon Mobil Corp. (Burt)* (Mar. 23, 2009); *Anheuser-Busch Companies, Inc.* (Jan. 17, 2007); *ConAgra Foods, Inc.* (July 3, 2006); *Johnson & Johnson* (Feb. 17, 2006); *The Talbots Inc.* (Apr. 5, 2002); *Masco Corp.* (Mar. 29, 1999); and *The Gap, Inc.* (Mar. 8, 1996).

The Staff has further concurred that, when substantially implementing a stockholder proposal, companies can address aspects of implementation in ways that may differ from the manner in which the stockholder proponent would implement the proposal. For example, the Staff

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

has consistently concurred with the exclusion of shareholder proposals requesting reports if the company has provided information about the requested subject matter in public disclosures, regardless of the form of disclosure. *See, e.g., Hess Corp.* (Apr. 11, 2019) (concurring in the exclusion of a proposal requesting from the company “a report on how it [the company] can reduce its carbon footprint in alignment with greenhouse gas reductions necessary to achieve the Paris Agreement’s goal” where the company had met the proposal’s essential objective through its 2017 Sustainability Report, its responses to the 2018 CDP Climate Change Questionnaire and its 2018 Investor Day Presentation). In addition, the Staff has previously taken the position that a stockholder proposal requesting that a company’s board of directors prepare a report pertaining to environmental, social or governance issues may be excluded when the company has provided information about the initiative in various public disclosures. *See PPG Industries, Inc. (Congregation of the Sisters of St. Joseph of Peace)* (Jan. 16, 2020)\* (concurring with the exclusion of a proposal requesting that “the Board of Directors prepare a report...on PPG’s [the company’s] processes for implementing human rights commitments within company-owned operations and through business relationships” where the requested information was already disclosed in the company’s global code of ethics, global supplier code of conduct, supplier sustainability policy, sustainability report and other disclosures); *The Wendy’s Co.* (Apr. 10, 2019) (concurring with exclusion of a proposal requesting that the board of directors prepare a “report on the [c]ompany’s process for identifying and analyzing potential and actual human rights risks of operations and supply chain” where the company already had a code of conduct for suppliers, a code of business conduct and ethics and other policies and public disclosures concerning supply chain practices and other human rights issues that achieved the proposal’s essential objective); *The Dow Chemical Co.* (Mar. 18, 2014, *recon. denied* Mar. 25, 2014) (concurring with the exclusion of a proposal requesting that “the company prepare a report to shareholders assessing the short- and long-term financial, reputational and operational impacts that the legacy of the Bhopal disaster may reasonably have on Dow’s [the company’s] Indian and global business opportunities and reporting on any actions Dow [the company] intends to take to reduce such impacts” where the company had already published a “Q and A” regarding Bhopal that addressed the information the proposal requested); and *MGM Resorts Int’l* (Feb. 28, 2012) (permitting exclusion under Rule 14a-8(i)(10) of a proposal requesting “a report to shareholders on the company’s sustainability policies and performance, including multiple, objective statistical indicators” where the company published an annual sustainability report).

2. *The Proposal may be excluded pursuant to Rule 14a-8(i)(10) because the Company’s policies, practices and procedures substantially implement the Proposal by satisfying the Proposal’s essential objective, and compare favorably to the Proposal.*

The Proposal’s essential objective has two prongs: (1) the Board create a board committee to “oversee and review the impact of the Company’s policy positions, advocacy, partnerships and charitable giving on social and political matters, and the effect of those actions on the Company’s financial sustainability” and (2) the Company must produce “a public report” on the committee’s findings. The Company already substantially satisfies and implements each prong of this objective.

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

The Company's current policies, practices and procedures—and in particular, the Board's current collective oversight of and direct involvement in certain matters—compare favorably to the first prong of the Proposal's essential objective and, thus, substantially satisfy and implement it for the following reasons:

- The Corporate Governance Guidelines, which are available on the Company's website<sup>46</sup>, are established by the Board and govern the Board's conduct and operation. According to such guidelines, it is the duty and the responsibility of each director of the Company to “*shap[e]* effective corporate governance and *oversee[ ]* matters related to issues such as environment, health and safety, *corporate citizenship*, *public policy* and *community involvement* (“ESG”) (including climate change and environmental sustainability policies, programs, goals and progress), as well as targets, standards and other metrics used to *measure and track* ESG performance and progress” (emphasis added). Together, these issues arguably constitute the “social and political matters” referred to in the Proposal. In addition, the Corporate Governance Guidelines state that a “[b]asic [r]esponsibility” of Directors of the Board is “reviewing and approving...*charitable contributions*” (emphasis added). Thus, the Board already reviews and oversees on an ongoing basis the Company's actions with respect to social and political matters and in particular any charitable contributions.
- The Nominating, Governance and Corporate Citizenship Committee (the “NGCCC”), as stated in its charter, which is available on the Company's website<sup>47</sup>, “[r]eview[s] with management *the impact* of the Company's business operations and business practices with respect to issues such as environment, health and safety, *corporate citizenship*, *public policy* and *community involvement*” (emphasis added). Thus, a committee of the Board is already specifically tasked with reviewing and overseeing the Company's actions with respect to social and political matters. Moreover, the NGCCC also “[p]eriodically review[s] and ha[s] oversight over the Company's corporate policies, programs, progress reports and, in coordination with other committees of the Board, significant publications relating to *ESG matters* and make recommendations on such matters to the full Board, as appropriate” (emphasis added) and “[r]eview[s] with management the Company's *key public policy positions* and the manner in which the Company conducts *significant public policy* and government relations activities” (emphasis added).
- Both the Board and the NGCCC already approve on an annual basis the Company's annual donation to the Levi Strauss Foundation. That particular grant represents a significant percentage of the Company's total annual expenditures on social and

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<sup>46</sup> See *Corporate Governance Guidelines*, available at [https://s23.q4cdn.com/172692177/files/doc\\_downloads/gov/2023/12/levi-strauss-corporate-governance-guidelines-final.pdf](https://s23.q4cdn.com/172692177/files/doc_downloads/gov/2023/12/levi-strauss-corporate-governance-guidelines-final.pdf).

<sup>47</sup> See *Charter of the Nominating, Governance and Corporate Citizenship Committee of the Board Of Directors*, available at [https://s23.q4cdn.com/172692177/files/doc\\_downloads/gov/2023/12/levi-strauss-nominating-governance-and-corporate-citizenship-committee-final.pdf](https://s23.q4cdn.com/172692177/files/doc_downloads/gov/2023/12/levi-strauss-nominating-governance-and-corporate-citizenship-committee-final.pdf).

political matters, and, at the same time, a *de minimis* portion of the Company's total revenues.<sup>48</sup>

- The Audit Committee, as stated in its charter, which is available on the Company's website<sup>49</sup>, “[d]iscuss[es] with management and the independent registered public accounting firm the risks faced by the Company and the policies, guidelines and process by which management assesses and manages the Company's risks, including the Company's *major financial risk* and enterprise exposures, risks related to environment, health and safety, *corporate citizenship, public policy* and *community involvement* (‘ESG’), and the steps management has taken to *monitor and control* such exposures, including the Company's risk assessment, risk management and business resumption policies” (emphasis added). Thus, the Board, through the Audit Committee, already oversees and reviews risks related to the “social and political matters” described in the Proposal, including from a financial sustainability perspective.
- As described in the Company's 2023 Notice of Annual Meeting of Shareholders and Proxy Statement, which is available on the Company's website<sup>50</sup>, states that “[i]n determining which issues to *support*, we [the Company]...take into consideration and discuss with the Nominating, Governance and Corporate Citizenship Committee and, as appropriate, the Board, among other things, the *potential impact* on our business, customers, employees and communities in which we do business, risks related to *taking a stand*, measures to address and mitigate such risks, and how best to communicate *our stance* on such issues” (emphasis added). Thus, not only does management consult with the Board or a committee thereof with respect to the potential impacts resulting from the Company's decision to support certain causes, but the Board is also deeply involved in discussion regarding how to manage and mitigate related risks.

Accordingly, the Company has not only accomplished the first prong of the Proposal's essential objective and taken actions to specifically address the underlying concerns of the Proposal, but it has also, in many cases, met or exceeded the exact request described in the Proposal.

Likewise, the Company already substantially satisfies and implements the second prong of the Proposal's essential objective: the issuance of “a public report” on board committee's findings regarding the impact of the Company's policy positions, advocacy, partnerships and charitable giving on social and political matters and the effect of those actions on the Company's financial sustainability. In addition to the information disclosed annually in the Company's proxy statement, the Company produces numerous public reports—among others, an annual Sustainability

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<sup>48</sup> Total expenditures on social and political matters is defined to include the Company's lobbying expenses, grants to the Levi Strauss Foundation and grants to all other organizations focused on social issues.

