December 21, 2017

Gene D. Levoff
Apple Inc.
glevoff@apple.com

Re: Apple Inc.
Incoming letter dated October 9, 2017

Dear Mr. Levoff:

This letter is in response to your correspondence dated October 9, 2017 and November 20, 2017 concerning the shareholder proposal (the “Proposal”) submitted to Apple Inc. (the “Company”) by Michael and Honore Connor (the “Proponents”) for inclusion in the Company’s proxy materials for its upcoming annual meeting of security holders. We also have received correspondence on the Proponents’ behalf dated November 1, 2017 and December 5, 2017. Copies of all of the correspondence on which this response is based will be made available on our website at http://www.sec.gov/divisions/corpfin/cf-noaction/14a-8.shtml. For your reference, a brief discussion of the Division’s informal procedures regarding shareholder proposals is also available at the same website address.

Sincerely,

Matt S. McNair
Senior Special Counsel

Enclosure

cc: Sanford Lewis
sanfordlewis@strategiccounsel.net
Response of the Office of Chief Counsel
Division of Corporation Finance

Re: Apple Inc.
Incoming letter dated October 9, 2017

The Proposal requests that the Company publish a report on its role in promoting freedom of expression.

There appears to be some basis for your view that the Company may exclude the Proposal under rule 14a-8(i)(11). We note that the Proposal is substantially duplicative of a previously submitted proposal that will be included in the Company’s 2018 proxy materials. 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)(11). In reaching this position, we have not found it necessary to address the alternative basis for omission upon which the Company relies.

Sincerely,

Evan S. Jacobson
Special Counsel
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 proposal 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 and rules administered by the Commission, including arguments as to whether or not activities proposed to be taken would violate 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 adversarial procedure.

It is important to note that the staff’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 company’s management omit the proposal from the company’s proxy materials.
December 5, 2017

Via electronic mail

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

Re: Shareholder Proposal to Apple Inc. Regarding Freedom of Expression on Behalf of Michael and Honore Connor – Supplemental Reply, including response to the Apple Board of Directors

Ladies and Gentlemen:

Michael and Honore Connor (the “Proponents”) are beneficial owners of common stock of Apple Inc. (the “Company”) and have submitted a shareholder proposal (the “Proposal”) to the Company. I have been asked by the Proponent to respond to the supplemental letter dated November 20, 2017 (“Company’s Supplemental Letter”) sent to the Securities and Exchange Commission by Gene D. Levoff on behalf of the Company. The Company sent its original no action request on October 9, and the Proponent responded on November 1, 2017.

The Company’s Supplemental Letter further discusses assertions that the Proposal may be excluded from the Company’s 2018 proxy statement, including statements that the Board of Directors has “concluded” that the Proposal’s subject matter is a matter of ordinary business for the Company and not an appropriate topic for a shareholder proposal.

This correspondence represents one of the first opportunities for an investor to respond in a no action reply to a Board of Directors opinion submitted pursuant to the new SEC Staff Legal Bulletin 14I issued on November 1, 2017. Because this presents a matter of first impression for the Staff and Commission, our letter will at times speak to fundamentals regarding the shareholder proposal process and the functioning of Rule 14a-8. It will also include a proponent’s perspective on the manner in which the SEC Staff can consider Board of Directors’ “opinions” on ordinary business while still fulfilling the Commission’s investor protection duties.

Our supplemental response today responds to the board’s conclusion and further information regarding the issue of substantial duplication with the Jing Zhao human rights committee proposal. A copy of this response letter is being emailed concurrently to Gene D. Levoff and the Apple Board of Directors.
UPDATED BACKGROUND

The importance of this Proposal has only grown since our initial reply. In November and early December, the sense of urgency and visibility of these issues of freedom of expression associated with Apple and targeted by the proposal have grown in visibility and number.

In the Washington Post of December 4, 2017, it was reported that the CEO of Apple seem to have stepped into very hot water by seeming to support the whitewashing of China’s censorship in a gathering in China that, in shades of doublespeak, touts China’s “open Internet:”

“The theme of this conference — developing a digital economy for openness and shared benefits — is a vision we at Apple share,” Cook said, in widely reported remarks. “We are proud to have worked alongside many of our partners in China to help build a community that will join a common future in cyberspace.”

Chinese media welcomed Cook’s endorsement, with the nationalist Global Times declaring in a headline that “Consensus grows at Internet conference.”

* * *

Free speech and human rights advocates were less impressed.

“Cook’s appearance lends credibility to a state that aggressively censors the internet, throws people in jail for being critical about social ills, and is building artificial intelligence systems that monitors everyone and targets dissent,” Maya Wang at Human Rights Watch in Hong Kong wrote in an email.

“The version of cyberspace the Chinese government is building is a decidedly dystopian one, and I don’t think anyone would want to share in this ‘common future.’ Apple should have spoken out against it, not endorsed it.”

The full article is appended to this letter as Exhibit A.

In late November Apple made another compromise to the Chinese government that undermines freedom of expression – i.e., removing Skype from its App Store in China. The New York Times reported:

SHANGHAI — One of the last foreign-run tools for online communication in China appears to be in trouble with the authorities here.

For almost a month, Skype, the internet phone call and messaging service, has been unavailable on a number of sites where apps are downloaded in China, including Apple’s app store in the country.

“We have been notified by the Ministry of Public Security that a number of voice over internet protocol apps do not comply with local law. Therefore these apps have been

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removed from the app store in China,” an Apple spokeswoman said Tuesday in an
emailed statement responding to questions about Skype’s disappearance from the app
store. “These apps remain available in all other markets where they do business.”

The removal led to a volley of complaints from Chinese users on internet message
boards who were no longer able to pay for Skype’s services through Apple. The users
said that the disruption began in late October.

Skype, which is owned by Microsoft, still functions in China, and its fate in the country
is not yet clear. But its removal from the app stores is the most recent example of a
decades-long push by China’s government to control and monitor the flow of
information online.

In addition, since responding to the original no action request, we’ve learned of the 2017
Ranking Digital Rights Corporate Accountability Index, which evaluates 22 of the world’s
most powerful telecommunications, internet, and mobile companies on their public
commitments and disclosed policies affecting users’ freedom of expression and privacy. The
report found:

“Apple ranked seventh among the 12 internet and mobile ecosystem companies
evaluated. A major reason for this relatively low score was poor disclosure about the
company’s commitments and policies affecting users’ freedom of expression.

Next to its peers, Apple also offered little disclosure about how it has institutionalized
commitments to users’ rights through corporate governance, oversight, and
accountability mechanisms.”

“While all companies fall short, Google’s Android had stronger disclosure of policies
pertaining to users’ freedom of expression and privacy than Apple’s iOS or Samsung’s
implementation of Android. The starkest differences were in the Governance and
Freedom of Expression categories—in both categories, Google led both Apple and
Samsung by a wide margin. Google made stronger commitments to protect users’
freedom of expression rights at the company-wide level and provided stronger
disclosure of policies that affect these rights for Android users.

“Apple, by contrast, disclosed a commitment to protect users’ privacy at the company
level but made no such commitment to protect freedom of expression—and had
similarly weak disclosure of policies that affect freedom of expression for iOS users…

- “Despite its strong public defense of users’ privacy, Apple disclosed no clear
  commitments or policies demonstrating respect for users’ freedom of expression.

- “Apple disclosed how it handles and complies with government requests to hand over
  user information, but published no data about government or private requests it
  receives to restrict content or to remove apps from its app store.”

3 https://rankingdigitalrights.org/index2017/
ANALYSIS

I. RESPONDING TO THE BOARD OF DIRECTORS OPINION REGARDING ORDINARY BUSINESS

A. Proponent's Analysis of the new Staff Legal Bulletin invitation for boards of directors to submit findings regarding Rule 14a-8(i)(7)

The Company's Supplemental Letter, and other no action requests filed by Apple (regarding proposals requesting a human rights committee, sustainability metrics, and a report on net zero greenhouse gases) appear to be the first purported applications of the new Staff Legal Bulletin 14I, issued at the beginning of November 2017, which invited boards of directors to weigh in on whether a proposal addresses a significant policy issue. The Board of Directors of Apple submitted findings asserting that all four proposals address ordinary business and need not be included on the Company's proxy statement.

Since this is the first opportunity for investors to formally respond to issues raised by this aspect of the Bulletin, we will briefly review the Bulletin and its relationship to existing precedents and legal duties of the Commission and Staff.

The Bulletin states:

At issue in many Rule 14a-8(i)(7) no-action requests is whether a proposal that addresses ordinary business matters nonetheless focuses on a policy issue that is sufficiently significant. These determinations often raise difficult judgment calls that the Division believes are in the first instance matters that the board of directors is generally in a better position to determine. A board of directors, acting as steward with fiduciary duties to a company's shareholders, generally has significant duties of loyalty and care in overseeing management and the strategic direction of the company. A board acting in this capacity and with the knowledge of the company's business and the implications for a particular proposal on that company's business is well situated to analyze, determine and explain whether a particular issue is sufficiently significant because the matter transcends ordinary business and would be appropriate for a shareholder vote.

Accordingly, going forward, we would expect a company's no-action request to include a discussion that reflects the board's analysis of the particular policy issue raised and its significance. That explanation would be most helpful if it detailed the specific processes employed by the board to ensure that its conclusions are well-informed and well-reasoned. We believe that a well-developed discussion of the board's analysis of these matters will greatly assist the staff with its review of no-action requests under Rule 14a-8(i)(7).

The shareholder proposal process provides a legal right to investors to weigh in on issues of significant social policy matters. It is in that context that we consider the invitation to boards of directors to provide input on whether a proposal addresses a significant policy issue.

The Bulletin's invitation to boards has the potential to make a board's oversight more visible and accountable — for boards of directors to consider the significance and relevance of proposals earlier in the process after receiving a proposal, and to encourage investors to communicate directly with the Board of Directors. In this response, we are copying the Board of Directors of Apple and bringing attention to our belief that they have misinterpreted the proposal, the Bulletin and the ordinary business rule.

However, if the Bulletin itself is misunderstood or abused by boards, it could undermine the integrity of the shareholder proposal process. For instance, the approach taken by the Board of
Directors of Apple would effectively entitle nearly any company to exclude a shareholder proposal, because they would merely need to assert that the board has already given its attention to issues like those in the proposal and that the company dedicates resources to attend to such issues. By their view, the fact that the company’s policies are out of alignment with the proposal’s policy and transparency requests would be irrelevant.

As stated in Medical Committee for Human Rights v. Securities and Exchange Commission, 432 F.2d 659 (D.C. Cir. 1970):

[T]he clear import of the language, legislative history, and record of administration of section 14(a) is that its overriding purpose is to assure to corporate shareholders the ability to exercise their right — some would say their duty — to control the important decisions which affect them in their capacity as stockholders and owners of the corporation. Thus, the Third Circuit has cogently summarized the philosophy of section 14(a) in the statement that "[a] corporation is run for the benefit of its stockholders and not for that of its managers." SEC v. Transamerica Corp., 163 F.2d 511, 517 (3d Cir. 1947), cert. denied, 332 U.S. 847, 68 S. Ct. 351, 92 L. Ed. 418 (1948).

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What is of immediate concern... is the question of whether the corporate proxy rules can be employed as a shield to isolate such managerial decisions from shareholder control. After all, it must be remembered that "[t]he control of great corporations by a very few persons was the abuse at which Congress struck in enacting Section 14(a)." SEC v. Transamerica Corp., supra, 163 F.2d at 518.

In most instances, when a proposal is presented to a company and will appear on the proxy, a Board of Directors issues a statement in opposition. For example, Trillium Asset Management filed a proposal in 2007 encouraging the Company to become a leader in eliminating persistent and bioaccumulative toxic chemicals, and all types of brominated flame retardants (BFRs) and polyvinyl chloride (PVC) plastics, in all Apple products, including an expeditious timetable to end the use of all BFRs and PVC. The company’s opposition statement asserted that the Company’s existing processes of managing chemicals were adequate. However, in the years since the proposal was filed, the Company has moved forward to eliminate many of the chemicals targeted by the proposal.

Similarly, shareholders As You Sow, New York City Comptroller, and Calvert Asset Management Inc. proposed that Apple issue a sustainability report in a 2010 proposal. Their proposal focused on greenhouse gas reporting, despite some good reporting on GHGs by Apple, because it was not providing information needed by investors:

Apple, however, lags behind global industry peers on sustainability reporting. It has released some product specific information on greenhouse gas emissions but its usefulness is limited as nearly all other companies use aggregate emission estimates. Apple has not made public greenhouse gas reduction commitments.

The Board of Directors opposed the proposal, claiming that the work the company was already doing on reporting sustainability in disparate locations and in its forms of GHG reporting was ample. The Board opposition statement to that proposal is strikingly similar to the current assertions of the Board regarding ordinary business:

The Company recognizes its responsibility as a global citizen and has been working proactively for years to reduce the environmental impact of its corporate operations as well as the manufacturing and use of its products, which accounts for 95% of the greenhouse gas emissions associated with the Company. The Company also provides its customers and shareholders with an unmatched level of detail on its environmental performance, both at the product level and for the Company as a whole.

Yet, despite the Board’s opposition to the Proposal, the Company’s reporting has evolved considerably and very much in the direction of the 2010 proposal’s requests, joining 2,700 other companies that were already issuing such reports.

Similarly, the shareholders of Apple voted in 2014 on a proposal filed by John Harrington and Northstar Asset Management requesting that the Board establish a human rights committee. The proposal noted:

In recent years the Company has become embroiled in public controversies regarding the human rights implications of its products and supply chains, including but not limited to controversies related to the Foxconn Technology Group, a supplier of many key items for Apple with facilities located in China and elsewhere. The proposed by-law would establish the vehicle of a Board Committee, but would leave the process of appointment and implementation of the Committee to the full Board of Directors.

The Board’s opposition statement accentuated the human rights efforts of the Company, in language strikingly similar to the current Board’s “finding”:

The Company’s Supplier Code of Conduct, the results of its auditing efforts, a list of the Company’s leading suppliers, and additional information on the Company’s Supplier Responsibility program are available at www.apple.com/supplierresponsibility.

The Company’s auditing program has expanded in breadth and depth over the past several years. In January 2012, the Company became the first electronics company to be granted membership in the Fair Labor Association (the “FLA”), a leading non-profit organization dedicated to protecting the rights of workers. The FLA’s independent auditors have unrestricted access to any facility in the Company’s supply chain at any time.

In addition to monitoring and driving improvements for workers in the supply chain, the Company places strong emphasis on education and worker empowerment initiatives. The Company has established a training program for new employees at the Company’s suppliers to inform them of their individual rights, local laws and the Company’s Supplier Code of Conduct. Millions of workers have participated in this training program.

The Company also partners with educational institutions to offer free college-level courses to workers who make the Company’s products. Hundreds of thousands of workers have attended these classes since 2008, and many have gone on to earn associate’s degrees. The Company recently expanded this educational program to offer more opportunities for participants to work toward a bachelor’s degree.

The Company is also active in protecting human rights and upholding its social responsibilities as they relate to its own employees throughout the world. The Company encourages a creative, culturally diverse and supportive work environment, and does not tolerate harassment or discrimination. To support the Company’s culture of inclusion, all employees are expected to respect the diverse ideas, experiences and backgrounds of all with whom we do business. In December 2013 the Company was awarded its 12th consecutive perfect rating from the Human
Rights Campaign’s annual Corporate Equality Index, which scores businesses based on lesbian, gay, bisexual and transgender workplace policies, and won the title of “Best Places to Work for LGBT Equality.

The opposition statement was unresponsive to dire emerging human rights concerns including a rash of suicides beginning in 2010 due to stressful work conditions at the Foxconn facility where iPhones are produced.6

From this history it is clear that whether and when a proposal appears on the proxy, the process is at its core a contest of views between the Board and its shareholders, and integrates an essential role for the owners of the company to help set direction on matters of significant social import. The board and management often work, through an opposition statement, to minimize the concrete concerns expressed by investors, and to express the view that the named issues are being effectively managed.

Whether an issue presents a significant public controversy that transcends ordinary business, and therefore is appropriate for shareholders to vote on, is not the domain or expertise of the Board of Directors of the company. We already know from decades of experience with the shareholder proposal process that Boards oppose the proposals, and generally believe that the strategies, transparency and accountability they are deploying are adequate to the subject being addressed.

The shareholder proposal process is the opportunity for the owners to weigh in, especially where the Board of Directors may appear to be shortsighted, lacking transparency, or missing essential issues regarding the impact of corporate policies on society. The SEC is the protector of these investors’ rights to participate, and must weigh the evidence and determine whether a subject matter is of significant social importance. If the issue raised, and especially transparency and accountability on the issue, is not substantially implemented, the Board of Directors is probably the least qualified entity to make a determination finding the issue is "ordinary" and therefore not subject to shareholder accountability.

