



DIVISION OF  
CORPORATION FINANCE

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

November 21, 2018

Sam Whittington  
Apple Inc.  
sam\_whittington@apple.com

Re: Apple Inc.  
Incoming letter dated September 26, 2018

Dear Mr. Whittington:

This is in response to your correspondence dated September 26, 2018 and October 10, 2018 concerning the shareholder proposal (the "Proposal") submitted to Apple Inc. (the "Company") by James McRitchie (the "Proponent") for inclusion in the Company's proxy materials for its upcoming annual meeting of security holders. We also have received correspondence from the Proponent and on the Proponent's behalf dated October 6, 2018, October 7, 2018, October 12, 2018, October 16, 2018 and November 8, 2018. 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,

M. Hughes Bates  
Special Counsel

Enclosure

cc: John Chevedden

\*\*\*

November 21, 2018

**Response of the Office of Chief Counsel**  
**Division of Corporation Finance**

Re: Apple Inc.  
Incoming letter dated September 26, 2018

The Proposal asks the board to amend the Company's proxy access bylaw provisions and any associated documents in the manner specified in the Proposal.

We are unable to concur in your view that the Company may exclude the Proposal under rule 14a-8(i)(3). We are unable to conclude that you have demonstrated objectively that the Proposal is materially false and misleading. Accordingly, we do not believe that the Company may omit the Proposal from its proxy materials in reliance on rule 14a-8(i)(3).

Sincerely,

Courtney Haseley  
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.

November 8, 2018

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

**# 5 Rule 14a-8 Proposal**  
**Apple Inc. (AAPL)**  
**Proxy Access**  
**James McRitchie**

Ladies and Gentlemen:

This is in regard to the September 26, 2018 no-action request and the company October 10, 2018 letter.

The company request needs to be put into context. A rule 14a-8 proponent has virtually no recourse in regard to the numerous erroneous or misleading statements published year after year in the management opposition statements by scores of companies. Plus a rule 14a-8 proposal proponent has no opportunity to include in the proxy any fact check text in regard to the erroneous or misleading opposition text of a company.

The company did not mention any concern with the text of the proposal in the 45-days from the date of the proposal submittal until September 26, 2018. Some companies will contact the proponent to make adjustments to text to avoid the expense and delay of a no action request. It is clearly in the interest of both parties to make minor adjustments to text.

The company again failed to cite one precedent from the current decade to supposedly support its position.

And the purported *General Electric Co.* (January 6, 2009) precedent is not an apples to apples comparison because the objected-to word of "withheld" was in the resolved statement – not in the supporting statement.

This is to request that the Securities and Exchange Commission allow this resolution to stand and be voted upon in the 2018 proxy.

Sincerely,

  
John Chevedden

cc: James McRitchie

Sam Whittington <sam\_whittington@apple.com>

October 16, 2018

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

**# 4 Rule 14a-8 Proposal**  
**Apple Inc. (AAPL)**  
**Proxy Access**  
**James McRitchie**

Ladies and Gentlemen:

This is in regard to the September 26, 2018 no-action request and the company October 10, 2018 letter.

The exhibit with October 6, 2018 letter is only an illustration of some of the overwhelming proposal text that the company does not object to. It is clearly not a new proposal or a revised proposal.

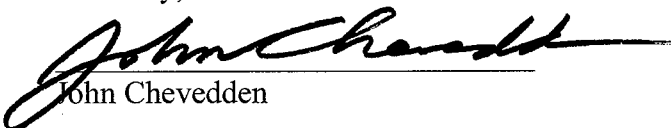
The company did not mention any concern with the text of the proposal in the 45-days from the date of the proposal submittal until September 26, 2018. Some companies will contact the proponent to make adjustments to text to avoid the expense and delay of a no action request. It is clearly in the interest of both parties to make minor adjustments to text.

The company again failed to cite one precedent from the current decade to supposedly support its position.

And the purported *General Electric Co.* (January 6, 2009) precedent is not an apples to apples comparison because the objected-to word of "withheld" was in the resolved statement – not in the supporting statement.

This is to request that the Securities and Exchange Commission allow this resolution to stand and be voted upon in the 2018 proxy.

