UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549-4561

DIVISION OF
CORPORATION FINANCE

March 29, 2011

Ann McCauley
Executive Vice President & General Counsel
The TJX Companies, Inc.
770 Cochituate Road
Framingham, MA 01701

Re: The TJX Companies, Inc.
Incoming letter dated February 4, 2011

Dear Ms. McCauley:

This is in response to your letter dated February 4, 2011 concerning the shareholder proposal submitted to TJX by the AFSCME Employees Pension Plan. We also have received a letter from the proponent dated February 15, 2011. Our response is attached to the enclosed photocopy of your correspondence. By doing this, we avoid having to recite or summarize the facts set forth in the correspondence. Copies of all of the correspondence also will be provided to the proponent.

In connection with this matter, your attention is directed to the enclosure, which sets forth a brief discussion of the Division's informal procedures regarding shareholder proposals.

Sincerely,

Gregory S. Belliston
Special Counsel

Enclosures

cc: Charles Jurgonis
Plan Secretary
American Federation of State, County and Municipal Employees, AFL-CIO
1625 L Street, N.W.
Washington, DC 20036-5687

March 29, 2011

Response of the Office of Chief Counsel
Division of Corporation Finance

Re: The TJX Companies, Inc.
Incoming letter dated February 4, 2011

The proposal requests that the board annually assess the risks created by the actions TJX takes to avoid or minimize U.S. federal, state, and local corporate income taxes and that it provide a report to shareholders on the assessment.

There appears to be some basis for your view that TJX may exclude the proposal under rule 14a-8(i)(7), as relating to TJX's ordinary business operations. In this regard, we note that the proposal relates to decisions concerning the company's tax expenses and sources of financing. Accordingly, we will not recommend enforcement action to the Commission if TJX omits the proposal from its proxy materials in reliance on rule 14a-8(i)(7). In reaching this position, we have not found it necessary to address the alternative bases for omission upon which TJX relies.

Sincerely,

Rose A. Zukin
Attorney-Adviser

DIVISION OF CORPORATION FINANCE
INFORMAL PROCEDURES REGARDING SHAREHOLDER PROPOSALS

The Division of Corporation Finance believes that its responsibility with respect to matters arising under Rule 14a-8 [17 CFR 240.14a-8], as with other matters under the proxy rules, is to aid those who must comply with the rule by offering informal advice and suggestions and to determine, initially, whether or not it may be appropriate in a particular matter to recommend enforcement action to the Commission. In connection with a shareholder proposal under Rule 14a-8, the Division's staff considers the information furnished to it by the Company in support of its intention to exclude the proposals from the Company's proxy materials, as well as any information furnished by the proponent or the proponent's representative.

Although Rule 14a-8(k) does not require any communications from shareholders to the Commission's staff, the staff will always consider information concerning alleged violations of the statutes administered by the Commission, including argument as to whether or not activities proposed to be taken would be violative of the statute or rule involved. The receipt by the staff of such information, however, should not be construed as changing the staff's informal procedures and proxy review into a formal or adversary procedure.

It is important to note that the staff's and Commission's no-action responses to Rule 14a-8(j) submissions reflect only informal views. The determinations reached in these no-action letters do not and cannot adjudicate the merits of a company's position with respect to the proposal. Only a court such as a U.S. District Court can decide whether a company is obligated to include shareholder proposals in its proxy materials. Accordingly a discretionary determination not to recommend or take Commission enforcement action, does not preclude a proponent, or any shareholder of a company, from pursuing any rights he or she may have against the company in court, should the management omit the proposal from the company's proxy material.

AFSCME
We Make America Happen

EMPLOYEES PENSION PLAN

February 15, 2011

VIA EMAIL
Office of the Chief Counsel
Division of Corporation Finance
Securities & Exchange Commission
100 F Street, NE
Washington, DC 20549

Re: Shareholder proposal of AFSCME Employees Pension Plan; request by The TJX Companies, Inc. for determination allowing exclusion

Dear Sir/Madam:

Pursuant to Rule 14a-8 under the Securities Exchange Act of 1934, the AFSCME Employees Pension Plan (the "Plan") submitted to The TJX Companies, Inc. ("TJX" or the "Company") a shareholder proposal (the "Proposal") requesting a report regarding certain aspects of risk assessment.

In a letter filed February 4, 2011 ("TJX Letter"), TJX stated its intent to omit the Proposal from proxy materials being prepared for the 2011 annual stockholders meeting and asked the Division to issue a determination that it would not recommend enforcement action if TJX does so.

TJX relies primarily on Rule 14a-8(i)(7), asserting that the Proposal relates to the Company's ordinary business operations. It also cites Rule 14a-8(i)(10), claiming that TJX has "substantially implemented" the request because of general and limited disclosures in the Company's Form 10-K. Finally the Company argues that individual words are impermissibly vague and indefinite, in violation of Rule 14a-8(i)(3). Because TJX has not met its burden of proving that it is entitled to rely on this exclusion, the Plan respectfully urges that its request for relief be denied.

The Proposal

The proposal asks the Company's board of directors each year to "assess the risks created by the actions TJX takes to avoid or minimize US federal, state and local corporate income taxes and provide a report to shareholders on the assessment, at reasonable cost and omitting proprietary information." The supporting statement notes that TJX set aside $192 million for tax reserves,

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and that the Company's income tax returns are subject to continuous examination by U.S. and foreign authorities. The statement cites one example where certain transactions that were designed to avoid state taxes had resulted in a ruling that the transactions were "sham transactions."

The supporting statement also cites empirical research that found a positive relationship between corporate tax avoidance and firm-specific stock price crash risk. A separate study concluded that tax avoidance schemes can "advance the interest of managers rather than shareholders."

Of particular note is the Internal Revenue Service's recent adoption of a new reporting requirement for "uncertain tax positions." As of tax years starting in January 2010, companies with assets exceeding $10 million must report to the IRS their income tax position for which the company or a related party has recorded a reserve in an audited financial statement, or for which no reserve was recorded because of an expectation to litigate.[1]

Analysis

1. The Proposal does not involve TJX's "ordinary business" under Rule 14a-8(i)(7).

In opposing a proposal seeking a report on risk issues, TJX relies principally upon the "ordinary business" exclusion in Rule 14a-8(i)(7). In so doing, TJX makes the familiar arguments that the Proposal:

· involves matters that go directly to the heart of management's ability to run the company on a day-to-day basis, such that shareholder oversight is unwarranted; and

· involves micromanagement on an issue too complex for shareholders to hold an informed judgment. (TJX Letter at 2, *citing Exchange Act Release No. 34-40018*, May 21, 1998).

Specifically, TJX contends that a company's tax practices are inherently ordinary business matter concerns and involve questions best left to management, including the Company's sources of financing and its efforts at legal compliance. TJX also objects to the request in the Proposal for additional detailed disclosures that, in the Company's view, go well beyond the scope of a "standard" shareholder report. (TJX Letter at 3-6).

TJX recognizes that the "ordinary business" exclusion does not apply if the subject matter of a proposal "transcends the day-to-day business matters of the company and raises

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[1]The IRS has usefully collected the final rule, reporting schedule and other materials at http://www.irs.gov/businesses/corporations/article/0,,id=221533,00.html.

policy issues so significant that it would be appropriate for a shareholder vote." *Staff Legal Bulletin No. 14E* § B (Oct. 27, 2009). Nonetheless, TJX argues that no such policy issue exists here. (TJX Letter at 7-8).

We begin with this last point first, because it is necessary to reframe the issue instead of looking at the Proposal in the narrow way that TJX proposes. Differently put, it is important to explode the myth that managing tax risk is a technical exercise in which the interests of shareholders and the company are perfectly aligned, that shareholders' only interest is the lowest possible payment of taxes, and that management's judgment can thus be relied upon without shareholder input. Recent academic research in the area suggests otherwise.

The supporting statement cites one such study, which TJX ignores. A 2010 report examined a large sample of U.S. public companies from 1995-2008 and concluded that "corporate tax avoidance is positively associated with firm-specific stock price crash risk." J-B. Kim, Y. Li, L. Zhang, *Corporate Tax Avoidance and Stock Price Crash Risk: Firm-Level Analysis* at i (July 2010), *available at* http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1596209&rec=1&srcabs=1594936 ("Kim"). The report continues: "Tax avoidance facilitates managerial rent extraction and bad news hoarding activities for extended periods by providing tools, masks, and justifications for these opportunistic behaviors." *Id.* The study reviews how this happened in spectacular fashion at Enron and Tyco, where complex and opaque tax arrangements benefitted senior managers, but when those arrangements proved unsustainable, the stock price plummeted to the detriment of shareholders as a whole. *Id.* at 10-13.

Kim criticizes the "traditional" view upon which TJX relies, namely, that tax avoidance is a benign and "value-maximizing activity that transfers wealth from the state to corporate shareholders." *Id.* at 1. In fact, the study argues, tax avoidance activities "can create opportunities for managers to pursue activities that are designed to hide bad news and mislead investors." *Id.* at 2. Indeed, management may justify the opacity of tax treatments "by claiming that complexity and obfuscation are necessary to minimize the risk" of IRS detection. *Id.* However, "complex and opaque tax avoidance transactions can also increase the latitude for other means of rent diversion and earnings manipulation." *Id.*

The Kim study is not alone. A 2009 study similarly concluded that "corporate tax avoidance activities need not advance the interests of shareholders" and that "investors must consider how to evaluate tax avoidance activities to ensure that shareholder interests are actually being advanced." M. Desai and D. Dharmapala, *"Earnings Management, Corporate Shelters, and Book-Tax Alignment* (Jan. 2009) at 3, 12, *available at* http://www.people.hbs.edu/mdesai/EarningsMngmtCTA.pdf ("Desai"). As with the Kim study, the Desai study views the issue as an agency-principal problem. Historically, Desai notes, managers were unwilling to engage in corporate tax avoidance because managers' interests were aligned with those of shareholders generally. So what changed? Desai suggests that increased levels of corporate tax avoidance can be tied to the rise of incentive compensation over the past 15 years, which creates incentives for managers to operate "opportunistically and in a manner that is not in the best interests of shareholders." *Id.* at 3-4. Specifically, "tax avoidance demands obfuscatory actions that can be bundled with diversionary activities, including earnings manipulation, to advance the interests of managers rather than shareholders." *Id.* at 12.