<sup>49</sup> See *Charter of the Audit Committee of the Board Of Directors*, available at [https://s23.q4cdn.com/172692177/files/doc\\_downloads/gov/2023/12/audit-committee-charter-final.pdf](https://s23.q4cdn.com/172692177/files/doc_downloads/gov/2023/12/audit-committee-charter-final.pdf).

<sup>50</sup> See *2023 Notice of Annual Meeting of Shareholders and Proxy Statement*, available at <https://d18rn0p25nwr6d.cloudfront.net/CIK-0000094845/5bdd6755-4750-43e7-bb52-91cd6f09a85a.pdf>.

Report<sup>51</sup>, an annual DE&I Impact Report<sup>52</sup>, a Climate Action Strategy<sup>53</sup>, a Water Action Strategy<sup>54</sup>, a Supplier Code of Conduct<sup>55</sup>—that address in part the topics outlined in the first prong of the Proposal’s essential objective. Furthermore, the Company publishes a webpage on its website called “Sustainability Issue Prioritization”<sup>56</sup>, which states, “To ensure we are addressing the issues with the most potential to *impact our business, society and the environment*, we [the Company] prioritize *sustainability issues* through a process in which we engage a broad group of internal and external stakeholders for feedback on key environmental, social and governance topics. This includes a *detailed assessment* every few years, complemented by *annual reviews* to assess emerging issues and make sure we continue to focus on issues of greatest relevance” (emphasis added). The webpage also notes that “[f]or our [the Company’s] priority sustainability issues, we have created time-bound and measurable goals to address the *impact on our business* and to create transparency around our performance and management approaches” (emphasis added).

Every year since 2019, the Company has published an annual Sustainability Report.<sup>57</sup> The latest annual Sustainability Report<sup>58</sup>, published in September 2023 and which is available on the “Sustainability in Action” tab of the Company’s website, outlines the Company’s “holistic *sustainability strategy*” (emphasis added) whose goals include “[d]riv[ing] *societal impact* in communities where LS&Co. operates through *advocacy, grantmaking, employee giving and volunteerism*” (emphasis added) and “[I]everag[ing] the leadership of the Levi Strauss Foundation and invest[ing] in our communities to *advance pioneering social change*” (emphasis added). The report also provides metrics highlighting progress achieved against these goals, including “LSF [Levi Strauss Foundation] grants”, “matching donations”, “[c]orporate giving”, “[t]he number of employees volunteering”, “engagement among our corporate employees” and the number of “causes” supported by employees. Last, the Sustainability Report notes, “We [the Company] align to multiple *sustainability reporting frameworks*”, including the “2022 Sustainability Accounting Standards Board (SASB) Index” (emphasis added). The Company’s Form 10-K for the fiscal year ended November 27, 2022 illustrates management’s and the Board’s ongoing focus on the impact of the Company’s advocacy, grantmaking and policy positions on the Company’s financial results and sustainability, stating that “[t]he [Company’s] goals include targets tied to various areas across

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<sup>51</sup> See *2022 Sustainability Goals & Progress Update*, available at <https://www.levistrauss.com/wp-content/uploads/2023/09/2022-LSCo.-Sustainability-Goals-Progress-Update.pdf>.

<sup>52</sup> See *DE&I Impact Report*, available at [https://www.levistrauss.com/wp-content/uploads/2023/05/DEI-Impact-Report\\_FINAL\\_RGB.pdf](https://www.levistrauss.com/wp-content/uploads/2023/05/DEI-Impact-Report_FINAL_RGB.pdf).

<sup>53</sup> See *Climate Action Strategy 2025*, available at [https://levistrauss.com/wp-content/uploads/2019/03/LSCO\\_Climate\\_Action\\_Strategy\\_2025.pdf](https://levistrauss.com/wp-content/uploads/2019/03/LSCO_Climate_Action_Strategy_2025.pdf).

<sup>54</sup> See *2025 Water Action Strategy*, available at [https://levistrauss.com/wp-content/uploads/2020/01/2019\\_LSCO\\_WATER\\_STRATEGY\\_REPORT.pdf](https://levistrauss.com/wp-content/uploads/2020/01/2019_LSCO_WATER_STRATEGY_REPORT.pdf).

<sup>55</sup> See *Supplier Code of Conduct*, available at [https://www.levistrauss.com/wp-content/uploads/2022/09/LSCo\\_Code-of-Conduct.pdf](https://www.levistrauss.com/wp-content/uploads/2022/09/LSCo_Code-of-Conduct.pdf).

<sup>56</sup> See *Sustainability Issue Prioritization*, available at <https://www.levistrauss.com/sustainability/issue-prioritization/>.

<sup>57</sup> See *Sustainability Reporting Resources*, available at <https://www.levistrauss.com/sustainability/reporting-resources/>.

<sup>58</sup> See *2022 Sustainability Goals & Progress Update*, available at <https://www.levistrauss.com/wp-content/uploads/2023/09/2022-LSCo.-Sustainability-Goals-Progress-Update.pdf>.

our sustainability strategy and collectively reflect our guiding philosophy of *profits through principles*<sup>59</sup> (emphasis added).

In short, the Company collectively—through its Board, its Board committees, management, policies, practices, procedures and reports—already substantially implements the Proposal by satisfying both prongs of the Proposal’s essential objective. Therefore, the Proposal warrants exclusion pursuant to Rule 14a-8(i)(10).

### CONCLUSION

Based upon the foregoing analysis, we respectfully request that the Staff concur that the Company may exclude the Proposal from the 2024 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](mailto: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.

Very truly yours,



Helena K. Grannis

cc:

David Jedrzejek, Levi Strauss & Co.

Nanci Prado, Levi Strauss & Co.

Scott Shepard, National Center for Public Policy Research

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<sup>59</sup> See Form 10-K For the Fiscal Year Ended November 27, 2022, available at <https://d18m0p25nwr6d.cloudfront.net/CIK-0000094845/ca2a82c3-5a43-4c12-878b-a5b2e5e56c62.pdf>.

**Exhibit A**





November 6, 2023

**Via FedEx to**

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

Dear Sir/Madam,


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

I submit the Proposal as the Director of the Free Enterprise Project of the National Center for Public Policy Research, which has continuously 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 2024 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 telephone conference to discuss this proposal November 27, 2023 or November 28, 2023 from 1-4 p.m. eastern. If that proves inconvenient, I hope you will suggest some other times to talk. Please feel free to contact me at [REDACTED] so that we can determine the mode and method of that discussion.

Copies of correspondence or a request for a "no-action" letter should be sent to me at the National Center for Public Policy Research, [REDACTED] and emailed to [REDACTED].

Sincerely,

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

Scott Shepard  
FEP Director

Enclosures: Shareholder Proposal

## Corporate Financial Sustainability Report

**Whereas:** The Company's policy positions, advocacy, partnerships and charitable giving on significant social policy and political matters should not alienate consumers, decrease sales, or diminish shareholder value.

The Company takes public and politically divisive positions over issues of significant social policy concern, including advocating for anti-Second Amendment policies and decrying laws designed to increase integrity and confidence in elections as "racist."<sup>1</sup>

The Company does not protect employees based on viewpoint and even forced out a top executive over her views regarding school closures during COVID-19, wearily describing it, too, as racist.<sup>2</sup>

The Company partners with divisive organizations such as the Human Rights Campaign (HRC), which seeks to indoctrinate elementary school children as young as 5-years-old with radical gender ideology and instruction on sexual orientation by pushing books and lesson plans in schools. The Company also has a 100 percent rating on the HRC's "Corporate Equality Index." Earning that score requires spending shareholder assets to embrace highly partisan positions on hot-button issues.