Sincerely,



John Chevedden

cc: James McRitchie

Sam Whittington <sam\_whittington@apple.com>

# Corporate Governance

*CorpGov.net: improving accountability through democratic corporate governance since 1995*

Office of Chief Counsel <shareholderproposals@sec.gov>  
Division of Corporation Finance  
Securities and Exchange Commission  
Office of Chief Counsel <[shareholderproposals@sec.gov](mailto:shareholderproposals@sec.gov)>  
Division of Corporation Finance  
Securities and Exchange Commission

October 12, 2018

Re: Apple Inc  
Shareholder Proposal of James McRitchie under SEC Rule 14a-8

To Whom it May Concern:

In correspondence dated September 26 and October 10 falsely claims my proxy proposal violates Rule 14a-8(i)(3).

During the 1990s and into the 2000s, SEC Staff saw significant resources expended on what amounted to word-by-word editing of proposals and supporting statements in response to Rule 14a-8(i)(3) challenges. SLB 14B (Sept. 15, 2004) was released in response to that drain on Staff resources. In SLB 14B, Staff observed that nearly half of the no-action requests in the 2004-2005 proxy season had "asserted that the proposal or supporting statement was wholly or partially excludable under Rule 14a-8(i)(3)." Staff stated that these numerous arguments, and the Staff's process for evaluating Rule 14a-8(i)(3) requests, up until that point, resulted in an "inappropriate extension" of the statutory exclusion and an inconsistency with the language of Rule 14a-8(l)(2), which states that "[t]he company is not responsible for the contents of [the shareholder proponent's] proposal or supporting statement." (my emphasis)

In SLB 14B, Staff set forth its view that, going forward, it would implement Rule 14a-8(i)(3) with the guiding principle that "it would not be appropriate for companies to exclude supporting statement language and/or an entire proposal in reliance on Rule 14a-8(i)(3) in the following circumstances: (i) the company objects to factual assertions because they are not supported; (ii) the company objects to factual assertions that, while not materially false or misleading, may be disputed or countered; (iii) the company objects to factual assertions because those assertions may be interpreted by shareholders in a manner that is unfavorable to the company, its directors, or its officers; and/or (iv) the company objects to statements because they represent the opinion of the shareholder proponent or a referenced source, but the statements are not identified specifically as such. Rather than permitting exclusion based on these arguments, the Staff indicated its view that it **"is appropriate under rule 14a-8 for companies to address these objections in their statements of opposition."** (my emphasis)

Staff went on to state in SLB 14B that "**modification** or exclusion may be consistent with [its] intended application of Rule 14a-8(i)(3)" (my emphasis) in the following situations: (i) "statements directly or indirectly impugn character, integrity, or personal reputation, or directly or indirectly make charges concerning improper, illegal, or immoral conduct or association, without factual foundation;" (ii) "the company demonstrates objectively that a factual statement is materially false or misleading;" (iii) "the resolution contained in the proposal is so inherently vague or indefinite that neither the stockholders voting on the proposal, nor the company in implementing the proposal (if adopted), would be able to determine with any reasonable certainty exactly what actions or measures the proposal requires;" and (iv) "substantial portions of the supporting statement are irrelevant to a consideration of the subject matter of the proposal, such that there is a strong likelihood that a reasonable shareholder would be uncertain as to the matter on which she is being asked to vote." Consistent with the underlying concept that the issuer bears the burden of demonstrating a basis for exclusion, the Staff indicated that it "will concur in the company's reliance on Rule 14a-8(i)(3) to exclude or modify a proposal or statement only where that company has demonstrated objectively that the proposal or statement is **materially** false or misleading." (my emphasis)

In various public forums, former Corp Fin Director Keith Higgins stated that, regarding Rule 14a-8(i)(3) no-action requests, the Staff considers three issues—(i) whether the challenged assertion is really a "fact" or whether the issuer is merely objecting to an opinion or inference; (ii) whether the issuer demonstrates, using objective evidence of falsity, that the assertion is false or misleading and not merely unfair or disputed; and (iii) whether the challenged assertion is "material."

The Supreme Court articulated the following test for Rule 14a-9 with respect to materiality: "there must be a substantial likelihood that the disclosure of the omitted fact [or the misstatement] would have been viewed by the reasonable investor as having significantly altered the 'total mix' of information made available." *TSC Industries, Inc. v. Northway, Inc.*, 426 U.S. 438 (1976).

Materiality refers to key terms, which must render the proposal itself false or misleading. In this case, the intent of the proposal is clear. If adopted by the Board, the number of Shareholder Nominees eligible to appear in Apple's proxy materials would raise to a minimum of two.

