



DIVISION OF  
CORPORATION FINANCE

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

December 12, 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 concerning the shareholder proposal (the "Proposal") submitted to Apple Inc. (the "Company") by Sustainvest Asset Management, LLC for inclusion in the Company's proxy materials for its upcoming annual meeting of security holders. 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: Dale Wannan  
Sustainvest Asset Management, LLC  
dale@sustainvest.com

December 12, 2017

**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 produce a report assessing the climate benefits and feasibility of adopting store-wide requirements for having all retail locations implement a policy to keep entrance doors closed when climate control (especially air-conditioning during warm months) is in use.

There appears to be some basis for your view that the Company may exclude the proposal under rule 14a-8(i)(10). Based on the information you have presented, it appears that the Company's policies, practices and procedures compare favorably with the guidelines of the Proposal and that the Company has, therefore, substantially implemented the Proposal. 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)(10). In reaching this position, we have not found it necessary to address the alternative basis for omission upon which the Company relies.

Sincerely,

M. Hughes Bates  
Special Counsel

**DIVISION OF CORPORATION FINANCE**  
**INFORMAL PROCEDURES REGARDING SHAREHOLDER PROPOSALS**

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



**Rule 14a-8(i)(10)**  
**Rule 14a-8(i)(7)**

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 Sustainvest Asset Management, LLC

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)(10) and Rule 14a-8(i)(7) under the Securities Exchange Act of 1934, as amended (the “**Exchange Act**”), the Company omits the enclosed shareholder proposal (the “**Proposal**”) and its accompanying supporting statement (the “**Supporting Statement**”) submitted by Sustainvest Asset Management, LLC (the “**Proponent**”) from the Company’s proxy materials for its 2018 Annual Meeting of Shareholders (the “**2018 Proxy Materials**”).

Copies of the Proposal and the Supporting Statement are attached hereto as Exhibit A, and other correspondence between the Company and the Proponent relating to the Proposal is attached hereto as Exhibit B.

In accordance with Staff Legal Bulletin No. 14D (Nov. 7, 2008) (“**SLB No. 14D**”), 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.

Apple  
1 Infinite Loop  
Cupertino, CA 95014

T 408 996-1010  
F 408 996-0275  
www.apple.com

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 5, 2017, the Company received from the Proponent, as an attachment to an e-mail, a letter submitting the Proposal for inclusion in the 2018 Proxy Materials. The Proposal reads as follows:

### **Resolved:**

Shareholders request that Apple Inc. produce a report assessing the climate benefits and feasibility of adopting store-wide requirements for having all retail locations implement a policy on keeping entrance doors closed when climate control (especially air-conditioning during warm months) is in use. The report should be produced at reasonable cost, in a reasonable timeframe, and omitting proprietary and confidential information.

The Supporting Statement indicates that “[g]reenhouse gas (GHG) emissions from human activities are the most significant driver of observed climate change.” The Supporting Statement remarks favorably upon the Company’s most recent Environmental Responsibility Report<sup>1</sup> but notes “in this report, there is no mention of addressing climate control in their retail locations when it comes to keeping entrance and exit doors closed while climate control is in use.” The Proponent points to potential reputational risk to the Company as “city officials and citizens [are] see[ing] this as an inappropriate way to get more shoppers into the door.”

## BASIS FOR EXCLUSION OF THE PROPOSAL

We request that the staff concur that the Company may exclude the Proposal from its 2018 Proxy Materials pursuant to (i) Rule 14a-8(i)(10) because the Company has already implemented a Store Environment Policy that makes the Proposal moot, and (ii) Rule 14a-8(i)(7) because the Proposal specifically relates to the Company’s ordinary business operations – the opening and closing of the doors in its retail stores.

### **I. Rule 14a-8(i)(10) – The Company Has Already Substantially Implemented the Proposal**

#### ***A. The Exclusion***

Rule 14a-8(i)(10) permits a company to exclude a shareholder proposal from its proxy materials if “the company has already substantially implemented the proposal.” The Commission stated in 1976 that the predecessor to Rule 14a-8(i)(10) was “designed to avoid

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<sup>1</sup> [https://images.apple.com/environment/pdf/Apple\\_Environmental\\_Responsibility\\_Report\\_2017.pdf](https://images.apple.com/environment/pdf/Apple_Environmental_Responsibility_Report_2017.pdf).