Another recent study correlates tax avoidance with executive compensation practices that put a premium on short-term returns. The study examines tax treatment by 19 paper companies of $6.4 billion in direct government subsidies that were structured as one-time refundable tax credits if the companies produced a certain product. Although these subsidies generated significant income for these companies, 8 of them reported some and 6 of them reported no tax benefits from these subsidies. The other five actually reported the subsidies as taxable income. L. De Simone, J. Robinson, B. Stomberg, *Distilling the reserve for uncertain tax positions: The revealing case of Black Liquor* (Jan. 24, 2011) available at http://ssrn.com/abstract=1751622 ("De Simone").

The authors viewed this example as an ideal case study for examining tax reporting aggressiveness, since each company is in the same industry and is engaged in the same practice for the same year involving the same product. As to the first group of companies, which viewed these subsidies as an opportunity for accruing tax benefits and thus improving their numbers, the study noted that the firms had the highest average pay for CEOs and CFOs and suggested that executives may be "more myopic" as to tax reporting because of their focus on short-term results and stock-based compensation; these firms also had the lowest number of shareholders holding at least five percent of the stock. De Simone at 25-27, 36 (Table 5).

Concern about aggressive tax avoidance is warranted as to TJX. As the supporting statement pointed out, TJX's policies have been challenged at the state level, and certain transactions have already been found to be "sham transactions" intended to avoid taxes.

This background underscores several ways in which the Proposal presents policy issues that transcend ordinary business.

First, there is a connection between tax avoidance and senior executive compensation, a topic that the Division has for the past 20 years recognized as beyond the scope of the "ordinary business" exclusion. *E.g., Wendy's International Inc.* (Dec. 4, 1989). According to one academic study, "equity risk incentives are positively associated with greater tax avoidance. Our results are robust across several measures of tax risk, but do not vary across four proxies for strength of corporate governance. We conclude that equity risk incentives are a significant determinant of corporate tax planning." S. Rego and R. Wilson, *Executive Compensation, Equity Risk Incentives, and Corporate Tax Aggressiveness* (July 2010), *available at* http://ssrn.com/abstract=1337207.

Second, the question of tax avoidance has moved front and center as a policy question within the last year. The flashpoint was the IRS' decision to require companies to file a new schedule setting forth for the IRS their "uncertain tax positions." It is difficult to overstate the depth of opposition to this proposal from corporate taxpayers. When first proposed, there was a massive outpouring of opposition from affected corporations,[2] and the Commissioner of Internal Revenue acknowledged that the proposal was a "game-changer" with respect to the IRS' relationship with large corporate taxpayers.[3] After the new requirement was adopted, a leading tax journal, reporting on events of the past year, characterized the IRS's UTP program as probably the most "unpleasant" development for corporate taxpayers in 2010.[4] TJX refers to this new development in passing (TJX Letter at 6), but its significance for corporate taxpayers cannot be underestimated. With corporate taxpayers now required to showcase for the IRS their "uncertain" tax positions, the interest in this topic will only increase.

Third, as the supporting statement notes, at a time when there is public debate about the national deficit, questions about tax revenues are inextricably bound up with that debate.

These factors demonstrate the existence of a policy issue at least as significant as other issues on which the Division has decided that shareholders may express a view. What is notable too is that none of the no-action letters cited by TJX involves the multiple policy issues present here.

We deal first with the claim that the Division has excluded proposals regarding corporate taxes because corporate taxes are "intricately interwoven with a company's financial planning and day-to-day business operations." (TJX Letter at 3.) However, the rationales for exclusion in the cited letters do not extend to this Proposal.

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[2] J. Coder, "Commenters Ask IRS to Abandon UTP Reporting Proposal, Change Schedule," *Tax Notes,* p. 1064 (June 7, 2010) (Ex. 1).

[3] Prepared Remarks of Commissioner of Internal Revenue Douglas H. Shulman before the Tax Executives Institute 60th Mid-Year Meeting (Apr. 12, 2010), *available at* http://www.irs.gov/newsroom/article/0,,id=221280,00.html.

[4] J. Coder, "UTP Reporting Regime Rattle Corporate Tax Community," *Tax Notes,* p. 38 (Jan. 3, 2011) (Ex. 2). *See also* "Execs Nervous about Reporting Uncertain Tax Positions to IRS" (Oct. 25, 2010), *available at* www.accountingtoday.com/news/Execs-Nervous-Reporting-Uncertain--Tax-Positions-IRS-56075-1.html.

TJX first cites letters dealing with requests to evaluate the impact of a flat tax on the company, should such a proposal be adopted by Congress. *Verizon Communications Inc.* (Jan. 31, 2006); *General Electric Co.* (Jan. 17, 2006); *Citigroup Inc.* (Jan. 26, 2006). The Division granted no-action relief based on its view that assessments of legislative action are entrusted to management. *See International Business Machines, Inc.* (Mar. 2, 2000). The present Proposal does not mention specific legislation and does not seek an assessment of pending legislation.

Other TJX-cited proposals requested a report on tax breaks to an extent not provided in a Form 10-K, *PepsiCo, Inc.* (Mar. 13, 2003); *Pfizer Inc.* (Feb. 5, 2003), but the proponents of the proposal at issue in those two cases did not assert overriding shareholder concerns or policy interests of the sort at stake here. Instead, the proponents pointed vaguely to the possibility of "political risk" in the future, but made no effort to articulate a more direct or compelling shareholder interest, as the Plan has done here.

Also distinguishable are decisions in which the Division granted relief because a proposal asked companies to make footnote disclosure in their Form 10-K as to certain tax information that was not required under Commission rules. *Chase Manhattan Corp.* (March 4, 1999); *General Motors Corp.* (Feb. 28, 1997). Those decisions merely stand for the proposition that shareholders cannot seek to customize disclosures in an annual report to include material that the Commission has not deemed necessary for inclusion in an annual report. Moreover, to the extent that the proposals in these letters sought to have the companies present information that is outside of GAAP or other requirements, we note that at least the new "uncertain tax positions" requirement is based on a FASB interpretive notice, Financial Accounting Standards Board Interpretation No. 48.[5]

Nor can TJX gain any traction from the second series of cited letters, which allowed relief on the grounds that management of tax payments is a source of financing for the company, which is a matter of ordinary business. (TJX Letter at 3-4.) TJX relies on the *Pfizer* and *PepsiCo* letters cited above, which involved hypothetical "what if" questions about pending legislation. The Company further cites *General Electric Co.* (Feb. 15, 2000), where a shareholder who wanted to "end corporate welfare as we know it" sought a report on "the financial benefit received by the company from the following sources: a) direct government subsidies; b) below market real estate transactions offered as incentives by governments; c) tax abatements offered by state and local governments; d) tax credits that apply only to the company or to certain industries; e) below-market financing backed by government funds or government guarantees." The Proposal here is qualitatively different. It requests an annual review and report on risk assessment involving a practice with transcendent policy issues. Unlike the cited proposals, it does not seek to push the Company into the political arena, nor does it ask TJX's board

[5] Announcement 2010-9, "Uncertain Tax Positions - Policy of Restraint," available at the IRS website cited in n. 1, *supra*.

affirmatively to justify the benefits of certain practices or to foreswear certain types of financing.

TJX's third "ordinary business" salvo involves decisions granting relief as to proposals seeking a report or explanation as to a company's compliance with legal requirements. (TJX Letter at 4-5) However, the resolutions in TJX's letter focused on compliance for the sake of compliance or because compliance was "the right thing to do." By contrast, the Plan's Proposal does not:

- ask why the proponent's employer lacks a code of ethics for executives (*Sprint Nextel Corp.* (Mar. 16, 2010));
- ask a company to verify the employment eligibility of employees, as it is already required to do by law (*Johnson & Johnson* (Feb. 22, 2010));
- ask for a report on whether the company's employees are properly classified under federal law as independent contractors, rather than employees (*FedEx Corp.* (July 14, 2009); *Lowe's Companies Inc.* (Mar. 12, 2008));
- ask for a report on the safety of the company's products (*Home Depot, Inc.* (Jan. 25, 2008) or the company's decision to provide customer information to government authorities without a warrant (Verizon Communications Inc. (Feb. 22, 2007));
- ask the board to adopt a policy against employees trespassing (*Verizon Communications Inc.* (Jan. 7, 2008));
- ask the board to set up a committee to monitor the company's compliance with the law generally or with specific statutes and to investigate alleged wrongdoing (*AES Corp.* (Jan. 9, 2007); *H&R Block, Inc.* (June 26, 2006) (date miscited in TJX letter); *Halliburton Co.* (Mar. 10, 2006); *Hudson United Bancorp* (Jan. 24, 2003); *Humana Inc.* (Feb. 25, 1998); *Citicorp Inc.* (Jan. 9, 1998)).
- ask the board to report on the costs and benefits of compliance with the Sarbanes-Oxley Act (*Bear Stearns Cos., Inc.* (Feb. 14, 2007); *Merrill Lynch & Co., Inc.* (Jan. 11, 2007); *Lehman Brothers Holdings, Inc.* (Jan. 11, 2007); Morgan Stanley (Jan. 8, 2007)).

The Plan's Proposal is not about compliance as an end in itself or the value of compliance. The focus here is on risk assessment more broadly, in line with the academic literature suggesting that aggressive tax positions may indicate more fundamental governance problems that plainly transcend "ordinary business" and are of concern to shareholders.

