



DIVISION OF
CORPORATION FINANCE

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

December 20, 2021

Sam Whittington
Apple Inc.

Re: Apple Inc. (the "Company")
Incoming letter dated October 18, 2021

Dear Mr. Whittington:

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

The Proposal asks that the board prepare a report assessing the potential risks to the Company associated with its use of concealment clauses, as defined in the Proposal, in the context of harassment, discrimination and other unlawful acts.

We are unable to concur in your view that the Company may exclude the Proposal under Rule 14a-8(i)(7). In our view, the Proposal transcends ordinary business matters and does not seek to micromanage the Company.

We are unable to concur in 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 do not compare favorably with the guidelines of the Proposal and that the Company has not, therefore, substantially implemented the Proposal.

Copies of all of the correspondence on which this response is based will be made available on our website at [SEC.gov | 2021-2022 No-Action Responses Issued Under Exchange Act Rule 14a-8](https://www.sec.gov/2021-2022-No-Action-Responses-Issued-Under-Exchange-Act-Rule-14a-8).

Sincerely,

Rule 14a-8 Review Team

cc: Kristin Hull
Nia Impact Capital



October 18, 2021

VIA ELECTRONIC MAIL

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

Re: **Apple Inc. Shareholder Proposal from Nia Impact Capital**

Ladies and Gentlemen:

This letter is submitted pursuant to Rule 14a-8(j) under the Securities Exchange Act of 1934, as amended. Apple Inc., a California corporation ("**Apple**" or the "**Company**"), has received a shareholder proposal (the "**Proposal**") and related supporting statement (the "**Supporting Statement**") from Nia Impact Capital (the "**Proponent**") for inclusion in the Company's proxy statement (the "**Proxy Materials**") for the Company's 2022 Annual Meeting of Shareholders (the "**Annual Meeting**"). A copy of the Proposal and the Supporting Statement, together with other correspondence relating to the Proposal, is attached hereto as [Exhibit A](#). The Company hereby advises the staff of the Division of Corporation Finance (the "**Staff**") that it intends to exclude the Proposal from its Proxy Materials. The Company respectfully requests confirmation that the Staff will not recommend enforcement action to the Securities and Exchange Commission (the "**Commission**") if the Company excludes the Proposal:

- (i) pursuant to Rule 14a-8(i)(10), as the Proposal has been substantially implemented; and
- (ii) pursuant to Rule 14a-8(i)(7), as the Proposal relates to the Company's ordinary business operations.

By copy of this letter, the Company is advising the Proponent of its intention to exclude the Proposal. In accordance with Rule 14a-8(j)(2) and Staff Legal Bulletin No. 14D, the Company is submitting by electronic mail (i) this letter, which sets forth its reasons for excluding the Proposal; and (ii) the Proponent's letter submitting the Proposal.

Pursuant to Rule 14a-8(j), the Company is submitting this letter not less than 80 days before the Company intends to file its Proxy Materials and is sending a copy of this letter concurrently to the Proponent.

I. **The Shareholder Proposal.**

The Proposal, in material part, requests that the Company's shareholders approve the following:

"Resolved: Shareholders of Apple Inc. ("Apple") ask that the Board of Directors prepare a public report assessing the potential risks to the company associated with its use of concealment clauses in the context of harassment, discrimination and other unlawful acts. The report should be prepared at reasonable cost and omit proprietary and personal information.

In addition, the Supporting Statement provides that concealment clauses are defined as "any employment or post-employment agreement, such as arbitration, non-disclosure or non-disparagement agreements, that Apple asks employees or contractors to sign which would limit their ability to discuss unlawful acts in the workplace, including harassment and discrimination."

II. **The Proposal Has Been Substantially Implemented by the Company in Accordance with Rule 14a-8(i)(10)**

Apple is deeply committed to creating and maintaining a positive and inclusive workplace. Apple does not limit employees' and contractors' ability to speak freely about harassment, discrimination, and other unlawful acts in the workplace. Instead, Apple supports the rights of its employees and contractors to speak freely about these matters, and it is the Company's policy that employees and contractors should not be prohibited from doing so. Given the foregoing, Apple has already substantially implemented the underlying concerns and essential objectives of the proposal – to disclose the risks of its use of concealment clauses – because the Company's policy is to not use such clauses. Apple communicates this through its Business Conduct Policy¹, which is available on the Company's public website for anyone, including shareholders, to review. Apple's Business Conduct Policy sets out Apple's expectations regarding confidentiality of unreleased products and non-public business information and provides that "nothing in this Policy should be interpreted as being restrictive of your right to speak freely about your wages, hours, or working conditions." Were the Proposal to be voted upon by shareholders at the Annual Meeting and pass, there is nothing further that Apple would include in such a report. Accordingly, the Company requests that the Staff concur in its view that the Company may exclude the Proposal from the Proxy Materials pursuant to Rule 14a-8(i)(10) because it has substantially implemented the Proposal.