The Company donates to divisive organizations such as the American Civil Liberties Union and Planned Parenthood, and pledged \$37 million to the Black Lives Matter movement and related causes proven to squander assets and support racism and antisemitism.<sup>3</sup>

The Company also supports a variety of other leftwing causes and organizations through the related Levi Strauss Foundation. For instance, 44 percent of the Foundation's 2020 grants went to so-called "social justice" organizations that support partisan and unpopular objectives and undermine law enforcement.<sup>4</sup> The Company supports these law enforcement-undermining organizations despite its "urgent concern" over the impact of "smash and grab" retail crime on business.<sup>5</sup>

**Supporting Statement:** The Company supports divisive organizations and takes public stances on divisive issues that alienate current and prospective consumers despite declining sales and a 22 percent drop in its Americas market.<sup>6</sup>

Recent events have made clear that company bottom-lines, and therefore value to shareholders, drop when companies take overtly political and divisive positions that alienate consumers. Following Bud Light's embrace of partisanship and disparagement of its customer base, its revenue fell \$395 million in North America when compared to the same time a year ago.<sup>7</sup> This

<sup>1</sup> <https://www.levistrauss.com/2021/04/02/standing-up-for-voting-rights/>; <https://fortune.com/2020/09/01/levi-strauss-ceo-racial-inequality-voter-disenfranchisement/>

<sup>2</sup> <https://www.foxbusiness.com/politics/levis-brand-president-quits-says-she-was-forced-out-over-her-views-against-school-closures>; <https://1792exchange.com/company/levi-strauss/>

<sup>3</sup> <https://1792exchange.com/company/levi-strauss/>

<sup>4</sup> <https://levistrauss.com/wp-content/uploads/2021/09/LSF-2020-Year-In-Review.pdf>

<sup>5</sup> <https://www.rila.org/focus-areas/asset-protection/retail-ceos-call-on-congress-address-retail-crime>; <https://www.foxbusiness.com/retail/retail-companies-support-police-reform-2020-ask-congress-increase-measures-retail-theft>

<sup>6</sup> <https://www.wsj.com/articles/levi-strauss-swings-to-loss-americas-sales-drop-22-31f9266>

<sup>7</sup> <https://www.cnn.com/2023/08/03/business/anheuser-busch-revenue-bud-light-intl-hnk/index.html>;

amounts to roughly 10 percent of its revenue in the months following its leap into contentious politics.<sup>8</sup> Target Corporation's market cap fell over \$15 billion amid backlash for similar actions.<sup>9</sup> And Disney stock fell 44 percent in 2022 – its worst performance in nearly 50 years – amid its decision to put extreme partisan agendas ahead of parents' rights.<sup>10</sup>

**Resolved:** Shareholders request that the Board of Directors create a board committee on corporate financial sustainability to oversee and review the impact of the Company's policy positions, advocacy, partnerships and charitable giving on social and political matters, and the effect of those actions on the Company's financial sustainability. The Company should issue a public report on the committee's findings by the end of 2024.

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<sup>8</sup> <https://www.theguardian.com/business/2023/aug/03/bud-light-revenue-sales-anheuser-busch>

<sup>9</sup> <https://www.foxbusiness.com/media/target-market-cap-losses-hit-15-7-billion-share-near-52-week-low-amid-woke-backlash>; <https://nypost.com/2023/05/23/target-to-remove-some-lgbtq-merchandise-after-facing-customer-backlash/?dicbo=v2-x4CMNWo>

<sup>10</sup> <https://www.washingtonexaminer.com/policy/economy/disney-has-lost-50-billion-in-value-since-war-with-florida-began>; <https://www.hollywoodreporter.com/business/business-news/disney-stock-2022-1235289239/>; <https://markets.businessinsider.com/news/stocks/disney-stock-price-decline-bob-iger-pandemic-inflation-recession-streaming-2022-12>; <https://www.foxnews.com/media/disneys-decline-shows-woke-focus-alienating-fans-wsj-column>

1155 Battery Street  
San Francisco, CA 94111  
levistrauss.com

November 9, 2023

**BY FEDERAL EXPRESS**

Scott Shepard  
National Center for Public Policy Research  


RE: Notice of Deficiency, dated November 9, 2023

Dear Mr. Shepard:

We are writing to acknowledge receipt on November 7, 2023 of the shareholder proposal and supporting statement (the "*Proposal*") submitted to Levi Strauss & Co. (the "*Company*") by the National Center for Public Policy Research (the "*Proponent*") pursuant to Rule 14a-8 of the Securities Exchange Act of 1934, as amended (the "*Exchange Act*") for inclusion in the Company's proxy materials for the 2024 Annual Meeting of Shareholders (the "*Annual Meeting*").

Under Rule 14a-8(b)(i), 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
- 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 its 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 its proposal, prove its eligibility to the company in one of two ways. For the Proponent's reference, a copy of Rule 14a-8 is attached to this letter as Exhibit A.

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SIGNATURE BY LEVI STRAUSS & CO.™  
BEYOND YOGA®

**LEVI STRAUSS & CO.**

The Proposal failed to include proof of the Proponent's ownership of shares of the Company's Class A Common Stock continuously since November 2020. Our records indicate that you are not a registered holder of the Company's Class A Common Stock. If the proponent intends to demonstrate ownership of at least:

- \$2,000 of the Company's Class A Common Stock for at least three years, preceding and including the date that the Proposal was submitted, the Proponent must verify that the Proponent had beneficially held the requisite number of shares of the Company's Class A Common Stock continuously for at least the period from November 7, 2020 to November 7, 2023; or
- \$15,000 of the Company's Class A Common Stock for at least two years, preceding and including the date that the Proposal was submitted, the Proponent must verify that the Proponent had beneficially held the requisite number of shares of the Company's Class A Common Stock continuously for at least the period from November 7, 2021 to November 7, 2023; or
- \$25,000 of the Company's Class A Common Stock for at least one year, preceding and including the date that the Proposal was submitted, the Proponent must verify that the Proponent had beneficially held the requisite number of shares of the Company's Class A Common Stock continuously for at least the period from November 7, 2022 to November 7, 2023.

Further to the above, please provide a written statement from the record holder of the Proponent's shares (usually a bank or broker) and a participant in the Depository Trust Company ("DTC") verifying that, at the time the Proponent submitted the Proposal on November 7, 2023, the Proponent had beneficially held the requisite number of shares of the Company's Class A Common Stock pursuant to the requirements of Rule 14a-8(b)(b)(i), as described above.

In order to determine if the record holder of the Proponent's shares of the Company's Class A Common Stock (usually a bank or broker) is a DTC participant, the Proponent can check the DTC's participant list, which is currently available on the Internet at <http://www.dtcc.com/downloads/membership/directories>. If the bank or broker holding the Proponent's shares of the Company's Class A Common Stock is not a DTC participant, the Proponent also will need to obtain proof of ownership from the DTC participant through which its shares are held. The Proponent should be able to find out who this DTC participant is by asking its broker or bank. If the DTC participant knows the Proponent's broker or bank's holdings, but does not know the Proponent's holdings, the Proponent can satisfy Rule 14a-8 by obtaining and submitting two letters proof of ownership statements verifying that, at the time the Proposal was submitted on November 7, 2023, 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 the Proponent's broker or bank confirming the Proponent's ownership, and the other from the DTC participant confirming the broker or bank's ownership. For additional information regarding the acceptable methods of proving the Proponent's 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.

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Rule 14a-8(f) requires that the Proponent correct the deficiency noted above in order to have the Proposal 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 the Proponent receives this letter. Once we receive the Proponent's response and documentation, we will be in a position to determine whether the Proposal is eligible for inclusion in the proxy materials for the Annual Meeting. Even if the Proponent remedies 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 substantive objections that the Company may submit to the Staff pursuant to Rule 14a-8, the Company may exclude the Proposal from its proxy materials for the Annual Meeting.

Sincerely,



Nanci Prado  
Corporate Secretary

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EXHIBIT A

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

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November 14, 2023

**Via FedEx to**

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

Dear Ms. Prado:

Please see the attached proof of ownership letter in furtherance of the 2024 shareholder proposal submitted by the National Center for Public Policy Research on November 6, 2023.

Should you have any questions, please feel free to contact me at [REDACTED].

Sincerely,

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

Scott Shepard  
FEP Director  
National Center for Public Policy Research



Tel: [Redacted]  
Fax: [Redacted]

November 9, 2023

National Center for Public Policy Research Inc



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

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 (i) You maintain a Brokerage Cash Service account with Wells Fargo Advisors, number ending in [PII], established on 08/04/2023.

(ii) As of November 9, 2023, the National Center for Public Policy Research holds, and has held continuously since November 1, 2020 more than \$2,000 of Levi Strauss & Co. common stock.

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  
Digitally signed by Patricia Chapple  
Date: 2023.11.10 15:35:22  
6302

**Patricia Chapple**  
CRG Divisional Governance Specialist  
Baltimore-Washington Market  
Wells Fargo Advisors | [Redacted]  
Tel [Redacted]  
[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

Wells Fargo Advisors,  
a trade name used by Wells Fargo Clearing Services, LLC, Member SIPC,  
a registered broker-dealer and non-bank affiliate of Wells Fargo & Company.





January 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, DC 20549

**Re: No-Action Request from Levi Strauss & Co. Regarding Shareholder Proposal by the National Center for Public Policy Research**

Ladies and Gentlemen:

This correspondence is in response to the letter of Helena K. Grannis on behalf of Levi Strauss & Co. (the "Company" or "Levi Strauss" or "Levi's") dated December 22, 2023, requesting that your office (the "Commission" or "Staff") take no action if the Company omits our shareholder proposal (the "Proposal") from its 2024 proxy materials for its 2024 annual shareholder meeting.