As a related point, TJX contends that preparation of the requested report "could" result in disclosure of privileged information that was prepared in connection with the Company's tax position. (TJX Letter at 5.) Putting to one side the fact that the Proposal allows the Company to omit "proprietary information," this argument is somewhat surprising, since it is basically a rehash of arguments by corporate taxpayers against the IRS' adoption of a new UTP regime, which was discussed above. The IRS' final rule and instructions make it clear that the newly mandated UTP disclosures to the IRS *do not* require disclosure of privileged information. *See* Instructions for Schedule UTP, Form 1120, Examples 10-12 and explanatory discussion, *available at* http://www.irs.gov/pub/newsroom/2010_instructions_for_sch_utp.pdf. It is thus possible for TJX to provide information of the sort that the Proposal is requesting, and TJX's citation of privilege concerns is thus a red herring.[6]

TJX concludes this forced march through irrelevant precedents by arguing that the Division "has consistently found that proposals seeking additional detailed disclosure the subject matter of which involves ordinary business may be excluded under Rule 14a-8(i)(7). (TJX Letter at 6, citing *Johnson Controls, Inc.* Oct. 26, 1999). But what of it? The Plan has demonstrated here how its Proposal implicates significant policy issues and thus transcends "ordinary business" limitations. The fact that the Division may have concurred in the omission of proposals that did *not* involve a significant policy issue cannot affect the analysis here.[7]

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6 As part of this argument, TJX reiterates a point we answered above (at 5-6), namely, that companies may omit proposals seeking disclosures of tax-related information beyond that which must be disclosed in a Form 10-K or GAAP standards (*Chase Manhattan Corp., supra; General Motors Corp., supra*). However, those rulings merely indicate that shareholders cannot seek to customize disclosures in an annual report to include material that the Commission has not deemed necessary for inclusion. Moreover, to the extent that the proposals at issue there sought to have the companies present information that is outside of GAAP or other requirements, the "uncertain tax positions" reporting is subject to a FASB interpretative notice.

7 The additional letters cited by TJX involved no significant policy issue, certainly not one of the significance identified here. See *AmerInst Insurance Group, Ltd.* (Apr. 14, 2005) (requesting a "full and adequate" disclosure each quarter of the line items and amounts of operating and management expenses); *J.P. Morgan Chase & Co.* (Feb. 28, 2001) (request to discuss risks of inflation and deflation in the annual report); *BankAmerica Corp.* (Feb. 8, 1996) (requesting more detailed discussion of reserve accounts on annual and quarterly basis); *Refac* (Mar. 27, 2002) (requested changes in disclosure, but also sought change in auditor, a separate ground for exclusion as ordinary business); *Time Warner Inc.* (Mar. 3, 1998) (requesting additional "Year 2000" or "Y2K" disclosures in company's periodic reports). However, compare *Tenet HealthCare Corp.* (July 1, 1998) (request for separate report on Y2K computer preparedness may *not* be excluded from company's proxy materials). As for the cited letters concurring in the omission of a proposal involving risk assessment, we note that they all antedate *Staff Legal Bulletin 14E* (discussed at p. 2, *supra*) which expressly authorized proposals on risk assessment of issues that transcend ordinary business. Here again, the Company's argument hinges on the notion that the Plan's Proposal is devoid of policy significance, a point we have rebutted previously.

In short, there is an overriding public policy concern in this case that was not present in the other cases. Thus, charges of "micromanagement" and the like are unavailing. At stake here is much more than TJX's responsibility as a good corporate citizen to pay its taxes. If anything, the "complexity" that TJX likes to cite is a prime reason why shareholders are entitled to greater transparency on this topic. As Kim and Desai point out, it is precisely because tax avoidance plans are complex, if not opaque, that an agency problem exists for shareholders and there is a risk of management aggrandizement at shareholder expense, potentially leading to a significant drop in stock price.

2. The Proposal has not been "substantially implemented" under Rule 14a-8(i)(10).

TJX next argues that the Plan's request for a report has been substantially implemented and thus warrants exclusion under Rule 14a-8(i)(10). This claim focuses on the fact that TJX made tax-related disclosures in its Form 10-K and in Note K thereto, which discusses "uncertain tax positions." TJX Letter at 9-11 and Ex. B.

Under Rule 14a-8(i)(10), the critical factor is what a company has done to address the core concerns raised by the proposal. See *Dow Chemical Co.* (Feb. 23, 2005); *Exxon Mobil* (Mar. 24, 2003); *Johnson & Johnson* (Feb. 25, 2003); *Exxon Mobil* (Mar. 27, 2002); *Raytheon* (Feb. 26, 2001); *Oracle Corp.* (Aug. 15, 2000). As the SEC acknowledged in *Exchange Act Release No. 34-20091* (Aug. 16, 1983), the application of this rule is subjective and therefore difficult. Furthermore, the fact that under Rule 14a-8(g) "the burden is on the company to demonstrate that it is entitled to exclude a proposal" means that the mootness exclusion presents a very high hurdle for companies to overcome.

TJX's disclosures in its Form 10-K are generic in nature and could describe just about any company doing business in multiple countries. Indeed, the cited discussion in TJX's MD&A section begins with the phrase "Like many large corporations . . ." (TJX Letter at 9.) Equally generic is the "risk factors" discussion, which talks generally about how the Company's provision for income taxes and cash tax liability "could be adversely affected by numerous factors" that apply to any multinational company.

Plainly the reader is not going to learn anything unique to TJX from reading these portions of the Form 10-K. Boilerplate disclosure that varies little from one year to the next is plainly not the "substantial" equivalent of the report requested in the Proposal.

The footnote disclosure upon which TJX relies (TJX Letter, Ex. B) is equally inadequate, as it provides merely aggregated figures as to income tax liability, net deferred tax assets and liabilities, and unrecognized tax benefits. These disclosures fall significantly short of the level of disclosure that the Proposal asks be presented in a report. These disclosures do little more than comply with GAAP disclosure requirements, including the measures for reporting uncertain tax positions using the standards required in the Financial Accounting Standards Board Interpretation No. 48 ("FIN 48"). TJX Letter at 9-10. A summary discussion presenting aggregate figures that are said to comply with GAAP is hardly a "report" worthy of the name.

We note that the Division has refused to credit arguments that disclosure in a Form 10-K is adequate when the request for data goes beyond the legally required minimum, as is the case here. Thus, the Division did not concur with a company's view that it could exclude a proposal asking the company to prepare a comprehensive report on foreign sales of military and weapons-related products, rejecting claims that there had been adequate disclosure in the Form 10-K, as well as to government agencies. *ITT Corp.* (Mar. 12, 2008). Similarly, in *Crescent Real Estate Equities Co.* (Mar. 28, 2005), the Division rejected a claim that mandated disclosures regarding related-party transactions substantially implemented a proposal seeking details regarding board involvement or non-involvement in such transactions. (The Division agreed that the "ordinary business" exclusion in Rule 14a-8(i)(7) was not available either). Indeed, TJX fails to cite any decision in which the Division has equated disclosure in a Form 10-K on a broad policy issue as sufficiently equivalent to a requested report that exclusion of the proposal is warranted.

TJX cites rulings in which the Division has concurred with the company's position because it appears that the company was already providing reports to shareholders on the specific topics in question *e.g., Anheuser-Busch Cos., Inc.* (Jan. 17, 2007); *ConAgra Foods, Inc.* (July 3, 2006); *Johnson & Johnson* (Feb. 17, 2006); *Exxon Mobil Corp.* (Mar. 18, 2004); and *Xcel Energy, Inc.* (Feb. 17, 2004) requests for report on global warming. (TJX Letter at 9.) Of course, the fact that a company issues a report with a key word such as "sustainability" in the title does not mean that all of the issues raised by a given proposal have been "substantially" addressed. *Kroger Co.* (Apr. 12, 2010) (denying no-action relief).[8]

TJX's limited disclosure thus fails to establish that the disclosure has "substantially" implemented the Plan's Proposal. The fact that there is *some* disclosure – with only one example, with known exceptions and with no explanation of how much of the problem this disclosure may address – is insufficient to warrant omission of a proposal on the ground that the proposal has been *substantially* implemented.

3. The Proposal is not impermissibly vague and indefinite under Rule 14a-8(i)(3).

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[8] TJX's citation to *Johnson & Johnson* (Feb. 17, 2006) is inapposite, as the proposal there sought not a shareholder report, but a verification that the company was complying with immigration laws; the company answered that it was conducting such verification and reporting results to the Immigration and Naturalization Service. A request for verification of employment status is qualitatively different from a request for a report to shareholders. Moreover, as the *ITT* letter cited in the text made clear, disclosure to a government agency on a non-public basis is not disclosure in a report to shareholders.

TJX argues finally that the Proposal is impermissibly vague and indefinite, so much so that it is "materially false or misleading" and thus eligible for exclusion under Rule 14a8-(i)(3). (TJX Letter at 11-13).

TJX focuses on the phrase "actions TJX takes to avoid or minimize US federal, state and local taxes," arguing that the individual words "to," "avoid," and "minimize" are hopelessly and inherently vague. Before answering these specific objections, however, we pause to note the contradiction between this argument and TJX's prior argument, *i.e.,* that the Company has "substantially implemented" a proposal that we are now told is "so vague and indefinite as to make it impossible for either the board of directors or the stockholders at large to comprehend precisely what the proposal would entail." *Dyer v. SEC,* 287 F.2d 773, 781 (8th Cir. 1961), *quoted in* TJX Letter at 11. Surely TJX cannot have it both ways. Nor can it be said that it is "impossible" to understand what the Proposal is asking.

Thus, TJX asks whether "to" is meant to require intent and, if so, to what extent? Or does it relate to any decision with tax implications? Does "avoid" refer only to situations where one avoids taxation or to a store closing? Does "minimize" mean a comparison of the actual tax rate to the statutory rate or to the effective rate in some previous period (and if so, which one)? (TJX Letter at 12.)