the possibility of shareholders having to consider matters which already have been favorably acted upon by the management.” *SEC Release No. 34-12598* (July 7, 1976). Originally, the staff narrowly interpreted this predecessor rule and granted no-action relief only when proposals were “fully effected” by the company. *SEC Release No. 34-19135* (October 14, 1982). By 1983, however, the Commission recognized that the “previous formalistic application of [the rule] defeated its purpose” because proponents were successfully convincing the staff to deny no-action relief by submitting proposals that differed from existing company policy by only a few words. *SEC Release No. 34-20091* (August 16, 1983). Therefore, in 1983, the Commission adopted a revised interpretation to the rule to permit the omission of proposals that had been “substantially implemented” (*id.*) and subsequently codified this revised interpretation. *SEC Release No. 34-40018* (May 21, 1998). The purpose of the exclusion under Rule 14a-8(i)(10) has been described as follows:

“A company may exclude a proposal if the company is already doing—or substantially doing—what the proposal seeks to achieve. In that case, there is no reason to confuse shareholders or waste corporate resources in having shareholders vote on a matter that is moot. In the [Commission’s] words, the exclusion ‘is designed to avoid the possibility of shareholders having to consider matters which have already been favorably acted upon by the management ....”

See Broc Romanek and Beth Young (W. Morley, editor), *Shareholder Proposal Handbook*, Sec. 23.01(B) at p. 23-4 (Aspen Law & Business 2003 ed.).

***B. The Company Already Implemented a Written Policy that Makes the Proposal Moot***

The Company already has a written policy that addresses the precise concern raised by the Proponent. Apple’s Store Environment Policy requires that all customer entrances in the Company’s retail locations that open directly to the outside remain closed at all times – not just when air-conditioning is in use.<sup>2</sup> Unaware of the existence of the Store Environment Policy, the Proponent requested that the Company produce a report assessing the climate benefits and feasibility of adopting store-wide requirements for having all retail locations implement a policy on keeping entrance doors closed when climate control (especially air-conditioning during warm months) is in use. Apple’s Store Environment Policy makes the Proposal moot because the requested policy already exists. The Company’s existing Store Environment Policy therefore not only compares favorably with the Proposal, but directly implements the Proposal. Accordingly, the Company may exclude the Proposal from its 2018 Proxy Materials pursuant to Rule 14a-8(i)(10). To assure that the Proponent was aware that the Company has already taken the action he requested, the Company emailed the Store Environment Policy to the Proponent on September 13, 2017. The Proponent acknowledged receipt of the policy by email on September 15, 2017.

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<sup>2</sup> The Store Environment Policy may be found in Exhibit B as an attachment to the email dated September 13, 2017.

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

### ***A. The Exclusion***

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**”).

### ***B. The Proposal Relates to Matters That Squarely Fall Within the Company’s Ordinary Business Operations***

The Proposal solely relates to how the Company operates the doors in its retail stores. The opening and closing of the doors in its retail stores is a matter that squarely falls within the Company’s ordinary business operations. It would constitute inappropriate micro-management of the Company for shareholders to oversee and vote upon at an annual shareholder meeting the opening and closing of doors in the Company’s retail stores.

In addition, although not part of the Proposal, on September 15, 2017, the Proponent requested by email that the Company publicly publish the Store Environment Policy. The Company publishes and makes available on its website a multitude of reports; however, the Company does not publicly publish its many internal operational policies, such as the Store Environment Policy. Any determination regarding which policies relating to the Company’s ordinary business operations are published on the Company’s website is also a matter that squarely relates to the Company’s ordinary business operations.

The Company’s guidelines relating to the opening and closing of the doors in its retail stores and the determination whether to post the guidelines are matters that relate to the Company’s ordinary business operations, are routine day-to-day operational decisions implemented by management, and are inappropriate for shareholder oversight at an annual meeting. Accordingly, the Company may exclude the Proposal from the 2018 Proxy Materials pursuant to Rule 14a-8(i)(7).

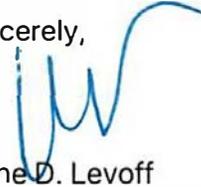
## **CONCLUSION**

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)(10) 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 excludes the Proposal from its 2018 Proxy Materials.

Office of Chief Counsel  
Division of Corporation Finance  
U.S. Securities and Exchange Commission  
October 9, 2017  
Page 5

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](mailto:glevoff@apple.com).

