



DIVISION OF  
CORPORATION FINANCE

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

March 18, 2022

Ronald O. Mueller  
Gibson, Dunn & Crutcher LLP

Re: Intel Corporation (the "Company")  
Incoming letter dated January 6, 2022

Dear Mr. Mueller:

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

The Proposal requests that the Company prepare a report to shareholders on whether, and/or to what extent, the public display of the pride flag has impacted current, and to the extent reasonable, past and prospective employees' view of the company as a desirable place to work.

There appears to be some basis for your view that the Company may exclude the Proposal under Rule 14a-8(i)(7). In our view, the Proposal relates to, and does not transcend, ordinary business matters. Accordingly, we will not recommend enforcement action to the Commission if the Company omits the Proposal from its proxy materials in reliance on Rule 14a-8(i)(7).

Copies of all of the correspondence on which this response is based will be made available on our website at <https://www.sec.gov/corpfin/2021-2022-shareholder-proposals-no-action>.

Sincerely,

Rule 14a-8 Review Team

cc: Chris Hotz

January 6, 2022

VIA E-MAIL

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

Re: *Intel Corporation*  
*Stockholder Proposal of Chris Hotz*  
*Exchange Act of 1934—Rule 14a-8*

Ladies and Gentlemen:

This letter is to inform you that our client, Intel Corporation (the “Company”), intends to omit from its proxy statement and form of proxy for its 2022 Annual Stockholders Meeting (collectively, the “2022 Proxy Materials”) a stockholder proposal (the “Proposal”) and statements in support thereof (the “Supporting Statement”) received from Chris Hotz (the “Proponent”).

Pursuant to Rule 14a-8(j), we have:

- filed this letter with the Securities and Exchange Commission (the “Commission”) no later than eighty (80) calendar days before the Company intends to file its definitive 2022 Proxy Materials with the Commission; and
- concurrently sent copies of this correspondence to the Proponent.

Rule 14a-8(k) and Staff Legal Bulletin No. 14D (Nov. 7, 2008) (“SLB 14D”) provide that stockholder proponents are required to send companies a copy of any correspondence that the proponents elect to submit to the Commission or the staff of the Division of Corporation Finance (the “Staff”). Accordingly, we are taking this opportunity to inform the Proponent that if the Proponent elects to submit additional correspondence to the Commission or the Staff with respect to the Proposal, a copy of that correspondence should be sent at the same time to the undersigned on behalf of the Company pursuant to Rule 14a-8(k) and SLB 14D.

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## THE PROPOSAL

The Proposal states:

**Resolved:** Shareholders request Intel prepare a report to shareholders on whether, and/or to what extent, the public display of the pride flag has impacted current, and to the extent reasonable, past and prospective employee's view of the company as a desirable place to work. The report should be prepared at reasonable cost and effort.

A copy of the Proposal and the Supporting Statement, as well as related correspondence with the Proponent, is attached to this letter as Exhibit A.

## BASIS FOR EXCLUSION

We believe that the Proposal may properly be excluded from the 2022 Proxy Materials pursuant to Rule 14a-8(i)(7) because the Proposal addresses the Company's management of its workforce and therefore deals with matters relating to the Company's ordinary business operations.

## ANALYSIS

### **The Proposal May Be Excluded Under Rule 14a-8(i)(7) Because It Involves Matters Related To The Company's Ordinary Business Operations.**

As discussed below, the Proposal may be omitted because it relates to the Company's management of its workforce—including how the Company communicates about its employment policies and attracts, hires or retains employees—and does not transcend the Company's ordinary business operations.

#### *A. Background On The Ordinary Business Standard Under Rule 14a-8(i)(7)*

Pursuant to Rule 14a-8(i)(7), a stockholder proposal may be excluded from a company's proxy materials if it "deals with a matter relating to the company's ordinary business operations." According to the Commission release accompanying the 1998 amendments to Rule 14a-8, the term "ordinary business" "refers to matters that are not necessarily 'ordinary' in the common meaning of the word," but instead the term "is rooted in the corporate law concept providing management with flexibility in directing certain core matters involving the company's business and operations." Exchange Act Release No. 40018 (May 21, 1998) (the "1998 Release").

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In the 1998 Release, the Commission stated that the underlying policy of the ordinary business exclusion is “to confine the resolution of ordinary business problems to management and the board of directors, since it is impracticable for shareholders to decide how to solve such problems at an annual shareholders meeting,” and identified two central considerations that underlie this policy. As relevant here, one consideration is 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.” Accordingly, even if a proposal touches upon a significant policy issue, the proposal may be excludable on ordinary business grounds if the proposal does not transcend a company’s ordinary business.