This represents a classic example of fixating on a specific word or phrase and then claiming that the individual words are hopelessly ambiguous, while failing to examine the Proposal as a whole. The thrust of the Proposal, as the supporting statement makes clear, is on what academic studies refer to as "aggressive" tax positions as companies seek to reduce tax liabilities. Aggressive tax positions carry risks for companies and shareholders: Companies know those risks and are required to consider and evaluate them under GAAP, in this case FIN No. 48, as TJX acknowledges. Companies are now required to report their uncertain tax positions in more detail to the IRS.

The letters cited by TJX (at 13) have nothing to do with the language in this Proposal, but deal with imprecise terminology in the field of executive compensation and, in one instance, the vague concept of "interfering" with the "government policy." Thus, the supposed precedents offer little support for the Company's position.

Finally, we are obliged to note how this Proposal stacks up against a recent proposal asking a company to prepare a report on its "policy concerning the use of initial and variance margin (collateral) on all over the counter derivatives trades and its procedures to ensure that the collateral is maintained in segregated accounts and is not rehypothecated." *JPMorgan Chase & Co.* (Mar. 19, 2010). The company invoked the (i)(3) exclusion on the ground that the phrases "initial and variance margin (collateral)" and "rehypothecated" were not defined in the proposal and that shareholders would not understand those terms. The Division nonetheless denied no-action relief. We respectfully suggest that the concept of "avoiding" or "minimizing" tax liability is more easily understood by shareholders than the concept of rehypothecating collateral on derivatives trades.

* * * *

For these reasons, the Plan respectfully asks the Division to deny the no-action relief TJX has sought.

Thank you in advance for your consideration of these comments. If you have any questions or need additional information, please do not hesitate to call me at (202) 429-1007. The Plan appreciates the opportunity to be of assistance to the Staff in this matter.

Very truly yours,

Charles Jurgonis
Plan Secretary

cc: Ann McCauley, Esq., TJX Companies, Inc.
Fax: (508) 390-2777
Mary Weber, Esq., Ropes & Gray LLP
Fax: (617) 235-0222

SECURITIES AND EXCHANGE COMMISSION
DIVISION OF CORPORATE FINANCE
OFFICE OF CHIEF COUNSEL
100 F STREET, N.E.
WASHINGTON, D.C. 20549

Re: The TJX Companies, Inc.
AFSCME Shareholder Proposal

The TJX Companies, Inc. ("TJX" or the "Company") submits this letter to inform you that it intends to omit from its proxy statement and form of proxy for its 2011 Annual General Meeting of Shareholders (collectively, the "2011 Proxy Materials") a shareholder proposal (the "Proposal") and supporting statement from the American Federation of State, County and Municipal Employees ("AFSCME" or the "Proponent"). We respectfully request that the Staff of the Division of Corporation Finance (the "Staff") concur in our view that the Company may, for the reasons set forth below, properly exclude the Proposal from the 2011 Proxy Materials.

In accordance with Rule 14a-8(j), we have filed this letter with the Securities and Exchange Commission (the "Commission") no later than eighty (80) calendar days before the Company intends to file its definitive 2011 Proxy Materials with the Commission and concurrently sent a copy of this letter and its attachment to the Proponent. Pursuant to Rule 14a-8(j) and Staff Bulletin No. 14D (November 7, 2008) ("SLB 14D"), we have submitted this letter, together with the Proposal to the Staff via e-mail at shareholderproposals@sec.gov in lieu of mailing paper copies.

Rule 14a-8(k) and SLB 14D provide that shareholder proponents are required to send companies a copy of any correspondence that the proponents elect to submit to the Commission or the Staff. Accordingly, we are taking this opportunity to inform the Proponent that if the Proponent elects to submit additional correspondence to the Commission or the Staff with respect to the Proposal, a copy of that correspondence should be furnished concurrently to the undersigned on behalf of the Company pursuant to Rule 14a-8(k) and SLB 14D.

THE PROPOSAL

The Proposal states:

> **Resolved**, that the shareholders of [T]he TJX Companies, Inc. ("TJX") request that TJX's board of directors annually assess the risks created by the actions TJX takes to avoid or minimize US federal, state and local corporate income taxes and provide a report to shareholders on the assessment, at reasonable cost and omitting proprietary information.

A copy of the Proposal and the supporting statement (the "Supporting Statement") is attached to this letter as Exhibit A.

BASES FOR EXCLUSION

We hereby respectfully request that the Staff concur in our view that the Proposal may be excluded from the 2011 Proxy Materials pursuant to:

- Rule 14a-8(i)(7), because the Proposal deals with matters relating to the Company's ordinary business operations;
- Rule 14a-8(i)(10), because the Company has already substantially implemented the Proposal; and
- Rule 14a-8(i)(3), because the Proposal is impermissibly vague and indefinite.

ANALYSIS

I. THE COMPANY MAY EXCLUDE THE PROPOSAL FROM ITS PROXY MATERIALS IN RELIANCE ON RULE 14a-8(i)(7) BECAUSE IT RELATES TO THE COMPANY'S ORDINARY BUSINESS OPERATIONS.

Rule 14a-8(i)(7) permits a company to exclude a shareholder proposal if it pertains to "a matter relating to the company's ordinary business operations." The term "ordinary business" refers "to matters that are not necessarily 'ordinary' in the common meaning of the word, and is rooted in the corporate law concept providing management with flexibility in directing certain core matters involving the company's business and operations." *Exchange Act Release No. 34-40018* (May 21, 1998) (the "<u>1998 Release</u>"). Proposals that seek a report where the subject matter involves ordinary business are excludable under Rule 14a-8(i)(7). *Exchange Act Release No. 34-20091* (August 16, 1983) (the "<u>1983 Release</u>"). According to the 1998 Release, the general policy underlying the "ordinary business" exclusion is "to confine the resolution of ordinary business problems to management and the board of directors, since it is impracticable for shareholders to decide how to solve such problems at an annual shareholders meeting."

In the 1998 Release, the Commission identified the two "central considerations" for the ordinary business exclusion. The first is the subject matter of the proposal, with the 1998 Release concluding 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." The second is the degree to which the proposal attempts 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. This consideration may come into play in a number of circumstances, such as where the proposal involves intricate detail, or seeks to impose specific time-frames or methods for implementing complex policies." As discussed below, the Proposal implicates both of these "central considerations" and may be omitted as relating to the Company's ordinary business operations. The reference in the Proposal to "risk" does not preclude exclusion where the subject matter underlying the risk evaluation is the ordinary business of the Company.

Management of corporate taxation is a task so fundamental to management's ability to run a company on a day-to-day basis that management cannot, as a practical matter, be subject to direct shareholder oversight with respect to this task. TJX operates in 14 countries, 48 states, 10 provinces, approximately 2,700 cities and towns as well as myriad other taxing jurisdictions in the U.S. and abroad. The tax planning and management associated with all of these tax jurisdictions is significant and is the full-time activity of a department within TJX. The Proposal infringes on management's day-to-day operation of the business because it involves issues, the subject matter of which are most appropriately left to such day-to-day management and oversight by the Board of Directors of the Company (the "Board") (and not to direct shareholder oversight). Issues related to corporate tax planning and tax risk assessments at TJX are intricate, highly complex and require a detailed understanding of, among other things, (i) compliance with applicable legal and regulatory regimes and (ii) TJX's day-to-day operations, business plans and business practices across all jurisdictions in which it operates. To fully understand any risk assessment, shareholders would require an intimate knowledge of these complex rules and practices. The intricacy of tax risk assessments and rapidly changing dynamics of tax regulations makes tax risk assessments an especially poor topic for shareholder action. Unlike shareholders, the Company's management and the Board, with frequent and fulsome advice from the Company's outside advisors, have the requisite knowledge of tax rules and regulations and the Company's operations in order to make and understand tax risk assessments. The Proposal is not limited to tax planning activities and reaches *any* activity taken to avoid or minimize U.S. federal, state or local corporate income taxes. This sweeping Proposal could literally encompass decisions on ordinary business matters such as levels and timing of expenditure, levels, types and timing of investment, borrowing, jurisdictions of expansion, business closures, hiring of employees, employee compensation and other benefits and any other matter that affects (or even could affect) the Company's taxable income in any U.S. taxing jurisdiction.

The Staff has consistently taken the position that shareholder proposals like the Proposal that involve corporate tax are within the scope of a company's ordinary business operations. Requests for evaluations of, and reports on, corporate taxes are intricately interwoven with a company's financial planning and day-to-day business operations and, as such, the Staff has consistently found proposals relating to such matters properly excludable. *See Verizon, Inc.* (January 31, 2006), *General Electric Co.* (January 17, 2006) and *Citigroup Inc.* (January 26, 2006) (proposals requesting reports on the impact of a flat tax excludable); *PepsiCo, Inc.* (March 13, 2003) and *Pfizer Inc.* (February 5, 2003) (proposals requesting reports on company tax breaks excludable); *The Chase Manhattan Corporation* (March 4, 1999) (proposal requiring disclosure of certain tax information in annual reports to shareholders excludable); *General Motors Corp.* (February 28, 1997) (proposal recommending adoption of a policy to disclose taxes paid and collected in annual report excludable).

The Staff has recognized that management of tax payments (including tax abatements and tax credits) is a source of financing for companies, which is a matter of ordinary business operations. The Staff has agreed that proposals addressing changes in the application or availability of tax code provisions or other federal financial incentives can be excluded as ordinary business matters, because they implicate a company's decisions on sources of financing. *See General Electric Co.* (February 15, 2000) (proposal to prepare a report on the financial benefits received by the company from tax abatements and credits excludable); *Pfizer Inc.*, *supra*; *Pepsico, Inc.*, *supra*. The methods used by TJX to manage the amount and timing of its income tax payments are at the core of management's daily business planning and decision-making with respect to financing sources.