**RESPONSE TO THE COMPANY'S CLAIMS**

The Proposal requests that:

the Board of Directors create a board committee on corporate financial sustainability to oversee and review the impact of the Company's policy positions, advocacy, partnerships and charitable giving on social and political matters, and the effect of those actions on the Company's financial sustainability.

The Company argues it may exclude the Proposal on one or more of the following grounds.

- Under 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;
- Under Rule 14a-8(i)(7) because the Proposal deals with matters relating to the Company's ordinary business operations; and
- Under Rule 14a-8(i)(10) because the Company has substantially implemented the Proposal.

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

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.

**I. The non-omissibility of our Proposal is strongly supported by the Staff's decision in *Alphabet, Inc.* (avail. April 11, 2022).**

Our Proposal is substantially indistinguishable, for Staff-review purposes, from the proposal that was found non-omissible in *Alphabet, Inc.* (avail. April 11, 2022). The resolution of our Proposal is based on and is conceptually indistinguishable from the Alphabet proposal. As we have noted, the resolution of our Proposal asks the Company's Board of Directors to:

create a board committee on corporate financial sustainability to oversee and review the impact of the Company's policy positions, advocacy, partnerships and charitable giving on social and political matters, and the effect of those actions on the Company's financial sustainability.

The proposal in Alphabet asked the Alphabet Board of Directors to:

create a board committee on environmental sustainability to oversee and review policies and provide guidance on matters relating to environmental sustainability.

These proposals are effectively identical in nature. Each call on the respective boards to examine how the policies and actions of each company impact key sustainability issues. Our Proposal seeks a review of its public policy positions and actions on the Company's financial sustainability, whereas the proposal in Alphabet seeks a review of such policies and actions on that company's environmental sustainability. Financial sustainability more completely implicates substantial issues of particular importance to shareholders because while environmental sustainability is at best a tertiary fiduciary concern of interest to only a portion of shareholders, financial sustainability is the central fiduciary concern imputed by law and common sense to all shareholders.

In *Alphabet, Inc.* (avail. April 11, 2022), the Staff concluded that the proposal "transcends ordinary business matters and does not seek to micromanage the Company," and that "the Company has not substantially implemented the Proposal." While the Staff did not address arguments arising under Rule 14a-8(i)(3), the Alphabet proposal having been found non-omissible goes a long way to concluding our Proposal must be included as well. Were the Staff to determine otherwise, it would thereby provide grounds upon which companies might in the future exclude all inquiries into the intersections of its policy positions on issues of significant social policy concern (in direct contravention of SLB 14L) and the company's continuing sustainability.

**II. The Company may not exclude the Proposal under Rule 14a-8(i)(3)**

The Company argues that it may exclude the Proposal under Rule Rule 14a-8(i)(3) because the Proposal (1) makes materially false statements, (2) makes materially misleading statements, and (3) is impermissibly vague, indefinite and susceptible to various interpretations so as to be inherently misleading in violation of the proxy rules.

**A. The Proposal Does Not Make Materially False Statements**

The Company argues that the Proposal makes a materially false statement when it asserts that: "The Company donates to divisive organizations such as the American Civil Liberties Union and Planned Parenthood, and pledged \$37 million to the Black Lives Matter movement and related causes proven to squander assets and support racism and antisemitism." The Company argues that it "did not make any corporate donations to Planned Parenthood in 2020, 2021, 2022 or 2023" and that "any employee matching gifts were funded out of the Levi Strauss Foundation." The Company also argues that it "did not make any corporate donations to the Black Lives Matter Foundation in 2020, 2021, 2022 or 2023" and that, again, "any employee matching gifts were funded out of the Levi Strauss Foundation."

The statements Levi's claims are materially misleading are supported by citation to the 1792 Exchange report on Levi Strauss, which states in relevant part that "Levi Strauss discriminates against religious organizations in its charitable giving while also donating to the American Civil Liberties Union (ACLU) and Planned Parenthood," that "The company provides travel benefits for abortion and has donated to Planned Parenthood," and that "Levi Strauss has pledged \$37 million to the Black Lives Matter movement and related causes, including the ACLU."<sup>1</sup> The 1792 Exchange provides a total of five links to documents supporting the foregoing, including one to The Claremont Institute's "BLM Funding Database," which lists Levi's as having donated \$37,200,000.00 to the "BLM Movement & Related Causes."<sup>2</sup>

It is important to note what the Company does not deny. It does not deny donating to the ACLU. It does not deny making relevant donations prior to 2020. It does not deny that the donations were made but tries to shift responsibility to "employee matching gifts ... funded out of the Levi Strauss Foundation," which could be read as saying that the donations were made by Levi's but funded by the Levi Strauss Foundation, and appears to indicate a conclusive admission that the Foundation is not a separate organization kept at arms-length by the Company, but rather that the two organizations are, if not technically unitary, nevertheless a team pulling in yoke. The *Company* offers its employees a matching fund, funded by the *Foundation*.

This no-doubt inadvertent admission is ratified by a review of the Company's website. A June 2020 blog posted on Levi.com with the title "LEVI STRAUSS & CO.'S DIVERSITY PROBLEM — AND OUR PLAN TO FIX IT" states that: "Over the past five years, *our company and the Levi Strauss Foundation* together have invested more than \$37 million in organizations advancing social justice and equality in the U.S."<sup>3</sup> Similarly, a 2020 posting on levistrauss.com states that:

As part of Levi Strauss & Co.'s commitment to protecting the rights of marginalized women in the communities where we live and work, the

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<sup>1</sup> <https://1792exchange.com/company/levi-strauss/>

<sup>2</sup> <https://dc.claremont.org/blm-funding-database/>

<sup>3</sup> [https://www.levi.com/US/en\\_US/blog/article/levi-strauss-co-s-diversity-problem-and-our-plan-to-fix-it](https://www.levi.com/US/en_US/blog/article/levi-strauss-co-s-diversity-problem-and-our-plan-to-fix-it) (emphasis added).

Levi Strauss Foundation is supporting frontline organizations working to ensure women and girls, both domestically and in our supply chain, have continued access to reproductive health services.... The Levi Strauss Foundation remains steadfast in its support of pioneering organizations that continue to remove barriers and fight the egregious attacks on health care for women and girls. They include the following: ... International Planned Parenthood Federation ....<sup>4</sup>

There, then, the Company asserts that it has a diversity problem (and it does, but not the sort its fixated on), and that its remedy plans rest on the Company's joint work with the *Foundation*, such that the Company aggressively and proudly takes credit for the Foundation's work as part of its own to solve a Company-specific problem. The Company should not be permitted to tell the market that it should be credited for these \$37 million in donations / "investments" and "Reproductive Justice" activities but then deny later that it should not be tied to these \$37 million in donations / "investments" and Planned Parenthood support. For the staff to permit such double-talk would make it the abettor and enabler of the Company continuing in a truly materially misleading stance – thereby violating the statutory core of the SEC's duties. If anything, Levi's no-action request letter should be sent over to the enforcement division to spark an investigation.

#### **B. The Proposal Does Not Make Materially Misleading Statements**

Levi's argues three statements in the Proposal are materially misleading:

- "The Company also supports a variety of other leftwing causes and organizations through the related Levi Strauss Foundation."
- "The Company also has a 100 percent rating on the HRC's 'Corporate Equality Index.' Earning that score requires spending shareholder assets to embrace highly partisan positions on hot-button issues."
- "The Company donates to divisive organizations such as the American Civil Liberties Union and Planned Parenthood, and pledged \$37 million to the Black Lives Matter movement and related causes proven to squander assets and support racism and antisemitism."

As to the first statement, the Company argues that "the Levi Strauss Foundation is distinct from the Company and 'is not a consolidated entity of the Company.'" However, as demonstrated in the prior section, it is Levi's itself that claims to be working through the Levi Strauss Foundation when it makes a public statement such as:

As part of Levi Strauss & Co.'s commitment to protecting the rights of marginalized women in the communities where we live and work, the Levi Strauss Foundation is supporting frontline organizations working to ensure women and girls, both domestically and in our supply chain, have continued access to reproductive health services.<sup>5</sup>

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<sup>4</sup> <https://www.levistrauss.com/2020/08/24/levi-strauss-foundation-supports-reproductive-justice/>

<sup>5</sup> <https://www.levistrauss.com/2020/08/24/levi-strauss-foundation-supports-reproductive-justice/> (emphasis added).