Sincerely,



Gene D. Levoff  
Associate General Counsel,  
Corporate Law

#### Attachments

cc: Dale Wannan  
Alan L. Dye, Hogan Lovells US LLP

**Exhibit A**

**Copy of the Proposal and Supporting Statement**

Dale Wannan, President of Sustainvest Asset Management LLC, is the proponent of the following shareholder resolution.

**Resolved:**

Shareholders request that Apple Inc. produce a report assessing the climate benefits and feasibility of adopting store-wide requirements for having all retail locations implement a policy on keeping entrance doors closed when climate control (especially air-conditioning during warm months) is in use. The report should be produced at reasonable cost, in a reasonable timeframe, and omitting proprietary and confidential information.

**Background**

Greenhouse gas (GHG) emissions from human activities are the most significant driver of observed climate change. In 2015, the Paris Agreement joined nearly all of the world's countries in a commitment to limit climate change to an average global warming of 2 degrees by 2050. These ambitious goals are considered critical to heading off the most catastrophic effects of climate change.

It is clear that all major corporations will need to continue to make significant reductions in greenhouse gas emissions in order to meet these critical goals. Apple Inc. is one such corporation. The Company has the challenge of assessing and reducing its greenhouse gas emissions.

Indeed, the Company acknowledges the importance of climate change and GHG emissions to the long-term sustainability of the Earth and of its operations. In its 2016 Corporate Social Responsibility ("CSR") Report, it is mentioned that 96 percent of the electricity used at their corporate facilities came from clean, renewable sources. Clearly, this company is making major strides when it comes to addressing climate change. However, in this report, there is no mention of addressing climate control in their retail locations when it comes to keeping entrance and exit doors closed while climate control is in use.

As of early 2017, the company was operating 490 brick-and-mortar retail stores in more than 18 different countries around the world, including the U.S., where it has retail stores in 45 out of 50 states. The company continues to open retail locations throughout the world.

Officials in the U.S. have shown concern with the negative climate implications of wasted energy. In New York City, officials have implemented a new law that requires nearly all shops and restaurants to keep front doors and windows shut while their air-conditioners and cooling systems are running. Any violation of this rule faces fines ranging from \$250 for a first offense to as much as \$1,000 for any additional violation.

Beyond loss of profit due to paying more for wasted energy usage, this issue could affect reputational risk as it is clear there is pushback from city officials and citizens seeing this as an inappropriate way to get more shoppers into the door.

**Supporting Statement:**

Shareholders request that the report consider and analyze options and scenarios for achieving more energy efficient policies when it comes to retail locations keeping entry doors opened.

**Exhibit B**

**Copy of Correspondence between the Company and the Proponent**

On Sep 5, 2017, at 12:13 PM, Dale Wannan <[dale@sustainvest.com](mailto:dale@sustainvest.com)> wrote:

Dear Corporate Secretary,

I am attaching documents for submittal of a shareholder proposal for inclusion in the upcoming proxy. I am not sending any hard copies as it stated in the proxy statement that email would be suffice. Please do let me know if there are any questions, etc.

Thanks.

Dale

Dale Wannan  
President  
Sustainvest Asset Management, LLC  
24 Western Avenue, Suite 309  
Petaluma, CA 94952  
w.707-766-9480  
c. 415-244-5003  
Please visit [www.sustainvest.com](http://www.sustainvest.com) to learn more about our services  
Follow @sustainvest1 on [Twitter](https://twitter.com/sustainvest1)

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<apple file letter 2017.pdf><Shareholder Proposal 2017 Apple.pdf><apple proof of ownership.pdf>



**SUSTAINVEST**  
ASSET MANAGEMENT, LLC

September 5, 2017

Apple's Secretary  
1 Infinite Loop  
MS: 301-4GC  
Cupertino, California 95014

**RE: Shareholder Proposal**

Dear Corporate Secretary,

As a beneficial owner of Apple Inc. company stock, I am submitting the enclosed shareholder resolution for inclusion in the proxy statement for the 2018 meeting in accordance with Rule 14a-8 of the General Rules and Regulations of the Securities and Exchange Act of 1934 (the "Act"). I am the beneficial owner, as defined in Rule 13d-3 of the Act, of at least \$2,000 in market value of Apple Inc. common stock. I have held these securities for more than one year as of the filing date and will continue to hold at least the requisite number of shares for a resolution through the shareholder's meeting. I have enclosed a copy of Proof of Ownership from Charles Schwab & Company. I or a representative will attend the shareholder's meeting to move the resolution as required.