Apple's contention of false and misleading statements is actually a search for anything that might lead to a possible misunderstanding or a potential for misunderstanding. Their contentions are not based in facts but in a misreading of plain English. They cite no facts to counter those offered in the proposal.

The so-called "misleading sections" of the Supporting Statement begins with the following. "Most S&P 500 companies have adopted proxy access." Apple presents no arguments or facts to dispute that statement.

The Supporting Statement next cites a report that studied companies that have adopted proxy access, which found that 84% "allow either a minimum of 2 directors to be nominated or 25% of the board." Searching for a potential misunderstanding, Apple then contends the Supporting Statement implies that 84% of S&P 500 companies have

adopted proxy access. The Supporting Statement makes no such claim. The Supporting Statement clearly says, “most S&P 500 companies have adopted proxy access.” It does **not** say 84% of S&P 500 companies have adopted proxy access.

Apple then goes on to argue the study cited by the Supporting Statement was not a study of S&P 500 companies. However, the Supporting Statement never states or infers the cited study was of S&P 500 companies.

Apple goes on to contend the Supporting Statement leaves a “materially misleading impression regarding the Proponent’s claim that the Company is an ‘outlier’ and a ‘laggard’” but provides no facts to counter that claim. Apple is clearly an outlier and a laggard, in comparison to the 475 companies reviewed in the cited report.

Apple goes on to argue the information provided in the Supporting Statement misleads shareholders because “neither the report nor the Proponent states whether the 6% of surveyed companies in this category [those allowing up to 25% with no minimum specified] all have eight or more directors.” It is not misleading to cite the findings of research that Apple believes is incomplete.


There is nothing false or misleading in the statement. If Apple can find research on the size of the 6% of boards that have adopted 25% with no minimum specified and believe that information will lead shareholders to vote down the proposal, they can present that research in their opposition statement. Many would argue that parsing out the facts on that 6% would not be material anyway but they are free to try to confuse shareholders with such arguments in their opposition statement.

## **Conclusion**

In permitting the exclusion of proposals, Rule 14a-8(g) imposes the burden of proof on companies. Companies seeking to establish the availability of exclusion under Rule 14a-8(i)(3), therefore, have the burden of showing ineligibility. The Company has failed to meet this burden and Staff must deny the no-action request. We would be pleased to respond to Staff questions. You can reach us at

\*\*\*

Sincerely,



James McRitchie  
Shareholder Advocate





October 10, 2018

**VIA E-MAIL ([shareholderproposals@sec.gov](mailto: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 James McRitchie

Dear Ladies and Gentlemen:

I am writing on behalf of Apple Inc. to respond to John Chevedden's letters to the staff dated October 6, 2018 (the "**First Response Letter**") and October 7, 2018 (the "**Second Response Letter**," and together with the First Response Letter, the "**Response Letters**"). The Response Letters relate to our letter to the staff dated September 26, 2018 (the "**Initial Letter**"), which sets forth the Company's intention to omit the Proponent's proposal from its 2019 Proxy Materials in reliance on Rule 14a-8(i)(3) because the Proposal contains statements that are materially false and misleading. For ease of reference, capitalized terms used in this letter have the same meaning ascribed to them in the Initial Letter.

The First Response Letter does not address the merits of the Company's position that the Proposal is excludable under Rule 14a-8(i)(3), and instead states: "The company does not object to most of the text in the rule 14a-8 proposal. Attached is the text the company does not object to." The text attached to the First Response Letter is simply the original proposal with certain statements redacted. If this is intended to serve as a new proposal, in substitution for the Proposal, it is too late for Mr. Chevedden to submit a corrected proposal. As noted in Staff Legal Bulletin No. 14F (October 18, 2011), if a proposal attempting to revise an earlier submitted proposal is submitted after a company's shareholder proposal deadline, the company may treat the revised proposal as a second proposal and submit a notice stating its intention to exclude the revised proposal. The Company's submission deadline was August 29, 2018. Accordingly, if the First Response Letter is intended to substitute a new proposal for the Proposal, the proposal is excludable under Rule 14a-8(e).