In light of this, our statement cannot be deemed misleading unless the Company is itself misleading the public about its connection to the Levi Strauss Foundation.

The Company challenges the second statement by arguing that there is no support for it, but the Human Rights Campaign discloses the relevant information publicly on a webpage devoted to "Corporate Equality Index Criteria" where it states that achieving a 100 percent rating includes the following:

Businesses must demonstrate ongoing LGBTQ+ specific engagement that extends across the firm, including ... the following: [1] LGBTQ+ employee recruitment efforts with demonstrated reach of LGBTQ+ applicants (required documentation may include a short summary of the event or an estimation of the number of candidates reached) [2] Supplier diversity program with demonstrated effort to include certified LGBTQ+ suppliers [3] Marketing or advertising to LGBTQ+ consumers (e.g.: advertising with LGBTQ+ content, advertising in LGBTQ+ media or sponsoring LGBTQ organizations and events) [4] Philanthropic support of at least one LGBTQ+ organization or event (e.g.: financial, in kind or pro bono support) [5] Demonstrated public support for LGBTQ+ equality under the law through local, state or federal legislation or initiatives

Obviously, these initiatives aren't free and thus require spending shareholder assets. In addition, recent events involving the Target and Bud Light brands belie any assertion that these initiatives are not highly partisan hot-button issues.<sup>6</sup>

Finally, as to the third statement, the Company argues that (1) "the Proposal does not define or identify in any way the 'related causes' that this statement refers to," (2) "the statement fails to provide any indication of how or by what metric the claim was 'prove[d]' and any identification of who or what 'prove[d]' the claim," (3) "fails to make any assertion whatsoever about the effectiveness of the Company's donations in support of the American Civil Liberties Union (the 'ACLU'), Planned Parenthood and Black Lives Matter ('BLM')," and (4) "fails to offer any semblance of proof with respect to any of these organizations 'squander[ing] assets and support[ing] racism and antisemitism.'"

As an initial matter, many hundreds of shareholder proposals over the years have been sustained by the Staff without the inclusion of a single citation. In our proposals generally and in the Proposal at issue here, we provide as much evidence as we can within the 500-word limit established by the Staff and monitored – sometimes to absurd and tendentious lengths – by companies. The standard is not that proponents must within their 500-word limit establish their case beyond a reasonable doubt but instead that they not make "materially misleading statements." In other words, the burden lies on the Company to show that a proposal's statements are misleading, not on the proponents to write a water-tight, meticulously sourced dissertation in its back-of-a-postcard space limitation. The Company's quadripartite claim thus materially falls at the first hurdle. (One might say that it had materially misrepresented the relevant rule.)

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<sup>6</sup> See Christina Cheddar Berk, *Boycotts hit stocks hard. Here's what might be next for Bud, Target and others caught in the anti-Pride backlash*, CNBC.COM (Jun 3, 2023), available at <https://www.cnbc.com/2023/06/03/anti-pride-backlash-what-target-anheuser-busch-and-others-should-expect-next-.html>

With regard to the substance of these illegitimate grounds for exclusion: First, as quoted above, the Company itself claimed “our company and the Levi Strauss Foundation together have invested more than \$37 million in organizations advancing social justice and equality in the U.S.”<sup>7</sup> If it’s not materially misleading for the Company to use “organizations advancing social justice and equality” then our use of “Black Lives Matter movement and related causes” is not either, as our phrase is synonymous with the Company’s. For all of its (materially misleading) attempt to assert a bright line of distinction between the Levi-Strauss Company and Foundation in its no-action request, the Company wholly glosses over the real difference between the Black Lives Matters *Foundation* (a specific entity) and the Black Lives Matters *movement*, which is ... well, a movement – which movement was characterized regularly at the time as one for “social justice” with special racial (or indeed racist) characteristics, as it were. And “related causes” is perfectly pellucid, both in that sentence alone and especially in the full context of the resolution text as “social justice” more generally.

Combining the Company’s second and fourth claim, the clause “proven to squander assets and support racism and antisemitism” only applies to “the Black Lives Matter movement and related causes” and the support for this assertion is again publicly available.<sup>8</sup> The relevant publicly available information certainly substantiates the claims that the BLM Foundation (which was certainly a part of the BLM movement) squandered assets and supported racism and antisemitism, and Merriam-Webster includes “substantiated” as a synonym for “proven.”<sup>9</sup> “Sunlight is said to be the best of disinfectants,”<sup>10</sup> and the Company is free to argue in its statement in opposition that the BLM movement and related causes have *not* squandered assets or promoted racism and antisemitism (or, if it wishes to be so bold, to argue that there is no evidence of the foregoing). But we certainly provided in our Proposal valid evidence to support our valid claims even though it is not strictly required. The Company, on the other hand, hasn’t provided any proof at all of material misrepresentation, but did manage to make a material misrepresentation of its own.

Finally, as to the Company’s third argument, either the Company is claiming that the ACLU, Planned Parenthood, and BLM aren’t divisive organizations, which would be an admission that its decision-making is so woefully lacking in viewpoint diversity or even informed participants as to fall below minimum fiduciary obligation, which would establish the vital import of our Proposal and its position well above ordinary business concern, or it is claiming that making donations to divisive organizations is

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<sup>7</sup> [https://www.levi.com/US/en\\_US/blog/article/levi-strauss-co-s-diversity-problem-and-our-plan-to-fix-it](https://www.levi.com/US/en_US/blog/article/levi-strauss-co-s-diversity-problem-and-our-plan-to-fix-it)

<sup>8</sup> See, e.g., KAYLA GASKINS, *BLM finances under fire: Only 33% of donations given to charities as execs paid millions*, WPDE.COM (May 31st 2023), available at <https://wpde.com/news/nation-world/blm-finances-under-fire-only-33-of-donations-given-to-charities-as-exec-s-paid-millions-black-lives-matter-racism-bankruptcy-deficit-fundraising-fundraisers-george-floyd-breonna-taylor-patrisse-cullors-tamir-rice-fraud-scam>; Christopher F. Rufo, *Racism in the Name of “Anti-Racism”*, CITY JOURNAL (Feb 15 2023) (“DEI programming ... segregates students by race and encourages discrimination against the ‘oppressor’ class”; “These programs ... exploded into prominence .... As the administration signaled that it was endorsing the Black Lives Matter movement ...”), available at <https://www.city-journal.org/article/racism-in-the-name-of-anti-racism>; Rep. Burgess Owens, *The Disturbing Connection Between BLM and Antisemitism In The Classroom*, FOXNEWS.COM (Dec 18, 2023), available at <https://owens.house.gov/posts/owens-the-disturbing-connection-between-blm-and-antisemitism-in-the-classroom>.

<sup>9</sup> <https://www.merriam-webster.com/thesaurus/proven>

<sup>10</sup> Phillip Goldstein, *SEC Gag Orders are Against Public Policy*, HARVARD LAW SCHOOL FORUM ON CORPORATE GOVERNANCE (May 3, 2022) (quoting Louis Brandeis, *OTHER PEOPLE’S MONEY* (1914)), available at <https://corpgov.law.harvard.edu/2022/05/03/sec-gag-orders-are-against-public-policy/>.



effective, which is a position shareholders would likely be very surprised to be made aware of – and at all events is a highly contested claim and one that requires full demonstration by the board, not merely (unsupported, offered without evidence) assertion. Happily, that sort of analysis, if possible without material misrepresentation after objective review, is exactly what our Proposal seeks – which casts new reflection on the Company's manic attempt in its no-action request to crank out any claim, however inapposite, to keep this Proposal from the ballot and thus to evade any discussion about the need to conduct such an honest and objective review.

**C. The Proposal is not impermissibly vague, indefinite, or susceptible to various interpretation**

Under Rule 14a-8(i)(3), a company may exclude a shareholder proposal in its entirety “if the language of the proposal or the supporting statement render the proposal so vague and indefinite that 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.”<sup>11</sup> When only portions of a proposal merit exclusion for causing vagueness or other difficulties, companies are only permitted “to exclude portions of the supporting statement, even if the balance of the proposal and the supporting statement may not be excluded.”<sup>12</sup>

The Company argues the following terms and phrases are impermissibly vague:

- “corporate financial sustainability”
- “board committee on corporate financial sustainability”
- “social and political matters”
- “alienate”

To begin with, there can be no serious claim that the words “corporate” and “financial” are impermissibly vague. Furthermore, for the Company to claim “sustainability” is impermissibly vague is particularly odd given that the Company's home page includes as one of six banner headings a page titled “Sustainability in Action,”<sup>13</sup> which then proceeds at the bottom the page to display the following five sub-headings: “Sustainability at Levi Strauss & Co.”; “Sustainability Report”; “Sustainability Reporting Resources”; “Sustainability News”; “Sustainability Policies & Commitments.”<sup>14</sup> According to a recent document search the Company used the word “sustainability” 28 times in its 2022 Sustainability Goals & Progress Update.<sup>15</sup> Were that word impermissibly vague, one would have expected the Company to define it the first time it was used in that report, but CEO Bergh's letter, which opens the report, includes an entire section devoted to “sustainability” without defining the word. The foregoing leaves the specious argument that impermissible vagueness is somehow introduced by combining these three words. However, this argument is belied by the fact that a Google search for “corporate financial stability” returned about 38,300 results in 0.30 seconds.<sup>16</sup>

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<sup>11</sup> See Staff Legal Bulletin No. 14B (September 15, 2004) (“SLB 14B”) (emphasis added).