A. Rule 14a-8(i)(10)

Rule 14a-8(i)(10) provides that a company may exclude a shareholder proposal from its proxy materials if the company has substantially implemented the proposal. In explaining the scope of a predecessor to Rule 14a-8(i)(10), the Commission stated that the exclusion is "designed to avoid the possibility of shareholders having to consider matters which already have been favorably acted upon by the management." See Exchange Act Release No. 12598 (July 7, 1976) (discussing the rationale for adopting the predecessor to Rule 14a-8(i)(10), which provided as a substantive basis for omitting a shareholder proposal that the proposal "has been rendered moot by the actions of the management"). At one time, the Staff interpreted the predecessor rule

¹ See https://s2.q4cdn.com/470004039/files/doc_downloads/Business-Conduct-Policy.pdf

narrowly, considering a proposal to be excludable under this provision only if it had been "fully effected" by the company. See Exchange Act Release No. 19135 at § II.B.5. (Oct. 14, 1982). By 1982, however, the Commission recognized that the Staff's narrow interpretation of the predecessor rule "may not serve the interests of the issuer's security holders at large and may lead to an abuse of the security holder proposal process," in particular by enabling proponents to argue "successfully on numerous occasions that a proposal may not be excluded as moot in cases where the company has taken most but not all of the actions requested by the proposal." *Id.* Accordingly, the Commission proposed in 1982, and adopted in 1983, a revised interpretation of the rule to permit the omission of proposals that had been "substantially implemented." See Exchange Act Release No. 20091, at § II.E.6. (Aug. 16, 1983) (the "**1983 Release**") (indicating that the Staff's "previous formalistic application of" the predecessor rule "defeated its purpose" because the interpretation allowed proponents to obtain a shareholder vote on an existing company policy by changing only a few words of the policy). The Commission later codified this revised interpretation in Exchange Act Release No. 40018 at n.30 (May 21, 1998). Accordingly, the actions requested by a proposal need not be "fully effected" by the company to be excluded; rather, to be excluded, they need only to have been "substantially implemented" by the company. See the 1983 Release.

Applying this standard, the Staff has noted that "a determination that the [c]ompany has substantially implemented the proposal depends upon whether [the company's] particular policies, practices and procedures compare favorably with the guidelines of the proposal." *Texaco, Inc.* (avail. Mar. 28, 1991). Thus, when a company has already taken action to address the underlying concerns and essential objectives of a shareholder proposal, even though the company did not take the exact action requested by the proponent, did not implement the proposal in every detail, or exercised discretion in determining how to implement the proposal, the proposal has been "substantially implemented" and may be excluded. See, e.g., *PPG Industries Inc.* (avail. Jan. 16, 2020); *Bank of New York Mellon Corp.* (avail. Feb. 15, 2019); *Exelon Corp.* (avail. Feb. 26, 2010); *Exxon Mobil Corp. (Burt)* (avail. Mar. 23, 2009); *Anheuser-Busch Companies, Inc.* (avail. Jan. 17, 2007); *ConAgra Foods, Inc.* (avail. Jul. 3, 2006); *Talbots Inc.* (avail. Apr. 5, 2002); *Exxon Mobil Corp.* (avail. Jan. 24, 2001); and *The Gap, Inc.* (avail. Mar. 8, 1996).

The Staff has previously concurred with the exclusion of a shareholder proposal requesting that a company's board of directors prepare a report when the company would have had no content to include in such a report in response to one of the items requested by the Proponent. In *Wal-Mart Stores, Inc.* (Mar. 28, 2007), the proposal requested that the board of directors prepare a report on the Company's relationships with its executive compensation consultants, and requested that the report include, among other things, "the Company's policies and procedures regarding non-compensation-related services provided by the Consultant". Wal-Mart argued in its no-action letter that, with respect to this particular requirement of the proposal, the proposal "only requires disclosure of such policies and procedures as the Company has in place. The Company has indicated to the Proponent that it currently has no such policies and procedures, and as a result has nothing to report under such requirement." The Staff permitted exclusion of the proposal under Rule 14a-8(i)(10).

B. The Company's Policies and Practices Address the Underlying Concerns and Essential Objectives of the Proposal and Therefore Substantially Implement the Proposal

Apple does not limit employees' and contractors' ability to speak freely about harassment, discrimination, and other unlawful acts in the workplace. Apple's existing policies and practices demonstrate its support of the rights of its employees and contractors to speak freely about unlawful acts in the workplace, including harassment and discrimination. Apple communicates this through its Business Conduct Policy, which is available on the Company's public website for anyone, including shareholders, to review. Apple's Business Conduct Policy sets out Apple's expectations regarding confidentiality of unreleased products and non-public business information and provides that "nothing in this Policy should be interpreted as being restrictive of your right to speak freely about your wages, hours, or working conditions." Apple broadly interprets "working conditions" to include unlawful acts in the workplace, including harassment and discrimination. In fact, Apple's policy is broader than the narrower language of the Proposal.

Apple's Business Conduct Policy applies to all full and part-time employees of Apple and its subsidiaries, and provides a standard guide for what is required of everyone at Apple. Apple expects its suppliers, contractors, consultants, and other business partners to follow its principles when providing goods and services to Apple or acting on Apple's behalf. Apple employees complete mandatory annual training on the Business Conduct Policy.