Sincerely,

Dale Wannan  
President  
Sustainvest Asset Management, LLC

**From:** [glevoff@apple.com](mailto:glevoff@apple.com) [mailto:[glevoff@apple.com](mailto:glevoff@apple.com)]

**Sent:** Tuesday, September 05, 2017 12:47 PM

**To:** Dale Wannan

**Subject:** Re: Shareholder Proposal Submittal

Hi Dale - I appreciate your taking my call. We are looking into this now. When you get a minute, can you try to remember any stores in particular so our facilities folks can start there?

Thanks,  
Gene

Gene Levoff  
Corporate Law Group  
Apple  
1 Infinite Loop MS 169-2CL  
Cupertino, CA 95014  
(408) 974-6931

**From:** Jung-Kyu McCann <[jungkyu\\_mccann@apple.com](mailto:jungkyu_mccann@apple.com)>  
**Subject:** AAPL Shareholder Proposal  
**Date:** September 13, 2017 at 3:15:42 PM PDT  
**To:** [dale@sustainvest.com](mailto:dale@sustainvest.com)  
**Cc:** [shareholderproposal@apple.com](mailto:shareholderproposal@apple.com)

PRIVILEGED AND CONFIDENTIAL

Mr. Wannan,

Thank you for your September 5 shareholder proposal requesting that Apple produce a report assessing the climate benefits of adopting a policy requiring all retail locations to keep entrance doors closed when climate control is in use.

Gene Levoff, our Associate General Counsel, Corporate Law, spoke with you on September 5 about your proposal and asked that you help us identify the stores where you saw outside-facing doors open. Mr. Levoff also told you he would research whether Apple had the requested policy already in place.

We have completed our research and are pleased to tell you that Apple has in place a Store Environment policy under which all customer entrances in our retail stores that open directly to the outside should remain closed at all times (see attached). If you have observed anything to the contrary, please let us know at which store so that we can follow up with the appropriate retail store manager. We will be sure to take necessary steps to address any violation of this policy. The Store Environment policy is available to all retail employees via our intranet and all retail store managers are required to implement the policy and ensure compliance.

As our existing Store Environment policy already implements the essential objective of your proposal and also relates to our ordinary business operations, we would appreciate your written withdrawal of your shareholder proposal by **Wednesday, September 20**. Email is sufficient. Thank you.

□ **Jung-Kyu McCann** | Apple Inc. | Corporate Law Group | Tel: (408) 783-5857 | [REDACTED] | [jung@apple.com](mailto:jung@apple.com)



# Store Environment

Want to create a happy place to shop, learn, create, get help, and customers want to visit over and over again? Start here.

## Cleaning and Preservation Standards 2

We maintain neat, clean, and organized stores in accordance with our preservation standards.

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## Customer Entrances (for stores that directly open to the outside) 4

We strive to create a comfortable space for our customers while upholding Apple's commitment to the environment.

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## In-Store Music 5

We strive to inspire customers with every visit and our in-store music is part of that experience.

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## Refreshing Demo Systems 6

Demo iOS devices and Mac systems are refreshed at the beginning of each day to clear customer activity.

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## Window Dashes (Safety Decals) 7

We use safety decals on our glass to help customers see the glass storefront.

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## Customer Entrances (for stores that directly open to the outside)

We strive to create a comfortable space for our customers while upholding Apple's commitment to the environment.

### General Overview

Customer entrances to our stores that open directly to the outside should remain closed at all times.

#### Do

---

- ✔ Ensure doors are unlocked during store hours.

**From:** Dale Wannan <[dale@sustaininvest.com](mailto:dale@sustaininvest.com)>  
**Date:** September 28, 2017 at 2:55:11 PM PDT  
**To:** [glevoff@apple.com](mailto:glevoff@apple.com)  
**Subject:** RE: Shareholder Proposal Submittal

Hi Gene,

Thanks for the call today and chatting. I really do appreciate you reaching out to me. At this point, I am just going to leave the resolution to be put onto the proxy if possible.

Thanks.

Dale

Dale Wannan  
President  
Sustaininvest Asset Management, LLC  
24 Western Avenue, Suite 309  
Petaluma, CA 94952  
w.707-766-9480  
c. 415-244-5003  
Please visit [www.sustaininvest.com](http://www.sustaininvest.com) to learn more about our services  
Follow @sustaininvest1 on [Twitter](https://twitter.com/sustaininvest1)



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