<sup>12</sup> Id.

<sup>13</sup> <https://www.levistrauss.com/>

<sup>14</sup> Id.

<sup>15</sup> <https://www.levistrauss.com/wp-content/uploads/2023/09/2022-LSCo.-Sustainability-Goals-Progress-Update.pdf>

<sup>16</sup>

[https://www.google.com/search?q=%22corporate+financial+sustainability%22&sca\\_esv=d6c34d09e2d0a221&ei=g](https://www.google.com/search?q=%22corporate+financial+sustainability%22&sca_esv=d6c34d09e2d0a221&ei=g)

The Company's remaining claims here, that somehow the terms and phrases "board committee on corporate financial sustainability," "social and political matters," and "alienate" are too vague for the board and shareholders to process at least border on frivolous. Either (1) the Company can identify and assess its policy positions, advocacy, partnerships, and charitable giving that implicates social and political matters, or (2) its directors and managers are arguably incapable of properly carrying out their fiduciary duties, and/or shouldn't be making any grants, donations or partnerships of any kind, because they have no idea of the purposes and ramifications of such actions.

If the Company is truly confused as to what may impact its financial sustainability, then all shareholders should be gravely concerned as to the competence of Company leadership and whether the Company's fiduciary duties to shareholders are being met. To be sure, the Company's number one concern should be its financial sustainability, especially with regard to shareholders. It may also be that the Company is confused as to the use of the term "financial sustainability," not due to any ambiguity on the part of the Proposal, but due to the Company's own bias that has apparently precluded it from interpreting the word "sustainability" in any way other than in an environmental context. As noted above, the Company has authored a recent report seemingly dedicated to "Sustainability," which is limited to the notion of sustainability in an environmental context, such as climate change. This only serves to underscore the need for our Proposal, which seeks to review the Company's financial, as opposed to environmental, sustainability.

Although reasonable minds may differ as to the use of equally appropriate terms or phrases when drafting a shareholder proposal, the applicable standard as previously noted is whether the company implementing the proposal "would be able to *determine with any reasonable certainty* exactly what actions or measures the proposal requires." (emphasis added). Absolute certainty, therefore, is not required. When it comes to the instant Proposal, there is nothing about it that prevents the Company, Board, or shareholders from being able to determine with any reasonable certainty exactly what actions or measures the proposal requires. Feigning confusion as a means to exclusion should not be encouraged. We presume that the Board of Directors is able to understand simple language and basic propositions. They will understand that should shareholders vote for the Proposal, they will have instructed the Board to create a committee to oversee and review the impact of the Company's policy positions, advocacy, partnerships and charitable giving on social and political matters, and the effect of those actions on the Company's financial sustainability. If the Directors cannot understand this intensely simple proposition, then the Company failed in its duty of care by recommending that they be elected to their positions.

Accordingly, the Proposal is not impermissibly vague, indefinite and susceptible to various interpretations so as to be inherently misleading in violation of Rule 14a-8(i)(3).

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**III. The Proposal does not impermissibly relate to the ordinary business matter of the Company's charitable contributions to, support for, and partnerships with specific types of organizations**

The Company argues that:

[T]he Proposal is not addressed generally to the Company's policies toward charitable giving and specific types of organizations, but instead is intended to serve as a shareholder referendum on Company contributions to, support for and partnerships with organizations that are affiliated with or supportive of a specific social and political movement—social justice organizations.

The Company notes further that “the Proponent has publicly voiced its objection to the Company's support of organizations focused on social justice,” and that:

The Proposal when read together with the supporting statement and the accompanying footnotes, and the additional context of the Proponent's public objections to the Company's support of organizations focused on social justice and to the “far-left agenda” demonstrates a clear intention to limit the Company's charitable contributions with respect to specific types of organizations, most prominently, the ACLU and BLM.

As an initial matter, the substance of our resolution is neutral. When proposals are neutrally drawn, they should be non-excludable simply because they mention current controversies solely for the purpose of establishing the importance and saliency of concerns like financial sustainability.

The supporting statement of our Proposal explains, as well it should, the concerns that animated our submission. The Company objects, relying on various previous Staff decisions to suggest that the Staff had established that proposals can be omitted if they make reference to specific organizations or types of organizations. For example, the Company cites *Netflix, Inc.* (Apr. 9, 2021). However, it is unclear how the Company can know the SEC's rationale for permitting exclusion, which is even more opaque than usual given that the Staff decision was issued without a letter, because Netflix provided at least two grounds for exclusion: (1) “The Proposal may be excluded because it relates to the ordinary business matter of the Company's charitable contributions to specific types of organizations,” and (2) “The Proposal may be excluded because it seeks to micromanage the Company.”<sup>17</sup>

Further doubt is cast on the Company's conclusion because of the simple incongruity of the claim. It asserts that the Staff has concluded that a proposal that is neutral in application but that explains in the supporting statement the concerns that animated the submission thereby becomes an intrusion into the ordinary business of the company. But that doesn't make any sense. A proposal that seeks company transparency or accountability either improperly implicates the company's ordinary business or it doesn't, whatever the proposal might include by way of explanation for why the proponents were impelled to seek the transparency. If the Staff decisions cited by the Company do stand for the notion that the Staff has decided that certain modes of supporting-statement explanation render an otherwise acceptable proposal an invasion of “ordinary business,” then it means that the Staff had improperly misapplied the ordinary business ground for exclusion by extending its application in a manner that has

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<sup>17</sup> Netflix, Inc. (Apr. 9, 2021).

nothing to do with the question of ordinary business *vel non*, presumably because it wanted to exclude some proposals but had no proper basis to do so. This, though, would at very least constitute arbitrary and capricious behavior on the part of the Staff – an abuse of its own rules and *ultra vires* decision-making by the Staff. And if, as it seems, the Staff has in practice used this rule to exclude some proposals because relevant staffers don't personally approve of the reasons the proposal was submitted, then there is a very good reason there is no legitimate heading under which to lodge it: because the Staff does not and cannot have the authority to make decisions on that basis.

The Company also cites additional no-action letters in further support of a "specific organizations" basis for excluding a proposal as impermissibly interfering with ordinary business. Accepting *arguendo* that this is the "holding" of these decisions, then they collectively, along with other Staff decisions, demonstrate a plain history of viewpoint discrimination by the Staff through many years. In addition to the previously discussed *Netflix, Inc.* (Apr. 9, 2021), the Company cites four other no-action decisions that target not only a particular viewpoint in general but this Proponent in particular (*Facebook, Inc.* (Mar. 26, 2021), *McDonald's Corporation* (Mar. 26, 2021), *AT&T Inc.* (Jan. 15, 2021) and *Starbucks Corp.* (Dec. 23, 2020)). The Company appears to believe that if it can simply show that it is in proper alignment with the SEC in terms of being on the right side of history, then glaring viewpoint discrimination can be brushed under the rug. Yes, in other contexts, this extent of one-sided disparate impact creates a presumption of illegal discrimination. Here it suggests that the Staff's concern is not with a focus in the supporting statement on specific organizations or types of organizations, but rather a focus on specific organizations or types of organizations that support agendas that the Staff, or the decision-making members thereof, personally approve of.