Apple  
One Apple Park Way  
Cupertino, CA 95014

T 408 996-1010  
F 408 996-0275  
[www.apple.com](http://www.apple.com)

Even if the redacted text included in the First Response Letter were accepted as a new proposal, the proposal remains excludable under Rule 14a-8(i)(3). The statement that "84% allow either a minimum of 2 directors to be nominated or 25% of the board" is still misleading, as it does not identify the population of companies to which the "84%" refers. As discussed in the Initial Letter, the report cited by the Proponent referenced outside research stating that only 65% of the 500 companies in the S&P 500 have adopted a proxy access bylaw in any form. The First Response Letter also does not clarify whether the companies that have "25%" proxy access bylaws have board sizes of eight or more directors, which would result in shareholders being able to nominate a minimum of two candidates. Furthermore, the following two sentences, without the redacted text to provide context, are now even more misleading: "That leaves Apple as a distinct outlier. The most common board size is 11." Mr. Chevedden's redactions therefore do not cure the deficiencies in the Proposal.

The Second Response Letter appears to be an effort to support the original version of the Proposal, by noting an insignificant difference between the Proposal and a proposal addressed in one of the letters cited in the Initial Letter. The letter does not explain why the Proposal is not materially false and misleading.

For these reasons, and the reasons set forth in the Initial Letter, the Company believes it may omit the Proposal and the redacted version of the proposal from its 2019 Proxy Materials. If the staff has any questions or needs additional information, please feel free to contact me at (408) 996-1010 or by e-mail at sam\_whittington@apple.com.

Sincerely,

A handwritten signature in black ink, appearing to read 'SWhittington', with a long horizontal flourish extending to the right.

Sam Whittington  
Assistant Secretary

cc: John Chevedden  
Alan L. Dye, Hogan Lovells US LLP

October 7, 2018

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

**# 2 Rule 14a-8 Proposal**  
**Apple Inc. (AAPL)**  
**Proxy Access**  
**James McRitchie**

Ladies and Gentlemen:

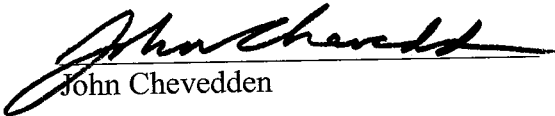
This is in regard to the September 26, 2018 no-action request.

The company failed to cite one precedent from the current decade.

And the purported *General Electric Co.* (January 6, 2009) precedent is not an apples to apples comparison because the purported objectionable word of "withheld" was in the resolved statement – not the supporting statement.

This is to request that the Securities and Exchange Commission allow this resolution to stand and be voted upon in the 2018 proxy.

Sincerely,



John Chevedden

cc: James McRitchie

Sam Whittington <sam\_whittington@apple.com>

## RESOLUTION

That the shareholders of GENERAL ELECTRIC COMPANY request its Board to take the steps necessary to adopt a formal policy to ensure that any Director who receives more than 25% in withheld votes (based on "FOR" and "Withheld" votes in the election of Directors, will not serve on any key board committee (audit, nomination, and executive compensation) for two years after such annual meeting, and such policy will take effect as soon after the annual meeting where the director receives the dismal 25% withheld vote.

This proposal will require our board to find replacement directors for these key committee positions as soon as possible, and, if replacements are needed, given that the key committees have as many as seven members. In the unlikely event that there would be two or more such directors after an annual meeting, the board could elect to apply this provision to the two directors who received the poorest votes.

## STATEMENT

Claudio Gonzalez received 30% in withheld votes yet was allowed to continue to serve on our audit, nomination, and executive compensation committees.

Shareholders expressed their significant displeasure with this director and the board allows him key governance assignments. This indicates that our board does not respect our "withheld" votes.

There is no reason--now, or in the future--to have a director who received 30% in withheld votes serve on committees at the same time when the choice for these positions could be among the twelve directors who received only 2% in withheld votes.

Please vote "FOR" this proposal to encourage our directors to respond positively to our votes.

October 6, 2018

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

**# 1 Rule 14a-8 Proposal**  
**Apple Inc. (AAPL)**  
**Proxy Access**  
**James McRitchie**

Ladies and Gentlemen:

This is in regard to the September 26, 2018 no-action request.

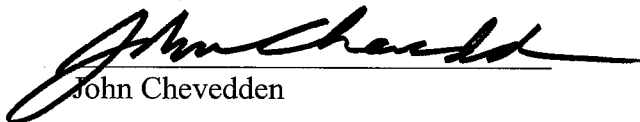
The company does not object to most of the text in the rule 14a-8 proposal.

Attached is the text the company does not object to.

The company did not mention any concern with the text of the proposal in the 45-days from the date of submittal until September 26, 2018.