Attending to “ordinary business" is the exclusive domain of the Board of Directors, but attending to significant policy issues suitable for shareholder deliberation is not. This was made clear in Medical Committee for Human Rights v. SEC, 432 F.2d 659 (D.C. Cir. 1985) in which the D.C. Circuit Court found that shareholder proposals are proper (not ordinary business) when they raise issues of corporate social responsibility or question the "political and moral predilections" of board or management. The keystone of that decision, as noted above, is that board and management have no monopoly on expertise over investors when it comes to issues with broad and significant social consequence. Investors are entitled to weigh in through the shareholder proposal process.

In addition to the many other grounds for potential exclusion of proposals under Rule 14a-8, the limitation on the ability of shareholders to weigh in on social and environmental issues is defined in part by the ordinary business rule, which prevents shareholders from delving too deeply into the everyday management of the company’s business. In effect, this means that proposals must address widely debated policy issues that have a reasonable connection to the company’s business.

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6 https://en.wikipedia.org/wiki/Foxconn_suicides This has been a continuing problem, see https://www.forbes.com/sites/bensin/2016/08/22/the-real-cost-of-the-iphone-7-more-foxconn-worker-deaths/#59c2a2655560
The legal framework for Rule 14a-8(i)(7) developed by the Commission, Staff and the courts, including under the Staff Legal Bulletin 14I, comprises a four-part test:

**Question 1. Ordinary Business.** Is the subject matter one of “ordinary business”? That is, is it a topic that is integral to the day-to-day management and operations of the company?\(^7\)

**Question 2. Significant Policy Issue.** If the answer to Question 1 is yes, is the subject matter nevertheless a significant policy issue – a subject of widespread public debate?

In those cases in which a proposal’s 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 generally will not be excludable under Rule 14a-8(i)(7) as long as a sufficient nexus exists between the nature of the proposal and the company.\(^8\)

On what topics does a proposal address a significant policy issue that transcends ordinary business? Staff decisions have made it clear that this inquiry concerns whether the proposal addresses an issue of widespread public debate. Examples recognized by the Commission and the Staff include such topics as environmental impact, human rights, climate change, discrimination, net neutrality and freedom of expression, as well as virtually all issues of corporate governance.\(^9\)

**Question 3. Nexus.** If the answer to Question 2 is yes, the next question is: Is there a nexus of the subject matter to the Company - does the subject matter of widespread public debate relate significantly to the company’s business or strategy? The invitation to the board of directors under the Bulletin is to demonstrate that the issue is insignificant for the company.\(^10\)

Unfortunately, it is predictable that some Boards of Directors may “find” a subject matter insignificant merely because they are trying to find grounds to exclude a proposal. Therefore, it is also necessary for the proponent to provide any evidence that contradicts the board’s finding of insignificance. Ultimately, the determination of insignificance to a company is the obligation of the Staff, the Commission, or the courts. If there is a reasonable basis for concluding that a significant policy issue has a connection to a company, it transcends ordinary business at the company.

**Question 4. Micromanagement.** Finally, if all of the above are true, does the approach of the proposal micromanage? Even if the proposal’s subject matter transcends ordinary business

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\(^7\) Staff Legal Bulletin 14H published in 2015 described ordinary business in terms of the “nitty gritty” of corporate management: “a proposal may transcend a company’s ordinary business operations even if the significant policy issue relates to the “nitty gritty of its core business.” This makes the distinction between and ordinary business determination and a significant policy determination clear.

\(^8\) Staff Legal Bulletin No. 14E (October 27, 2009).

\(^9\) The Staff has indicated that it considers a number of indicia when determining whether a proposal focuses on a significant policy issue. These indicia not only include the presence of widespread public debate, media coverage, regulatory activity and legislative activity, but also whether the issue has been part of the public debate for a sufficient length of time -- what has been referred to as the “test of time.”

\(^10\) William Hinman, Director of the Corporation finance division, and Matt McNair, Senior Special Counsel have made this point (based on their personal interpretations of the Bulletin) in publicly reported comments. https://www.briefinggovernance.com/2017/11/what-we-know-so-far-about-the-news-slb-on-shareholder-proposals/ https://www.thecorporatecounsel.net/Webcast/2017/11_14/transcript.htm
(number two) and has a connection to the company (number three), the proposal still may be excludable if the approach of the proposal micromanages the company's business.

**B. Applying the Analytical Framework to the Board's “findings” regarding the present Proposal**

The Apple Board of Directors' “findings” involve a fundamental misinterpretation of the Staff Legal Bulletin. It appears that the Board of Directors focused its analysis principally on Question 1 – whether the Proposal's subject matter is ordinary business for the company. However, the Apple Board is unable to demonstrate that the subject matter does not address a significant policy issue (Question 2) nor that it lacks a connection to the Company's business (Question 3). Further, the proposal does not micromanage (Question 4).

In the present instance, the Proposal clearly addresses the significant policy issue of freedom of expression, with a clear nexus to the Company given its high visibility on this issue and the effect it is already beginning to have in undermining its reputation as a protector of public rights in the digital sphere.

The Board of Directors is in error in its interpretation that because the proposal addresses “ordinary business” it is excludable. It addresses a transcendent policy issue with a connection to the company and does not micromanage. It is not excludable.

**i. The Apple Board finding is that the proposal addresses ordinary business**

The Apple Board essentially concluded that because it has significant programs in place, and the board and management regularly discuss and address issues of environment and human rights, these have become matters of ordinary business. The company claims that it considers human rights, including free expression, to be “a matter of utmost importance.” The company believes that these issues are an integral component of the company’s business operations, talks about its commitment to fair and safe working conditions, opportunities for workers, transparent reporting, etc. It notes that the company raises the bar on a year-to-year basis for its suppliers. Further, human rights are factored into every decision made by the management in the day-to-day operations of the company.

For instance, the Company’s Supplemental Letter states:

> The Company considers human rights, including freedom of expression, and the free exercise of those rights by everyone in the world, to be a matter of the utmost importance. The Company devotes substantial time and resources to safeguarding and upholding human rights. While the term “human rights” encompasses a broad range of rights to which all humans are entitled, and does not have a universally accepted definition, the rights set forth in the United Nations’ Universal Declaration on Human Rights are generally considered by the Company and the Board in assessing the impact of the Company’s policies and practices on human rights. Education, for example, is a fundamental human right, and the Company seeks to help assure that a quality education is or becomes accessible to all. In 2016, the Company partnered with its suppliers to train more than 2.4 million workers on their rights as employees. Its ConnectED program has helped create transformative learning environments in 114 underserved U.S. schools, reaching over 4,000 teachers and 50,000 students. The Apple Teacher program delivers
free professional development for educators, and Everyone Can Code provides free materials to learn, write, and teach code.

Moreover, the Board and management firmly believe that human rights are an integral component of the Company’s business operations. In fact, management memorializes this practice on its website by noting its belief that “We have a great responsibility to protect the rights of all the people in our supply chain, and to do everything we can to preserve our planet’s fragile environment. That’s why we obsess over every detail of how we build our products.”

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The observance of human rights standards factors into every decision made by management in the day-to-day operations of the Company. Management is bound to protect and promote human rights in the ordinary course of business, based on laws applicable to its employment practices, its treatment of its customers, its environmental impact, and its business practices worldwide. The Proposal and supporting statement discuss the Company’s response to governmental regulation and orders in China. Management, with its specific knowledge of the Company’s operations in China (as well as the other jurisdictions in which the Company does business), is best positioned to assess the specific requirements of such regulations, as well as to determine the Company’s response to those requirements, with input from the Board where appropriate.

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Based on the foregoing, the Board concluded that the Proposal does not transcend the Company’s ordinary business or its day-to-day operations. Accordingly, while the Board is pleased that the Proponent’s general interest in the Company’s human rights strategy is fully aligned with that of the Company, the Board does not believe that the Proposal requires a vote of shareholders at the 2018 Annual Meeting of Shareholders.

As noted above, these statements are being made at the same time the CEO is embroiled, concretely in a high visibility controversy over Apple’s continued cooperation with China and its lack of transparency on how it is addressing investor and consumer concerns regarding the safeguarding of freedom of expression.

This approach taken by the Board of Directors is legally inconsistent with the role and expertise of a board in the shareholder proposal process. If the Board has any role to play in determinations under Rule 14a-8(i)(7) it would be limited to finding that an issue is “insignificant” for the company. In fact, the Board of Directors is unable to make such a finding because these issues are having significant impact on the company’s reputation.

Moreover, we believe the Board has a fiduciary duty to encourage shareholder engagement on freedom of expression and similar issues through the shareholder proposal process, a duty contradicted by this reflexive attempt to find a means of excluding environmental and human rights proposals.
ii. Conducting a firm’s ordinary business is not the same as “more or less substantially implementing”

Some of the Board’s assertions regarding its integral human rights programs seem to convey something like a coarse version of substantial implementation — that the Board considers similar policy issues and its day to day activities. The Company’s supplemental letter notes that “all aspects of the Company’s business incorporate an in-depth review of the impact of the Company’s policies, practices, and operations (including product offerings in China) on human rights. Therefore, the proposal’s request that the company publish a report on its efforts to promote freedom of expression and access to the Internet is redundant of what the company on board already do.”

The Board recognized that it had already considered the issues raised by the Proposal when setting the strategic direction of the Company and performing its duties as a Board. Additionally, the Board determined that senior executives’ focus on reviewing, improving, and implementing policies designed to promote human rights make these matters an integral part of the ordinary business operations of the Company, and the issues presented in the Proposal as a whole fit squarely within the Company’s ordinary business mission to safeguard and uphold human rights wherever it does business. The Board also considered the Company’s existing policies, practices, and disclosures and concluded that the Proposal, even if submitted to shareholders and approved, would not call for the Company to consider facts, issues or policies that the Company does not regularly consider in the course of its day-to-day operations, and therefore does not transcend the Company’s ordinary business The Board considered the fact that it, along with management, is regularly and actively involved in the consideration, oversight, and re-assessment of the Company’s human rights policies.

The general description of the Company’s human rights efforts demonstrates how important these issues are to the business. But they do not provide clarity or transparency on the subject matter of the proposal. They do not substantially implement the requests of the proposal.

In this instance, the Board’s assertion that it is on top of these human rights issues including freedom of expression is itself a dubious assertion according to an industrywide review of these issues from an investment perspective. In September 2017, Ranking Digital Rights, a non-profit organization which researches digital rights issues, published its 2017 Investor Research Note. The paper notes particular shortcomings at Apple on the Board’s capacity to address these issues:

“Getting board capacity right: In light of the serious risk management challenges that many companies face on digital rights issues, it should be a priority for companies to develop the board capacity required to oversee and evaluate appropriate risk management on behalf of stakeholders. Indeed, few of the boards of leading companies have professional backgrounds related to the management of complex digital rights issues. For example, this void may pose a particular challenge for companies such as Apple which underperforms its peers on key governance indicators in the Index, and also appears to lack board capacity with either the global regulatory or issue expertise investors might expect. This apparent expertise gap for Apple and others is particularly important when many companies are spending aggressively on

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11 https://rankingdigitalrights.org/investors/
government relations on a range of issues including the net neutrality debate in the U.S. and privacy regulations in Europe.

In any event, the Company’s actions do not qualify as having fulfilled the essential purpose and guidelines of the Proposal to qualify for having substantially implemented the proposal pursuant to Rule 14a-8(i)(10), and thus the Board opinion here implies a much looser form of substantial implementation consideration – one in which the fact the company Board considers similar issues should suffice to allow exclusion of a shareholder proposal. This would effectively negate Rule 14a-8(i)(10) as a functional rule, and it is logically and legally inconsistent to require a rigorous approach to substantial implementation in one section of the rules, and to allow an open ended exception to bar proposals for companies whose board has contemplated similar facts and issues generally.

iii. The Board of Directors is unable to find that the Proposal subject matter is “insignificant“ for the Company.

The Board of Directors did not, and could not, claim that the subject matter of the Proposal is insignificant. It is very significant indeed for Apple, one of the issues for which the company is most in the news these days and with enormous impact on the company’s reputation as a defender of human rights. See above updated background section, as well as our prior letter.

Apple’s willingness to cooperate with Chinese authorities in banning VPN apps from the App Store in China – without presenting any public analysis or report regarding its differences with the Chinese government – could significantly set back whatever gains the Company has made from previous steps to enhance its reputation for protecting privacy and data security.

In early 2016, Apple waged an intense public legal battle to resist requests by the U.S. Justice Department and FBI to unlock an encrypted iPhone used by a terrorist.

The New York Times observed then that the Company

...is playing the long game with its business. Privacy and security have become part of its brand, especially internationally, where it reaps almost two-thirds of its almost $234 billion a year in sales. And if it cooperates with one government, the thinking goes, it will have to cooperate with all of them...

“Tim Cook is leveraging his personal brand and Apple’s to stand on the side of consumer privacy in this environment,” said Mark Bartholomew, a law professor at the University at Buffalo who studies encryption and cyberlaw. “He is taking the long view.”

Mashable, a tech industry publication, said at the time that Apple’s position “benefits the company’s bottom line, its reputation in respect to its Silicon Valley competition and the carefully crafted maverick image that Apple has spent years building... That’s especially important overseas, where Apple now conducts the majority of its business and where people might be even more wary about a government having access to the intimate details of their lives.”

The article concluded: “Now that push is coming to shove, Apple has a huge business interest in following through with its fight” with the Justice Department and FBI.

In contrast, Apple’s 2017 decision to drop VPN apps for the App Store in China has been seen as a major retreat by the company. ZDNet headlined a recent story: “In defending China demands, Apple loses privacy high ground.” 13 The story said: “What seems to be a utilitarian approach for its Chinese customers falls foul of the company's global privacy and security mantra, something the company doubled-down on in its fight against the FBI last year. And that sets a dangerous precedent going forward.”

Indeed, Apple’s turnabout has led David Kaye, the United Nations Special Rapporteur regarding freedom of expression, to publicly question the Company. In an August 2017 letter to Apple, 14 Mr. Kaye noted that in 2015 he had filed a statement with U.S. courts in support of Apple’s stance on encryption. 15 Now, he said, he was following up “on your statements that Apple states a point of view and speaks up in the context of restrictions on fundamental rights.” He asked CEO Tim Cook a series of eight questions regarding Apple’s decision to ban VPN apps from the App Store in China. Apple has apparently not responded to the U.N. official’s letter.

iv. The approach of the Board opinion would eliminate the role of the shareholder proposal process in collaborative corporate leadership.

Even companies that are recognized leaders benefit from and require continued engagement with shareholders. A company like Apple that builds a reputation as a defender of digital rights attracts investors on that basis. Company strategy is then inevitably subject to continued engagement and dialogue as shareholders monitor progress and file shareholder proposals as needed where they are not satisfied with the Company’s policies or transparency.

To cite another example in addition to those cited above, in 2006, the Company received a proposal from Domini Social Investment seeking a vendor code of conduct for its supply chain, and in a process of negotiation in exchange for withdrawal of the proposal, Apple agreed to establish workforce protections for its supply chain.

To conclude that these and many other collaborations between the management, board and shareholders, highly contingent on the availability of the shareholder proposal process, are no longer needed in advancing the best that Apple and other companies have to offer would be a tragic mistake. It would undermine the rights of investors, relationships with investors whose capital is backing the company and with whom the company has collaborated for years, as well as undermining the prospects and reputation of the Company.

In some instances, companies engaging in “leading” disclosure sometimes fail to share information that investors seek to form a complete picture of investment value and risk. This was true, for instance, in the sustainability reporting proposal example cited above. 16

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16 To cite a notorious example, Aetna, a major corporation in the health services industry, was considered a leader in disclosing political contributions due to its adoption of disclosure policies advocated by shareholders. Though the company disclosed thousands of dollars of contributions made to various politicians, it had concealed much larger donations to PACs and Trade Associations; this lack of disclosure of the “full picture” came out when Aetna accidentally revealed that the company had donated $4.05 million to the Chamber of Commerce - far more than the $100,000 in political contributions it had
II. THE PROPOSAL DOES NOT SUBSTANTIALLY DUPLICATE THE JING ZHAO PROPOSAL.

As we noted in our prior letter, the present Proposal does not substantially duplicate the proposal requesting the establishment of a board human rights committee. Such a committee - if it were ever established by the Company – would have a plethora of human rights issues to attend to.

Unfortunately for Apple, the board and management’s repeated assertions that human rights are a top corporate priority have not insulated the Company from numerous allegations regarding human rights failures, representing persistent threats to the Company’s global reputation. These allegations first surfaced as far back as 2010, with reports of deaths and suicides at Apple supplier plants in China\textsuperscript{17} - but they continue even today.

Only last month, in November 2017, for example, Apple was accused in a Financial Times story of relying on students working illegal overtime to build the iPhone X, through its contractor Foxconn, which manufactures the devices in Zhengzhou, China.\textsuperscript{18} Apple subsequently confirmed the report.\textsuperscript{19}

And earlier this year, in May 2017, China Labor Watch (CLW), an independent non-profit organization, published the results of a major investigation into Apple suppliers in China, entitled “A Year of Regression in Apple’s Supply Chain: Pursuing Profits at the Cost of Working Conditions.”\textsuperscript{20}

The CLW report alleged serious failings by Apple suppliers with regard to wages, overtime and other working conditions. “Apple promised to treat every worker fairly, and would publicize its achievements on social responsibility in its annual report,” the report said. “However, according to CLW’s investigation, Apple and its suppliers’ efforts are just for the purpose of public relations, and their achievements are limited.” CLW said “Apple must fulfill the promise that ‘Apple cares about every worker in its supply chain.’”