The 1998 Release distinguishes proposals pertaining to ordinary business matters from those involving “significant social policy issues,” the latter of which are not excludable under Rule 14a-8(i)(7) because they “transcend the day-to-day business matters and raise policy issues so significant that it would be appropriate for a stockholder vote.” *Id.* Examples of the tasks cited by the Commission include “*management of the workforce, such as the hiring, promotion, and termination of employees, decisions on production quality and quantity, and the retention of suppliers.*” 1998 Release (emphases added). When assessing proposals under Rule 14a-8(i)(7), the Staff considers the terms of the resolution and its supporting statement as a whole. *See* Staff Legal Bulletin No. 14C, part D.2 (June 28, 2005) (“In determining whether the focus of these proposals is a significant social policy issue, we consider both the proposal and the supporting statement as a whole.”)

A stockholder proposal being framed in the form of a request for a report does not change the nature of the proposal. The Commission has stated that a proposal requesting the dissemination of a report may be excludable under Rule 14a-8(i)(7) if the subject matter of the report is within the ordinary business of the issuer. *See* Exchange Act Release No. 20091 (Aug. 16, 1983). In addition, the Staff has indicated that “[where] the subject matter of the additional disclosure sought in a particular proposal involves a matter of ordinary business . . . it may be excluded under [R]ule 14a-8(i)(7).” *Johnson Controls, Inc.* (avail. Oct. 26, 1999).

*B. The Proposal May Be Excluded Under Rule 14a-8(i)(7) Because It Relates To The Company’s Management Of Its Workforce.*

The Proposal requests that the Company report on how current, past and prospective employees view one of the Company’s communication practices that is used in support of the Company’s nondiscrimination, diversity and inclusion policies. Specifically, the Proposal requests that the Company annually report on “whether, and/or to what extent, the public display of the pride flag has impacted” how current, former and prospective employees view “the [C]ompany as a desirable place to work.” The Supporting Statement instructs that input

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for such reports is to be sought from “those *employed, terminated or interviewed*” within specified periods (emphasis added). In support of the requested report, the Proposal’s recitals assert that success in the Company’s “highly competitive market” depends on “the [C]ompany’s *ability to hire and retain* the most talented employees” and that taking “a public stance on issues related to politics, religion, or deeply held moral beliefs” can impact “an employee’s *decision to join or stay* with a company” (emphases added). The recitals go on to frame the Company’s pride flag display as public and visible alignment “with the LGBTQ Pride movement” and express concern that such a stance could impact shareholder value.

As part of the Company’s commitment to nondiscrimination and to provide a diverse workplace, the Company has developed policies and programs to foster an inclusive environment to support the Company’s workforce. One aspect of the Company’s efforts to create a diverse and inclusive culture is its focus on building awareness and inclusion around the Company’s Lesbian, Gay, Bisexual, Transgender and Queer/Questioning (LGBTQ) community of employees. Display of the pride flag is one way in which the Company communicates both within the Company and to the general public its support of diversity and policies of nondiscrimination and inclusion to prospective and current employees, stakeholders and the communities in which the Company operates.

The Proposal is directly focused on both how the Company communicates with its employees about its employment policies, and how the Company attracts and retains qualified employees. The Commission and Staff have long concurred that these issues relate to companies’ ordinary business operations and do not raise significant policy issues because they relate to a company’s management of its workforce. As discussed above, the Commission recognized in the 1998 Release that “management of the workforce” is “fundamental to management’s ability to run a company on a day-to-day basis.” 1998 Release. Consistent with the 1998 Release, the Staff has recognized that proposals pertaining to the management of a company’s workforce are excludable under Rule 14a-8(i)(7). This is because proposals addressing how a company manages its relationships with its employees, including how employee-related policies are implemented, interpreted and communicated to employees, implicate complex considerations that are not appropriately addressed through the shareholder proposal process. For example, in *Costco Wholesale Corp.* (avail. Nov. 14, 2014, recon. denied Jan 5, 2015), the Staff concurred with the exclusion of a proposal requesting adoption of a company-wide Code of Conduct including an anti-discrimination policy that protects employees’ right to engage in political and civic activities, viewing the proposal as “relating to [the company’s] ordinary business operations” and, in particular, “policies concerning [the company’s] employees”. *See also Amazon.com, Inc.* (avail. Apr. 1, 2020, *Comm. review denied* Apr. 9, 2020) (concurring with the exclusion of a proposal requesting a report on steps the company has taken to reduce the risk of accidents because “the [p]roposal focuses on workplace accident prevention, an ordinary