Requirements to pay or not to pay taxes are based on compliance with tax laws, and as a result, the "actions TJX takes to avoid or minimize US federal, state or local corporate income taxes" are the subject of legal requirements—an area of subject matter that is properly within the management's control as part of its operation of the business. The Company's management established, maintains, monitors and devotes substantial resources to a broad-ranging legal compliance program covering tax and disclosure laws, regulations and other requirements across its entire business. Many of these actions that would be encompassed within the Proposal are mandated by law. For example, in a company with TJX's scale, intra-company transactions necessarily cross different taxing jurisdictions and as a result, affect taxes among the various jurisdictions in which they occur. Appropriate payments for these transactions are mandated by law, including transfer pricing and licensing fees for intellectual property, among many others. The Staff consistently has recognized a company's compliance with laws and regulations as a matter of ordinary business and proposals relating to a company's legal compliance program as infringing on management's core function of overseeing business practices. *See Sprint Nextel Corp.* (March 16, 2010, *recon. denied* April 20, 2010) (proposal requesting explanation of why it did not adopt an ethics code designed to deter wrongdoing by its CEO, and to promote ethical conduct, securities law compliance, and accountability excludable); *Johnson & Johnson* (February 22, 2010) (proposal requesting that the company take specific actions to comply with employment eligibility verification requirements excludable); *FedEx Corp.* (July 14, 2009) and *Lowe's Companies, Inc.* (March 12, 2008) (proposals requesting the preparation of a report discussing the company's compliance with state and federal laws governing the proper classification of employees and independent contractors excludable); *The Home Depot, Inc.* (January 25, 2008) (proposal requesting that the board publish a report on the company's policies on product safety excludable); *Verizon Communications Inc.* (February 22, 2007) (proposal requesting a report on the technological, legal and ethical policy issues surrounding disclosure of customer information to government agencies without a warrant excludable); *Verizon Communications Inc.* (January 7, 2008) (proposal requesting a report on policies for preventing and handling illegal trespassing incidents excludable); *The AES Corp.* (January 9, 2007) (proposal seeking creation of a board oversight committee to monitor compliance with applicable laws, rules and regulations of federal, state and local governments excludable); *H&R Block Inc.* (August 1, 2006) (proposal requesting a legal compliance program regarding lending policies excludable); *Halliburton Co.* (March 10, 2006) (proposal requesting the preparation of a report detailing policies and procedures to reduce or eliminate the recurrence of instances of fraud, bribery and other law violations excludable); *Hudson United Bancorp* (January 24, 2003) (proposal requesting appointment of an independent shareholders' committee to investigate possible corporate misconduct excludable); *Humana Inc.* (February 25, 1998) (proposal urging appointment of a committee of outside directors to oversee the company's corporate anti-fraud compliance program excludable); *Citicorp Inc.* (January 9, 1998) (proposal requesting an independent committee to oversee the audit of contracts with foreign entities to ascertain if bribes and other payments of the type prohibited by the Foreign Corrupt Practices Act or local laws had been made excludable). Similarly, the Staff repeatedly has concurred with the exclusion of shareholder proposals requesting that the board of directors undertake actions to ensure compliance with laws as requiring an assessment of companies' general legal compliance programs, which are characteristically an element of ordinary business operations. *See Bear Stearns Companies Inc.* (February 14, 2007) (proposal requesting a Sarbanes-Oxley Right-to-Know report detailing the costs and benefits of Sarbanes-Oxley on the company's in-house operations as well as the impact of Sarbanes-Oxley on the company's investment banking business excludable); *Merrill Lynch & Co., Inc.* (January 11, 2007) (same); *Lehman Brothers Holdings Inc.* (January 11, 2007) (same); *Morgan Stanley* (January 8, 2007) (same). The Proposal's request for a report on Company actions that "avoid or minimize US federal, state or local corporate income taxes", clearly relates to compliance with laws and assessment of risk of that compliance requires legal assessments and thus relates directly to ordinary business operations.

The Proposal's requirement to report on tax risk assessment interferes with the Company's ability to control decisions related to the disclosure of highly confidential and sensitive information notwithstanding the Proposal's reference to the omission of proprietary information. Disclosure of confidential details of TJX's tax and financing strategies and the intracompany transactions underlying those strategies could be competitively harmful. TJX already reports on its tax and financing strategies, providing investors significant insight into these operations. Providing details of internal financing arrangements would not provide meaningful information to investors but could reveal to competitors information with respect to TJX's strategies and requirements for intercompany financing which competitors could utilize in considering their competitive strategies.

The disclosures involved in providing a report on the risks associated with the Company's tax positions could result in disclosures constituting a waiver of the attorney-client privilege, the tax practitioner privilege (provided for in the Internal Revenue Code of 1986, as amended) and the work product privilege as to the advice and other communications between the Company and its legal counsel or other tax advisers relating to a tax position and related work product. A waiver of any of these privileges could compromise the Company's ability to litigate effectively the issues to which such advice, communications or work product relate and could prompt new litigation against the Company. Consequently, if implemented, the disclosure requirements in the Proposal would effectively substitute the shareholders' judgment for the judgment of the Board and management as to whether to give blanket waivers of one or more of the attorney-client privilege, the tax practitioner privilege and the work product privilege as to such communications, legal and tax advice and privileged work product with respect to a tax matter in which the Company is engaged, a decision that shareholders as a group are particularly unsuited to make.

The Staff has concluded that proposals requiring disclosure of tax-related information beyond that which is required by applicable laws and accounting principles are properly excludable. *See, e.g., The Chase Manhattan Corporation* (March 4, 1999) (proposal to amend the company's by-laws to require it to disclose in its annual report certain tax information, including tabulations of taxes on the company for the fiscal year, taxes collected by company and the amount of taxes per share excludable) and *General Motors Corp., supra*. In mandating disclosure obligations for public companies to achieve an understandable, comprehensive portrayal of their financial condition and performance, the Commission relies on, among other things, audited financial statements that meet the standards set forth by the Financial Accounting Standards Board ("FASB"). In a process overseen by the Commission, FASB establishes detailed accounting rules and requirements for complex topics such as tax risks and tax reserves. Indeed accounting for uncertainties with respect to payment of income taxes was addressed and implemented just a few years ago by FASB. As a result, the Company, like other public companies, must analyze the technical merits of its tax positions, determine the likelihood that these positions will be sustained if they were ever examined by the taxing authorities and establish and disclose reserves for positions unlikely to be sustained. The Proposal requests a report that would provide additional tax disclosure beyond that required by the applicable accounting principles.

Notwithstanding the disclosures already made by the Company in its financial statements, the Company's management and Board (and not shareholders), in their exercise of their core duties, are tasked with determining the proper amount of information that both fulfills relevant legal requirements and provides investors with meaningful disclosure about the Company and its business with respect to these ordinary business matters. The Staff has consistently found that proposals seeking additional detailed disclosure, the subject matter of which involves ordinary business operations, may be excluded under Rule 14a-8(i)(7). *See Johnson Controls, Inc.* (October 26, 1999) (proposal requesting additional disclosure of financial statements in reports to shareholders excludable). *See also AmerInst Insurance Group, Ltd.* (April 14, 2005) (proposal requiring company to provide a full, complete and adequate disclosure of the accounting, each calendar quarter, of its line items and amounts of operating and management expenses excludable). As discussed above, the subject matter of the disclosure sought by the Proposal relates entirely to ordinary business operations. The Staff has found proposals seeking increased disclosure to enable shareholders to evaluate risk to be excludable. *See, e.g., J.P. Morgan Chase & Co.* (February 28, 2001) (proposal requiring discussion of risks of inflation/deflation in annual report excludable); *BankAmerica Corporation* (February 8, 1996) (proposal requesting amendment of governing documents to require detailed disclosure regarding reserve accounts on an annual and quarterly basis excludable). Beyond compliance with applicable legal and regulatory requirements, it is management's responsibility to determine what information above that which is legally required is most appropriately disclosed to investors. *See, e.g., Refac* (March 27, 2002) (proposal requesting improved corporate disclosure practices, including the disclosure of the number of shareholders of record of the Company and the results of voting at the annual meeting excludable); *Time Warner, Inc.* (March 3, 1998) (proposal requesting Year 2000 disclosure excludable).

Due to the complexity of the underlying subject matter, a full report on the assessment of risks relating to the Company's tax positions would be highly complex and would by necessity contain numerous qualifications and assumptions. In order to understand the risks related to the possibility of Federal, state and local governments looking to the Company to increase tax revenues and potential risks related to the adoption of Schedule UTP (Uncertain Tax Positions), shareholders would need to be informed of the Company's current jurisdictional tax base and risks in each of those jurisdictions. Evaluating tax laws, budget shortfalls, political positions, potential regulatory action and other factors in numerous jurisdictions would require detailed disclosure as well as numerous qualifications, assumptions and projections. This type of report is beyond the scope of a standard shareholder report (such as a Corporate Social Responsibility report) and would not materially improve shareholders' understanding of the report's underlying subject matter or of TJX's business and operations as a whole. Instead, such a report would cause confusion and could enable the Company's competitors to gain valuable information with respect to its competitively sensitive tax and business strategies.

A. The Proposal's Reference to Risk Does Not Alter Its Excludability Where The Subject Matter Relates to Ordinary Business Operations.