This is to request that the Securities and Exchange Commission allow this resolution to stand and be voted upon in the 2018 proxy.

Sincerely,



John Chevedden

cc: James McRitchie

Sam Whittington <sam\_whittington@apple.com>

[AAPL – Rule 14a-8 Proposal, August 10, 2018]  
Proposal [4\*] - Shareholder Proxy Access Amendments

RESOLVED: Shareholders of Apple, Inc. (the “Company” or “Apple”) ask the board of directors (the “Board”) to amend its “Proxy Access for Director Nominations” bylaw, and any other associated documents, to include the following changes for the purpose of increasing the potential number of nominees:

The number of “Shareholder Nominees” eligible to appear in proxy materials shall be 20% of the directors then serving or 2, whichever is greater.

Supporting Statement: Current proxy access bylaws restrict Shareholder Nominees to 20% of directors rounded down to the nearest whole number.

According to a report by Sidley Austin (<https://www.sidley.com/-/media/update-pdfs/2018/02/20180201-corporate-governance-report.pdf>), 84% allow either a minimum of 2 directors to be nominated or 25% of the board. That leaves Apple as a distinct outlier.

The most common board size is 11. 20% of 11, rounding down to the nearest whole number is 2. However, Apple has only 8 directors. 20% of 8, rounding down to the nearest whole number is 1.

BlackRock’s 2018 Proxy Voting Guidelines included the following: “In general, we support market-standardized proxy access proposals, which allow a shareholder (or group of up to 20 shareholders) holding three percent of a company’s outstanding shares for at least three years the right to nominate the greater of up to two directors or 20% of the board.”

Because shareholders are limited to one nominee at Apple, instead of two, as is the case at most large companies, any shareholder nominee elected under the current bylaws at Apple could be easily isolated and ineffective. They might not even be able to get a second on a motion in a board meeting to discuss important topics.

A cost-benefit analysis by CFA Institute, *Proxy Access in the United States: Revisiting the Proposed SEC Rule* (<http://www.cfapubs.org/doi/pdf/10.2469/ccb.v2014.n9.1>), found proxy access would “benefit both the markets and corporate boardrooms, with little cost or disruption,” raising US market capitalization by up to \$140.3 billion.

Apple has proxy access provisions but they certainly do not meet even the weakest of industry standards.

Increase shareholder value  
Vote for Shareholder Proxy Access Amendments – Proposal [4\*]





**Rule 14a-8(i)(3)**

September 26, 2018

**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 James McRitchie

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 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 James McRitchie (the "**Proponent**") from the Company's proxy materials for its 2019 Annual Meeting of Shareholders (the "**2019 Proxy Materials**").

A copy of the Proposal and the Supporting Statement, together with other correspondence relating to the Proposal, is attached hereto as Exhibit A.

In accordance with Staff Legal Bulletin No. 14D (November 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 the proponent submits 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 2019 Proxy Materials with the Commission more than 80 days after the date of this letter.

## THE PROPOSAL

On August 12, 2018, the Company received from John Chevedden, on behalf of the Proponent, as an attachment to an e-mail, a letter submitting the Proposal for inclusion in the Company's 2019 Proxy Materials. The Proposal reads as follows:

Resolved: Shareholders of Apple, Inc. (the "Company" or "Apple") ask the board of directors (the "Board") to amend its "Proxy Access for Director Nominations" bylaw, and any other associated documents, to include the following changes for the purpose of increasing the potential number of nominees:

The number of "Shareholder Nominees" eligible to appear in proxy materials shall be 20% of the directors then serving or 2, whichever is greater.