The Company has a large, global workforce and uses various forms of agreements around the world. But the Company is not aware of any such agreements that would conflict with the Company's Business Conduct Policy, which applies worldwide. For example, Apple's standard form of Intellectual Property Agreement for employees in the U.S. does not contain "concealment clauses" as defined by the Proposal. Moreover, the agreement states, in relevant part: "Nothing in this Agreement restricts your rights to speak freely about your wages, hours, or working conditions, as legally permitted." Similarly, Apple's standard form of contractor agreement does not contain "concealment clauses" as defined by the Proposal.

The vast majority of Apple employees leave Apple without any type of separation agreement. However, as a further example, Apple's standard form of separation agreement for departing U.S. employees does not prohibit disclosure of the facts underlying the individual's separation from the Company. Instead, the confidentiality provision in the agreement only prohibits disclosure of the "terms, amount and fact" of the agreement itself. There is no provision in the standard form of separation agreement that would prohibit former employees from discussing harassment, discrimination or other unlawful acts in the workplace with anyone. In addition, the agreement specifically provides:

"Claims and Communication with Government Agencies about Potential Violations of Law. Nothing contained in this Agreement limits my ability to file an administrative charge or complaint with the Equal Employment Opportunity Commission, any state anti-discrimination agency, the National Labor Relations Board, the Occupational Safety and Health Administration, the Securities and Exchange Commission, the Department of Justice, or any other federal, state, or local governmental agency or commission (collectively referred to as

"Government Agencies"). Nothing in this Agreement restricts me from initiating communications directly with, responding to any inquiry from, or providing information or documents to, or providing testimony before any of the Government Agencies about actual or potential violations of laws."

Legislative action has also addressed the issue raised by the proposal. For example, in September 2018, the state of California adopted the STAND (Stand Together Against Non-Disclosures) Act, which generally prohibited confidentiality or non-disclosure provisions in settlement agreements that prevent the disclosure of factual information involving allegations of sexual misconduct. And, in October 2021, the state of California, where the Company is headquartered, adopted the "Silenced No More Act," which will become effective on January 1, 2022. This new law makes it "an unlawful employment practice [in California] for an employer, in exchange for a raise or bonus, or as a condition of employment or continued employment, ... to require an employee to sign a nondisparagement agreement or other document to the extent it has the purpose or effect of denying the employee the right to disclose information about unlawful acts in the workplace." The law goes on to provide that "[a] nondisparagement or other contractual provision that restricts an employee's ability to disclose information related to conditions in the workplace shall include, in substantial form, the following language: 'Nothing in this agreement prevents you from discussing or disclosing information about unlawful acts in the workplace, such as harassment or discrimination or any other conduct that you have reason to believe is unlawful.'" Therefore, effective January 1, 2022, it would not only be contrary to Apple's current policies and practices, but illegal, for Apple to include the type of concealment clause referred to in the Proposal in any agreement with California employees.

As demonstrated above, Apple supports the rights of its employees and contractors to speak freely about harassment, discrimination, and other unlawful acts in the workplace. As publicly disclosed in its Business Conduct Policy, Apple explicitly states that "nothing in this Policy should be interpreted as being restrictive of your right to speak freely about your wages, hours, or working conditions." As a result, the report requested by the Proposal on the "potential risks to the company associated with its use of concealment clauses" is moot – it is the Company's policy to not use these types of concealment clauses, and therefore the Company has nothing to disclose regarding the risks associated with their use (see *Wal-Mart Stores*). Indeed, if the Proposal were to be voted upon by shareholders at the Annual Meeting and pass, there is nothing further that Apple would include in such a report. Accordingly, the Company requests that the Staff concur in its view that the Company may exclude the Proposal from the Proxy Materials pursuant to Rule 14a-8(i)(10) because it has substantially implemented the Proposal.

III. The Proposal May be Excluded under Rule 14a-8(i)(7) Because the Proposal Relates to the Ordinary Business Operations of the Company.

Alternatively, the Company requests that the Staff concur in its view that the Company may exclude the Proposal from the Proxy Materials pursuant to Rule 14a-8(i)(7) because it relates to the ordinary business operations of the Company. As explained below, the subject matter of the Proposal relates to the Company's management of its workforce, specifically the terms of its contractual arrangements with employees, former employees and contractors. Further, the Company's current policies and practices are already aligned with the policy issues raised in the

Proposal. Therefore, those policy issues are not significantly at issue in the context of the Company and do not transcend the Company's ordinary business activities. Accordingly, the Proposal may be properly excluded pursuant to Rule 14a-8(i)(7).

A. Rule 14a-8(i)(7)

Rule 14a-8(i)(7) provides that a company may exclude a shareholder proposal from its proxy materials "[i]f the proposal deals with a matter relating to the company's ordinary business operations." The Commission has stated that the "general underlying policy of this exclusion is consistent with the policy of most state corporate laws: 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." Exchange Act Release No. 34-40018 (May 21, 1998) ("**1998 Release**"). As explained by the Commission, the term "ordinary business" in this context refers to "matters that are not necessarily 'ordinary' in the common meaning of the word and is rooted in the corporate law concept providing management with flexibility in directing certain core matters involving the company's business and operations." *Id.*

The Commission stated in the 1998 Release that the policy underlying the ordinary business exclusion is based on two considerations:

- first, whether a proposal relates to "tasks 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;" and
- second, whether a "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."