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business matter”); *Walmart Inc.* (avail. Apr. 8, 2019) (“*Walmart 2019*”) (concurring with the exclusion of a proposal requesting a report evaluating the risk of discrimination that may result from the company’s policies and practices for hourly workers taking absences from work for personal or family illness because it related “generally to the [c]ompany’s management of its workforce, and [did] not focus on an issue that transcends ordinary business matters”); *Northrop Grumman Corp.* (avail. Mar. 18, 2010) (concurring with the exclusion of a proposal requesting the board provide certain disclosures in the context of the company’s reduction-in-force review process and noting “[p]roposals concerning a company’s management of its workforce are generally excludable under [R]ule 14a-8(i)(7)”).

Notably, the Staff has concurred with the exclusion of a similar proposal submitted to the Company by the Proponent as relating to the Company’s ordinary business operations.<sup>1</sup> See *Intel Corp.* (avail. Mar. 6, 2020) (“*Intel 2020*”). In *Intel 2020*, the proposal requested that the Company “refrain from publicly displaying the pride flag.” The supporting statements suggested that the Company’s “intended message to the public and employees” was that the Company “does not discriminate against LGBTQ individuals in its hiring, promotion, or retention practices,” and noted that “the intended non-discrimination message is desirable to ensure Intel is able to achieve its goal to hire and retain the most qualified person for each position within the [C]ompany.” Similar to the recitals here, the supporting statements expressed concern that “unintended messages” from the pride flag’s display “put that same goal at risk” (i.e., could hinder hiring and retention efforts), then asserted that the Company “should find an alternative to the pride flag for publicly conveying the [C]ompany’s non-discrimination message.” The Company argued in its no-action request that the proposal therefore focused on how the Company communicates with its employees about its employment policies and, indirectly, how best to attract and retain qualified employees, which did not raise a significant policy issue, but related to the ordinary business matters of workplace policies and procedures and the communication of such policies and procedures to employees. The Staff concurred with the proposal’s exclusion under Rule 14a-8(i)(7). Here, although the nature of the request has changed, the Proposal is nonetheless focused on the same ordinary business matters the Staff has previously agreed implicate the Company’s ordinary business operation. In fact, the Proposal is even more squarely focused on ordinary

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<sup>1</sup> The Proposal marks the fourth proposal in as many years that the Proponent has submitted related to the Company’s public display of the pride flag. See *Intel Corp.* (avail. Mar. 12, 2021) (concurring with the exclusion of a proposal requesting the Company “refrain from publicly displaying the pride flag” as seeking to micromanage the Company); *Intel Corp.* (avail. Mar. 15, 2019) (concurring with the exclusion of a proposal requesting the Company update certain policies, websites, and communications to include a statement that “Intel affirms and believes all that the Pride flag and Gay Pride movement it is associated with represent or assert to be right and true” as seeking to micromanage the Company “by dictating that the Company must adopt a specific policy position and prescribing how the Company must communicate that policy position”).

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business matters than the proposal in *Intel 2020*, expressly requesting a review of the connection between the Company's communication of its employment nondiscrimination and related policies through the pride flag display and its efforts to recruit and hire employees, with input sought solely from individuals "employed, terminated or interviewed" during specific periods of time in which the Company was communicating its policies.