The Proposal requests that "TJX's board of directors annually assess the risks created by the actions TJX takes to avoid or minimize US federal, state and local corporate income taxes and provide a report to shareholders on the assessment, at reasonable cost and omitting proprietary information." In Staff Legal Bulletin No. 14E (Oct. 27, 2009) ("SLB 14E"), the Staff indicated that in evaluating shareholder proposals that request a risk assessment:

> rather than focusing on whether a proposal and supporting statement relate to the company engaging in an evaluation of risk, we will instead focus on the subject matter to which the risk pertains or that gives rise to the risk…similar to the way in which we analyze proposals asking for the preparation of a report, the formation of a committee or the inclusion of disclosure in a Commission-prescribed document—where we look to the underlying subject matter of the report, committee or disclosure to determine whether the proposal relates to ordinary business—we will consider whether the underlying subject matter of the risk evaluation involves a matter of ordinary business to the company….

The fact that a shareholder proposal references risk is not dispositive of whether the proposal may be excluded under Rule 14a-8(i)(7). *Id*. Rather, the Staff has continued to concur in the exclusion of risk assessment shareholder proposals when the subject matter concerns ordinary business operations. *See JPMorgan Chase & Co.* (March 12, 2010) (proposal requesting an assessment of the probable impact on greenhouse gas emissions and environmental harm to Appalachia of expanding the policy to bar project financing for all mountain top removal projects where neither company was involved with such projects except with respect to extending credit to certain types of customers excludable); *Bank of America Corp.* (February 24, 2010) (same). Though the Staff indicated in SLB 14E that certain proposals are not excludable under Rule 14a-8(i)(7) if the "underlying subject matter transcends the day-to-day business matters of the company and raises policy issues so significant that it would be appropriate for a shareholder vote", the Proposal does not fall into this exception. Here, the underlying subject matter of the Proposal does not transcend the day-to-day business of TJX because, as discussed above, matters related to the evaluation of tax risk assessment and tax planning are an integral part of the Company's daily business operations and financial planning. The Proposal and Supporting Statement relate only to a narrow issue of business management that is specific to the Company. Although, as discussed below, it is not clear precisely what the Proponents wish the Company to address, the subject matter appears to range from the tax consequences of the Company's specific trademark licensing strategy to overall tax risk assessment. The Proponents do not, however, raise specific tax policy issues or any other articulable policy issues; rather, the only item that comes close to a social policy issue is a general concern over U.S. Federal, state and local budget shortfalls with the possibility that such governments may look to additional tax revenue to address such shortfalls. As such, the Proposals is excludable under Rule 14a-8(i)(7).

B. The Proposal Does Not Focus on Any Significant Social Policy Issue Which Would Transcend The Day-to-Day Business Matters Raised by The Proposal.

Although, as discussed above, certain proposals relating to ordinary business matters that focus on "sufficiently significant social policy issues" are generally not considered to be excludable, the Staff has consistently recognized that a proposal that inappropriately addresses ordinary business matters may be excluded in its entirety even if it also touches upon a significant social policy issue. *See Marriot International, Inc.* (March 17, 2010) (proposal relating to global warming that sought to micromanage the company excludable); *Newmont Mining Corp.* (February 4, 2004) (proposal requesting that the board of directors publish a comprehensive report on the risk to the company's operations, profitability and reputation from its social and environmental liabilities excludable). The factors that the Staff has considered in the past to determine whether a proposal relates to a "significant social policy issue" include the existence of widespread public debate concerning the subject matter of the proposal, increasing recognition of the issue among the public, and the existence of legislation or proposed legislation addressing the same. *See Tyson Foods Inc*. (December 15, 2009) (proposal regarding the use of antibiotics in raising livestock, an issue of widespread public debate and the subject of current legislation, includable upon reconsideration because it related to a "significant social policy issue").

The Proposal does not fall under this exception to Rule 14a-8(i)(7) because it does not identify a social policy issue that the Company is requested to review or address, nor does it require that the report address or remedy any social issues. Though the Proponent may argue that there has recently been public debate about the need for states and municipalities to generate additional tax revenue, the subject matter of the Proposal is narrowly tailored to the specific tax risks created by actions of the Company to avoid or minimize taxes. It seeks to address the Company's employment of tax management strategies and its application of tax laws to the Company's particular factual circumstances. The Proposal does not address social policy issues relating to taxation in general or any other articulable social policy issue or shareholder interest. Rather, the Proposal is limited to a narrow issue specific to the Company that relates to the management of the business and does not raise a "sufficiently significant social policy issue" so as to bring it outside of Rule 14a-8(i)(7). As the Proposal merely addresses the ordinary business of the Company, it is excludable.

II. THE COMPANY MAY EXCLUDE THE PROPOSAL FROM ITS PROXY MATERIALS IN RELIANCE ON RULE 14a-8(i)(10) AS ALREADY SUBSTANTIALLY IMPLEMENTED.

A shareholder proposal may be excluded under Rule 14a-8(i)(10) if the proposal has already been substantially implemented by the company. This Rule "is designed to avoid the possibility of shareholders having to consider matters which already have been favorably acted upon by management." *Exchange Act Release No. 34-12598* (July 7, 1976). A determination as to whether the company has substantially implemented the proposal depends on whether the company's relevant "policies, practices and procedures compare favorably with the guidelines of the proposal." *Wal-Mart Stores, Inc.* (March 30, 2010). Substantial implementation under Rule 14a-8(i)(10) requires a company's actions to have addressed both the proposal's underlying concerns and its essential objective.

The Staff has allowed shareholder proposals to be excluded as substantially implemented where a company's actions, policies, practices and procedures have satisfactorily addressed the underlying concerns of the proposal, even if by means other than those suggested by the shareholder proponent and even if there are differences between a company's actions and the details of the shareholder proposal. *See, e.g.*, *Anheuser-Busch Cos., Inc.* (January 17, 2007), *ConAgra Foods, Inc.* (July 3, 2006), *Johnson & Johnson* (February 17, 2006), *Exxon Mobil Corporation* (March 18, 2004), *Xcel Energy, Inc.* (February 17, 2004), *The Talbots, Inc.* (April 5, 2002), *AMR Corp.* (April 17, 2000), *Masco Corp.* (March 29, 1999), *Erie Indemnity Co.* (March 15, 1999), and *Nordstrom, Inc.* (February 8, 1995) (in each instance proposal requesting a global warming report excludable where the company had already published a report that contained information relating to its environmental initiatives). This is consistent with the 1983 Release, which noted that a proposal need not be "fully effected" in order to be considered "substantially implemented."

The Company has substantially implemented the Proposal through its policies and procedures with respect to tax risk that compare favorably with those in the Proposal. This risk assessment is part of the Company's ordinary business operations and is implemented consistent with SEC rules, New York Stock Exchange listing standards and U.S. generally accepted accounting principles ("GAAP") and the conclusions are reported in the Company's reports to the SEC and its shareholders. The Company is engaged in a substantial, ongoing enterprise risk assessment program which includes tax risks. The program is led by the Company's Senior Vice President, Director Enterprise Risk and Chief Compliance Officer, with significant involvement in the case of tax risks and related policies and procedures, from the financial, accounting, tax and legal departments. The Company's tax risks are regularly reviewed by the Audit Committee, the Finance Committee and the Board of Directors as well as the Company's Chief Financial and Administrative Officer, Senior Vice President, Corporate Tax & Risk Management Director and General Counsel. Policies and procedures with respect to tax positions and planning are reviewed by senior management.

The Company reports on its assessments of tax risk annually in its Annual Report on Form 10-K. For example, the Company identified and discussed income taxes in the U.S. and abroad as an area of substantial management judgment in its Management Discussion and Analysis in its Form 10-K for the fiscal year ending January 30, 2010:

> ***Income taxes:*** Like many large corporations, our income tax returns are regularly audited by federal, state and local tax authorities in the United States and in foreign countries where we operate. Such authorities may challenge positions we take, and we are engaged in various proceedings with such authorities with respect to assessments, claims, deficiencies and refunds. In accordance with U.S. GAAP, we evaluate uncertain tax positions based on our understanding of the facts, circumstances and information available at the reporting date, and we accrue for exposure when we believe that it is more likely than not, based on the technical merits, that the positions will not be sustained upon examination. However, it is possible that amounts accrued or paid as the result of the final resolutions of examinations, judicial or administrative proceedings, changes in facts or law, expirations of statute of limitations in specific jurisdictions or other resolutions of, or changes in, tax positions, will differ either positively or negatively from the amounts we have accrued, and may result in accruals or payments for periods not

> currently under examination or for which no claims have been made. It is possible that such final resolutions or changes in accruals could have a material adverse impact on the results of operations of the period in which a examination or proceeding is resolved or in the period in which a changed outcome becomes probable and reasonably estimable.

In addition, various of the Company's Risk Factors in its Form 10-K cover tax risk, including, for example, the following specific risk in the fiscal 2011 Form 10-K:

> We are subject to income taxes in both the United States and numerous foreign jurisdictions. Our provision for income taxes and cash tax liability in the future could be adversely affected by numerous factors including, but not limited to, income before taxes being lower than anticipated in countries with lower statutory tax rates and higher than anticipated in countries with higher statutory tax rates, changes in the valuation of deferred tax assets and liabilities, changes in U.S. tax legislation and regulation, foreign tax laws, regulations and treaties, exposure to additional tax liabilities, changes in accounting principles and interpretations relating to tax matters, which could adversely impact our results of operations and financial condition in future periods. In addition, we are subject to the continuous examination of our income tax returns by federal, state and local tax authorities in the U.S. and foreign countries, such authorities may challenge positions we take, and we are engaged in various proceedings with such authorities with respect to assessments, claims, deficiencies and refunds, and the results of these examinations, judicial proceedings or as a result of the expiration of statute of limitations in specific jurisdictions. We regularly assess the likelihood of adverse outcomes resulting from these examinations to determine the adequacy of our provision for income taxes. However, it is possible that the actual results of proceedings with tax authorities and in courts, changes in facts, expiration of statutes of limitations or other resolutions of tax positions will differ from the amounts we have accrued in either a positive or a negative manner, which could materially affect our effective income tax rate in a given financial period, the amount of taxes we are required to pay and our results of operations.