This concern rises to the level of conclusion when it is considered that the Staff has found no need to omit proposals that have focused on organizations or types of organizations in ways the Staff approves of. In *McDonald's Corporation* (avail. Feb. 28, 2017), the proposal focused on giving to "health-related organizations, including the American Academy of Pediatrics, the California Dietetic Association, and the Michigan Academy of Nutrition and Dietetics conference, among others" as its reason for opposing McDonald's giving to schools for class activities that would "expose" children to McDonald's products. Here is a focus on giving to one type of organization (medical professional organizations) being used to justify objection to giving to another type of organization (elementary schools) as justification for the neutral request for transparency. Likewise, in *Mastercard* (avail. April 25, 2019), the proponent sought the formation of a standing committee on human rights. The supporting statement revealed that the proponent wished the committee to be responsible for cutting off services to a specific type of organization, specifically naming some examples, that expressed opinions with which the proponents disagreed. While it appears in that instance that the organizations specifically mentioned were indeed espousing noxious views, this cannot provide a relevant ground for distinction for the Staff. The Staff may not determine which proposals to omit and which to allow through on the grounds of its personal agreement with the proposals themselves. In that proceeding the Staff decided that the proposal did not constitute excludable ordinary business despite focusing in its supporting statement on a specific type of groups and naming three examples. *Amazon.com, Inc.* (avail. April 3, 2019) and *Alphabet, Inc.* (avail. April 19, 2019) followed the same pattern to the same result – finding that proposals that in their supporting statements focused on specific types of organizations in order to explain the purpose of their proposal were not omissible.

Now to be sure, these proposals did not seek committees be created to review financial sustainability. Rather, their purpose was to *try to get the companies to stop selling certain goods or providing services* to the individually named groups and that type of group. This is to say, the purpose of the proposals trenched directly on the ordinary business of the company, buying and selling, rather than on a necessarily peripheral activity – giving away shareholder assets to third parties. At the most fundamental level, the distinction is without a difference: either a focus in supporting statements on specific organizations or types of organizations somehow turns otherwise acceptable proposals into ordinary business, or it does not. But if the distinction is not meaningless, then surely buying and selling are more truly ordinary business activities than donations, so the “ordinary-business-making” effect of mentioning specific organizations or types of organizations should be more powerful in proposals dealing with core business activities.

Then there are the lobbying and trade-association membership proposals. For more than a decade the Staff has declined to omit proposals that sought company transparency in its lobbying and trade-association activities even though those proposals singled out individual organizations, such as the National Association of Manufacturers, the American Petroleum Institute and the American Legislative Exchange Council (ALEC), and that focused on specific types of organizations (*e.g.*, those that opposed shifting away from reliable and affordable energy on politicized timelines). *See, e.g.*, Devon Energy (March 31, 2014). The Staff's refusal to omit proposals that focus in their supporting statements on those organizations and that type of organization is so well established that it has been many years since any company has challenged one except when it could append non-ordinary-business grounds as well. *See, e.g.*, *Eli Lilly & Co.* (avail. March 2, 2018) (proposal specifically named the Chamber of Commerce, ALEC and the Pharmaceutical Research and Manufacturers of America, which the proponents opposed because they were the type of organization that fought to maintain free-market pricing of medicines; proposal not omissible). Proponents are so certain that singling out specific organizations and types of organizations is – for *some* types of organizations and topics – acceptable to the Staff that a massive wave of proposals targeting lobbying groups fighting green extremism, not just in the supporting statement but in the resolution of the proposal as well, have recently descended on companies. And companies are so certain that the Staff will allow specific identification of and focus on *those* organizations of *that* type that they don't even bother to seek no-action relief.

No principled distinction can be made between (a) using shareholder assets to lobby or to be members of trade organizations and (b) giving shareholder assets to organizations that then themselves undertake lobbying and public advocacy, and even use some of those assets to pressure corporations themselves to adopt partisan positions and to end support for certain lobbying and trade associations that those organizations oppose. Yet even when the National Center submitted a proposal specifically explaining that an organization that a company was funding was itself funding efforts to end corporate relationships with the lobbying groups mentioned above, and was therefore functionally indistinguishable from those groups, the Staff omitted our proposal because we had mentioned a specific group. *See Johnson & Johnson* (avail. Jan. 1, 2018). This left the Staff having taken the position that it *did not* constitute grounds for omission to focus in a supporting statement on the desire to defund a specific type of organizations and even to name individual organizations, while it *did* constitute grounds for omission to focus in a supporting statement on the desire to defund a group, and others like it, that were lobbying for the defunding of the groups that it was not grounds for exclusion to focus on.

It is difficult to find any ground other than bias to explain those twin decisions and the divergent results in the others cited above, but even if there were some other explanation, the haphazard application of this rule – combined with the Staff's regular refusal to explain its decisions and the lack of any relationship between ordinary business and a focus on certain groups or types of groups in supporting statements – render its application arbitrary and capricious. The Staff has so many times in so many contexts permitted proposals to avoid omission even though their supporting statements (or even their resolutions) focused on specific organizations or type of organizations that it cannot with fidelity use that as a reason to omit our Proposal here.

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

The Company argues that the subject matter of the Proposal impermissibly relates to the Company's ordinary business operations because "the financial sustainability analyses requested by the Proposal is squarely within the purview of management and therefore relates to the ordinary business of the Company," and that "the Proposal could be interpreted to concern the Company's 'financial sustainability' and 'partnerships,' definitively ordinary business matters." However, the Proposal merely requests a committee be established to "oversee and review the impact of the Company's policy positions, advocacy, partnerships and charitable giving on social and political matters, and the effect of those actions on the Company's financial sustainability." If the Company's argument is that management should not be subject to board oversight when it comes to these matters, or that shareholders should be precluded from requesting such oversight via the shareholder proposal process, then it is claiming freedom to turn its back on good corporate governance.

Consider the oddity of the Company's overall position. It claims that our proposal is just too vague to be understood, but that it really seeks to get right into the ordinary, everyday decisions that the Company makes, and must be free to make without shareholder oversight. While in this instance neither of those claims are true, it certainly can't be the case that they both be true, and the Company's attempt to go for either/or illustrates that even the Company recognizes that both claims are empty.

**IV. The Proposal Involves a Significant Social Policy Issue that Transcends the Company's Ordinary Business Operations.**

SLB 14L makes clear that a corporation may not rely on the ordinary business exclusion when a proposal raises "significant social policy issues." This significant social policy exception "is essential for preserving shareholders' right to bring important issues before other shareholders by means of the company's proxy statement." In determining the social policy significance "of the issue that is the subject of the shareholder proposal.... the Staff will consider whether the proposal raises issues with a broad societal impact, such that they transcend the ordinary business of the company." Put another way, proposals "focusing on sufficiently significant social policy issues. . .generally would not be considered to be excludable, because the proposals would transcend the day-to-day business matters and raise policy issues so significant that it would be appropriate for a shareholder vote."<sup>18</sup>

Even if one looks solely at the statements in the Proposal that the Company does not challenge, it is clear that this Proposal involves significant social policy issues that transcend the Company's ordinary business:

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<sup>18</sup> Quoting the 1998 Release.

- The Company takes public and politically divisive positions over issues of significant social policy concern, including advocating for anti-Second Amendment policies and decrying laws designed to increase integrity and confidence in elections as “racist.”
- The Company does not protect employees based on viewpoint and even forced out a top executive over her views regarding school closures during COVID-19, wearingly describing it, too, as racist.

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

The Company claims that the Company’s “current policies, practices and procedures—and in particular, the Board’s current collective oversight of and direct involvement in certain matters—compare favorably to the first prong of the Proposal’s essential objective and, thus, substantially satisfy and implement it.” In addition:

[T]he Company already substantially satisfies and implements the second prong of the Proposal’s essential objective: the issuance of “a public report” on board committee’s findings regarding the impact of the Company’s policy positions, advocacy, partnerships and charitable giving on social and political matters and the effect of those actions on the Company’s financial sustainability.

However, in the aforementioned *Alphabet, Inc.* (avail. April 11, 2022), the Staff rejected similar arguments when the company there argued that it had substantially implemented the proposal under consideration there because (1) “an existing committee’s charter empowered such committee to perform the actions requested in the proposal,” and (2) “existing public disclosure ... provides details of oversight measures the Company has in place.” Similarly here, the Staff should reject the Company’s substantial compliance argument.

**VI. Issuing relief to the Company would raise serious constitutional and administrative law concerns.**

For the reasons discussed above, our proposal’s merits under Commission and Staff rules, interpretations, guidance, and precedent require that Staff deny the Company’s request for relief. If the Staff elects to issue relief to the Company despite its clear merits, the Staff’s decision would raise a host of constitutional and administrative law issues.

**A. The Company is asking the Staff to discriminate on the basis of viewpoint in violation of the First Amendment.**

Our proposal relates to socially significant issues. By urging the Staff to issue relief for the Proposal regardless, the Company invites the Staff to itself discriminate based on viewpoint.