The Commission has long held that shareholder proposals relating to the management of the company's workforce, including a company's employment practices, relationships with employees and termination of employees, are excludable under Rule 14a-8(i)(7). In the 1998 Release, the Commission stated that the "management of the workforce, such as the hiring, promotion, and termination of employees" constituted "tasks ... 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." For example, the Staff concurred with the exclusion of a proposal in *Bank of America Corp.* (February 14, 2012) requesting that a company policy be amended to include "protection to engage in free speech outside the job context, and to participate freely in the political process without fear of discrimination or other repercussions on the job" because the proposal related to the company's policies concerning its employees. See also *Merck & Co., Inc.* (March 6, 2015) (concurring with exclusion of a proposal requesting that the company fill only entry-level positions with outside candidates and adopt a policy of developing individuals for its higher level positions exclusively from employees meeting certain standards because "the proposal relates to procedures for hiring and promoting employees"); *Starwood Hotels & Resorts Worldwide, Inc.* (February 14, 2012) (concurring with exclusion of a proposal requesting verification and documentation of U.S. citizenship for the company's U.S. workforce because it concerned "procedures for hiring and training employees"); *Northrop Grumman Corp.* (March 18, 2010) (concurring with exclusion of a proposal requesting that the board provide certain disclosures in the context of the

company's reduction-in-force review process, noting that "[p]roposals concerning a company's management of its workforce are generally excludable under [R]ule 14a-8(i)(7)"; *Merck & Co., Inc.* (March 6, 2002) (concurring with exclusion of a proposal requesting that the company keep shareholders informed regarding resolution of employment disputes because it related to the company's "management of the workforce"); *Burlington Northern Santa Fe Corp.* (February 15, 2000) (concurring with exclusion of a proposal relating to employment policies because it related to "management of the workforce"); and *Consolidated Edison, Inc.* (Feb. 24, 2005) (concurring that a proposal requesting the termination of certain supervisors could be excluded as it related to "the termination, hiring, or promotion of employees". In *United Technologies* (Feb. 19, 1993), the Staff stated the following:

As a general rule the staff views proposals directed at a company's employment policies and practices with respect to its non-executive workforce to be uniquely matters relating to the conduct of the company's ordinary business operations. Examples of the categories of proposals that have been deemed to be excludable on this basis are: employee health benefits, general compensation issues not focused on senior executives, management of the workplace, employee supervision, labor-management relations, employee hiring and firing, conditions of the employment and employee training and motivation.

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

Similarly, the Staff explained in Staff Legal Bulletin 14E (Oct. 27, 2009) ("**SLB 14E**") that a shareholder proposal requesting a risk analysis also does not change the nature of the proposal for purposes of Rule 14a-8(i)(7). The Staff stated that in the Rule 14a-8(i)(7) context:

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

The Staff has continued to concur with the exclusion of proposals seeking risk assessments when the subject matter concerns ordinary business operations. See, e.g., *Amazon.com, Inc. (Oxfam America, Inc.)* (avail. Apr. 3, 2019) (concurring with the exclusion of

a proposal urging the company's board of directors to conduct human rights impact assessments for certain food products that the company sells that present a high risk of adverse human rights impacts); *McDonald's Corp.* (avail. Mar. 22, 2019) (concurring with the exclusion of a proposal asking the company to "disclose the economic risks" it faced from "campaigns targeting the [c]ompany over concerns about cruelty to chickens" because it "focuse[d] primarily on matters relating to the [c]ompany's ordinary business operations"); and *Exxon Mobil Corp.* (avail. Mar. 6, 2012) (concurring with the exclusion of a proposal asking the board to prepare a report on "environmental, social, and economic challenges associated with the oil sands," which involved ordinary business matters).

However, SLB 14E states 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 14a-8(i)(7) as long as a sufficient nexus exists between the nature of the proposal and the company." The Staff reaffirmed this position in Note 32 of Staff Legal Bulletin No. 14H (Oct. 22, 2015), explaining "[w]hether the significant policy exception applies depends, in part, on the connection between the significant policy issue and the company's business operations," and later stated in Staff Legal Bulletin No. 14K (Oct. 16, 2019) ("**SLB 14K**") that it "believe[s] the focus of an argument for exclusion under Rule 14a-8(i)(7) should be on whether the proposal deals with a matter relating to that company's ordinary business operations or raises a policy issue that transcends that company's ordinary business operations."

B. The Subject Matter of the Proposal is Fundamental to Management's Ability to Run the Company's Day-to-Day Business and the Proposal Seeks to Micromanage the Company

The Proposal requests a report on "the potential risks to the company associated with its use of concealment clauses in the context of harassment, discrimination and other unlawful acts." At its core, the Proposal attempts to mandate how Apple drafts and negotiates any non-disclosure or non-disparagement provisions in the employment agreements and post-employment agreements it may choose to enter into with employees and contractors around the world. This kind of mandate invokes matters that are fundamental to Apple's day-to-day business operations: the way in which the Company manages its workforce and arrangements with its employees, former employees and contractors, and is precisely the kind of micromanaging that the 1998 Release deems to be excludable because it relates to the Company's ordinary business.