In similar contexts, the Staff has consistently concurred that proposals addressing how companies implement workplace policies are excludable under Rule 14a-8(i)(7). In *Amazon.com, Inc.* (avail. Mar. 6, 2019) ("*Amazon 2019*"), the proposal urged the board to adopt a policy that the company would not engage in any "[i]nequitable [e]mployment [p]ractice" such as mandatory arbitration of certain claims or non-compete agreements with employees. The company argued that decisions regarding the employment arrangements outlined in the proposal were "multifaceted, complex, and based on factors beyond the knowledge and expertise of shareholders, such as the amount of compensation associated with such arrangements, competitive practices in different lines of business or geographic regions, and differing legal regimes" and that deciding whether to implement the requested policy would "require an understanding of [c]ompany-specific effects across tens or hundreds of thousands of employees who are employed in a wide range of positions around the world, and thus would be impractical for shareholders voting at an annual meeting." The Staff concurred with the proposal's exclusion because it related "generally to the [c]ompany's policies concerning its employees, and [did] not focus on an issue that transcends ordinary business matters." Similarly, in *The Walt Disney Co.* (avail. Nov. 24, 2014, *recon. denied* Jan. 5, 2015), the Staff permitted exclusion of a proposal requesting that the company "consider the possibility of adopting anti-discrimination principles that protect employees' human right[s]" relating to engaging in political and civic expression. The company argued that the adoption of such principles involved "decisions with respect to, and modifications of the way the company manages its workforce and employee relations" that were "multi-faceted, complex and based on a range of factors beyond the knowledge and expertise of the shareholders." In concurring with the proposal's exclusion, the Staff again affirmed that "policies concerning [the companies'] employees" relate to companies' ordinary business operations covered by Rule 14a-8(i)(7) and are thus excludable on that basis. In *Merck & Co.* (avail Dec. 29, 2005) ("*Merck 2005*"), the Staff concurred in the exclusion of a proposal requiring that the company communicate to its employees and stockholders all reports and allegations of, and investigations and actions taken in response to, violations of the law and professional misconduct. The company argued that communications with its employees were "fundamental to the conduct of ordinary business operations of the [c]ompany." In its response, the Staff noted that the proposal's requested communications related to the company's "management of the workplace" and thus, was excludable under Rule 14a-8(i)(7). *See also Intel Corp.* (avail.

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Mar. 18, 1999) (concurring with the exclusion of a proposal requesting an employee bill of rights).

The proposal's focus on "the [C]ompany's ability to hire and retain the most talented employees" does not elevate the proposal beyond an ordinary business matter. In the 1998 Release, the Commission specifically identified "the hiring, promotion and termination of employees" as matters relating to the management of the workforce. 1998 Release. Similarly, in *United Technologies Corp.* (avail. Feb. 19, 1993), the Staff provided the following examples of topics that involve a company's ordinary business and thus make a proposal excludable under Rule 14a-8(i)(7): "employee health benefits, general compensation issues not focused on senior executives, *management of the workplace*, employee supervision, *labor-management relations*, *employee hiring and firing*, conditions of the employment and employee training and motivation" (emphases added). The Staff has consistently recognized that proposals pertaining to these matters are excludable under Rule 14a-8(i)(7).

For example, the proposal in *Merck & Co., Inc.* (avail. Mar. 6, 2015) ("*Merck 2015*") requested that the company fill only entry-level positions with outside candidates and adopt a policy of developing individuals for its higher-level positions exclusively from employees meeting certain standards. The Staff concurred that the proposal could be excluded under Rule 14a-8(i)(7) because "the proposal relate[d] to procedures for hiring and promoting employees." See also *Starwood Hotels & Resorts Worldwide, Inc.* (avail. Feb. 14, 2012) (concurring with the exclusion of a proposal requesting verification and documentation of U.S. citizenship for the company's U.S. workforce and requiring training for foreign workers in the U.S. to be minimized because it "relates to procedures for hiring and training employees" and "[p]roposals concerning a company's management of its workforce are generally excludable under Rule 14a-8(i)(7)"); *Wells Fargo & Co.* (avail. Feb. 22, 2008) (concurring that a proposal requesting a policy stating that the company would not employ individuals who worked at a credit rating agency within the last year could be excluded because it related to "ordinary business operations (i.e., the termination, hiring, or promotion of employees)").

Like the proposals excluded in the precedent above, the Proposal relates to how the Company manages its workforce; specifically, how the Company communicates about workforce-related policies both before and after hiring and attracts or retains employees as a result. By seeking a review of how the Company's method for communicating its existing policies impacts hiring and retention, the Proposal does not raise a significant policy issue, but instead implicates the types of complex workplace-oriented matters that Rule 14a-8(i)(7) is intended to address, just like the proposals in *Intel 2020*, *Amazon 2019*, *The Walt Disney Co.* and *Merck 2005*. Moreover, the Supporting Statement makes clear the requested report



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should be based on “input from all those employed, terminated or interviewed during past years in which the [C]ompany has displayed the pride flag,” further demonstrating that the Proposal is focused squarely on how the Company communicates its employment nondiscrimination, diversity and inclusion policies. Decisions regarding how the Company communicates with respect to its employment policies involve workforce management considerations that are, like those addressed in the proposal in *The Walt Disney Co.*, “multi-faceted, complex and based on a range of factors beyond the knowledge and expertise of the shareholders.” The Proposal is thus analogous to the proposals in *Intel 2020*, *Merck 2015*, *Amazon 2019*, *The Walt Disney Co.* and *Merck 2005* in that it focuses on the Company’s employee relationships through its employment policies and the Company’s communications with its current and prospective employees. Workplace policies and procedures, and the communication of such policies and procedures to its employees, are complex but routine aspects of managing the Company’s ordinary business operations.