## BASIS FOR EXCLUSION OF THE PROPOSAL

### I. Rule 14a-8(i)(3) – The Proposal is Vague and Indefinite

#### A. Background

Rule 14a-8(i)(3) permits exclusion of a proposal if the proposal or supporting statement is contrary to any of the Commission's proxy rules, including Rule 14a-9, which prohibits materially false or misleading statements in proxy soliciting materials. Specifically, Rule 14a-9 provides that no solicitation shall be made by means of any proxy statement containing "any statement, which, at the time and in light of the circumstances under which it is made, is false or misleading with respect to any material fact, or which omits to state any material fact necessary in order to make the statements therein not false or misleading." In Staff Legal Bulletin No. 14B (September 15, 2004) ("**SLB 14B**"), the staff asserted that exclusion under Rule 14a-8(i)(3) may be appropriate where "the company demonstrates objectively that a factual statement is materially false or misleading." The Staff consistently has allowed the exclusion under Rule 14a-8(i)(3) of shareholder proposals that contain statements that are false or misleading. See, e.g., *General Electric Co.* (January 6, 2009) (permitting exclusion of a proposal requesting a policy to ensure that a director who received greater than 25% withheld votes in a director election would not serve on key board committees, because it falsely asserted that shareholders had the option to withhold votes from director candidates on the Company's proxy card); *Citigroup Inc.* (January 31, 2007) (permitting exclusion of a proposal asking the board to adopt a policy that shareholders be given the opportunity at each annual meeting to vote on an advisory management resolution to approve the report of the compensation committee in the proxy statement, because the proposal was "materially false or misleading under rule 14a-9"); *Wal-Mart Stores, Inc.* (April 2, 2001) (permitting exclusion of a proposal to remove "all genetically engineered crops, organisms or products" because the text



of the proposal misleadingly implied that it related only to the sale of food products); *McDonald's Corp.* (Mar. 13, 2001) (permitting exclusion of a proposal because its request to adopt "SA 8000 Social Accountability Standards" did not accurately describe the standards).

In addition, the staff has permitted exclusion of portions of proposals or supporting statements that contain materially false or misleading information under Rule 14a-9. For example, in *Sara Lee Corp.* (July 31, 2007), the proposal at issue requested that the company's board of directors publish in the next proxy statement a complete report on the laws, rules, and regulations and other procedures regarding the process of shareholder proposals and their legal implications. The staff permitted deletion of certain sections of the supporting statement which were unrelated to the proposal and confusing to shareholders because, in the staff's view, "portions of the supporting statement may be materially false or misleading under rule 14a-9."

***B. The Proposal is Materially False and Misleading Because it References Misleading Statistics in the Supporting Statement***

The Proposal is excludable under Rule 14a-8(i)(3) and Rule 14a-9 because assertions in the Supporting Statement are false and misleading. In particular, the Supporting Statement distorts and misreads statistics in its cited report relating to S&P 500 companies, and falsely describes the Company as a "distinct outlier" and a "laggard" in regards to its proxy access bylaw. These statements are objectively and demonstrably false and misleading and could materially impact shareholders' views regarding the appropriateness of the Company's proxy access bylaw.

The misleading sections of the Supporting Statement read as follows:

Most S&P 500 companies have adopted proxy access. According to a report by Sidley Austin (<https://www.sidley.com/-/media/update-pdfs/2018/02/20180201-corporate-governance-report.pdf>), 84% allow either a minimum of 2 directors to be nominated or 25% of the board. That leaves Apple as a distinct outlier with 16% that allow only up to 20% of the board to be nominated by shareholders.

However, Apple is worse than most of the 16% of laggards. The most common board size at S&P 500 companies is 11. 20% of 11, rounding down to the nearest whole number is 2. However, Apple has only 8 directors. 20% of 8, rounding down to the nearest whole number is 1.

These statements misrepresent the findings set forth in the cited report. The Supporting Statement implies that 84% of the companies included in the S&P 500 index have adopted proxy access on the terms proposed by the Proposal, by stating that "Most S&P 500



companies have adopted proxy access" and then following that statement with "84% allow either a minimum of 2 directors to be nominated or 25% of the board." This implication is false. The report cited by the Proponent referenced outside research stating that only 65% of the 500 companies in the S&P 500 have adopted a proxy access bylaw in any form, far fewer than 84%.

The cited report's independent research was not confined to the S&P 500. Instead, the report analyzed the proxy access bylaws of 475 companies that implemented proxy access after January 1, 2015. These 475 companies varied widely in size and were not identified in the report as components of any specific stock index. Thus, the report does not say anything at all about the number of S&P 500 companies that have adopted proxy access on the terms favored by the Proponent. The Proposal also does not clarify that the figure only includes companies that have adopted proxy access bylaws since January 1, 2015. Instead, the report states that 84% of the 475 companies reviewed for the report have implemented proxy access provisions that permit shareholders to nominate a maximum of either (a) the greater of two directors or 20% of the board, (b) the greater of two directors or 25% of the board, or (c) 25% of the board. Thus, the Proposal misstates the number and size of companies included in the denominator of the 84% figure, by implying that it consisted of all companies in the S&P 500. This error materially overstates the number and size of companies that have adopted proxy access, particularly on the terms favored by the Proponent, and leaves a materially misleading impression regarding the Proponent's claim that the Company is an "outlier" and a "laggard."