The Company's decisions with respect to the terms of its contractual arrangements with employees and contractors are fundamental to the Company's ability to manage its workforce. As disclosed in the Company's Annual Report on Form 10-K for the year ended September 26, 2020, the Company had approximately 147,000 full-time equivalent employees worldwide as of the end of the fiscal year. These employees are spread geographically throughout the U.S. and all around the world and cover all business functions, including retail service and sales, manufacturing, engineering, design, marketing, and corporate functions, among many others. As a technology-driven Company that operates in extremely competitive markets, any use by Apple of, and the specific content contained in, any non-disclosure or non-disparagement clause reflects management's in-depth consideration of the Company's business needs, including any potential business benefit and the nature of the employee's position, balanced against local laws and market standards as well as the potential risks associated with such provisions in each of the jurisdictions where Apple operates. Apple's use of, and the specific content contained in, these

provisions are inextricably linked to the Company's policies for hiring and terminating employees and contractors and, more generally, the way Apple manages its workforce throughout the world. The Proposal does not take into account all of these differing needs and requirements of the Company's global business. Instead, the Proposal attempts to replace management's fundamental tasks with a shareholder vote.

As a result, the Proposal is an attempt to micromanage the Company's complex operations and massive workforce and intrude on matters that are central to management's ability to run the business. The Staff noted in SLB 14K that a proposal micromanages a company where it "seeks intricate detail or imposes a specific strategy, method, action, outcome or timeline for addressing an issue, thereby supplanting the judgment of management and the board." Here, the Proposal is aimed at imposing a specific mechanism for Apple to manage its relations with employees and contractors. As noted above, the Staff has concurred on numerous occasions that proposals relating to the management of a company's workforce implicate a company's ordinary business operations and may be excluded pursuant to Rule 14a-8(i)(7) (see e.g., *Bank of America Corp.*) The policy concerns raised by the Proposal do not change the fact that the Proposal seeks to impact the Company's ordinary business operations and therefore is excludable under Rule 14a-8(i)(7).

C. The Policy Issues Raised in the Proposal Do Not Transcend the Company's Ordinary Business.

SLB 14E states 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 14a-8(i)(7) as long as a sufficient nexus exists between the nature of the proposal and the company." The Staff reaffirmed this position in Note 32 of Staff Legal Bulletin No. 14H (Oct. 22, 2015), explaining "[w]hether the significant policy exception applies depends, in part, on the connection between the significant policy issue and the company's business operations," and later stated in SLB 14K that it "believe[s] the focus of an argument for exclusion under Rule 14a-8(i)(7) should be on whether the proposal deals with a matter relating to that company's ordinary business operations or raises a policy issue that transcends that company's ordinary business operations."

Moreover, in SLB 14K, the Staff noted that "a policy issue that is significant to one company may not be significant to another." The Staff has indicated that a discussion in a no-action request of whether the company has already addressed the policy issues raised by a proposal in some manner can be helpful to establish whether or not the policy issues presented by the Proposal are significant to the Company. In particular, the Staff elaborated in SLB 14K that "[a] delta analysis could be useful for companies that have already addressed the policy issue in some manner but may not have substantially implemented the proposal's specific request for purposes of exclusion under Rule 14a-8(i)(10) (e.g., by addressing the issue in a manner not contemplated by the proposal)." Consistent with this guidance, in *Churchill Downs Incorporated* (avail. Feb. 19, 2021), the Staff concurred, on ordinary business grounds, with the exclusion of a proposal seeking a report on the feasibility of replacing the dirt track at Churchill Downs with a synthetic track, where the company had already adopted policies and taken other extensive measures to address the animal welfare concerns raised in the proposal, as summarized in the no-action request.

Here, the Proposal attempts to shift the focus away from the ordinary business nature of the matters requested in the report by highlighting social issues purportedly created by Apple's contractual arrangements with its employees, as well as controversies at the other companies unrelated to Apple. Apple supports the rights of its employees and contractors to speak freely about unlawful acts in the workplace, including harassment and discrimination and does not dispute that the ability to speak freely about harassment, discrimination or other unlawful acts in the workplace are important policy matters. However, these matters do not transcend ordinary business when specifically applied to Apple. It is the Company's policy to not limit employees' and contractors' abilities to speak freely about harassment, discrimination, and other unlawful acts in the workplace – the fundamental policy concern raised by the Proposal – and therefore the delta between the requests made in the Proposal and the actions the Company has already taken to address this issue is not significant.

This is made clear in Apple's Business Conduct Policy. Apple's Business Conduct Policy sets out Apple's expectations on confidentiality of unreleased products and non-public business information and provides that "nothing in this Policy should be interpreted as being restrictive of your right to speak freely about your wages, hours, or working conditions." Apple broadly interprets "working conditions" to include unlawful acts in the workplace, including harassment and discrimination. In fact, Apple's policy is broader than the narrower language of the Proposal.