A 2016 report by Students & Scholars Against Corporate Misbehaviour, a Hong Kong-based organization, examined working conditions at factories operated by Pegatron, which manufactured about half of Apple’s iPhones during one recent period. The report found that “the working conditions at these three factories are abhorrently poor, which again show how Apple

\textsuperscript{17} http://www.nytimes.com/2010/06/07/business/global/07suicide.html
\textsuperscript{18} https://www.theguardian.com/technology/2017/nov/21/apple-students-illegal-overtime-reports-iphone-x-foxconn-interns
\textsuperscript{20} http://www.chinalaborwatch.org/upfile/2017_05_03/20170517.pdf
Inc. is building its empire at the cost of blood, sweat, and tears of migrant workers in the Chinese mainland.\(^{21}\)

A separate 2014 investigation by the UK’s BBC network show footage of exhausted Pegatron workers falling asleep on 12-hour shifts and one undercover reporter having to work 18 days in a row despite "repeated" requests to take a day off.\(^{22}\) The same documentary reported from Indonesia, showing children digging tin ore by hand in what it called "extremely dangerous conditions." The program accused Apple of "routinely" breaking promises to protect workers. In response, Apple's senior vice-president of operations, Jeff Williams, sent an email to around 5,000 staff members in the U.K. on Friday, saying that he and Cook were "deeply offended" by the BBC's claims.

Meanwhile, half a world away, in the Democratic Republic of Congo, Apple has come under criticism for how its suppliers have permitted cobalt to enter the supply chain for the Company's products. A searing report by Amnesty International addressed Apple's due diligence policy with regard to the issue, noting that “Apple did not explain why it has not put in place due diligence measures for cobalt until now, particularly since human rights risks associated with its extraction in the DRC are well documented. For example, the U.S. government has issued warnings relating to child labour linked to the extraction of cobalt in the DRC since 2009.”

After examining many of these claims, researchers at the University of Oxford and the Institute for Advanced Studies on Science, Technology and Society concluded in 2015: “All of this evidence suggests that Apple's internally managed model of corporate social responsibility does not work. The company's slick publications, and claims in the press and on its website contribute to the value and power of its $118 billion brand, but do not foster systemic change in its troubled supply chain. That change will only come with real transparency in terms of how the company's products are made, how specifically Apple works with suppliers to fix problems and the results of those efforts.”

A human rights committee would have numerous issues to address. The specific requests of the present Proposal's for transparency would not necessarily be addressed, and there is no chance that shareholders reading the two proposals would be confused or unclear about the relationship between the two proposals. The purposes of Rule 14a-8(i)(11) would not be served by excluding the Proposal, and therefore we urge the Staff to deny the request to exclude on that basis.

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CONCLUSION

Based on the foregoing and our prior correspondence, we believe it is very clear that neither Apple management nor its Board have provided any basis for the conclusion that the Proposal is excludable from the 2018 proxy statement pursuant to Rule 14a-8. As such, we respectfully request that the Staff inform the company that it is denying the no action letter request. If you have any questions, please contact me at 413 549-7333 or sanfordlewis@strategiccounsel.net.

Sincerely,

Sanford Lewis

cc:
Michael and Honore Connor
Gene D. Levoff

Apple Board of Directors
Arthur D. Levinson, Ph. D
James A. Bell
Tim Cook, CEO
Albert Gore Jr.
Robert A. Iger
Andrea Jung
Ronald D. Sugar, Ph. D
Susan L. Wagner
Apple CEO backs China’s vision of an ‘open’ Internet as censorship reaches new heights

BEIJING — Reading headlines from the World Internet Conference in China, the casual reader might have come away a little confused. China was opening its doors to the global Internet, some media outlets optimistically declared, while others said Beijing was defending its system of censorship and state control.

And perhaps most confusing of all, Apple’s CEO Tim Cook stood up and celebrated China’s vision of an open Internet.

Say what?

China has more than 730 million Internet users, boast the largest e-commerce market in the world and consumers who enthusiastically embrace mobile digital technology. But it censors many foreign news websites and keeps most Western social media companies out.

The World Internet Conference held in the eastern Chinese city of Wuzhen is meant to
promote China’s vision of “cyber-sovereignty” — the idea that governments all over the world should have the right to control what appears on the Internet in their countries.

In practice, in China, that amounts to the largest system of censorship and digital surveillance in the world, where criticism of the Communist Party is sharply curtailed and can even land you in jail.

But that wasn’t mentioned when Cook delivered a keynote speech on the opening day of the gathering Sunday.

“The theme of this conference — developing a digital economy for openness and shared benefits — is a vision we at Apple share,” Cook said, in widely reported remarks. “We are proud to have worked alongside many of our partners in China to help build a community that will join a common future in cyberspace.”

Chinese media welcomed Cook’s endorsement, with the nationalist Global Times declaring in a headline that “Consensus grows at Internet conference.”

Alongside Cook in endorsing China’s digital vision were officials from countries such as Saudi Arabia and Serbia, it noted.

Free speech and human rights advocates were less impressed.

“Cook’s appearance lends credibility to a state that aggressively censors the internet, throws people in jail for being critical about social ills, and is building artificial intelligence systems that monitors everyone and targets dissent,” Maya Wang at Human Rights Watch in Hong Kong wrote in an email.

“The version of cyberspace the Chinese government is building is a decidedly dystopian one, and I don’t think anyone would want to share in this ‘common future.’ Apple should have spoken out against it, not endorsed it.”

And it wasn’t just Cook who some critics accused of indulging in a little doublespeak.

China’s President Xi Jinping opened the conference with written remarks that led to a
Apple CEO backs China’s vision of an ‘open’ Internet as censorship reaches new heights - The Washington Post

flurry of arguably misleading headlines.

“The development of China’s cyberspace is entering a fast lane,” he said in remarks read out by an official. “China’s doors will only become more and more open.”

Yet the audience was soon reminded that nothing that could possibly threaten the Communist Party would be allowed through those supposedly open doors.

China has tightened censorship and controls of cyberspace under Xi, with a new cybersecurity law requiring foreign firms to store data locally and submit to domestic surveillance.

Wang Huning, who serves as a member of the Communist Party’s elite standing committee and is Xi’s top ideologue, defended China’s system and even suggested that more controls could be in the offing.

“China stands ready to develop new rules and systems of internet governance to serve all parties and counteract current imbalances,” he said to the conference, according to Reuters.

But it was Cook’s words that prompted the strongest reaction, coming after Apple has also come under fire for its actions in China.

In a written response to questions from Senators Patrick J. Leahy (D-Vt.) and Ted Cruz of (R-Tex.) last month, Apple said that it had removed 674 VPN apps from its app store in China this year — tools that allow users to circumvent censorship by routing traffic abroad — to comply with local laws. Skype was also removed from Apple’s China store, the New York Times reported.

In August, Cook said Apple hadn’t wanted to remove the apps but had to follow local laws wherever it does business.

“We strongly believe that participating in markets and bringing benefits to consumers is in the best interests of folks there and in other countries as well,” Cook said. “We believe in engaging in governments even when we disagree.”
But Greatfire.org, a group that combats Chinese censorship, argued Apple’s decision to agree to censorship put pressure on other companies to follow suit and could even mean that Chinese citizens could ultimately be subjected to Chinese censorship when they travel abroad.

“It is undeniable that Tim Cook and Xi Jinping have a shared vision of the internet. Xi wants to be able to control all information and silence those who may threaten his leadership. Cook helps him with vast, unaccountable, implementation of censorship across Apple products,” the group wrote to The Washington Post.

Critics saw simple business calculations in Cook’s appearance in Wuzhen.

“Cook Kisses the Ring,’ Bloomberg columnist Tim Culpan wrote, arguing that Cook was “desperate to hold onto any remaining scraps of the China market” in the face of stiff competition from local rivals.

The head honchos of China’s main digital and Internet companies, Huawei, Baidu and Tencent, “ought to have been grinning like Cheshire cats,” Culpan added, since censorship has kept foreign companies like Facebook, Google and Twitter out of China and served as a “handy little tool of trade protectionism.”

Nor did it matter if Cook’s tongue was in his cheek, for his presence at the conference, along with Google’s Sundar Pichai and CISCO Systems’ Chuck Robbins, not only gave legitimacy to the authorities but also sent a signal to domestic Chinese rivals that their turf is safe, Culpan wrote.

Rights group Freedom House last month branded China the worst abuser of Internet freedom among 65 countries surveyed, followed by Syria and Ethiopia.

But in Wuzhen, that report was not about to be discussed.

Instead, a top state-backed Chinese think tank declared that the host nation ranked fifth among 38 nations globally in standards of cyber governance, as it called for a ‘democratic’ Internet governance system to eradicate inequalities that it said had marginalized developing nations.
“We should promote the establishment of a multinational, democratic and transparent global internet governance system,” the Chinese Academy of Cyberspace Studies said in a report, according to Reuters.

Simon Denyer is The Post’s bureau chief in Beijing. He previously worked as the Post's bureau chief in New Delhi, as a Reuters bureau chief in Washington, New Delhi and Islamabad, and a Reuters correspondent in Nairobi, New York and London. He plays soccer and cricket, and supports Pompey.

Follow @simondenyer

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addisonr    2 hours ago
This is just a continuation of Apple's monopolistic anti-competitive stance they practice here at home.

Like  Reply  Link  Report

working antique    2 hours ago
If there is a better example of the corrupting power of money, I can't think of it. (Well, except for the current situation in Washington). Let's see, a couple of hundred million new iPhones sold in China, or principles.... Hhmmm.

Like  Reply  Link  Report

maricaibo    2 hours ago
Was he there representing Apple or Trump?

Like  Reply  Link  Report

stephen boston    2 hours ago
He was there for Greed. So in answer to your question: both Apple and Trump.

Like  Reply  Link  Report

flyerbob    3 hours ago
That's one of the reasons I wouldn't own an Apple product.

Like  Reply  Link  Report

victoria w.    3 hours ago
It's clear that the conference's primary purpose is simply to give the CCP a high-profile platform from which they can self-endorse their colossal purge on freedom of expression and freedom of communication. Mr Cook's presence does nothing to enhance the
respectability or acceptability of what the CCP are doing; on the contrary, it complements the shabbiness of the main event by giving us a side-show of a business-man prostituting whatever vestiges of moral principles he still had to the primitive money god he worships.
November 20, 2017

VIA E-MAIL (shareholderproposals@sec.gov)

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

Re: Apple Inc.
    Shareholder Proposal of Michael and Honore Connor

Dear Ladies and Gentlemen:

I am writing on behalf of Apple Inc. to supplement my letter dated October 9, 2017 (the “Initial Letter”) requesting that the staff not recommend enforcement action to the Commission if the Company omits the Proposal from its 2018 Proxy Materials in reliance on Rule 14a-8(i)(11) and 14a-8(i)(7). The Company is writing this letter to supplement its request that the staff concur that the Company may exclude the Proposal from the Company’s 2018 Proxy under Rule 14a-8(i)(7). For ease of reference, capitalized terms used in this letter have the same meaning ascribed to them in the Initial Letter.

BASES FOR EXCLUSION OF THE PROPOSAL

I. Rule 14a-8(i)(7) — The Proposal Relates to Matters of the Company’s Ordinary Business

A. The Exclusion

Rule 14a-8(i)(7) permits a company to exclude a proposal that “deals with a matter relating to the company’s ordinary business operations.” The purpose of the exception 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.” See Securities Exchange Act Release No. 34-40018 (May 21, 1998) (the “1998 Release”). In the 1998 Release, the Commission explained that the ordinary business exclusion rests on two central considerations: first, 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”; and second, the degree to which the proposal attempts to “micromanage” a 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.”

As explained in the 1998 Release, under the first consideration, a proposal that raises matters that 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” may be excluded, unless the proposal raises policy issues that are sufficiently significant to transcend day-to-day business matters. On November 1, 2017, the Staff published Staff Legal Bulletin No. 14I (“SLB No. 14I”), which announced a new staff policy regarding the application of Rule 14a-8(i)(7). The staff stated in SLB No. 14I that the applicability of the significant policy exception “depends, in part, on the connection between the significant policy issue and the company’s business operations.” The staff noted further that whether a policy issue is of sufficient significance to a particular company to warrant exclusion of a proposal that touches upon that issue may involve a “difficult judgment call” which the company’s board of directors “is generally in a better position to determine,” at least in the first instance. A well-informed board, the staff said, exercising its fiduciary duty to oversee management and the strategic direction of the company, “is well situated to analyze, determine and explain whether a particular issue is sufficiently significant because the matter transcends ordinary business and would be appropriate for a shareholder vote.”

Where the board concludes that the proposal does not raise a policy issue that transcends the company’s ordinary business operations, the staff said, the company’s letter notifying the staff of the company’s intention to exclude the proposal should set forth the board’s analysis of “the particular policy issue raised and its significance” and describe the “processes employed by the board to ensure that its conclusions are well-informed and well-reasoned.” Consistent with the staff’s guidance, the discussion below reflects the analysis of the Company’s board of directors (the “Board”) as well as management’s and includes a description of the Board’s processes in conducting its analysis.

B. Application of the Exclusion

The Proposal requests that the Company publish a report on its role in promoting freedom of expression, including: a summary of measures the Company “took to prevent removal of VPN apps in China,” a description of the Company’s policies for responding to government requests involving products affecting freedom of expression, and an exploration of “policy options for the Company to play a role in ensuring that consumers in countries like China . . . have unfettered and anonymous access to the internet.” As discussed in the Initial Letter, the Company views the Proposal as primarily concerning freedom of expression and access to a free and open internet, which the staff has stated is not a significant policy issue, rather than human rights generally. However, regardless of whether the Proposal is deemed to broadly implicate human rights or specifically implicate access to the internet in China, in the opinion of the Board, the matter still relates to the Company’s ordinary business under SLB No. 14I for the reasons discussed in the Initial Letter and set forth below.

The Company considers human rights, including freedom of expression, and the free exercise of those rights by everyone in the world, to be a matter of the utmost importance. The
Company devotes substantial time and resources to safeguarding and upholding human rights. While the term “human rights” encompasses a broad range of rights to which all humans are entitled, and does not have a universally accepted definition, the rights set forth in the United Nations’ Universal Declaration on Human Rights are generally considered by the Company and the Board in assessing the impact of the Company’s policies and practices on human rights. Education, for example, is a fundamental human right, and the Company seeks to help assure that a quality education is or becomes accessible to all. In 2016, the Company partnered with its suppliers to train more than 2.4 million workers on their rights as employees. Its ConnectED program has helped create transformative learning environments in 114 underserved U.S. schools, reaching over 4,000 teachers and 50,000 students. The Apple Teacher program delivers free professional development for educators, and Everyone Can Code provides free materials to learn, write, and teach code.

Moreover, the Board and management firmly believe that human rights are an integral component of the Company’s business operations. In fact, management memorializes this practice on its website by noting its belief that “We have a great responsibility to protect the rights of all the people in our supply chain, and to do everything we can to preserve our planet’s fragile environment. That’s why we obsess over every detail of how we build our products.” The Company is committed to providing fair and safe working conditions, creating greater opportunities for workers, and transparently reporting on its efforts at every level of the supply chain. For example, the Company demands that all suppliers doing business with the Company affirmatively agree to adhere to our Supplier Code of Conduct and supporting standards. The Supplier Code of Conduct outlines the Company’s standards for creating safer working conditions, treating workers fairly, and using environmentally responsible practices in our supply chain. The Code goes beyond mere compliance with the law. In 2016, the Company conducted 705 supply chain assessments on labor and human rights, health and safety, and environment, covering over 1.3 million workers in 30 countries. Every year, the requirements that the Company’s suppliers must meet increase and our efforts to raise the bar continue.

The observance of human rights standards factors into every decision made by management in the day-to-day operations of the Company. Management is bound to protect and promote human rights in the ordinary course of business, based on laws applicable to its employment practices, its treatment of its customers, its environmental impact, and its business practices worldwide. These laws, and the Company’s policies for promoting human rights well beyond the minimum required by law, protect the human rights of the Company’s employees, customers, suppliers, and other business partners, as well as the citizens of the communities in which the Company does business. The Company’s compliance with governmental laws and regulations, including laws and regulations concerning human rights, are a core management function, as are the Company’s voluntary human rights programs. The Proposal and supporting statement discuss the Company’s response to governmental regulation and orders in China. Management, with its specific knowledge of the Company’s operations in China (as well as the other jurisdictions in which the Company does business), is best positioned to assess the specific requirements of such regulations, as well as to determine the Company’s response to those requirements, with input from the Board where appropriate.
Well beyond these legal and regulatory requirements, management has undertaken, as part of the Company’s day-to-day business, to promote and protect human rights in all of the countries and communities where its operations have an impact. In doing so, Apple has distinguished itself from its peers by making human rights a key management concern. The Company has a dedicated Vice President for Environment, Policy, and Social Initiatives, who reports directly to the CEO. The Vice President leads the Company’s advocacy for government policies that protect individual privacy and civil rights. The Vice President of Environment, Policy and Social Initiatives also drives the Company’s work to make high-quality education more available to young people of diverse economic backgrounds, and to make high-technology products more accessible to people with disabilities. The Vice President also leads the Company’s work to reduce its impact on climate change by using renewable energy sources and driving energy efficiency in its products and facilities. Appointing senior management to lead these initiatives and report directly to the CEO demonstrates that the issues are key concerns of management and are deeply embedded in the Company’s day-to-day operations.