Further, the aim of the Proposal is to permit shareholders to be able to nominate a minimum of two directors under the Company's proxy access bylaw. The Proponent emphasizes that only one shareholder nominee is currently permitted under the Company's proxy access bylaw, and contrasts this negatively against the supposed 84% of S&P 500 companies that "allow either a minimum of 2 directors to be nominated or 25% of the board." However, including in this figure the companies that permit shareholders to nominate up to 25% of the board, with no minimum number of directors specified, is misleading, and implies that the vast majority of the Company's peers permit a minimum of two shareholder nominees. The cited report analyzes the terms of proxy access bylaws specifying the number of board candidates that shareholders may nominate and concludes that (a) 71% of the 475 surveyed companies permit shareholders to nominate the greater of two nominees or 20% of the board, (b) 7% allow the greater of two nominees or 25% of the board, and (c) 6% allow up to 25% of the board, with no minimum number of directors specified. This third category of companies may or may not permit shareholders to nominate a minimum of two director candidates. A proxy access bylaw allowing shareholders to nominate up to 25% of the board would not permit shareholders to nominate a minimum of two candidates if the board consisted of seven or fewer directors, yet neither the report nor the Proponent states whether the 6% of surveyed companies in this category all have eight or more directors. The Proposal therefore misleads shareholders regarding the extent to which the Company may be a "laggard."

The foregoing statements in the Supporting Statement are materially false and misleading under Rule 14a-9. In addition, the false and misleading statements form the basis for false and misleading conclusions that are material to the matter on which shareholders are being asked to vote (e.g., the Company is "worse than most of the 16% of laggards"). The

Proposal therefore may be excluded from the Company's 2019 Proxy Materials in reliance on Rule 14a-8(i)(3).

### **CONCLUSION**

For the reasons discussed above, the Company believes that it may omit the Proposal from its 2019 Proxy Materials in reliance on Rule 14a-8(i)(3). 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 2019 Proxy Materials.

If you have any questions or need additional information, please feel free to contact me at (408) 996-1010 or by e-mail at [sam\\_whittington@apple.com](mailto:sam_whittington@apple.com).

Sincerely,

A handwritten signature in dark ink, appearing to read 'SSW', followed by a long horizontal flourish line.

Sam Whittington  
Assistant Secretary

### **Attachments**

cc: John Chevedden  
Alan L. Dye, Hogan Lovells US LLP

## **Exhibit A**

### **Copy of the Proposal and Supporting Statement and Related Correspondence**

James McRitchie

\*\*\*

Ms. Katherine Adams  
Corporate Secretary  
Apple Inc. (AAPL)  
One Apple Park Way  
Cupertino, CA 85014  
Emailed to: shareholderproposal@apple.com  
PH: 408 996-1010  
FX: 408-974-2483  
FX: 408-253-7457

Dear Ms. Adams,

Apple is one of only a few companies with proxy access that does not provide for a minimum of two shareholder nominees. We have negotiated agreements at many companies for more usable proxy access and hope to do the same at Apple. Please contact us.

My proposal to amend proxy access at Apple is for the next annual shareholder meeting. I will meet Rule 14a-8 requirements including the continuous ownership of the required stock value until after the date of the respective shareholder meeting. My submitted format, with the shareholder-supplied emphasis, is intended to be used for definitive proxy publication.

This is my delegation to John Chevedden and/or his designee to forward this Rule 14a-8 proposal to the company and to act as my agent regarding this Rule 14a-8 proposal, negotiations and/or modification, and presentation of it for the forthcoming shareholder meeting.

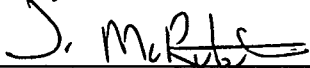
Please direct all future communications regarding my rule 14a-8 proposal to John Chevedden (PH: )  
at: \*\*\*

\*\*\*

to facilitate prompt and verifiable communications. Please identify me exclusively as the lead filer of the proposal and Harrington Investments, Inc. as a co-filer.