Apple's Business Conduct Policy applies to all full and part-time employees of Apple and its subsidiaries, and provides a standard guide for what is required of everyone at Apple. Apple expects its suppliers, contractors, consultants, and other business partners to follow its principles when providing goods and services to Apple or acting on Apple's behalf. Apple employees complete mandatory annual training on the Business Conduct Policy.

The Company has a large, global workforce and uses various forms of agreements around the world. But the Company is not aware of any such agreements that would conflict with the Company's Business Conduct Policy, which applies worldwide. For example, Apple's standard form of Intellectual Property Agreement for employees in the U.S. does not contain "concealment clauses" as defined by the Proposal. Moreover, the agreement states, in relevant part: "Nothing in this Agreement restricts your rights to speak freely about your wages, hours, or working conditions, as legally permitted." Similarly, Apple's standard form of contractor agreement does not contain "concealment clauses" as defined by the Proposal.

The vast majority of Apple employees leave Apple without any type of separation agreement. However, as a further example, Apple's standard form of separation agreement for departing U.S. employees does not prohibit disclosure of the facts underlying the individual's separation from the Company. Instead, the confidentiality provision in the agreement only prohibits disclosure of the "terms, amount and fact" of the agreement itself. There is no provision in the standard form of separation agreement that would prohibit former employees from discussing harassment, discrimination or other unlawful acts in the workplace with anyone. In addition, the agreement specifically provides:

"Claims and Communication with Government Agencies about Potential Violations of Law. Nothing contained in this Agreement limits my ability to file an administrative charge or complaint with the Equal Employment Opportunity Commission, any state anti-

discrimination agency, the National Labor Relations Board, the Occupational Safety and Health Administration, the Securities and Exchange Commission, the Department of Justice, or any other federal, state, or local governmental agency or commission (collectively referred to as "Government Agencies"). Nothing in this Agreement restricts me from initiating communications directly with, responding to any inquiry from, or providing information or documents to, or providing testimony before any of the Government Agencies about actual or potential violations of laws."

Legislative action has also addressed the issue raised by the proposal. For example, in September 2018, the state of California adopted the STAND (Stand Together Against Non-Disclosures) Act, which generally prohibited confidentiality or non-disclosure provisions in settlement agreements that prevent the disclosure of factual information involving allegations of sexual misconduct. And, in October 2021, the state of California adopted the "Silenced No More Act," which will become effective on January 1, 2022. This new law makes it "an unlawful employment practice [in California] for an employer, in exchange for a raise or bonus, or as a condition of employment or continued employment, ... to require an employee to sign a nondisparagement agreement or other document to the extent it has the purpose or effect of denying the employee the right to disclose information about unlawful acts in the workplace." The law goes on to provide that "[a] nondisparagement or other contractual provision that restricts an employee's ability to disclose information related to conditions in the workplace shall include, in substantial form, the following language: 'Nothing in this agreement prevents you from discussing or disclosing information about unlawful acts in the workplace, such as harassment or discrimination or any other conduct that you have reason to believe is unlawful.'" Therefore, effective January 1, 2022, it would not only be contrary to Apple's current policies and practices, but illegal, for Apple to include the type of concealment clause referred to in the Proposal in any agreement with California employees, where the Company is headquartered.

As demonstrated above, Apple supports the rights of its employees and contractors to speak freely about harassment, discrimination, and other unlawful acts in the workplace – the fundamental policy concern raised by the Proposal – and the delta between the requests made in the Proposal and the actions the Company has already taken to address this issue is not significant. Moreover, the situation here is distinguishable from *CBRE Group, Inc.* (Mar. 6, 2019), where the Staff did not permit the exclusion, on ordinary business grounds, of a proposal requesting a report on the impact of mandatory arbitration policies on the Company's employees. In *CBRE Group Inc.*, the company merely made a conclusory statement that "[t]he Proposal's references to workplace sexual harassment do not override the Proposal's underlying ordinary business subject matter and, therefore, it is excludable under Rule 14a-8(i)(7)" and referenced CBRE Group Inc.'s "strong policies against sexual harassment" but failed to provide any evidence that the company had taken actions to address the specific concerns raised by the proposal or demonstrate that the policy issues raised in that proposal were not significant for the company. As noted above, Apple supports the rights of its employees and contractors to speak freely about unlawful acts in the workplace, including harassment and discrimination, and already has taken significant steps to implement this principle in its policies and practices. Apple has not previously received any other shareholder proposals related to the use of agreements that would limit the ability of employees or

contractors to discuss unlawful acts in the workplace, including harassment and discrimination, and Apple shareholders have not previously voted on any such proposal. The Proposal's attempt to intrude on management's decision-making processes regarding the management of the Company's workforce interferes with the Company's day-to-day ordinary business operations. As discussed above, proposals relating to the management of the company's workforce, including a company's employment practices, relationships with employees and termination of employees have been recognized repeatedly by the Staff as "fundamental to management's ability to run a company on a day-to-day basis" (1998 Release). Because the focus of the Proposal is squarely on matters relating to the Company's ordinary business operations (see e.g., *Bank of America Corp.*), and because Apple's existing policies and relevant form agreements, as well as California law, are already aligned with the objectives raised in the Proposal (see e.g., *Churchill Downs*), the policy issues raised in the Proposal do not "transcend the day-to-day business matters" of the Company.