The Board and management are committed to upholding and promoting human rights, including freedom of expression. The Company’s policies, practices, and deliberations regarding all aspects of the Company’s business incorporate an in-depth review of the impact of the Company’s policies, practices, and operations (including product offerings in China) on human rights. Therefore, the Proposal’s request that the Company publish a report on its efforts to promote freedom of expression and access to the internet is redundant of what the Company and the Board already do. Accordingly, the Proposal does not raise a “significant policy issue” that transcends the Company’s ordinary business. Review, improvement, and implementation of policies designed to protect and promote human rights are an integral part of ordinary business at Apple. For that reason, in the context of the Company’s operations and existing policies and practices, including the Company’s longstanding commitment to and active promotion and protection of human rights, the Board has analyzed the Proposal, considered its impact on the business and operations of the Company, and determined that the issues presented by the Proposal do not transcend the Company’s ordinary business operations and therefore do not warrant a shareholder vote on the Proposal at the 2018 Annual Meeting of Shareholders.

C. Board Process

The Board is regularly updated on the Company’s business operations, including the Company’s efforts to make substantial progress on its human rights goals. In reviewing the Proposal, the Board was presented with information prepared by management about the Proposal and its policy implications. The Company’s Vice President of Environment, Policy and Social Initiatives met with the Board and reviewed the Company’s efforts with respect to its human rights efforts. This discussion included a review of written materials, including the Company’s Supplier Responsibility 2017 Progress Report. The Board undertook a thorough review of the Proposal, discussed the Proposal’s implications for the Company’s business and policies and came to a consensus that it had received sufficient information from management to make an informed decision about whether the Proposal raises a significant policy issue that transcends the Company’s ordinary business.
The Board recognized that it had already considered the issues raised by the Proposal when setting the strategic direction of the Company and performing its duties as a Board. Additionally, the Board determined that senior executives’ focus on reviewing, improving, and implementing policies designed to promote human rights make these matters an integral part of the ordinary business operations of the Company, and the issues presented in the Proposal as a whole fit squarely within the Company’s ordinary business mission to safeguard and uphold human rights wherever it does business. The Board also considered the Company’s existing policies, practices, and disclosures and concluded that the Proposal, even if submitted to shareholders and approved, would not call for the Company to consider facts, issues or policies that the Company does not regularly consider in the course of its day-to-day operations, and therefore does not transcend the Company’s ordinary business mission. The Board considered the fact that it, along with management, is regularly and actively involved in the consideration, oversight, and re-assessment of the Company’s human rights policies.

Based on the foregoing, the Board concluded that the Proposal does not transcend the Company’s ordinary business or its day-to-day operations. Accordingly, while the Board is pleased that the Proponent’s general interest in the Company’s human rights strategy is fully aligned with that of the Company, the Board does not believe that the Proposal requires a vote of shareholders at the 2018 Annual Meeting of Shareholders.

II. Rule 14a-8(i)(11) — The Proposal Substantially Duplicates the Zhao Proposal and May Be Excluded if the Company Includes the Zhao Proposal in its 2018 Proxy Materials

The Initial Letter stated that the Proposal also is excludable under Rule 14a-8(i)(11) because it substantially duplicates a shareholder proposal submitted by Jing Zhao (the “Zhao Proposal”). At the time of the submission of the Initial Letter, the Company planned to include the Zhao Proposal in its 2018 Proxy Materials. However, following publication of SLB No. 14I, the Company submitted a letter to the staff requesting the staff’s concurrence that the Zhao Proposal may be excluded from the 2018 Proxy Materials under Rule 14a-8(i)(7). Accordingly, the Company’s request for concurrence that it may exclude the Proposal under Rule 14a-8(i)(11) is contingent upon a staff decision that the Zhao Proposal may not be excluded in Rule 14a-8(i)(7) (as the Company would then include the Zhao Proposal in its 2018 Proxy Materials).
CONCLUSION

For the reasons discussed above, the Company believes that it may omit the Proposal from its 2018 Proxy Materials in reliance on Rule 14a-8(i)(7). We respectfully request that the staff concur with the Company’s view and confirm that it will not recommend enforcement action to the Commission if the Company excludes the Proposal from its 2018 Proxy Materials.

If you have any questions or need additional information, please feel free to contact me at (408) 974-6931 or by e-mail at gleoff@apple.com.

Sincerely,

Gene D. Levoff
Associate General Counsel,
Corporate Law

Attachments

cc: Michael and Honore Connor
    John Harrington, Harrington Investments, Inc.
    Alan L. Dye, Hogan Lovells US LLP
November 1, 2017

Via electronic mail

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

Ladies and Gentlemen:

Michael and Honore Connor (the "Proponents") have submitted a shareholder proposal to Apple Inc. (the "Company") requesting a report on freedom of expression (the “Proposal”). By letter from Gene D. Levoff, dated October 9, 2017 (“Company Letter”), the Company contends that the Proposal is excludable under Rule 14a-8 (i)(11) or Rule 14a-8(i)(7). I have been asked by the proponents to respond to the Company letter. A copy of this reply is being emailed as well to Mr. Levoff.

SUMMARY

The company argues under Rule 14a-8(i)(11) that the Proposal (attached as Appendix A) is substantially duplicative of a proposal previously submitted to the Company (the “Previous Proposal”) requesting the establishment of a committee on human rights.

The principal thrust of the Proposal is to produce a report on Freedom of Expression and Censorship, a very specific and high-profile public controversy in which the Company is embroiled. In contrast, the principal thrust of the previously submitted proposal is on establishing a Human Rights Committee with a broad mandate. Although the Committee might address issues of freedom of expression, it is far more broadly scoped, and no shareholders can reasonably be expected to be confused in deliberation or voting regarding the difference between these two proposals. Accordingly, both proposals must be included in the proxy.

The Company also argues that the proposal is excludable as relating to ordinary business under Rule 14a-8(i)(7). However, freedom of expression is a clear significant policy issue with a nexus to the Company, and the proposal does not micromanage. See Yahoo, Inc. (April 13, 2007). Therefore, the Proposal is not excludable pursuant to Rule 14a-8(i)(7).
ANALYSIS

1. The current proposal and previously submitted proposal are not duplicative within the meaning of Rule 14a-8(i)(11).

   A. The principal thrust of the proposals is not the same.

The Company has the burden of establishing that a proposal can be excluded from a proxy report. (17 CFR 240.14a-8(g)). If the Company does not discharge this burden, then the Proposal must be included in the proxy report. In this instance, the proposals focus on a very different subject matter.

The Proposal submitted by the Proponents states in its resolve clause:

   Resolved, shareholders request that the Company publish a report on its role in promoting freedom of expression. The report should be produced at reasonable expense, excluding proprietary and confidential information, and:

   • Summarize measures Apple took to prevent removal of relevant VPN apps in China;
   • Describe Company policies for evaluating and responding to, above and beyond legal compliance, government requests to remove apps from the App store affecting freedom of expression;
   • Explore policy options for the Company to play a role in ensuring that consumers in countries like China, with severe censorship records, have unfettered and anonymous access to the Internet.

The full text of the Proposal is attached as Appendix A.

A proposal previously submitted to the Company requests that the Company establish a committee on human rights. In its resolved clause that proposal requests:

   Resolved: shareholders recommend that Apple Inc. establish a Human Rights Committee to review, assess, disclose, and make recommendations to enhance Apple’s policy and practice on human rights. The board of directors is recommended, in its discretion and consistent with applicable laws to: (1) adopt Apple Human Rights Principles, (2) designate the members of the committee, including outside independent human rights experts as advisors, (3) provide the committee with sufficient funds for operating expenses, (4) adopt a charter to specify the functions of the committee, (5) empower the committee to solicit public input and to issue periodic reports to shareholders and the public on the committee’s activities, findings and recommendations, and (6) adopt any other measures.

As noted in the Company letter, previously submitted proposal also mentions in its supporting statement the VPN controversy facing the Company. The full text of the previously submitted proposal is included as Appendix B to this letter.
In addition, in footnote 1, the Company asserted its right to claim Rule 14a-8(i)(11) exclusion of the Proposal due to a third proposal, submitted by NCPPR one day prior to the present Proposal, in the event that the SEC does not allow exclusion of the third proposal. The Company declined to argue the issue of duplication of the NCPPR Proposal and said it would do so if that was not otherwise found to be excludable pursuant to Rule 14a-8(i)(11). Although the Company has chosen not to argue the case regarding applicability of Rule 14a-8(i)(11) between that third proposal and the present Proposal, we reserve the right to respond to arguments regarding that proposal should the Company choose to argue the applicability.

Rule 14a-8(i)(11) provides for exclusion of a proposal only if it “substantially duplicates another proposal previously submitted to the Company.” The purpose of this Rule is to prevent shareholders having to consider two or more “substantially identical proposals” by proponents acting independently of each other. Exchange Act Release No. 12999 (November 22, 1976). The Staff has interpreted these provisions to only allow exclusion of proposals with the same subject matter and having the same “principal thrust” or “principal focus.” See e.g. Allstate Corporation (March 12, 2014) (proposal requesting report of company expenditure on lobbying found not substantially duplicative, i.e., had different principal thrust, than the proposal requesting disclosure of political spending.).

A plain reading of the previously submitted and current Proposal demonstrates that each has a different subject matter, a different principal focus, and requests different actions by the Company. They are not substantially duplicative.

Most importantly, the human rights committee proposal necessarily implicates a very wide array of human rights oversight issues facing the Company. As one of the largest companies in the world, Apple has 118,000 full-time employees and millions more workers employed by its third-party suppliers. The Company reports that in 2016 alone it partnered with suppliers “to train more than 2.4 million workers on their rights as employees.” Apple has 588 million users worldwide, according to an estimate by the banking firm Credit Suisse. The company reports that 65% of its net sales derive from international operations.

In that context, a Human Rights Committee of the Apple board of directors would confront a broad array of issues – including working conditions in the factories that make iPhones, compliance with national and international requirements regarding the use of so-called “conflict minerals,” and a host of human rights concerns in the Company’s vast global supply chain.

Apple’s Supplier Code of Conduct, for example, lists 29 distinct areas of concern for supplier conduct regarding labor and human rights, health and safety, environmental protection, ethics, and management practices. Apple's 2017 Supplier Responsibility Progress
Report, which evaluated Apple's suppliers against the Supplier Code of Conduct, highlighted more than 500 issues and expected behaviors.\(^5\)

In contrast, the current Proposal brings management and board focus to one critically important public policy issue which has drawn the attention of members of the U.S. Senate, a high-level representative of the United Nations, human rights organizations and the global media.

With regard to the VPN issue, the establishment of the Human Rights Committee might provide no resolution at all. The Company’s public position is that with regard to defending free expression and preventing censorship, the company will simply be, according to CEO Tim Cook, constrained to “follow the law wherever we do business.” Accordingly, one can reasonably question whether the Company or its board would ever even take the questions raised on the Proposal of Free Expression and Censorship as a human right issue and bring the questions before the human rights committee.

**B. Staff precedents do not support exclusion of the Proposal.**

The current Proposal and previously submitted proposal are quite unlike the human rights precedent cited by the Company in *Cooper Industries Ltd.* (January 17, 2006). The first submitted proposal requested that the company commit itself to the implementation of a code of conduct based on ILO human rights standards and United Nations’ Norms on the Responsibilities of Transnational Corporations with Regard to Human Rights, by its international suppliers and in its own international production facilities, and commit to a program of outside, independent monitoring of compliance with these standards. The proposal in its background section mentioned that the ILO human rights standards include:

1. All workers have the right to form and join trade unions and to Bargain collectively. (ILO Conventions 87 and 98; UN Norms, section D9).

2. Workers representatives shall not be the subject of discrimination and shall have access to all workplaces necessary to enable them to carry out their representation functions. (ILO Convention 135; UN Norms, section D9)

3. There shall be no discrimination or intimidation in employment. Equality of opportunity and treatment shall be provided regardless of race, color, sex, religion, political opinion, age, nationality, social origin or other distinguishing characteristics. (ILO Conventions 100 and 111; UN Norms, section B2).

4. Employment shall be freely chosen. There shall be no use of force, including bonded or prison labor. (ILO Conventions 29 and 105; UN Norms, section D5).

5. There shall be no use of child labor. (ILO Convention 138; UN Norms, section D6) …

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The subsequently submitted proposal was significantly duplicative in requesting management to review its policies related to human rights to assess areas where the company needs to adopt and implement additional policies and to report its findings, with the supporting statement mentioning that it should include:

1. A risk assessment to determine the potential for human rights abuses in locations where the company operates.

2. **A report on the current system in place to ensure that the company’s suppliers are implementing human rights policies in their operations, including monitoring, training and addressing issues of non-compliance.**

3. The company’s strategy of engagement with internal and external stakeholders.

Thus, in that instance, and in the vast majority of cases where the Staff allows exclusion under Rule 14a-8(i)(11), there is detail or scoping in the ask that makes it clear that when the company takes the actions requested by the first submitted proposal, responsive action is also prescribed for the main issues raised by the excluded proposal.

In contrast, in the present instance, the previously submitted proposal does not ensure response on the specific details and concerns of the significant policy issue facing the Company. This makes the Proposal and previous proposal much more like prior decisions in which Staff has denied no-action relief under Rule 14a-8(i)(11) where proposals concern the same broad subject matter but request different actions. Such proposals do not have the same principal thrust and focus. In *Pulte Homes, Inc.* (February 27, 2008) ("Pulte"), the Staff was unable to concur that a subsequent proposal could be excluded under Rule 14a-8(i)(11). The two proposals at issue in *Pulte* both sought the formation of a committee of independent directors and a report to shareholders relating to evaluation and mitigation of risks associated with the company’s mortgage lending operations. While the proposal that was filed first focused on a “thorough review of the [c]ompany’s regulatory, litigation and compliance risks with respect to its mortgage lending operations,” the subsequent proposal focused on development and enforcement of policies and procedures to ensure loan terms and underwriting standards of nontraditional mortgages were consistent with prudent lending practices. Despite the similarities, the different focus of the two proposals was sufficient to render them non-duplicative for purposes of Rule 14a-8(i)(11).

In examining whether two proposals are substantially duplicative, prior Staff decisions looked to the specific actions requested. As long as the proposals are not in conflict or create confusion among the voting shareholders, two proposals addressing a similar subject matter are not excludable under Rule 14a-8(i)(11).

As an example, proposals addressing aspects of climate risk have been found to be not duplicative even though they both addressed climate risk. For instance, in *ExxonMobil* (March 14, 2014) the company argued that the focus of both proposals was climate change and related risks. However, proponents demonstrated that the principal thrust of the proposal at issue was
disclosure of the risk of stranded, or devalued assets, resulting from global climate change, i.e., the negative impact on assets currently on the balance sheet. In contrast, the "principal thrust" of the previously submitted proposal was to ask the company to set quantitative goals for reducing greenhouse gas emissions. Even though both addressed the broader topic of climate change, the proponents demonstrated successfully that no reasonable reader would be confused about the difference between these two ideas and the Staff found the proposal not duplicative.

Similarly, the current Proposal’s principle thrust is on a set of recent developments regarding freedom of expression and censorship, and transparency regarding how the Company is addressing freedom of expression concerns. In contrast, the previously submitted proposal simply establishes a committee on human rights.

A recent staff decision in Kraft Inc. (January 28, 2015) demonstrates that request for a report on a large topic – sustainability reporting – is not substantially duplicative with more specific reporting requests that theoretically could be included in the sustainability report, specifically proposals relating to sustainable packaging and sustainable forestry. Rule 14a-8(i)(11) does not contemplate exclusion of focused proposals even if the subject matter of a broader proposal might theoretically touch on the content of the other proposals. Thus, in the present instance, the fact that the proposed human rights committee of the previously submitted proposal would be authorized to issue reports on human rights does not substantially duplicate the request for a very specific report addressing live issues facing the Company.

In Chevron Corp. (March 24, 2009), Chevron unsuccessfully attempted to characterize two distinct proposals as duplicative, alleging that “both reflect a concern over the company’s criteria for determining whether to operate in various countries” and both request an assessment of the reputational risks associated with those decisions. While the proposals did have the identified similarities, their subject matter was found to be distinct and non-duplicative. One proposal addressed “the gap between its international environmental aspirations and its performance,” referring to Chevron’s multi-billion-dollar environmental, health and safety fines and settlements, asking that the company apply the highest environmental standards in the countries in which it operates. The other proposal requested a report on “the policies and procedures that guide Chevron’s assessment of host country laws and regulation with respect to their adequacy to protect human health, the environment and our company’s reputation.”