Consistent with GAAP, the Company has reserves for its uncertain tax positions which are disclosed and discussed in detail each year in its Form 10-K, e.g. Note K to its audited financial statements in the fiscal 2010 Form 10-K, attached to this letter as <u>Exhibit B</u>. As part of its compliance with FASB Interpretation No. 48 ("<u>FIN 48</u>"), the Company conducts an analysis of all tax positions that it includes in its financial statements to determine whether (a) it is more likely than not that the position will be sustained on the merits if challenged by a taxing authority and (b) the amount of the benefit for positions that meet this threshold. *FIN 48* at Paragraphs 6-8. Pursuant to the requirements of FIN 48, the Company quantifies these positions and discloses the amount of its unrecognized tax benefits as of the end of the current and prior fiscal year, with reconciliation for additions for the current and prior years for uncertain tax positions, reductions for prior years' uncertain tax positions, expiration of statutes of limitation and settlements with taxing authorities and the amount of unrecognized tax benefits included that will not affect future years' effective tax rates. In addition, the Company discloses total amounts of interest and penalties and years that remain subject to examination by major tax jurisdictions. The Company quantifies the possible change in its provision for taxes as a result of any reasonably probable change in the Company's net unrecognized tax benefits during the next twelve months. The Company's financial footnotes also contain information reconciling taxes paid to the statutory rate. These disclosures provide the shareholders with a clear and quantified view of the Company's tax risk, which is the underlying concern of the Proposal. By regularly examining its tax positions and associated tax risks and regularly discussing those risks in its Securities Exchange Act reports, the Company has substantially implemented the Proposal.

III. THE PROPOSAL MAY BE EXCLUDED UNDER RULE 14a-8(i)(3) BECAUSE IT IS IMPERMISSIBLY VAGUE AND INDEFINITE SO AS TO BE INHERENTLY MISLEADING.

The Proposal and Supporting Statement are so inherently vague or 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. Rule 14a-8(i)(3) permits the exclusion of a shareholder proposal if the proposal or supporting statement is contrary to Rule 14a-9, which prohibits materially false or misleading statements in proxy soliciting materials. The Staff consistently has taken the position that vague and indefinite shareholder proposals are inherently misleading and therefore excludable under Rule 14a-8(i)(3) because shareholders cannot make an informed decision on the merits of a proposal without at least knowing what they are voting on. *See* Staff Legal Bulletin No. 14B (September 15, 2004) (noting 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"). *See also Dyer v. SEC*, 287 F.2d 773, 781 (8th Cir. 1961) (proposal requesting the creation of a stockholder relations office excludable because it was "so vague and indefinite as to make it impossible for either the board of directors or the stockholders at large to comprehend precisely what the proposal would entail").

The Staff on numerous occasions has concurred that a shareholder proposal was sufficiently misleading so as to justify its exclusion where a company and its shareholders might interpret the proposal differently, such that "any action ultimately taken by the Company upon implementation [of the proposal] could be significantly different from the actions envisioned by shareholders voting on the proposal." *Fuqua Industries, Inc.* (March 12, 1991). *See also Bank of America Corp.* (June 18, 2007) (proposal requesting a report "concerning the thinking of the Directors concerning representative payees" excludable under Rule 14a-8(i)(3) as "vague and indefinite"); *Puget Energy, Inc.* (March 7, 2002) (proposal requesting that the company's board of directors take steps to implement a policy of "improved corporate governance" excludable).

Under these standards, the Staff has consistently concurred with the exclusion of proposals where such proposals fail to define critical terms or phrases or otherwise fail to provide guidance on what is required to implement the proposals. *Bank of America Corp.* (February 25, 2008) (proposal requesting that the company amend its policies to observe a moratorium on all financing, investment and further involvement in activities that support MTR (mountain top removal) projects without defining what would constitute "further involvement" and "activities that support MTR [projects] excludable as vague and indefinite); *Wendy's International, Inc.* (February 24, 2006) (proposal requesting a report on the progress made toward "accelerating development" of controlled-atmosphere killing without defining "accelerating" and "development" excludable).

The Proposal here fails to define critical phrases or otherwise provide guidance on what is necessary to implement it. Specifically, the Proposal does not define what is meant by the words "to", "avoid" and "minimize" within the context of the phrase "actions TJX takes to avoid or minimize US federal, state or local corporate income taxes". The Proposal is not clear about what actions are included within these terms, how the Company is to make those determinations or what standards it should use to do so.

Does the word "to" require intent, and if so, what degree of intent is required? Does "to" imply an action implemented solely to affect taxes? Or does it mean every action where there is consideration of the tax effect? Or does it mean any action that, regardless of consideration of tax effects by the Company, had an effect on corporate income taxes at some level? Tax planning is a significant activity for all corporations, and virtually all corporate actions have some effect on taxes paid within some taxing jurisdiction, making identification of the potentially encompassed activities virtually impossible.

Do the words "avoid" and "minimize" mean something different? Does avoidance cover only situations where the Company completely "avoids" taxation and no longer pays income tax in a jurisdiction? For instance, would it cover the Company's decision to close the only store in a particular taxing jurisdiction? Or, is it intended to cover any situation where the Company takes an action that results in it paying additional income taxes in one jurisdiction rather than another? This, of course, would include the Company's routine business decisions as to where to locate stores, offices and distribution facilities because all of these decisions implicate the decision to pay taxes in one jurisdiction rather than another. Or does "avoid" only mean an activity on which the Company is not required to pay any taxes? Is this intended to mean only business activities or would it extend, for instance, to the investment in tax exempt debt?

What standard is minimization measured against? Does "minimize" mean a comparison of the Company's actual tax rate to the statutory rate or to the effective rate in some previous period (and if so, what period)? Or does "minimize" mean a comparison of the amount of taxes actually paid by the Company as compared to prior periods (and if so, what periods) or to a theoretical amount that could have been paid if a different decision had been made (and if so, how does the Company determine what the correct theoretical base is)? For example, would the Company's recent decision to discontinue the A.J. Wright chain and reopen certain of the stores under other banners, a business decision that has significant tax consequences, be intended to be included in this report? Would the Company's decision to expand in one jurisdiction as opposed to another be covered, which would result in higher taxes in the jurisdiction of expansion and lower taxes where expansion was not undertaken? What about decisions as to the countries in which borrowing is done, or decisions as to something as fundamental as prices charged in stores in different tax jurisdictions?

How is the applicability of the Proposal to all "US federal, state or local corporate income taxes" to be applied to the determinations of "avoidance" and "minimization"? Is this determination to be made and reported on the basis of the smallest tax unit or is there some overall aggregation intended?

The Supporting Statement adds additional uncertainty to the meaning of the term "avoid". The Supporting Statement asks for a report of the Board's assessment of risks created by the Company's "tax avoidance practices". As described in the Supporting Statement, these tax avoidance practices are those related to "firm-specific stock price-crash risk" and involve "obfuscatory actions…bundled with diversionary activities, including earnings manipulation, that advance the interests of managers rather than shareholders." Is the Company intended to provide a risk assessment on only such practices?

Without definitions or other guidance for the critical words "to", "avoid" and "minimize" within the context of the phrase "actions TJX takes to avoid or minimize US federal, state or local corporate income taxes", the Proposal is vague and indefinite such that shareholders voting on the Proposal and the Company could interpret it differently, and as a result, the Company's implementation of the Proposal could differ materially from what was envisioned by the stockholders when voting on the Proposal.

The Staff has concurred for many years on the exclusion of vague and indefinite proposals under Rule 14a-8(i)(3). *See Eastman Kodak Co.* (March 3, 2003) (proposal seeking to cap executive salaries at one million dollars "to include bonus, perks, stock options" failed to define critical terms and gave no indication of how the options were to be valued); *Pfizer Inc.* (February 18, 2003) (proposal requesting that the board of directors "make all stock options to management and the Board of Directors at no less than the highest stock price" failed to define critical elements or otherwise provide guidance on what would be necessary to implement it); *General Electric Co.* (February 5, 2003) (proposal urging the board of directors to "seek shareholder approval of all compensation for Senior Executives and Board members not to exceed more than 25 times the average wage of hourly working employees" failed to define critical terms or otherwise provide guidance on how to measure those terms); *General Electric Co.* (January 23, 2003) (proposal seeking "an individual cap on salaries and benefits of one million dollars for G.E. officers and directors" failed to define the critical term "benefits" or otherwise provide guidance on how benefits should be measured for purposes of implementing the proposal). *See also American Telephone and Telegraph Co.* (January 12, 1990) (under prior Rule 14a-8(c)(3), which also prohibited vague and indefinite proposals, proposal that sought to prohibit a company from "interfering" with the "government policy" of certain foreign governments excludable, noting that "the proposal, if implemented, would require the Company to make highly subjective determinations concerning what constitutes 'interference' and 'government policies' as well as when the proscriptions of the proposal would apply").

Accordingly, we believe that the Proposal is excludable under Rule 14a-8(i)(3) because it is impermissibly misleading as a result of its vague and indefinite nature.

CONCLUSION

For the foregoing reasons, we request your confirmation that the Staff will not recommend any enforcement action to the Commission if the Proposal is omitted from the Company's 2011 Proxy Materials.

If the Staff has any questions with respect to the foregoing, or if for any reason the Staff does not agree that the Company may omit the Proposal from its 2011 Proxy Materials, please contact me at (508) 390-2777. I would appreciate if you would send your response by facsimile to me at (508) 390-5022 as well as to the Company's counsel, Ropes & Gray LLP to the attention of Mary Weber, at (617) 235-0222.

Very truly yours,

Ann McCauley

Ann McCauley
Executive Vice President & General Counsel

Enclosure(s)

cc: Charles Jurgonis, AFSCME Employees Pension Plan

Exhibit A

[see attached Proposal and Supporting Statement]

Resolved, that stockholders of the TJX Companies, Inc. ("TJX") request that TJX's board of directors annually assess the risks created by the actions TJX takes to avoid or minimize US federal, state and local corporate income taxes and provide a report to shareholders on the assessment, at reasonable cost and omitting proprietary information.