IV. Conclusion.

For the reasons described above, it is the Company's view that it may exclude the Proposal from its Proxy Materials pursuant to Rule 14a-8(i)(10) and Rule 14a-8(i)(7). We request that the Staff concur or, alternatively, confirm that the Staff will not recommend any enforcement action to the Commission if the Company so excludes the Proposal.

* * * *

If the Staff does not concur with the Company's position, we would appreciate an opportunity to confer with the Staff concerning this matter prior to the determination of the Staff's final position. In addition, the Company requests that the Proponent copy the undersigned on any response it may choose to make to the Staff, pursuant to Rule 14a-8(k).

Please contact the undersigned at (408) 966-1010 or by email at sam_whittington@apple.com to discuss any questions you may have regarding this matter.

Sincerely,



Sam Whittington
Assistant Secretary

Enclosures

cc: Meredith Benton, Whistlestop Capital
Jenna Cooper, Latham & Watkins LLP

Exhibit A

Copy of the Proposal and Supporting Statement and Related Correspondence

Copy of the Proposal and Supporting Statement

APPLE DRAFT RESOLUTION

RESOLVED:

Shareholders of Apple Inc. (“Apple”) ask that the Board of Directors prepare a public report assessing the potential risks to the company associated with its use of concealment clauses in the context of harassment, discrimination and other unlawful acts. The report should be prepared at reasonable cost and omit proprietary and personal information.

SUPPORTING STATEMENT: Concealment clauses are defined as any employment or post-employment agreement, such as arbitration, non-disclosure or non-disparagement agreements, that Apple asks employees or contractors to sign which would limit their ability to discuss unlawful acts in the workplace, including harassment and discrimination.

WHEREAS:

Apple wisely uses concealment clauses in employment agreements to protect corporate information, such as intellectual capital and trade secrets. However, Apple has not excluded from these clauses their workers' rights to speak openly about harassment, discrimination and other unlawful acts. Given this, investors cannot be confident in their knowledge of Apple's workplace culture.

A healthy workplace culture is linked to strong returns. McKinsey found that companies in the top quartile for workplace culture post a return to shareholders 60 percent higher than median companies and 200 percent higher than organizations in the bottom quartile.¹ A study by the *Wall Street Journal* found that over a five-year period, the 20 most diverse companies in the S&P 500 had an average annual stock return that was almost six percentage points higher than the 20 least diverse companies.²

A workplace that tolerates harassment invites legal, brand, financial and human capital risk. Companies may experience reduced morale, lost productivity, absenteeism and challenges in attracting and retaining talent.³ Employees who engage in harmful behavior may also be shielded from accountability.

In California, forthcoming⁴ and existing legislation prohibit concealment clauses in employment agreements involving recognized forms of discrimination and unlawful activity. Apple works under a patchwork of state laws related to the use of concealment clauses and may benefit from consistent practices across all employees and contractors.

As hundreds of employees stopped work in protest^{5,6} and after years of binding employees who settled discrimination claims to concealment agreements,⁷ Pinterest paid \$22.5 million to settle a gender discrimination lawsuit brought by a former executive. Shareholders ultimately sued Pinterest executives alleging a breach of fiduciary duty by “perpetrating or knowingly ignoring the long-standing and systemic

1

<https://www.mckinsey.com/business-functions/organization/our-insights/the-organization-blog/culture-4-keys-to-why-it-matters>

² <https://www.wsj.com/articles/the-business-case-for-more-diversity-11572091200>

³ https://conference.iza.org/conference_files/LaborMarkets_2021/sockin_j28322.pdf

⁴ <https://www.protocol.com/silenced-no-more-assembly>

⁵ <https://www.nytimes.com/2020/12/14/technology/pinterest-gender-discrimination-lawsuit.html>

⁶ <https://www.washingtonpost.com/technology/2020/07/03/pinterest-race-bias-black-employees/>

⁷ <https://www.theverge.com/2020/9/11/21429619/pinterest-workplace-discrimination-finance-team-unequal-culture-bias>

culture of discrimination and retaliation.”⁸ Similarly, in 2020, as part of a \$300 million settlement of shareholder lawsuits alleging the company created a toxic work environment, Alphabet agreed to limit confidentiality restrictions associated with harassment and discrimination cases.⁹

Investors have reason to be concerned with Apple, where allegations that the company retaliated against employees complaining of discrimination and potential labor law violations¹⁰ have led workers to organize under the banner #AppleToo.^{11,12}

⁸<https://www.institutionalinvestor.com/article/b1phvnsfffr2bp/Retirement-System-Sues-Pinterest-Board-and-Execs-Over-Discrimination>

⁹ <https://www.nytimes.com/2020/09/25/technology/google-sexual-harassment-lawsuit-settlement.html>

¹⁰<https://www.theverge.com/platform/amp/2021/8/9/22609687/apple-pay-equity-employee-surveys-protected-activity>

¹¹ <https://www.theverge.com/2021/8/23/22638150/apple-appletoo-employee-harassment-discord>

¹² <https://appletoo.us/>

Copy of Related Correspondence

From: Kelly Hall <kelly@niaimpactcapital.com>
Subject: Nia Impact Capital Shareholder Resolution
Date: September 7, 2021 at 11:11:06 PDT
To: shareholderproposal@apple.com
Cc: Kristin Hull <kristin@niaglobalsolutions.com>, Tejas Gala <tgala@apple.com>, Meredith Benton <benton@whistlestop.capital>, Jaylen Spann <spann@whistlestop.capital>

Hello,

I hope this finds you well amidst all that is going on in our world.