The second proposal addressed Chevron’s “opaque” process to determine “whether to invest in or withdraw from countries. The shareholders requested a report detailing Chevron’s criteria for “(i)investment in; (ii) continued operations in; and, (iii) withdrawal from specific countries.” Despite some overlap of subject matter, the proposals were sufficiently distinct to avoid exclusion.

Similarly, in ExxonMobil Corporation (March 23, 2009) a proposal requesting a report on the impact of climate change on vulnerable emerging countries between 2010 and 2030,
comparing the severity of impacts to a scenario where Exxon adopted sustainable energy policies that benefitted vulnerable emerging countries, was not found to be duplicative of a proposal that asked the company to “adopt a policy for renewable energy research, development and sourcing, reporting on its progress to investors.” Even though both proposals broadly referred to renewable or sustainable technology research, the first proposal did not refer to creating policy changes within the company, but “to investigate and report to shareholders on the likely consequences of global climate change between now and 2030 for emerging countries, and poor communities in these countries and developed countries, and to compare these outcomes with scenarios in which ExxonMobil takes leadership in developing sustainable energy technologies that can be used by and for the benefit of those most threatened by climate change.”

Finally, in *OGE Energy Corp.* (February 27, 2008) two proposals that related broadly to climate change were found not to be substantially duplicative where the first filed proposal requested a report on the economic impact of climate change on the company, and the second proposal requested a report on the “feasibility of adopting quantitative goals based on current and emerging technologies for reducing global greenhouse gas emissions from the company’s operations.” These decisions highlight that proposals that relate to the same subject matter are not excludable when they propose different core actions and have different principal thrusts.

The Company’s reliance on *Chevron Corp.* (March 23, 2009) is misplaced. In that decision, the Company asserted and the SEC, by virtue of its decision, agreed that the greenhouse gas reduction information requested in the oil sands proposal was a substantial part of the request and therefore substantially duplicative of the earlier filed proposal requesting greenhouse gas emission reductions from company operations and products. There is no similarly substantial overlap in the current proposals, because the scope of company action through a human rights committee is of ambiguous scope, and need not substantially address the issues of concern in the Proposal.

SEC Staff decisions in other subject areas confirm that proposals that seek to address a similar subject matter of concern to shareholders in two different ways are not considered duplicative if the approaches of the proposals to the subject matter are different enough. See for instance, *Pharma-Bio Serv, Inc.* (January 17, 2014) in which two proposals, which both related to the issuance of dividends, were allowed by the Staff to appear on the proxy, and not found to be excludable under Rule 14a-8(i)(11). The first proposal requested that the board establish a quarterly dividend policy while the second requested that the board immediately adopt and issue a special cash dividend.

In this instance, the fact that the previously submitted proposal mentions in its supporting statement one of the biggest human rights controversies facing the Company in 2017, the VPN/China controversy, does not create the same principal thrust. Instead, the present Proposal provides a focused response to that major controversy, while the previously submitted proposal, submitted by a known human rights advocate, seeks top-level oversight of all human rights issues.
It should be noted that the Company Letter cites some precedents that seem to have been overruled by subsequent staff determinations. For instance, it cites WellPoint, Inc. (February 24, 2012) and Union Pacific Corp. (February 1, 2012 recon. denied Mar. 30, 2012) in which the Staff concurred that a proposal calling for disclosure of the company's "political contributions and expenditures" (specified as contributions to political campaigns) was substantially duplicative of a proposal calling for disclosure of the company's policies regarding "lobbying of legislators and regulators." Yet in March 2013 the Staff found several instances where lobbying and political contributions proposals were not substantially duplicative and ruled against similar exclusions at Exxon Mobil (March 15, 2013), Goldman Sachs Group Inc. (March 14, 2013) and CVS Caremark (March 15, 2013).

The Company Letter attempts to fabricate a sense of similarity by describing the overlap between the proposals as both addressing aspects of human rights. But the previously presented proposal seeks only the establishment of a human rights committee with broad oversight of human rights issues while the current Proposal addresses accountability on a specific controversy confronting the Company. Accordingly, these two proposals requested very different actions, and there is no assurance that creating a human rights committee would in any way result in the company addressing or having transparency on the specific freedom of expression issues.

There is no danger of confusion regarding the subject matter of the proposals in this instance. The important point is that the Proposals relate to different subject matters and request different solutions. Separate votes on each Proposal are accordingly required to illuminate shareholder views regarding these separate issues.

II. The Proposal is not excludable under Rule 14a-8(i)(7) because it addresses a significant policy issue and does not micromanage.

The Commission has stated that “proposals relating to [ordinary business] matters but focusing on sufficiently significant policy issues . . . generally would not be considered to be excludable.” Staff Legal Bulletin No. 14E (October 27, 2009) noted that, “On those cases in which a proposal’s 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 generally will not be excludable under Rule 14a-8(i)(7) as long as a sufficient nexus exists between the nature of the proposal and the company.”

Staff Legal Bulletin 14H published in 2015 added that “a proposal may transcend a company’s ordinary business operations even if the significant policy issue relates to the “nitty-gritty of its core business.” Therefore, proposals that focus on a significant policy issue transcend a company’s ordinary business operations and are not excludable under Rule 14a-8(i)(7).”

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Once a significant policy issue is identified and nexus is found, the only further ordinary business question is whether the Proposal micromanages the Company. In the present instance, the Proposal clearly addresses the significant policy issue of freedom of expression and censorship, has a clear connection to the Company’s business activities given the high-profile conflicts that the company has found itself in in the last year, and the Proposal does not micromanage the Company’s management of the issue.

A. Staff precedent demonstrates that the proposal addresses a significant policy issue.

As in Yahoo! Inc. (April 13, 2007) the present proposal finds the company embroiled in a specific public controversy that has all of the relevant earmarks of a significant policy issue, and therefore rises above the level of ordinary business excludable under Rule 14a-8(i)(7). In Yahoo! Inc., the proposal requested that the management institute policies to help protect freedom of access to the internet. The Company had been involved in significant public controversy over its cooperation in censorship in China. The Staff was unable to agree that Yahoo could omit the proposals from its proxy materials under Rule 14a-8(i)(7). A very similar set of issues is involved in the present case, with a similar nexus and high-profile involvement of Apple.

The Company Letter erroneously analogizes the proposal to the issue of net neutrality and a free and open Internet generally, which were not found to have sufficient nexus and widespread/visible debate in early consideration. Sprint Nextel Corp. (January 4, 2010) Notably, the issue of net neutrality – also known as "a free and open Internet" was subsequently found to be a significant policy issue. See, e.g., Verizon Communications (February 13, 2012)

As with the issue of net neutrality, Apple’s actions and standards for responding to proposed censorship and interference with free expression on the Internet present an overriding significant policy issue. This Proposal does not require the company to drive or alter its decisions regarding whether and where it allows sales to occur. Instead, it is focused solely on creating greater transparency about how the company manages the overriding policy issues regarding freedom of expression and censorship – transparency regarding how the company interacts with government requests for censorship and against free expression:

Resolved, shareholders request that the Company publish a report on its role in promoting freedom of expression. The report should be produced at reasonable expense, excluding proprietary and confidential information, and:

- Summarize measures Apple took to prevent removal of relevant VPN apps in China;
- Describe Company policies for evaluating and responding to, above and beyond legal compliance, government requests to remove apps from the App store affecting freedom of expression;
• Explore policy options for the Company to play a role in ensuring that consumers in countries like China, with severe censorship records, have unfettered and anonymous access to the Internet.

As such, the current Proposal is much more like the net neutrality and Yahoo! Freedom of expression proposals and other proposals that relate to transparency on policy issues on which a company engages, and not the kind of proposal that dictates whether or not to sell particular products.

B. Apple faces significant public concern and controversy regarding its violations of free expression - demonstrating nexus of the issue to the Company.

Apple is at the center of public concern and debate regarding its role in violating the right of free expression and encouraging censorship in China, including the removal of Virtual Private Network (VPN) apps from the company’s App Store in China. This issue has garnered significant attention by Congress, officials at the United Nations, global media outlets, and human rights groups. It poses a significant threat to business opportunities for the Company.

The controversy began in late July 2017, when news outlets reported that “all major VPN apps” had been removed from the App Store in China. In response to media inquiries at the time, the Company issued the following statement:

Earlier this year China’s MIIT [Ministry of Industry and Information Technology] announced that all developers offering VPNs must obtain a license from the government. We have been required to remove some VPN apps in China that do not meet the new regulations. These apps remain available in all other markets where they do business.

According to a July 2017 article in Bloomberg: “A VPN is a third-party service that routes web traffic through servers in another country or location to where a person physically is. While they have standard business purposes, such as connecting a traveling employee to the company’s home network, they are also used to avoid geographic restrictions on websites...”

Tech Crunch, an industry trade publication explained: “VPN apps and services currently represent one of the only ways that a person living in China can bypass state censorship controls that prevent access to many websites and services based on their content or potential content…this sweep removes most of the well-known and well-used VPNs from the store, making it harder for the average citizen to bypass monitoring and censorship.”

Media Coverage

A Google search for the terms “Apple VPN China” produces approximately 581,000 links to related web postings and articles.

Widespread criticism of Apple emerged immediately following the Company’s removal of VPN apps from its App Store in China.

Farhad Manjoo, the weekly technology columnist for The New York Times, specifically addressed the removal of VPN apps from the App Store:

“Whatever Apple may have done in private to fight the Chinese internet law, the company has not offered a peep of criticism in public…

Search Apple’s website for a letter from Mr. Cook issuing a public rebuke of China’s intrusion into his customers’ privacy and freedom of expression — you won’t find it. The company has not fully tested its political and economic leverage in China. It hasn’t tested the public’s immense love of its products. It hasn’t publicly threatened any long-term consequences — like looking to other parts of the world to manufacture its products.

The company’s silence may be tactical; the Chinese government, the conventional thinking goes, does not take well to public rebuke. Yet Apple’s quiet capitulation to tightening censorship in one of its largest markets is still a dangerous precedent.

The publication Tech Crunch said: “Apple may believe it is best for its business to co-operate with requests from Beijing, but this App Store purge just created one of the biggest setbacks for the free internet in China’s history.”

Writing in Wired, Emily Parker, a reporter and former adviser to the U.S. State Department, said: “It turns out that some corporate leaders will sacrifice a good night’s sleep to reach hundreds of millions of internet users—and potential customers.”

Engadget reported: “Apple has drawn criticism from pro-democracy activists, like Joshua Wong Chi-fung, secretary general of Hong Kong political party Demosisto. On Twitter, he said that the company “values profit over human right…”

The Shanghaiist, a website about Shanghai, said: “(T)his appears to be yet another example of Apple’s newfound willingness to bend to the will of Chinese authorities.”


The article stated, in part:

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11 https://www.wired.com/story/apple-china-censorship/
12 https://www.engadget.com/2017/08/02/apple-vpn-restrictions-china/
Apple shut down iBooks and iTunes Movies services in China last year. It removed the New York Times apps from the China App Store. Then last weekend Apple took down, according to mobile-app tracking site ASO100.com, over 400 apps with the description of “virtual private network” (VPN), or software that enables users to circumvent the country’s vast system of internet filters. In all those cases, Apple said it was following Chinese laws and regulations.

“The government will continue to clamp down on anything that can possibly include politically sensitive material,” says Tay Xiaohan, an analyst at IDC. “I believe that Apple will continue to comply with the government’s regulation for fear that the country would one day ban Apple’s products.”

Apple has been on a charm offensive. It has announced two new research-and-development centers in China, bringing its total commitment to R&D facilities there to $500 million.

It recently appointed its first China head—a China-born, longtime Apple executive—and, according to a person familiar with the matter, she has been trying to recruit a government-relations executive.

The thing is, instead of charm, some Chinese consumers want Apple to show some backbone—the way it did to the FBI when the company refused to unlock an iPhone used by an attacker in the San Bernardino, Calif., shootings in 2015.

“If Apple doesn’t stand up and make some noise, which company can?” asks Tao Jingzhou, a lawyer at Dechert LLP in Beijing.

Joseph Holt, a business ethics professor at the University of Notre Dame, wrote in FORTUNE magazine:15

Last year, Apple was on a moral high in its defiant standoff with the FBI over whether the company would help the agency unlock the iPhone of one of the San Bernardino shooters. The company was hailed as a hero in the fight against government intrusion.

But the company is no longer being hailed as a privacy rights hero. In January 2017, China’s Ministry of Industry and Information adopted a new regulation requiring virtual private network (VPN) developers to obtain a license from the government. VPN apps are one of the few ways that someone living in or visiting China can bypass the “Great Firewall” that restricts access to foreign websites—including perennial favorites like Google, Facebook, Twitter, and Instagram. In response, on July 29, Apple announced that it was removing all major VPN apps—which help Internet users circumvent censorship systems—from its App Store in China (the apps remain available in all other markets).

I can personally attest to the effect of this change. I am writing this piece from a hotel room in Beijing, where I was unable to access my Gmail account for the first two days.

here, even with a VPN connection. I eventually found a work-around, but the experience has left me sensitive to the importance of readily available means for getting around laws that unduly restrict the availability and flow of information.

… I am saying that there are times when the legal argument is morally inadequate.

*The Diplomat,* a current-affairs magazine for the Asia-Pacific region, published an article about the VPN controversy with the headline: “Is Apple Kowtowing to China?”\(^{16}\) The article stated:

As China — currently Apple’s second largest market — is becoming the company’s most important market, no one doubts Apple CEO Tim Cook’s enthusiasm for China. However, one of the most important reasons that fans remain loyal to Apple’s more-expensive-than-average products is its idealism, which Steve Jobs implanted into the company long time ago. Let’s recall Apple’s best-known commercial, launched in 1984: “On January 24th, Apple Computer will introduce Macintosh. And you’ll see why 1984 won’t be like [the novel] 1984.”

Now, 33 years after the year of 1984, are we going to see 2017 become a bit more like 1984 — with Apple’s assistance?

**Apple’s actions were also cited in reports by media on mainland China.**

*Huanqiu,* one of the largest and most authoritative state-controlled media outlets in China, published an article entitled: ”Apple Off the Tower/VPN Is Win of Government by Law”\(^{17}\) (Translation by Google)

*The Paper,* a publication controlled by the Chinese Communist Party, featured an article with the headline: “Apple CEO in response to the next frame VPN: policy enforcement efforts to strengthen, Apple law-abiding”\(^{18}\) (Translation by Google)

The Chinese language version of the *Financial Times* reported: “Apple is withdrawing all the applications that do not comply with Chinese law, even if the application developer is outside of China.”\(^{19}\) (Translation by Google)

**Apple’s CEO Confirmed the Controversy in a Call with Securities Analysts**

In an August 1 telephone conference call with financial analysts, Apple CEO Tim Cook spoke about the controversy. CNN reported:\(^{20}\)

\(^{16}\) [https://thediplomat.com/2017/08/is-apple-kowtowing-to-china/](https://thediplomat.com/2017/08/is-apple-kowtowing-to-china/)

\(^{17}\) [http://opinion.huanqiu.com/hqpl/2017-08/11077448.html](http://opinion.huanqiu.com/hqpl/2017-08/11077448.html)

\(^{18}\) [http://www.thepaper.cn/newsDetail_forward_1749544](http://www.thepaper.cn/newsDetail_forward_1749544)

\(^{19}\) [http://www.ftchinese.com/story/001073617](http://www.ftchinese.com/story/001073617)

Tim Cook on Tuesday addressed the controversy over his company's recent removal of some virtual private network (VPN) apps from its China App Store, reiterating that the U.S. company was simply complying with Chinese regulations.

"We're hopeful that over time the restrictions we're seeing are lessened, because innovation really requires freedom to collaborate and communicate," Cook said during Apple's latest earnings call.

"We believe in engaging with governments even when we disagree," he said.

CNBC said Cook discussed with analysts other controversial elements of the Company’s decision.

"We would obviously rather not remove the apps, but like we do in other countries, we follow the law wherever we do business," Cook said. "We strongly believe participating in markets and bringing benefits to customers is in the best interest of the folks there and in other countries as well."

Cook also addressed critics' comparisons between Apple's decision to conform to the law in China, versus its refusal last year to help the FBI access an iPhone belonging to one of the San Bernardino terrorists.

"Some folks have tried to link it to the U.S. situation last year. They're very different," Cook said. He added that in the U.S., the law supported Apple. "In the case of China, the law is very clear there. Like we would if the U.S. changed the law here, we have to abide by them in both cases," he said.

While Apple beat Wall Street expectations in its fiscal third-quarter earnings, the company's revenue in Greater China fell 10 percent year over year, amid rising competition from local names like Huawei and Xiaomi.