*C. The Proposal Does Not Focus On A Significant Policy Issue That Transcends The Company’s Ordinary Business Operations.*

The well-established precedent set forth above demonstrates that the Proposal addresses ordinary business matters and, therefore, is excludable under Rule 14a-8(i)(7) because it relates to the Company’s management of its workforce. Because the Proposal focuses on one very narrow and discrete aspect of how the Company communicates with current and prospective employees regarding its employment nondiscrimination, diversity and inclusion policies, it does not transcend the Company’s ordinary business. It is well established that the fact a proposal may touch upon or address issues such as employment discrimination (or in this case, nondiscrimination) does not automatically result in a proposal transcending ordinary business.

For example, in *Deere & Co.* (avail. Nov. 14, 2014, *recon. denied* Jan. 5, 2015), the proposal requested that the company adopt an employee code of conduct that included an anti-discrimination policy “that protects employees’ human right[s] to engage in the political process, civic activities and public policy of his or her country without retaliation.” The proposal asserted that corporations that prohibited discrimination on those bases “have a competitive advantage in recruiting and retaining employees from the widest possible talent pool,” while employee discrimination on such bases “diminishes employee morale and productivity.” The company argued in its correspondence with the Staff that the proposal involved ordinary business matters such as “relations between [a] company and its employees” and “management of the employee workforce,” and that “a handful of references to human rights [did] not transform the [p]roposal into a significant policy issue or override the clear ordinary business aspect of the [p]roposal.” The Staff concurred, explaining that the proposal related to the company’s “policies concerning its employees” and thus

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implicated the company's ordinary business operations. *See also Walmart 2019* (concurring with the exclusion of a proposal requesting a report evaluating the risk of discrimination that may result from the company's policies and practices for hourly workers taking absences from work for personal or family illness because it related "generally to the [c]ompany's management of its workforce, and [did] not focus on an issue that transcends ordinary business matters"); *CVS Health Corp.* (avail. Feb. 27, 2015) (concurring with the exclusion of a proposal requesting that the company "amend its equal employment opportunity policy . . . to explicitly prohibit discrimination based on political ideology, affiliation or activity," finding that the proposal did not focus on a significant social policy issue, as it related to the company's policies "concerning its employees").

Here, notwithstanding the Proposal's references to nondiscrimination, the Proposal is focused on one specific aspect of how the Company communicates about one of its nondiscrimination, diversity and inclusion policies and management of the workforce. Accordingly, even more so than the proposals in *Costco Wholesale Corp.*, *Deere & Co.* and the other precedent cited above, the Proposal's request does not transcend the ordinary business considerations of the Company to focus on a significant policy issue on which it is appropriate for stockholders to vote.

## CONCLUSION

Based upon the foregoing analysis, we respectfully request that the Staff concur that it will take no action if the Company excludes the Proposal from its 2022 Proxy Materials.

We would be happy to provide you with any additional information and answer any questions that you may have regarding this subject. Correspondence regarding this letter should be sent to [shareholderproposals@gibsondunn.com](mailto:shareholderproposals@gibsondunn.com). If we can be of any further assistance in this matter, please do not hesitate to call me at (202) 955-8671 or Alex Shukhman, the Company's Associate Director, Corporate Legal Group, at (408) 653-8407.

Sincerely,



Ronald O. Mueller

Enclosures

cc: Alex Shukhman, Intel Corporation  
Chris Hotz

**EXHIBIT A**

**From:** Chris Hotz [REDACTED]  
**Date:** November 4, 2021 at 7:51:45 AM CDT  
**To:** [corporate.secretary@intel.com](mailto:corporate.secretary@intel.com)  
**Subject:** **shareholder proposal**

Please find attached my shareholder proposal for the 2022 Intel shareholders meeting, as well as my signed letter of intent to maintain ownership of the requisite number of shares.

Please confirm receipt,  
Chris Hotz

**Whereas:** Intel operates in a highly competitive market in which success (and thus shareholder value) is dependent on the company's ability to hire and retain the most talented employees. To the extent that a company takes a public stance on issues related to politics, religion, or deeply held moral beliefs, said stance can have an impact on an employee's decision to join or stay with a company.

Intel, for several years, has publicly and visibly aligned itself with the LGBTQ Pride movement through the display of the pride flag at many of its campuses throughout the month of June.