It is well-established that the government cannot engage in viewpoint discrimination.<sup>19</sup> This principle prevents governments from regulating speech “because of the speaker’s specific motivating ideology,

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<sup>19</sup> *Matal v. Tam*, 137 S. Ct. 1744 (2017); *Iancu v. Brunetti*, 139 S. Ct. 2294 (2019).

opinion, or perspective.”<sup>20</sup> And the Supreme Court defines “the term ‘viewpoint’ discrimination in a broad sense.”<sup>21</sup> This is because “[v]iewpoint discrimination is a poison to a free society.”<sup>22</sup>

The rule against viewpoint discrimination prevents allowing speech based on one “political, economic, or social viewpoint” while disallowing other views on those same topics.<sup>23</sup> It also prohibits excluding views that the government deems “unpopular”<sup>24</sup> or because of a perceived hostile reaction to the views expressed.<sup>25</sup>

Here, the Company invites the Staff to engage in viewpoint discrimination by issuing relief on our proposal.

Just last year, in *The Walt Disney Co.* (Jan. 12, 2023) and *The Kroger Co.* (Apr. 25, 2023) the Staff denied companies no-action relief for proposals seeking the disclosure of charitable contributions where the proponents praised corporate “support of Planned Parenthood” and the “Southern Poverty Law Center . . . since they included several conservative Christian organizations in their list of hate groups.” These proposals clearly espoused the viewpoint that corporate charitable contributions to groups associated with the political left were praiseworthy and grounded their advocacy for the proposal on that basis. Similarly, the Staff has denied relief to companies seeking to disclose political expenditures aligned with the political like “problematic company sponsored advocacy efforts” to “undercut public health policies.”<sup>26</sup>

Our proposal addresses the related issue of financial sustainability—but from a different viewpoint. So, if the Staff opts to issue relief to exclude our Proposal, one might reasonably conclude that it could only do so because of its opinion of the distinctive political *views* our Proposal expresses.

The Staff—and the Commission—needs a principled basis for such a distinction. The Company proposes none. As the Supreme Court has explained, to avoid viewpoint discrimination the government must have “narrow, objective, and definite” standards to prevent officials from covertly discriminating based on viewpoint through subjective and unclear terms.<sup>27</sup> And here, the Staff has complete discretion to determine what “issues” are significant and do not “micromanage” the company and even to censor on the same issue when they are presented by speakers with different political views. The Staff should choose not to exercise this discretion here by denying the Company’s request for no-action relief.

**B. The Company is asking the Staff to take arbitrary and capricious action under the Administrative Procedure Act.**

If the Staff grants no-action relief to the Company for our proposal, it must explain how our proposal is distinct from prior sustainability proposals that it has blessed.

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<sup>20</sup> Rosenberger v. Rector and Visitors of Univ. of Va., 515 U.S. 819, 820 (1995).

<sup>21</sup> Matal, 137 S. Ct. at 1763.

<sup>22</sup> Iancu, 139 S. Ct. at 2302 (Alito, J., concurring).

<sup>23</sup> Rosenberger, 515 U.S. at 831.

<sup>24</sup> McIntyre v. Ohio Elections Comm’n, 514 U.S. 334, 357 (1995).

<sup>25</sup> Forsyth Cnty., Ga. v. Nationalist Movement, 505 U.S. 123, 134 (1992).

<sup>26</sup> PepsiCo, Inc., *supra*.

<sup>27</sup> Forsyth Cnty., Ga., 505 U.S. at 131.



Under the Administrative Procedure Act (APA), agency action that is “arbitrary and capricious” may be set aside.<sup>28</sup> The Supreme Court has succinctly explained that “[t]he APA’s arbitrary and capricious standard requires that agency action be reasonable and reasonably explained.”<sup>29</sup> Under this precedent, in order for action to be reasonable and reasonably explained, the agency must at least consider the record before it and rationally explain its decision.<sup>30</sup>

Additionally, where an agency seeks to change its position from a prior regime, it must “display awareness that it is changing position,” “show that there are good reasons for the new policy” and provide an even “more detailed justification” when the “new policy rests upon factual findings that contradict those which underlay its prior policy,” and “take[] into account” “reliance interests” on the prior policy.<sup>31</sup>

Given the Staff’s prior precedent on proposals related to sustainability, issuing relief to The Company would undoubtedly be a change in its position. At a bare minimum, the Staff—or the Commission—would have to explain its reasoning for the reversal in position to comply with the APA.

**C. The Company is requesting relief the Staff lacks statutory authority to issue.**

Regardless, the Staff lack statutory authority to grant the Company no-action relief. The Company has notice that we intend to submit our proposal, which is valid under state law, for consideration at the annual meeting. The Staff may not give the company its blessing to exclude an otherwise valid proposal from its proxy statement.

Section 14(a) of the Exchange Act prohibits anyone from “solicit[ing] any proxy” “in contravention of such rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors.”<sup>32</sup> While this authority might be read “broadly,” “it is not seriously disputed that Congress’s central concern [in enacting § 14(a)] was with disclosure.”<sup>33</sup> The purpose of Section 14(a) was to ensure that investors had “adequate knowledge” about the “financial condition of the corporation . . . [and] the major questions of policy, which are decided at stockholders’ meetings.”<sup>34</sup>

While Section 14(a) gave the Commission authority to compel investor-useful disclosures, the substantive regulation of stockholder meetings was left to the “firmly established” state-law jurisdiction over corporate governance.<sup>35</sup> Recognizing that state law provides the “confining principle” to Section 14(a)’s otherwise “vague ‘public interest’ standard,” the D.C. Circuit has held that “the Exchange Act cannot be understood to include regulation of” “the substantive allocation” of corporate governance

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<sup>28</sup> 5 U.S.C. § 706(2)(A).

<sup>29</sup> FCC v. Prometheus Radio Project, 141 S. Ct. 1150, 1158 (2021); see also Motor Vehicle Mfs. Ass’n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co., 463 U.S. 29, 50 (1983).

<sup>30</sup> See FCC, 141 S. Ct. at 1160.

<sup>31</sup> FCC v. Fox Television Stations, Inc., 556 U.S. 502, 515 (2009).

<sup>32</sup> 15 U.S.C. § 78n(a)(1).

<sup>33</sup> Bus. Roundtable v. SEC, 905 F.2d 406, 410 (D.C. Cir. 1990).

<sup>34</sup> S. Rep. No. 792 at 12 (1934).

<sup>35</sup> Bus. Roundtable, 905 F.2d at 413 (internal citation omitted).

that is "traditionally left to the states."<sup>36</sup> Under Section 14(a), then, the SEC may compel the disclosure in a company's proxy materials of items that will be before shareholders at the annual meeting.

Under state law, a shareholder proposal may be presented for consideration at the corporation's annual meeting if the proposal is a proper subject for action by the corporation's stockholders.<sup>37</sup> A proposal is a proper subject for action by stockholders if it is within the scope or reach of the stockholders' power to adopt.<sup>38</sup>

Our proposal is valid under state law. Under Section 14(a), the SEC only has power to compel that the Company disclose our proposal in its proxy materials. The Staff therefore may not then give the Company no-action relief to exclude it.

## VII. Conclusion

Our Proposal is substantially indistinguishable, for Staff-review purposes, from the proposal that was found non-omissible in *Alphabet, Inc.* (avail. April 11, 2022). In addition, the Company has failed to carry its burden of showing that the Proposal makes materially false or misleading statements, or that the Proposal is impermissibly vague, indefinite, or susceptible to various interpretation. Furthermore, the Proposal does not impermissibly relate to the Company's ordinary business generally or specifically to the ordinary business matter of the Company's charitable contributions to, support for, and partnerships with specific types of organizations. Even if the Staff were to conclude that the Proposal impermissibly relates to the Company's ordinary business, the Proposal involves a significant social policy issue that transcends the Company's ordinary business operations. Finally, the Company has not substantially implemented the Proposal, and issuing relief to the Company would raise serious constitutional and administrative law concerns.

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

A copy of this correspondence has been timely provided to the Company. If we can provide additional materials to address any queries the Commission may have with respect to this letter, please do not hesitate to call us at (202) 507-6398 or email us at [REDACTED] and at [REDACTED].

Sincerely,



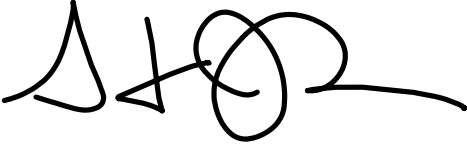
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<sup>36</sup> *Id.*

<sup>37</sup> See *CA, Inc. v. AFSCME Emps. Pension Plan*, 953 A.2d 227 (Del. 2008).

<sup>38</sup> *Id.* at 232.

Scott Shepard  
FEP Director  
National Center for Public Policy Research

A handwritten signature in black ink, appearing to read 'Stefan Padfield', with a stylized, cursive script.

Stefan Padfield  
FEP Deputy Director  
National Center for Public Policy Research

cc: Helena K. Grannis ( [REDACTED] )