Apple has recently stepped up efforts in China, including setting up its first data center and also creating a new leadership role to oversee coordination across the company's China-based team.

**Concern About Apple’s Actions Have Prompted Recent Criticism and Inquiries from the U.S. Congress.**

Apple's removal of VPN apps from its App Store in China continues to draw high-level and bipartisan scrutiny from the U.S. Congress. In October 2017, U.S. Senators Ted Cruz (R-Texas) and Patrick Leahy (D-Vermont) sent a letter to Apple CEO Tim Cook, asking him a detailed list of questions, asking him to explain if Apple had raised concerns when Beijing was formulating its cybersecurity laws or if the tech giant pushed back when asked to take down several of the apps.  

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The letter from Senators Cruz and Leahy states:

While Apple’s many contributions to the global exchange of information are admirable, removing VPN apps that allow individuals in China to evade the Great Firewall and access the Internet privately does not enable people in China to “speak up.” To the contrary, if Apple complies with such demands from the Chinese government it inhibits free expression for users across China, particularly in light of the Cyberspace Administration of China’s new regulations targeting online anonymity.

Unfortunately, the removal of VPN apps is not the only time that Apple has reportedly acceded to a request from the Chinese government involving censorship, at the expense of Internet freedom. On December 23, 2016, Apple reportedly removed The New York Times app from its China App Store at the request of Chinese authorities. In addition, prior to the removal of The New York Times app, Apple also reportedly shut down its own iBooks Store and iTunes Movies in China at the request of Chinese authorities.

The threat that the Great Firewall poses to the freedom of the people of China is similar to the threat that the Berlin Wall imposed on the people of East Berlin for twenty-eight years. As long as the Great Firewall operates and is enabled by American technology companies, Internet freedom in China will remain at risk.

The importance of VPNs to the free flow of information in China – and Apple’s critical role in distributing VPNs in China – has been a long-standing concern of the United States-China Economic and Security Review Commission. The Commission was created by the U.S. Congress in October 2000 with the legislative mandate to monitor, investigate, and submit to Congress an annual report on the national security implications of the bilateral trade and economic relationship between the United States and the People’s Republic of China.23

In May 2017, the commission held a hearing that addressed China’s censorship and internet controls. The subject of VPNs and their important role in China was raised 32 times during the course of the hearing; Apple’s removal of apps from the App Store at the insistence of Chinese authorities was mentioned approximately two dozen times.

Dr. Sophie Richardson, China Director, Human Rights Watch, told the May 2017 hearing:

“In order to get around the Great Firewall to access prohibited information, Chinese netizens have to use software such as Virtual Private Networks (VPNs). However, VPNs have increasingly become unreliable as the Chinese government has stepped up efforts to block or disrupt VPN services. And this year, the government issued new rules to increase its legal controls over the use of VPNs.”

Dr. Richardson added that “by heavy-handedly patching the cracks in China’s censorship apparatus, the Xi government has effectively eliminated the pockets of free speech

23 https://www.uscc.gov/about
that had emerged during China’s three decades of reform era.” (Note: this May 2017 hearing pre-dated Apple’s July 2017 removal of the VPN apps.)

In July 2017, Brian McCarthy, Managing Director and Chief Investment Strategist of the Emerging Sovereign Group, testified before the Commission that the ban on VPNs in China was one reason American investors were wary of the Chinese economy. Mr. McCarthy referenced Apple’s reported removal of VPNs from the App Store in China.

Apple’s actions have spurred concern by the United Nations advocate for freedom of expression.

In August 2017, David Kaye, the United Nations Special Rapporteur on freedom of opinion and expression, sent a letter to Apple CEO Tim Cook in which he said:

I am mindful of the challenges that your business and other technology and media companies face in expanding access to your products in China, products which often expand communication and access to information. In recent years, China has expanded the scope of its censorship tools and efforts, coming at the expense of individual rights to freedom of expression, access to information, freedom of association, and other fundamental human rights. Chinese restrictions put you in the position – unenviable, and likely reluctantly – of having to mediate between your customers, Chinese citizens, and Chinese law.

Indeed, earlier this year, when accepting the Newseum 2017 Free Expression Award, you stated that “we defend, we work to defend these freedoms by enabling people around the world to speak up. And second, we do it by speaking up ourselves. Because companies can, and should have values.”

Your stated commitment to freedom of expression aligns Apple with many of its peers, and internationally accepted standards of corporate responsibility. Your statements also embrace Apple’s critical role in protecting fundamental rights in the digital age: While it may be a natural target for government censorship, it has also become indispensable to the lives of hundreds of millions of users worldwide, and therefore uniquely qualified to speak truth to power and stand up for their rights.

Given these statements, and in keeping with my mandate to investigate key freedom of expression challenges worldwide, I would like to follow up on your statements that Apple states a point of view and speaks up in the context of restrictions on fundamental rights. …

It’s not known whether Apple has responded to Mr. Kaye’s letter and questions. If it has, the response has not been made public.

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24 [https://www.uscc.gov/sites/default/files/transcripts/May%20Final%20Transcript.pdf](https://www.uscc.gov/sites/default/files/transcripts/May%20Final%20Transcript.pdf)
25 [https://www.uscc.gov/sites/default/files/transcripts/Transcript%20-%20July%202012%20%202017%20Roundtable.pdf](https://www.uscc.gov/sites/default/files/transcripts/Transcript%20-%20July%202012%20%202017%20Roundtable.pdf)
The controversy over the removal of VPNs in China is global.

On October 16, 2017, Reuters reported:27

BEIJING (Reuters) - China's internet restrictions have struck a "new blow" against foreign companies working there, Germany's ambassador said on Monday, warning that such moves could undermine Beijing's political and commercial ties with the world...

"Unrestricted internet access via VPN is vital if China wants to take maximum advantage of international cooperation in research and development as well as academic and cultural exchange," German Ambassador Michael Clauss said in a statement.

The higher the digital wall grows, the less attractive living and working in China will be for professionals, researchers or artists, Clauss said, adding that repeated requests to discuss the issue with Chinese authorities "have not led to meaningful dialogue so far".

Apple’s removal of VPN apps has prompted outcries by human rights organizations.

Amnesty International’s Hong Kong branch published a Chinese-language report which said: “The use of VPN to break through the heavy network blockade is the only way for many Chinese people to connect freely with the outside world, and the Chinese government's move will undoubtedly further limit the ability of the public to receive opinions and messages and seriously crack down on freedom of speech.”28 (Translation by Google)

In August 2017, Greatfire.org, a nonprofit that helps Chinese Internet users circumvent censorship and restrictions imposed by China’s Great Firewall, and Golden Frog, a company that develops apps to enable privacy and provide access to a free and open Internet, wrote to Apple CEO Tim Cook:29

This is more than a simple business decision or compliance issue. The United Nations declared the right to privacy a fundamental human right, as detailed in Article 19 of the Universal Declaration of Human Rights (USDR). VPNs are a tool people in China and around the world use to achieve this human right.

When you eliminate access to VPNs, you make a statement about your feelings on human rights - even if it's an implicit one. Therefore, we are appealing to Apple to provide greater transparency into the issues you face with Chinese regulators, and offer explanations on company decisions. We also encourage you to publicly partner with like-minded groups globally, to help leverage your unique position as a technology leader in China. We encourage you to use this position as an opportunity to

28 https://zh.amnesty.org/more-resources/blog/china-vpn-ban-firewall-unescaped/
champion the Internet freedom and privacy you stand for in other nations around the world.

There is also concern that Apple’s failure to speak out in China has emboldened other authoritarian regimes, including Russia. Only days after Apple removed VPN apps from its store in China, CNBC published a story with the headline, “Russia follows China in tightening internet restrictions, raising fresh censorship concerns.”

Russia has passed a law banning software that allows users to view internet sites barred in the country anonymously.

President Vladimir Putin signed the bill prohibiting virtual private networks (VPNs) and other technologies that anonymize users, according to the government's website on Sunday.

"VPNs can help people freely access the Internet without their browsing being observed by their Internet provider," Jim Killock, executive director of the U.K. digital rights campaign Open Rights Group, told CNBC via email.

"People can also use them to access censored and blocked content. Laws that criminalize the use of privacy-enhancing technologies like VPNs are incredibly dangerous and will restrict rights to privacy, free expression and access to information."

Russia’s VPN ban follows the news that Apple had removed most major VPN apps from its app store in China, in order to comply with a law passed earlier this year.

CONCLUSION

As demonstrated above, the Proposal is not excludable under Rule 14a-8(i)(11) or Rule 14a-8(i)(7). Therefore, we request the Staff to inform the Company that the SEC proxy rules require denial of the Company's no-action request. In the event that the Staff should decide to concur with the Company, we respectfully request an opportunity to confer with the Staff beforehand.

Please call Sanford Lewis at (413) 549-7333 with respect to any questions in connection with this matter, or if the Staff wishes any further information.

Sincerely,
Sanford Lewis
Cc: Gene Levoff
Michael and Honore Connor
Support for free expression and opposition to censorship can significantly enhance a company's reputation. Conversely, if a company is linked to violations of the right of free expression and support for censorship, the resulting reputational damage can undermine consumer brand loyalty and shareholder value.

In China, virtual private networks (VPNs) allow users to bypass state censorship controls to connect to the Internet. Human Rights Watch says the Internet plays a “critical role in creating transparency and enabling redress for human rights violations in China.” A 2016 U.S. State Department report on China cited continuing “official abuse” of citizens, including unlawful killings, detention, disappearances and torture.

Yet in July 2017, Apple removed dozens of VPNs from its App Store in China and reported to software developers that their apps had been declared illegal under Chinese law.

Apple’s action has stirred global controversy. Trade publication Tech Crunch said, “this App Store purge just created one of the biggest setbacks for the free internet in China’s history.” A New York Times tech columnist called Apple’s “quiet capitulation to tightening censorship” a “dangerous precedent.”

In an August 2017 earnings call, CEO Tim Cook said Apple “would obviously rather not remove the apps,” but is constrained to “follow the law wherever we do business.”

Apple has previously stressed the importance of addressing some human rights issues, including human trafficking and responsible sourcing. In 2016, Apple fought an intense battle opposing U.S. Department of Justice efforts to bypass encryption on iPhones.

Yet, Apple has disclosed little regarding what, if anything, it did to resist removal of these apps in China. David Kaye, United Nations Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression, has asked numerous questions regarding VPNs and how the Company “speaks up in the context of restrictions on fundamental rights.” The Company has not responded.

Apple’s lack of transparency on this matter may highlight a larger problem. The 2017 Ranking Digital Rights survey concluded that Apple “lacked disclosure of
governance and accountability mechanisms around the implementation of its commitments and policies related to privacy or freedom of expression.”

As investors, we are concerned about weaknesses in Apple’s governance and accountability mechanisms on freedom of expression and related legal, financial and reputational risks.

Resolved, shareholders request that the Company publish a report on its role in promoting freedom of expression. The report should be produced at reasonable expense, excluding proprietary and confidential information, and:

• Summarize measures Apple took to prevent removal of relevant VPN apps in China;
• Describe Company policies for evaluating and responding to, above and beyond legal compliance, government requests to remove apps from the App store affecting freedom of expression;
• Explore policy options for the Company to play a role in ensuring that consumers in countries like China, with severe censorship records, have unfettered and anonymous access to the Internet.
Shareholder Proposal on Human Rights Committee

Resolved: shareholders recommend that Apple Inc. establish a Human Rights Committee to review, assess, disclose, and make recommendations to enhance Apple’s policy and practice on human rights. The board of directors is recommended, in its discretion and consistent with applicable laws to: (1) adopt Apple Human Rights Principles, (2) designate the members of the committee, including outside independent human rights experts as advisors, (3) provide the committee with sufficient funds for operating expenses, (4) adopt a charter to specify the functions of the committee, (5) empower the committee to solicit public input and to issue periodic reports to shareholders and the public on the committee’s activities, findings and recommendations, and (6) adopt any other measures.

Supporting Statement

There have been too many negative reports on Apple’s human rights policy and practice, mostly related to Apple’s operation in China for many years. For example, recently, the New York Times reported “Apple Removes Apps From China Store That Help Internet Users Evade Censorship” on July 29, 2017; the Wall Street Journal reported “Get Used to Apple Bowing Down to Chinese Censors” on August 7, 2017. Furthermore, Apple is building its first China-based data center, and “the new agreement goes one step further with a Chinese partner responsible for running its data center, managing the sales of its services in the country and handling legal requests for data from the government.” (New York Times, July 12, 2017)

On human rights policy and practice, we have the best case (see my proposal to Google 2010 shareholders meeting) and the worst case (see my proposals to Yahoo 2011 and 2013 shareholders meetings, to Verizon 2017 shareholders meeting and to Yahoo/Altaba 2017 shareholders meeting http://cpri.tripod.com/cpr2017/altaba-statement.pdf on the abuses of the so-called “Yahoo Human Rights Fund” against human rights) here in Silicon Valley. Apple should not fail as Yahoo.
October 9, 2017

VIA E-MAIL (shareholderproposals@sec.gov)

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

Re: Apple Inc.
Shareholder Proposal of Michael and Honore Connor

Dear Ladies and Gentlemen:

Apple Inc., a California corporation (the “Company”), hereby requests confirmation that the staff of the Division of Corporation Finance of the U.S. Securities and Exchange Commission (the “Commission”) will not recommend enforcement action to the Commission if, in reliance on Rule 14a-8(i)(11) and (i)(7) under the Securities Exchange Act of 1934, as amended (the “Exchange Act”), the Company omits a shareholder proposal (the “Proposal”) submitted by Michael and Honore Connor and co-filed by Harrington Investments, Inc. (collectively, the “Proponent”) from the Company’s proxy materials for its 2018 Annual Meeting of Shareholders (the “2018 Proxy Materials”). A copy of the Proposal and related correspondence is attached hereto as Exhibit A.

In accordance with Staff Legal Bulletin No. 140 (November 7, 2008) (“SLB No. 140’), this submission is being delivered by e-mail to shareholderproposals@sec.gov. Pursuant to Rule 14a-8(j), a copy of this submission also is being sent to the Proponent. Rule 14a-8(k) and SLB No. 14D provide that a shareholder proponent is required to send the company a copy of any correspondence which the proponent elects to submit to the Commission or the staff. Accordingly, we hereby inform the Proponent that, if the Proponent elects to submit additional correspondence to the Commission or the staff relating to the Proposal, the Proponent should concurrently furnish a copy of that correspondence to the undersigned.

Pursuant to the guidance provided in Section F of Staff Legal Bulletin 14F (October 18, 2011), we ask that the staff provide its response to this request to the undersigned via e-mail at the address noted in the last paragraph of this letter.

The Company intends to file its definitive 2018 Proxy Materials with the Commission more than 80 days after the date of this letter.
THE PROPOSAL

On September 8, 2017, the Company received from the Proponent, as an attachment to an e-mail, a letter submitting the Proposal for inclusion in the Company’s 2018 Proxy Materials. The Proposal reads as follows:

Resolved, shareholders request that the Company publish a report on its role in promoting freedom of expression. The report should be produced at reasonable expense, excluding proprietary and confidential information, and:

- Summarize measures Apple took to prevent removal of relevant VPN apps in China;
- Describe Company policies for evaluating and responding to, above and beyond legal compliance, government requests to remove apps from the App store affecting freedom of expression;
- Explore policy options for the Company to play a role in ensuring that consumers in countries like China, with severe censorship records, have unfettered and anonymous access to the Internet.

As discussed more fully below, the Company believes that it may omit the Proposal and the Supporting Statement from its 2018 Proxy Materials in reliance on (i) Rule 14a-8(i)(11) because the Proposal is substantially duplicative of a shareholder proposal previously submitted to the Company by Jing Zhao (the “Zhao Proposal” and (ii) Rule 14a-8(i)(7), because the Proposal relates to the Company’s ordinary business operations.

THE ZHAO PROPOSAL

On August 22, 2017, prior to the Company’s receipt of the Proposal, the Company received the Zhao Proposal, which reads as follows:

Resolved: shareholders recommend that Apple Inc. establish a Human Rights Committee to review, assess, disclose, and make recommendations to enhance Apple’s policy and practice on

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1 The Company also received a human rights proposal from the National Center for Public Policy Research (“NCPPR”). In a separate letter, the Company has requested the staff’s concurrence that NCPPR’s proposal is substantially duplicative of the Zhao Proposal and therefore is excludable under Rule 14a-8(i)(11). If the staff does not agree that NCPPR’s proposal is excludable, the Company believes that the Proposal is excludable on the alternative ground that it is substantially duplicative of NCPPR’s proposal, for all of the reasons that the Proposal is substantially duplicative of the Zhao Proposal. If the staff determines that NCPPR’s proposal is not excludable, the Company requests the opportunity to supplement this letter to address more specifically the bases on which it believes the Proposal is substantially duplicative of NCPPR’s proposal. A copy of and a description of NCPPR’s proposal is included in the Company’s letter to the staff dated October 9, 2017 and is incorporated herein by reference.
human rights. The board of directors is recommended, in its
discretion and consistent with applicable laws to: (1) adopt Apple
Human Rights Principles, (2) designate the members of the
committee, including outside independent human rights experts
as advisors, (3) provide the committee with sufficient funds for
operating expenses, (4) adopt a charter to specify the functions
of the committee, (5) empower the committee to solicit public
input and to issue periodic reports to shareholders and the public
on the committee's activities, findings and recommendations, and
(6) adopt any other measures.