Supporting Statement:

TJX has $192 million set aside for tax reserves (TJX 2009 10-K, p. F-23). TJX acknowledges its income tax returns are subject to continuous examination by federal, state and local tax authorities in the US and foreign countries and that these matters could adversely affect its results and financial condition. (2009 10-K, p. 16).

One area where TJX's tax strategy has come under scrutiny involves its Nevada subsidiary NBC Fourth Realty Corp. ("NBC"), which owns TJX's trademarks. TJX stores in other states pay NBC fees for use of the trademarks, and these fees are deducted as business expenses from state tax returns. NBC's income is not subject to taxes in those states, nor is it subject to Nevada tax because Nevada does not tax income from intangible assets. In 2009, the Massachusetts Appellate Tax Board ruled that TJX could not deduct these payments to NBC, saying, "The sale and license-back transactions at issue in these appeals were sham transactions."

There is evidence that corporate tax avoidance can be harmful to shareholders. Professors Kim, Li and Zhang analyzed a large sample of US firms for the period 1995–2008 and found a positive relationship between corporate tax avoidance and firm-specific stock price crash risk (*Corporate Tax Avoidance and Stock Price Crash Risk*, July 2010). Professors Desai and Dharmapala conclude that "tax avoidance demands obfuscatory actions that can be bundled with diversionary activities, including earnings manipulation, to advance the interests of managers rather than shareholders." (*Earnings Management, Corporate Tax Shelters, and Book-Tax Alignment*, January 2009, p. 20).

The IRS has adopted Schedule UTP (Uncertain Tax Positions) for tax years beginning on January 1, 2010. Companies must report all tax positions for which a reserve was recorded or which the company expects to litigate. The IRS may use this new information to conduct more targeted tax audits.

Each year, approximately $60 billion in US tax revenue is lost to companies' income shifting, according to a study published in December 2009 in *National Tax Journal* by Kimberly Clausing. The US faces a large medium-term federal budget deficit and an unsustainable long-term fiscal gap (*Choosing the Nation's Fiscal Future;* Committee on the Fiscal Future of the United States, 2010).

As the federal, state and local governments seek new sources of revenue to address concerns over budget shortfalls, companies that rely on tax avoidance practices could be exposed to greater risk and decreasing earnings.

An annual report to TJX shareholders disclosing the board's assessment of the risks created by such strategies would allow shareholders to evaluate the risks to their investments.

We urge shareholders to vote for this proposal.

<u>Exhibit B</u>

[see attached Note K to the Consolidated Financial Statements in the fiscal 2010 Form 10-K]

K. Income Taxes

The provision for income taxes includes the following:

In thousands	Fiscal Year Ended **January 30, 2010**	January 31, 2009 (53 weeks)	January 26, 2008
Current:			
Federal	**$ 465,799**	$ 259,857	$ 375,799
State	**104,621**	27,376	94,727
Foreign	**114,195**	97,976	87,260
Deferred:			
Federal	**54,544**	126,816	(64,363)
State	**1,773**	23,955	(15,698)
Foreign	**(2,942)**	74	(70)
Provision for income taxes	**$ 737,990**	$ 536,054	$ 477,655

Income from continuing operations before income taxes includes foreign pre-tax income of $342.3 million in fiscal 2010, $292.6 million in fiscal 2009 and $260.8 million in fiscal 2008.

TJX had net deferred tax (liabilities) assets as follows:

In thousands	Fiscal Year Ended **January 30, 2010**	January 31, 2009
Deferred tax assets:		
Foreign tax credit carryforward	**$ 89,796**	$ 37,611
Reserve for discontinued operations	**11,813**	14,859
Pension, stock compensation, postretirement and employee benefits	**253,926**	238,557
Leases	**39,635**	38,889
Foreign currency and hedging	**3,743**	4,571
Computer Intrusion reserve	**8,722**	16,749
Other	**88,447**	83,483
Total deferred tax assets	**$ 496,082**	$ 434,719
Deferred tax liabilities:		
Property, plant and equipment	**$ 274,937**	$ 215,462
Capitalized inventory	**44,079**	44,102
Tradename	**42,873**	42,873
Undistributed foreign earnings	**193,252**	111,506
Other	**10,926**	12,109
Total deferred tax liabilities	**566,067**	426,052
Net deferred tax (liability) asset	**$ (69,985)**	$ 8,667

The fiscal 2010 net deferred tax liability is presented on the balance sheet as a current asset of $122.5 million and a non-current liability of $192.4 million. For fiscal 2009, the net deferred tax asset is presented on the balance sheet as a current asset of $135.7 million and a non-current liability of $127.0 million. TJX has provided for deferred U.S. taxes on all undistributed earnings from its Winners Canadian subsidiary, its Marshalls Puerto Rico subsidiary and its Italian subsidiary through January 30, 2010. All earnings of TJX's other foreign subsidiaries are considered indefinitely reinvested and no U.S. deferred taxes have been provided on those earnings. The net deferred tax (liability) asset summarized above includes deferred taxes relating to temporary differences at our foreign operations and amounted to an $18.9 million net liability as of January 30, 2010 and a $19.9 million net liability as of January 31, 2009.

In fiscal 2009, TJX's HomeGoods subsidiary utilized a Puerto Rico net operating loss carryforward of approximately $1.1 million which had not been previously recognized. There were no further Puerto Rico net operating losses as of the fiscal year ended January 31, 2009. TJX's German subsidiary, which is treated as a branch for U.S. tax purposes, incurred net operating losses of $11.4 million in fiscal 2010, $15.0 million in fiscal 2009 and $14.4 million in fiscal 2008 for tax and financial reporting purposes. The losses were fully utilized in each year to reduce TJX's current U.S. taxable income. Any future utilization of the losses in Germany will result in a corresponding amount of taxable income for U.S. tax purposes.

TJX established valuation allowances against certain deferred tax assets which may not be realized in future years. The amount of the valuation allowances was $3.9 million as of January 30, 2010 and $6.2 million as of January 31, 2009.

TJX's worldwide effective income tax rate was 37.8% for fiscal 2010, 36.9% for fiscal 2009, and 37.9% for fiscal 2008. The difference between the U.S. federal statutory income tax rate and TJX's worldwide effective income tax rate is reconciled below:

	Fiscal Year Ended		
	January 30, 2010	January 31, 2009	January 26, 2008
		(53 weeks)	
U.S. federal statutory income tax rate	**35.0%**	35.0%	35.0%
Effective state income tax rate	**4.3**	2.8	4.1
Impact of foreign operations	**(0.6)**	(0.1)	(0.6)
Impact of repatriation of foreign earnings	**—**	—	(0.4)
All other	**(0.9)**	(0.8)	(0.2)
Worldwide effective income tax rate	**37.8%**	36.9%	37.9%

The increase in TJX's effective state income tax rate for fiscal 2010 as compared to fiscal 2009 is primarily attributed to the settlement, in fiscal 2009, of several state tax audits and the resulting reduction to our reserves for uncertain tax positions. In the first quarter of fiscal 2008, TJX adopted the provisions for recognizing and measuring tax positions taken or expected to be taken in a tax return that affect amounts reported in the financial statements. As a result of the implementation, TJX recognized a charge of approximately $27.2 million to its retained earnings balance at the beginning of fiscal 2008. TJX had net unrecognized tax benefits of $121.0 million as of January 30, 2010, $129.9 million as of January 31, 2009 and $140.7 million as of January 26, 2008.

A reconciliation of the beginning and ending gross amount of unrecognized tax benefits is as follows:

In thousands	**January 30, 2010**	January 31, 2009	January 26, 2008
Balance at beginning of year or date of implementation	**$ 202,543**	$ 232,859	$ 188,671
Additions for uncertain tax positions taken in current year	**59,301**	59,807	30,811
Additions for uncertain tax positions taken in prior years	**1,444**	1,848	52,328
Reductions for uncertain tax positions taken in prior years	**(53,612)**	(80,959)	(36,474)
Reductions resulting from lapse of statute of limitations	**(3,267)**	(2,002)	(307)
Settlements with tax authorities	**(14,668)**	(9,010)	(2,170)
Balance at end of year	**$ 191,741**	$ 202,543	$ 232,859

Included in the gross amount of unrecognized tax benefits are items that will not impact future effective tax rates upon recognition. These items amount to $57.6 million as of January 30, 2010, $49.3 million as of January 31, 2009 and $67.8 million as of January 26, 2008.

TJX is subject to U.S. federal income tax as well as income tax in multiple state, local and foreign jurisdictions. In nearly all jurisdictions, the tax years through fiscal 2001 are no longer subject to examination.

TJX's accounting policy is to classify interest and penalties related to income tax matters as part of income tax expense. The amount of interest and penalties expensed was $7.6 million for the year ended January 30, 2010, $15.3 million for the year ended January 31, 2009 and $16.2 million for the year ended

January 26, 2008. The accrued amounts for interest and penalties are $50.6 million as of January 30, 2010, $51.1 million as of January 31, 2009 and $52.5 million as of January 26, 2008.

Based on the final resolution of tax examinations, judicial or administrative proceedings, changes in facts or law, expirations of statute of limitations in specific jurisdictions or other resolutions of, or changes in, tax positions; it is reasonably possible that unrecognized tax benefits for certain tax positions taken on previously filed tax returns may change materially from those represented on the financial statements as of January 30, 2010. During the next twelve months, it is reasonably possible that such circumstances may occur that would have a material effect on previously unrecognized tax benefits. As a result, the total net amount of unrecognized tax benefits may decrease, which would reduce the provision for taxes on earnings by a range estimated at $1.0 million to $49.0 million