This letter does not cover proposals that are not rule 14a-8 proposals. This letter does not grant the power to vote. Your consideration and the consideration of the Board of Directors is appreciated in support of the long-term performance of our company. Please acknowledge receipt of my proposal promptly by email to \*\*\*

Sincerely,



James McRitchie

August 10, 2018

Date

cc: Gene Levoff <glevoff@apple.com>  
Vice President of Corporate Law

[AAPL – Rule 14a-8 Proposal, August 10, 2018]  
Proposal [4\*] - Shareholder Proxy Access Amendments

RESOLVED: Shareholders of Apple, Inc. (the “Company” or “Apple”) ask the board of directors (the “Board”) to amend its “Proxy Access for Director Nominations” bylaw, and any other associated documents, to include the following changes for the purpose of increasing the potential number of nominees:

The number of “Shareholder Nominees” eligible to appear in proxy materials shall be 20% of the directors then serving or 2, whichever is greater.

Supporting Statement: Current proxy access bylaws restrict Shareholder Nominees to 20% of directors rounded down to the nearest whole number.

Most S&P 500 companies have adopted proxy access. According to a report by Sidley Austin (<https://www.sidley.com/-/media/update-pdfs/2018/02/20180201-corporate-governance-report.pdf>), 84% allow either a minimum of 2 directors to be nominated or 25% of the board. That leaves Apple as a distinct outlier with 16% that allow only up to 20% of the board to be nominated by shareholders.

However, Apple is worse than most of the 16% of laggards. The most common board size at S&P 500 companies is 11. 20% of 11, rounding down to the nearest whole number is 2. However, Apple has only 8 directors. 20% of 8, rounding down to the nearest whole number is 1.

BlackRock’s 2018 Proxy Voting Guidelines included the following: “In general, we support market-standardized proxy access proposals, which allow a shareholder (or group of up to 20 shareholders) holding three percent of a company’s outstanding shares for at least three years the right to nominate the greater of up to two directors or 20% of the board.”

Because shareholders are limited to one nominee at Apple, instead of two, as is the case at most large companies, any shareholder nominee elected under the current bylaws at Apple could be easily isolated and ineffective. They might not even be able to get a second on a motion in a board meeting to discuss important topics.

A cost-benefit analysis by CFA Institute, *Proxy Access in the United States: Revisiting the Proposed SEC Rule* (<http://www.cfapubs.org/doi/pdf/10.2469/ccb.v2014.n9.1>), found proxy access would “benefit both the markets and corporate boardrooms, with little cost or disruption,” raising US market capitalization by up to \$140.3 billion.

Apple has proxy access provisions but they certainly do not meet even the weakest of industry standards.

Increase shareholder value  
Vote for Shareholder Proxy Access Amendments – Proposal [4\*]



Notes:

James McRitchie,

\*\*\*

sponsored this proposal.

Please note the title of the proposal is part of the proposal. The title is intended for publication.

If the company thinks that any part of the above proposal, other than the first line in brackets (not intended for publication), can be omitted from proxy publication based on its own discretion, please obtain a written agreement from the proponent.

This proposal is believed to conform with Staff Legal Bulletin No. 14 B (CF), September 15, 2004 including (emphasis added):

Accordingly, going forward, we believe it would not be appropriate for companies to exclude supporting statement language and/or an entire proposal in reliance on rule 14a-8(i)(3) in the following circumstances:

- the company objects to factual assertions because they are not supported;
- the company objects to factual assertions that, while not materially false or misleading may be disputed or countered;
- the company objects to factual assertions because those assertions may be interpreted by shareholders in a manner that is unfavorable to the company, its directors, or its officers; and/or
- the company objects to statements because they represent the opinion of the shareholder proponent or a referenced source, but the statements are not identified specifically as such.

**We believe that it is appropriate under rule 14a-8 for companies to address these objections in their statements of opposition.**

See also: Sun Microsystems, Inc. (July 21, 2005)

The stock supporting this proposal will be held until after the annual meeting and the proposal will be presented at the annual meeting.



08/24/2018

James Mcritchie

\*\*\*

Re: Your TD Ameritrade Account Ending in \*\*\*

Dear James Mcritchie,

Thank you for allowing me to assist you today. As you requested, this letter is to confirm that as of the date of this letter, James McRitchie held, and had held continuously for at least thirteen months, at least 600 shares of Apple, Inc. (AAPL) common stock in his TD Ameritrade account ending in \*\*\*. The DTC clearinghouse number for TD Ameritrade is 0188.

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,

A handwritten signature in dark ink, appearing to read 'Nathan Maxwell', with a stylized flourish at the end.

Nathan Maxwell  
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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