A copy of the Zhao Proposal and related correspondence received from Mr. Zhao is
attached hereto as Exhibit B.

BASES FOR EXCLUSION OF THE PROPOSAL

I. Rule 14a-8(i)(11) — The Proposal Substantially Duplicates the Zhao Proposal
and May Be Excluded if the Company Includes the Zhao Proposal in its 2018
Proxy Materials

Rule 14a-8(i)(11) permits a company to exclude a proposal if it substantially duplicates a
proposal previously submitted by another proponent that will be included in the company's
proxy materials. The Commission's stated purpose for this exclusion is to “eliminate the
possibility of shareholders having to consider two or more substantially identical proposals
submitted to an issuer by proponents acting independent of each other.” Exchange Act Release
No. 12999 (November 22, 1976).

When a company receives two substantially duplicative proposals, the staff has
indicated that the company must include in its proxy materials the proposal the company
received first (assuming the proposal is not excludable for other reasons) and may exclude the
second proposal. See Great Lakes Chemical Corp. (March 2, 1998); see also Atlantic Richfield
Co. (January 11, 1982). If the Company includes the Zhao Proposal in its 2018 Proxy Materials,
the Company may exclude the Proposal in reliance on Rule 14a-8(i)(11) because the Zhao
Proposal was received prior to the Company's receipt of the Proposal.

Rule 14a-8(i)(11) does not require shareholder proposals to be identical to warrant
exclusion. The test applied to determine whether a proposal substantially duplicates a
previously received proposal is whether the proposals present the same core issues, or the
same “principal thrust” or “principal focus.” See, e.g., Exxon Mobil Corp. (March 19, 2010);
General Electric Co. (December 30, 2009); The Procter & Gamble Co. (July 21, 2009); Pacific
Gas & Electric Co. (February 1, 1993).

Proposals with Different Specificity or Different Requested Actions. A proposal is
excludable under Rule 14a-8(i)(11) if it falls under the same broad policy or principle of a
previously submitted proposal, even if the proposals differ in their precise terms and breadth. In
WellPoint, Inc. (February 24, 2012) and Union Pacific Corp. (February 1, 2012 recon. denied
Mar. 30, 2012), for example, the staff concurred that a proposal calling for disclosure of the company’s “political contributions and expenditures” (specified as contributions to political campaigns) was substantially duplicative of a proposal calling for disclosure of the company’s policies regarding “lobbying of legislators and regulators.” While contributing to political campaigns is a different activity than lobbying government officials, the two proposals addressed the same broad policy issue—disclosure of corporate political activity. See also *Wal-Mart Stores, Inc.* (April 3, 2002) (permitting exclusion of a proposal requesting a report on gender equality as substantially duplicative of an earlier proposal requesting a report on affirmative action programs).

Similarly, proposals that address the same subject matter and have the same thrust and focus are substantially duplicative even if they call for different actions. In *Cooper Industries* (January 17, 2006), for example, the staff determined that a proposal requesting that the company “review its policies related to human rights to assess areas where the company needs to adopt and implement additional policies and report its findings” was substantially duplicative of an earlier submitted proposal requesting that the company “commit itself to the implementation of a code of conduct based on” identified, internationally-recognized human rights standards. See also *Chevron Corp.* (March 23, 2009, recon. denied April 6, 2009) (concurring that a proposal requesting that an independent committee prepare a report on the environmental damage that would result from the company’s expanding oil sands operations in the Canadian boreal forest was substantially duplicative of a proposal to adopt goals for reducing total greenhouse gas emissions from the company’s products and operations); *Wells Fargo & Co.* (February 8, 2011) (concurring that a proposal seeking a review and report on internal controls related to loan modifications, foreclosures and securitizations was substantially duplicative of a proposal requesting a report on the company’s residential mortgage loss mitigation policies and outcomes).

**Proposals Differing in Number of Requested Actions.** A proposal also is substantially duplicative of a previously submitted proposal where the proposal calls for a specific action and the earlier proposal calls for a multiple actions which include the action called for by the later proposal. See, e.g., *Bank of America Corp.* (February 24, 2009) (allowing exclusion of a proposal requesting adoption of a 75% hold-to-retirement policy as subsumed by another proposal that called for a "set of executive compensation reforms that impose important limitations on senior executive compensation," including, among other specified reforms, adoption of a hold-to-retirement requirement for “at least 75% of the shares of stock obtained through equity awards”).

Here, the Proposal and the Zhao Proposal address the same broad policy issue—the Company’s human rights policies and practices. The Zhao Proposal is worded broadly to request that the Company assess, enhance, and issue a report on its human rights policies and practices. The Proposal, in contrast, is worded narrowly to request that the Company issue a report on its role in promoting freedom of expression, particularly “policy options” available to the Company to assure that citizens of all countries have unfettered access to the Internet. Freedom of expression, however, is an element of human rights, as demonstrated by the United
Nations Universal Declaration of Human Rights.\(^2\) Article 19 of the Declaration declares “freedom of opinion and expression,” including the right to “receive and impart information and ideas through any media,” to be an “inalienable right[] of all members of the human family.” Although they differ in their specificity, the two proposals have the same principal thrust and focus and are excludable under all of the no-action letters cited above. See WellPoint, Inc. (February 24, 2012); Union Pacific Corp. (February 1, 2012 recon. denied Mar. 30, 2012); Wal-Mart Stores, Inc. (April 3, 2002).

While the two proposals call for different actions, they share a single common concern—access to the internet in China. The Proposal specifically requests that the requested report address the “removal of relevant VPN apps in China” and the Company’s “role in ensuring that consumers in countries like China, with severe censorship records, have unfettered and anonymous access to the Internet.” In addition, the Proposal’s supporting statement consists primarily of statements relating to the Company’s operations in China and their alleged effect on internet censorship. Similarly, the supporting statement in the Zhao Proposal cites several news articles relating to Chinese censorship and the Company’s operations in China. Thus, the principal thrust of the proposals, as well as the motive underlying their submission, involves substantially the same subject matter. The Proposal therefore is excludable even though, facially, the two proposals call for different actions. See Cooper Industries (January 17, 2006); Chevron Corp. (March 23, 2009, recon. denied April 6, 2009); Wells Fargo & Co. (February 8, 2011).

The Proposal also is excludable because Zhao Proposal’s call for an assessment of the Company’s human rights policies necessarily entails a review of the Company’s policies regarding freedom of expression. As the staff concluded in Bank of America Corp. (February 24, 2009), a proposal that calls for a specific action (here, a report on the Company’s role in promoting freedom of expression) is substantially duplicative of an earlier proposal that calls for a broader range of actions, including the specific action called for by the later proposal.

Unlike the Proposal, the Zhao Proposal recommends that the Company establish, fund and empower a Human Rights Committee and that the Company’s board of directors adopt “Apple Human Rights Principles.” These additional recommendations do not change the principal thrust and focus of the Zhao Proposal or distinguish the Proposal from the Zhao Proposal for purposes of Rule 14a-8(i)(11). Instead, the additional language merely recommends a process for conducting the requested assessment of the Company’s human rights policies. As noted above, in Cooper Industries, one of the proposals (like the Proposal) merely requested an assessment of (and report on) the company’s human rights policies, while the other proposal (like the Zhao Proposal) requested, in addition to an assessment, that the board adopt specific principles and adopt a process which involved independent monitoring of the company’s compliance. The staff nevertheless concluded, appropriately, that the proposals were substantially duplicative because they shared a principal focus—assessing and reporting on the company’s human rights policies.

Here, the Proposal’s objective is the same as the overarching objective of the Zhao Proposal—to cause the Company to review and report on its human rights policies insofar as they relate to the Company’s role in facilitating access to the internet. The supporting statements indicate that the proposals are motivated by the same concerns— the potential impact of the Company’s operations on the Chinese government’s “censoring” of the internet in China.

Inclusion of both proposals in the 2018 Proxy Materials would cause shareholders to have to consider two substantially identical proposals, contrary to one of the stated purposes of Rule 14a-8(i)(11). See Exchange Act Release No. 12999 (November 22, 1976). For this reason, as well as the other reasons discussed above, the Proposal is substantially duplicative of the Zhao Proposal and is excludable under Rule 14a-8(i)(11).

II. Rule 14a-8(i)(7) — The Proposal Concerns the Company’s Ordinary Business Operations

Rule 14a-8(i)(7) permits a company to omit from its proxy materials a shareholder proposal that relates to the company’s “ordinary business operations.” According to the Commission, 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 shareholder meeting.” Exchange Act Release No. 40018, Amendments to Rules on Shareholder Proposals, Fed. Sec. L. Rep. (CCH) 11 86,018, at 80,539 (May 21, 1998) (the “1998 Release”).

In the 1998 Release, the Commission described two “central considerations” for the ordinary business exclusion. The first is that certain tasks are “so fundamental to management’s ability to run a company on a day-to-day basis that they could not, as a practical matter, be subject to direct shareholder oversight.” The second consideration relates to “the degree to which the proposal seeks to ‘micro-manage the company by probing too deeply into matters of a complex nature upon which shareholders, as a group, would not be in a position to make an informed judgment.” Id. at 86,017-18 (footnote omitted).

The Commission stated in the 1998 Release that “proposals relating to [ordinary business] matters but focusing on sufficiently significant policy issues... generally would not be considered to be excludable.” The staff elaborated on this “significant policy” exception in Staff Legal Bulletin No. 14E (October 27, 2009), in which the staff noted that, “[i]n those cases in which a proposal’s 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 generally will not be excludable under Rule 14-a8(i)(7) as long as a sufficient nexus exists between the nature of the proposal and the company.” (emphasis added). The staff went on to state that, “[c]onversely, in those cases in which a proposal’s underlying subject matter involves an ordinary business matter to the company, the proposal generally will be excludable under Rule 14a-8(i)(7).”
Office of Chief Counsel  
Division of Corporation Finance  
U.S. Securities and Exchange Commission  
October 9, 2017  
Page 7

The significant policy exception is further limited in that, even if a proposal involves a significant policy issue, the proposal may nevertheless be excluded under Rule 14a-8(i)(7) if it seeks to micro-manage the company by specifying in detail the manner in which the company should address the policy issue. See Marriott International Inc. (March 17, 2010) (proposal limiting showerhead flow to no more than 1.6 gallons per minute and requiring the installation of mechanical switches to control the level of water flow excludable for micro-managing despite recognition that global warming, which the proposal sought to address, is a significant policy issue); and Duke Energy Corporation (February 16, 2001) (proposal requesting 80% reduction in nitrogen oxide emissions from the company’s coal-fired plants and limit of 0.15 lbs of nitrogen oxide per million British Thermal Units of heat input for each boiler excludable despite proposal’s objective of addressing significant environmental policy issues). The staff has recognized that a shareholder’s casting of a proposal as a mere request for a report, rather than a request for a specific action, does not mean that the proposal does not seek to micro-manage the Company, even when the proposal addresses a significant policy issue. See Ford Motor Company (March 2, 2004) (proposal requesting the preparation and publication of scientific report regarding the existence of global warming or cooling excludable “as relating to ordinary business operations” despite recognition that global warming is a significant policy issue).

As discussed below, implementation of the Proposal would involve replacing management’s judgments on complex operating and business decisions and strategies with those favored by the Proponent and would fundamentally interfere with management’s ability to operate the Company’s global business. Accordingly, the Proposal relates to the Company’s ordinary business operations and therefore may be excluded from the Company’s 2018 Proxy Materials pursuant to Rule 14a-8(i)(7).

A. The Proposal Focuses on a Free and Open Internet, which is not a Significant Policy Issue

While the Proposal references freedom of expression, which is an element of the significant policy issue of human rights, a close reading of the Proposal reveals that it is primarily concerned with access to a free and open internet, which the staff has stated is not a significant policy issue. For example, in Sprint Nextel Corp. (January 4, 2010), the staff permitted exclusion of a proposal requesting a report on the merits of “adopting a set of guiding principals (sic) for the company to promote a free and open Internet.” In an effort to take advantage of the significant policy issue exception, the proposal stated that it concerned human rights, asking the company to consider “authoritative statements on human rights and the Internet, including . . . the Universal Declaration of Human Rights” for its guiding principles. Nevertheless, the staff allowed exclusion of the proposal as a matter of the company’s ordinary business, noting that “the proposal relates to the policies and procedures regarding Sprint Nextel’s network management techniques.” Significantly, the staff also explicitly noted that a proposal relating to a free and open internet “does not focus on a significant social policy issue” (emphasis added), despite the proponent’s appeal to human rights in the text of the proposal. See also Comcast Corp. (March 18, 2010) (permitting exclusion of the same proposal for the same reason); AT&T Inc. (March 1, 2010) (permitting exclusion of a proposal seeking a report on the “free and open internet issue” because, in the staff’s words, it related to both “AT&T[s]
ordinary business operations” and the company’s “policy position on net neutrality, which we do not believe is a significant social policy issue”). Relatedly, the staff has also permitted exclusion of proposals that request a report assessing the impact of the company’s internet operations on freedom of expression. See, e.g., Qwest Communications (February 17, 2009) (permitting exclusion of a proposal requesting a report “examining the effects of the company’s Internet network management practices in the context of the significant public policy concerns regarding the public’s expectations of privacy and freedom of expression on the Internet” because the proposal related “to Qwest’s ordinary business operations (i.e. procedures for protecting user information).” See also Sprint Nextel Corp. (February 17, 2009) (permitting exclusion of the same proposal); Verizon Communications Inc. (February 13, 2009) (permitting exclusion of the same proposal).

As in Sprint Nextel Corp. (January 4, 2010) and Comcast Corp. (March 18, 2010), the Proposal can be read to indicate that the Proponent’s primary concern is not about a significant policy issue, human rights, but about a subject that is not a significant policy issue—a free and open internet. This reading is supported by the list of subjects the Proposal would have the Company address in requested report.

First, the Proposal requests that the report “[s]ummarize measures Apple took to prevent removal of relevant VPN apps in China.” The supporting statement is similarly focused on the removal of Virtual Private Networks, which connect users to the internet via an encrypted connection. VPNs allow users to avoid governmental restrictions in countries like China that block certain websites as part of their regulation of the internet. While VPNs thus allow users to access otherwise restricted websites and to express themselves without censorship, the freedom to express oneself online is just one of the many reasons users use VPNs in countries with restricted internet. For example, users of VPNs in such countries can read otherwise censored newspapers, magazines and literature, purchase restricted goods and services, associate with communities of similar interest online, and countless other activities. While the Proposal is concerned with freedom of expression on its face, its focus on VPNs in China belies a primary concern with access to a free and open internet.

In addition, the Proposal states explicitly what seems to be the primary purpose of the proposal: to “[e]xplore policy options for the Company to play a role in ensuring that consumers . . . have unfettered and anonymous access to the Internet” (emphasis added). The staff has generally taken the position that a proposal focused on a matter of ordinary business may not avoid exclusion by dressing it up with a reference to a significant policy issue. For example, in Papa John’s International, Inc. (February 13, 2015), the staff permitted exclusion of a proposal that sought to compel a company to expand the vegan menu items available in its restaurants by couching the proposal as relating to animal welfare. Here, the Proposal is primarily focused on restrictions the Chinese government has imposed on internet use, the Company’s removal from its online store of apps that allow access to an unrestricted internet, and the availability of “unfettered and anonymous access to the Internet” to users of the Company’s products.

While freedom of expression is mentioned in the Proposal, it is incidental to the Proposal’s primary focus on access to an unrestricted internet. As in Sprint Nextel Corp.
(January 4, 2010), the Proponent is attempting to characterize free and open access to the internet as “significant policy” by describing the issue as one involving human rights. Accordingly, the Proposal is not focused on a significant policy issue.

B. The Proposal Impermissibly Interferes with the Company’s Sales of Particular Products and General Legal Compliance Programs

The subject matter of the Proposal deals with issues that are fundamental to management’s ability to run the company on a day-to-day basis. The Proposal also seeks to “micro-manage” the Company by probing too deeply into matters of a complex nature upon which the Company’s shareholders, as a group, would not be in a position to make an informed judgment. It does so by attempting to influence management’s decisions regarding which products to offer for sale in its App Store and by encroaching upon the Company’s general legal compliance program, each of which is an impermissible intrusion into ordinary business operations.

1. The Proposal Improperly Interferes with the Company’s Decision to Sell Certain Products

The Proposal seeks to micromanage the Company’s product offerings by requesting an accounting of the Company’s decision to remove certain apps from its App Store, including a report on how the Company’s decisions regarding the apps it offers in its App Store may be affected by requests from government authorities and the extent to which the Company seeks to offer products that ensure free access to the internet. The App Store, which is a digital distribution platform providing applications for use on Company products, is a central element of the Company’s business. The App Store includes a network of over two million apps, which have been downloaded over one hundred billion times since the App Store’s inception. Maintaining the App Store and its product mix is a key aspect of the Company’s branding, operations, and customer relations.