Proponents believe this public stance could have an impact on long-term shareholder value, and that an analysis is beneficial to determine whether that impact is positive, negative, or neutral.

**Resolved:** Shareholders request Intel prepare a report to shareholders on whether, and/or to what extent, the public display of the pride flag has impacted current, and to the extent reasonable, past and prospective employee's view of the company as a desirable place to work. The report should be prepared at reasonable cost and effort.

**Supporting Statement:** The initial report should attempt to include input from all those employed, terminated, or interviewed during past years in which the company has displayed the pride flag. Following that, an annual report (for years in which the pride flag is raised), based on those employed, terminated, or interviewed in that same year should be provided. The report should exclude any proprietary or privileged information, and respect the privacy of those surveyed. Care should be taken to ensure that those from whom input is requested are able to answer anonymously, such that there is no concern of reprisals based on their response.

Chris Hotz



I, Chris Hotz do confirm my commitment to maintain ownership of the 102 shares of Intel stock acquired on 7/22/2019 via vesting of RSU grant [REDACTED] up to and throughout the Intel 2022 shareholders meeting.

Chris Hotz  
Sign

11/4/2021  
Date

**From:** [Chris Hotz](#)  
**To:** [ShareholderProposals](#)  
**Cc:** [Walter, Geoffrey E.](#); [alex.shukhman@intel.com](mailto:alex.shukhman@intel.com); [shareholderproposals@gibsondunn.com](mailto:shareholderproposals@gibsondunn.com)  
**Subject:** Intel Corporation, Shareholder Proposal of Chris Hotz  
**Date:** Sunday, January 30, 2022 11:56:24 PM

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

Re: Intel Corporation  
Stockholder Proposal of Chris Hotz  
Securities Exchange Act of 1934—Rule 14a-8

Ladies and Gentlemen:

This letter is a response to the "intent to omit" correspondence from Alex Shukhman of Intel Corporation (the "Company"), which was sent on Jan 6, 2022, related to a stockholder proposal (the "Proposal") received from Chris Hotz (the "Proponent").

Proponent asserts that the Company's analysis of the basis for exclusion of the Proposal under Rule 14a-8 is faulty and that no such exclusion is thus supported. The Company's analysis held that the basis for exclusion was that the public display of the Pride flag (the subject matter of the Proposal) related to the Company's management of its workforce - including how the Company communicates about its employment policies.

Proponent asserts that it is beyond the Company's capacity to control or discern the specific message which is delivered through the public display of the Pride flag. The categorization of the Pride flag as communicating the Company's "support of diversity and policies of nondiscrimination and inclusion" is conjecture and without basis for support.

The Company further stated that "The Proposal is directly focused on both how the Company communicates with *its employees* about its employment policies, and how the Company attracts and retains qualified employees" (emphasis added). Were it the case that the subject matter was a display of the Pride flag that was solely accessible by employees, such as an internal Company website, inside Company buildings, or limited to locations within the Company's grounds which were not accessible or visible to the public, Proponent would concede that such displays could be classified as communication between the Company and its employees. However the focus of the Proposal is on the *public* display of the Pride flag. This makes the primary function of the display a means of communication between the Company and the general public. The Company acknowledges that the general public is a target of the communication (but fails to afford it status as primary). Proponent acknowledges that employees may also receive the communication, but asserts it is a side effect of their being part of the general public and their geographical proximity to the display. As the display is public, communication with employees is not its fundamental or primary function.

Thus, the focus of the Proposal is fundamentally a communication between the Company and the general public related to a significant social policy issue. This does not relate to the Company's ordinary business operations, and thus is not excludable.

Furthermore, if the Commission allows for this assertion that such displays fall within the definition of the Company's "ordinary business operations", it establishes a dangerous precedent. All companies would thus be able to make public endorsements (for or against) other significant social policy issues and shield such endorsements from shareholder action by making the similar claim that the endorsement communicated a specific message which that company determined, and that the endorsement was visible to employees and thus related to management of the workforce. In the current Proposal the example is the Pride flag, but in the future, based on the precedent thus established, it could be a public display about traditional marriage, black lives matter, white supremacy, abortion, global warming, immigration, vaccination status, or even the endorsement of particular political parties.

We urge the Commission to reject the Company's assertions that this Proposal may be excluded and allow shareholders to have their say. If I can be of any further assistance in this matter, please do not hesitate to call me at [REDACTED] PII

Cordially,  
Chris Hotz