In addition, the Proposal seeks to compel the Company to carry certain VPN apps in the App Store. The staff has repeatedly allowed retailers to exclude, as relating to ordinary business operations, proposals seeking to influence management’s decision whether to sell particular products. See, e.g., Wal-Mart Stores, Inc. (March 24, 2008) (permitting exclusion of a proposal requesting that the board issue a report on the viability of Wal-Mart’s U.K. cage-free egg policy); PetSmart, Inc. (April 14, 2006) (permitting exclusion of a proposal requesting the company’s board to issue a report based on the company’s findings in an investigation into whether to end bird sales); Marriott International, Inc. (February 13, 2004) (permitting exclusion of a proposal prohibiting the sale of sexually explicit material at Marriott-owned and managed properties); Albertson’s, Inc. (March 18, 1999) (permitting exclusion of a proposal that the company’s board take steps necessary to assure that the company no longer sells, advertises, or promotes tobacco products). The Proposal’s attempt to influence the sale of particular products in the App Store is a matter of ordinary business even if the Proposal is deemed to concern the promotion of human rights or any other significant policy issue, as the staff has permitted exclusion of proposals touching on significant policy issues if they relate to specific
product offerings. In *Home Depot, Inc.* (January 24, 2008), for example, the staff permitted exclusion of a proposal seeking to end the sale of glue traps "because they are cruel and inhumane to the target animals and pose a danger to companion animals and wildlife as well."

While the proposal was linked to animal welfare, a significant policy issue, the staff noted that the proposal related to the company’s "ordinary business operations (i.e., the sale of a particular product)." See also *Lowe’s Companies, Inc.* (February 1, 2008) (permitting exclusion of a similar proposal on the ground that it related to the sale of a particular product, despite the proponent’s assertion that animal welfare is a matter of significant social policy); *Papa John’s International, Inc.* (February 13, 2015) (permitting exclusion of a proposal that touched upon a significant policy issue (animal welfare) because it related to an ordinary business matter (choice of products offered for sale)); *Danaher Corp.* (March 8, 2013) (permitting exclusion of a proposal requesting that the board issue a report summarizing the company’s policies and plans for eliminating releases of mercury from company products because it related to the company’s product development).

Allowing shareholders to determine, through the shareholder proposal process, the products for sale in the Company’s App Store would inappropriately delegate management’s role to shareholders. Decisions regarding the products listed in the App Store inherently involve complex operational and business issues requiring knowledge of such things as the Company’s array of current and contemplated App Store offerings, the preferences of the Company’s customers, the legal implications of providing certain products, quality control considerations, and other factors. Assessing these and the many other considerations that influence the Company’s decisions regarding particular sales decisions requires the judgment of the Company’s management, which, unlike individual shareholders, is well-positioned to, and has the necessary skills, knowledge, information and resources to, make informed decisions on such business and operational matters. The Company has routinely made operational decisions about large scale additions or removals of apps from its App Store, for a variety of reasons, and such decisions are fundamentally the domain of management’s discretion and judgment. Accordingly, the Proposal is excludable under Rule 14a-8(i)(7).

2. **The Proposal Relates to Areas of Legal Compliance**

The Proposal also is excludable under Rule 14a-8(i)(7) as relating to the general conduct of the Company’s legal compliance program. The staff has consistently recognized that shareholder proposals addressing company compliance with governmental laws and regulations may be excluded under Rule 14a-8(i)(7) because they infringe on a core management function. For example, in *General Electric Co.* (January 4, 2005), a proposal requesting a report detailing NBC’s broadcast television stations’ current activities to meet their public interest obligations was deemed excludable under Rule 14a-8(i)(7) as relating to the "general conduct of a legal compliance program" because the proposal related to compliance with Federal Communication Commission regulations. See also *Corrections Corporation of America* (March 18, 2013) (permitting exclusion of a proposal requesting that the board make disclosures concerning the company’s potential conversion into a REIT and related compliance with IRS rules governing REITS as relating to general conduct of a legal compliance program); *FedEx Corp.* (July 14, 2009) (permitting exclusion of a proposal requesting a report on compliance by the company
and its contractors with state and federal laws governing proper classification of employees and independent contractors).

The Proposal’s requested report necessarily would have to address the effects of the Company’s compliance (or non-compliance) with laws and regulations applicable to product offerings by internet retailers. The Proposal is concerned with the Company’s removal of VPNs from the App Store in China, which the Proposal suggests was in response to Chinese regulatory action. The requested report would include a summary of measures the Company “took to prevent removal of relevant VPN apps in China” and “policies for evaluating and responding to, above and beyond legal compliance, government requests to remove apps from the App store affecting freedom of expression.” Despite the Proponent’s attempt to characterize his request as “above and beyond legal compliance,” the Proposal clearly requests information about the Company’s compliance with governmental laws, regulations and orders that govern products that facilitate access to the internet in China.

Further evidence of the Proposal’s focus on the Company’s legal compliance program appears in the supporting statement. The supporting statement asserts that the Company “reported to software developers that their apps had been declared illegal under Chinese law” and quotes the Company’s chief executive officer as stating that the Company must “follow the law wherever we do business.” Thus, by the Proponent’s own admission, the Proposal relates to the Company’s compliance with local laws and regulations in the jurisdictions in which it does business. The Proposal requests that the Company provide a report “above and beyond legal compliance,” but it is not apparent what such a report would address unless the Company were to describe circumstances under which it would not comply with applicable laws, which still would address the Company’s legal compliance program.

However the Proposal is interpreted, the report requested by the Proposal would necessarily involve a discussion of the Company’s legal compliance program. Thus, the Proposal is excludable under Rule 14a-8(i)(7) as a matter relating to the Company’s ordinary business.
CONCLUSION

For the reasons discussed above (including footnote 1 above), the Company believes that it may omit the Proposal from its 2018 Proxy Materials in reliance on Rule 14a-8(i)(11) and Rule 14a-8(i)(7). We respectfully request that the staff concur with the Company’s view and confirm that it will not recommend enforcement action to the Commission if the Company omits the Proposal from its 2018 Proxy Materials.

If you have any questions or need additional information, please feel free to contact me at (408) 974-6931 or by e-mail at glevoff@apple.com.

Sincerely,

Gene D. Lefoff
Associate General Counsel,
Corporate Law

Attachments

cc: Michael and Honore Connor
    John Harrington, Harrington Investments, Inc.
    Alan L. Dye, Hogan Lovells US LLP
Exhibit A

Copy of the Proposal and Supporting Statement and Related Correspondence
September 8, 2017

Via e-mail to shareholderproposal@apple.com.

Bruce Sewell
Secretary
Apple Inc.
1 Infinite Loop
Cupertino, CA 95014

RE: Shareholder proposal for 2018 Annual Meeting

Dear Mr. Sewell,

We write to file the attached proposal to be included in the proxy statement of Apple Inc. (“Apple” or the ”Company”) for its 2018 annual meeting of stockholders.

We have been concerned for some time about Apple’s track record regarding free expression in China, one of the Company’s largest markets. We were especially troubled to learn that earlier this year the Company removed a number of Virtual Private Network (VPN) apps from the App Store in China. As you know, these apps allow users to bypass state censorship controls to connect to the Internet.

Our proposal asks Apple to publish a report that addresses its role in promoting freedom of expression, with questions regarding some specific measures and policy options.

We are filing this shareholder resolution on behalf of ourselves. We have continuously held more than $2,000 in AAPL common stock for more than one year prior to the submission of the shareholder proposal, which would meet the requirements of Rule 14a-8 under the Securities Exchange Act of 1934, as amended. Verification of this ownership from a DTC participating bank, TD Ameritrade, is attached.

This letter serves as confirmation that we intend to continue to hold the requisite number of shares through the date of the Company’s 2018 annual meeting of stockholders.

We are the primary filers for this resolution. One of us will personally attend or send a representative to the stockholders’ meeting to move the shareholder proposal as required by the SEC rules. We expect that we will be joined by one or more co-filers.

We welcome continued engagement with members of management on this issue. Michael Connor can be reached by telephone at *** or via email at ***. We request copies of any documentation related to this proposal.

Sincerely,

Michael Connor
Honore Connor
Free Expression and Censorship

Support for free expression and opposition to censorship can significantly enhance a company’s reputation. Conversely, if a company is linked to violations of the right of free expression and support for censorship, the resulting reputational damage can undermine consumer brand loyalty and shareholder value.

In China, virtual private networks (VPNs) allow users to bypass state censorship controls to connect to the Internet. Human Rights Watch says the Internet plays a “critical role in creating transparency and enabling redress for human rights violations in China.” A 2016 U.S. State Department report on China cited continuing “official abuse” of citizens, including unlawful killings, detention, disappearances and torture.

Yet in July 2017, Apple removed dozens of VPNs from its App Store in China and reported to software developers that their apps had been declared illegal under Chinese law.

Apple’s action has stirred global controversy. Trade publication Tech Crunch said, “this App Store purge just created one of the biggest setbacks for the free internet in China’s history.” A New York Times tech columnist called Apple’s “quiet capitulation to tightening censorship” a “dangerous precedent.”

In an August 2017 earnings call, CEO Tim Cook said Apple “would obviously rather not remove the apps,” but is constrained to “follow the law wherever we do business.”

Apple has previously stressed the importance of addressing some human rights issues, including human trafficking and responsible sourcing. In 2016, Apple fought an intense battle opposing U.S. Department of Justice efforts to bypass encryption on iPhones.

Yet, Apple has disclosed little regarding what, if anything, it did to resist removal of these apps in China. David Kaye, United Nations Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression, has asked numerous questions regarding VPNs and how the Company “speaks up in the context of restrictions on fundamental rights.” The Company has not responded.

Apple’s lack of transparency on this matter may highlight a larger problem. The 2017 Ranking Digital Rights survey concluded that Apple “lacked disclosure of governance and accountability mechanisms around the implementation of its commitments and policies related to privacy or freedom of expression.”

As investors, we are concerned about weaknesses in Apple’s governance and accountability mechanisms on freedom of expression and related legal, financial and reputational risks.

Resolved, shareholders request that the Company publish a report on its role in promoting freedom of expression. The report should be produced at reasonable expense, excluding proprietary and confidential information, and:
• Summarize measures Apple took to prevent removal of relevant VPN apps in China;
• Describe Company policies for evaluating and responding to, above and beyond legal compliance, government requests to remove apps from the App store affecting freedom of expression;
• Explore policy options for the Company to play a role in ensuring that consumers in countries like China, with severe censorship records, have unfettered and anonymous access to the Internet.
09/08/2017

Michael & Honore Connor

Re: Confirmation of Your Account Transaction History

Dear Michael & Honore Connor,

Thank you for your request regarding your TD Ameritrade account ending in ***. Here is the purchase information you requested.

AAPL– Apple Inc
6/27/2016 – Purchased 50 shares at $92.1501 per share for a total of $4,607.51

As of September 8, 2017, you have continuously held 50 AAPL shares in your account ending in *** for at least one year.

If you have questions regarding your tax liability or need assistance with determining your cost basis, please consult with a qualified tax advisor. TD Ameritrade does not provide tax advice.

If we can be of any further assistance, please let us know. Just log in to your account and go to the Message Center to write us. You can also call Client Services at 800-669-3900. We're available 24 hours a day, seven days a week.

Sincerely,

Joy Busse
Resource Specialist
TD Ameritrade

This information is furnished as part of a general information service and TD Ameritrade shall not be liable for any damages arising out of any inaccuracy in the information. Because this information may differ from your TD Ameritrade monthly statement, you should rely only on the TD Ameritrade monthly statement as the official record of your TD Ameritrade account.

Market volatility, volume, and system availability may delay account access and trade executions.

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September 8, 2017

Apple, Inc.
1 Infinite Loop,
MS: 301-4GC,
Cupertino, CA 95014
ATTENTION: Corporate Secretary

RE: Shareholder Proposal

Dear Corporate Secretary,


For this proposal, Michael Connor will act as the lead filer and HII will act as the co-filer.

HII is the beneficial owner of at least $2,000 worth of Apple, Inc. Company stock. HII has held the requisite number of shares for over one year, and plan to hold sufficient shares in the Apple, Inc. Company through the date of the annual shareholders' meeting. In accordance with Rule 14a-8 of the Securities Exchange Act of 1934, verification of ownership is included, separately. A representative of the lead filer will attend the stockholders' meeting to move the resolution as required by SEC rules.

If you would like to discuss this proposal, please contact Michael Connor.
If you have any questions, I can be contacted at (707) 252-6166.

Sincerely,

[Signature]

John C. Harrington

President and C.E.O.
Free Expression and Censorship

Support for free expression and opposition to censorship can significantly enhance a company’s reputation. Conversely, if a company is linked to violations of the right of free expression and support for censorship, the resulting reputational damage can undermine consumer brand loyalty and shareholder value.

In China, virtual private networks (VPNs) allow users to bypass state censorship controls to connect to the Internet. Human Rights Watch says the Internet plays a “critical role in creating transparency and enabling redress for human rights violations in China.” A 2016 U.S. State Department report on China cited continuing “official abuse” of citizens, including unlawful killings, detention, disappearances and torture.

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As investors, we are concerned about weaknesses in Apple’s governance and accountability mechanisms on freedom of expression and related legal, financial and reputational risks.

Resolved, shareholders request that the Company publish a report on its role in promoting freedom of expression. The report should be produced at reasonable expense, excluding proprietary and confidential information, and:
• Summarize measures Apple took to prevent removal of relevant VPN apps in China;
• Describe Company policies for evaluating and responding to, above and beyond legal compliance, government requests to remove apps from the App store affecting freedom of expression;
• Explore policy options for the Company to play a role in ensuring that consumers in countries like China, with severe censorship records, have unfettered and anonymous access to the Internet.
September 8, 2017

Corporate Secretary
1 Infinite Loop,
MS: 301-4GC,
Cupertino, CA 95014

RE: Account
HARRINGTON INVESTMENTS INC
1001 2nd ST, STE 325
NAPA, CA

Dear Corporate Secretary:

This letter is to confirm that Charles Schwab is the record holder for the beneficial owner of the Harrington Investments, Inc. account and which holds in the account 150 shares of common stock in Apple, Incorporated. These shares have been held continuously for at least one year prior to and including September 8, 2017.

The shares are held at Depository Trust Company under the Participant Account Name of Charles Schwab & Co., Inc., number 0164.

This letter serves as confirmation that the account holder listed above is the beneficial owner of the above referenced stock.

Should additional information be needed, please feel free to contact me directly at 877-393-1951 between the hours of 11:30am and 8:00pm EST.

Sincerely,

Melanie Salazar
Advisor Services
Charles Schwab & Co. Inc.
Exhibit B

Copy of the Zhao Proposal and Supporting Statement and Related Correspondence
August 22, 2017

Secretary
Apple Inc.
1 Infinite Loop, MS: 301-4GC
Cupertino, California 95014
(via post mail & email shareholderproposal@apple.com)

Re: Shareholder Proposal to 2018 Shareholders Meeting

Dear Secretary:

Enclosed please find my shareholder proposal for inclusion in our proxy materials for the 2018 annual meeting of shareholders and a letter of my shares ownership. I will continuously hold these shares until the 2018 annual meeting of shareholders.

Should you have any questions, please contact me at *** or ***.

Yours truly,

Jing Zhao

Enclosure: Shareholder proposal
Shares ownership letter
Shareholder Proposal on Human Rights Committee

Resolved: shareholders recommend that Apple Inc. establish a Human Rights Committee to review, assess, disclose, and make recommendations to enhance Apple’s policy and practice on human rights. The board of directors is recommended, in its discretion and consistent with applicable laws to: (1) adopt Apple Human Rights Principles, (2) designate the members of the committee, including outside independent human rights experts as advisors, (3) provide the committee with sufficient funds for operating expenses, (4) adopt a charter to specify the functions of the committee, (5) empower the committee to solicit public input and to issue periodic reports to shareholders and the public on the committee's activities, findings and recommendations, and (6) adopt any other measures.

Supporting Statement

There have been too many negative reports on Apple’s human rights policy and practice, mostly related to Apple’s operation in China for many years. For example, recently, the New York Times reported “Apple Removes Apps From China Store That Help Internet Users Evade Censorship” on July 29, 2017; the Wall Street Journal reported “Get Used to Apple Bowing Down to Chinese Censors” on August 7, 2017. Furthermore, Apple is building its first China-based data center, and “the new agreement goes one step further with a Chinese partner responsible for running its data center, managing the sales of its services in the country and handling legal requests for data from the government.” (New York Times, July 12, 2017)

On human rights policy and practice, we have the best case (see my proposal to Google 2010 shareholders meeting) and the worst case (see my proposals to Yahoo 2011 and 2013 shareholders meetings, to Verizon 2017 shareholders meeting and to Yahoo/Altaba 2017 shareholders meeting