Attached is Nia Impact Capital's Shareholder Resolution and Filing Letter in PDF format.

We will follow up soon with our proof of ownership letter.

If you have any questions, please feel free to contact Meredith, CC'd here.

Warm regards,
Kelly

--

Kelly Hall
[She/Her]
Operations & Communications Associate
Nia Impact Capital
<http://www.niaimpactcapital.com>



September 7th, 2021

Via email to shareholderproposal@apple.com:

Katherine Adams
Senior Vice President, General Counsel and Secretary
Apple Inc.
One Apple Park Way, MS: 169-5GC
Cupertino, CA 95014 USA
shareholderproposal@apple.com

Attn: Katherine Adams

Re: Shareholder proposal for 2022 Annual Shareholder Meeting

Dear Ms. Adams,

Nia Impact Capital is submitting the attached proposal (the “Proposal”) pursuant to the Securities and Exchange Commission’s Rule 14a-8 to be included in the proxy statement of Apple Inc. (the “Company”) for its 2022 annual meeting of shareholders.

Nia Impact Capital has continuously beneficially owned, for at least one year as of the date hereof, at least \$25,000 worth of the Company’s common stock. Verification of this ownership will be sent under separate cover. Nia Impact Capital intends to continue to hold such shares through the date of the Company’s 2022 annual meeting of shareholders.

Our efforts earlier this summer to secure a meeting with Apple were unsuccessful. We remain eager to discuss this, and other, topics with Apple. Nia Impact Capital is available to meet with the Company in person or via teleconference on

Friday, September 17th
12:00pm-1:00pm PDT

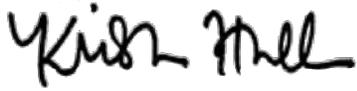
Monday, September 20th
11:30am-12:30pm PDT

Monday, September 27th
11:30am-12:30pm PDT

Wednesday, September 29th
10:30am-11:30am PDT

Please send future correspondence and communications regarding this proposal to my representative Meredith Benton who can be contacted at benton@whistlestop.capital or 1-978-304-2234.

Sincerely,

A handwritten signature in black ink that reads "Kristin Hull". The signature is written in a cursive, flowing style.

Kristin Hull
CEO

APPLE DRAFT RESOLUTION

RESOLVED:

Shareholders of Apple Inc. (“Apple”) ask that the Board of Directors prepare a public report assessing the potential risks to the company associated with its use of concealment clauses in the context of harassment, discrimination and other unlawful acts. The report should be prepared at reasonable cost and omit proprietary and personal information.

SUPPORTING STATEMENT: Concealment clauses are defined as any employment or post-employment agreement, such as arbitration, non-disclosure or non-disparagement agreements, that Apple asks employees or contractors to sign which would limit their ability to discuss unlawful acts in the workplace, including harassment and discrimination.

WHEREAS:

Apple wisely uses concealment clauses in employment agreements to protect corporate information, such as intellectual capital and trade secrets. However, Apple has not excluded from these clauses their workers' rights to speak openly about harassment, discrimination and other unlawful acts. Given this, investors cannot be confident in their knowledge of Apple's workplace culture.

A healthy workplace culture is linked to strong returns. McKinsey found that companies in the top quartile for workplace culture post a return to shareholders 60 percent higher than median companies and 200 percent higher than organizations in the bottom quartile.¹ A study by the *Wall Street Journal* found that over a five-year period, the 20 most diverse companies in the S&P 500 had an average annual stock return that was almost six percentage points higher than the 20 least diverse companies.²

A workplace that tolerates harassment invites legal, brand, financial and human capital risk. Companies may experience reduced morale, lost productivity, absenteeism and challenges in attracting and retaining talent.³ Employees who engage in harmful behavior may also be shielded from accountability.

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<https://www.mckinsey.com/business-functions/organization/our-insights/the-organization-blog/culture-4-keys-to-why-it-matters>

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³ https://conference.iza.org/conference_files/LaborMarkets_2021/sockin_j28322.pdf

⁴ <https://www.protocol.com/silenced-no-more-assembly>

⁵ <https://www.nytimes.com/2020/12/14/technology/pinterest-gender-discrimination-lawsuit.html>

⁶ <https://www.washingtonpost.com/technology/2020/07/03/pinterest-race-bias-black-employees/>

⁷ <https://www.theverge.com/2020/9/11/21429619/pinterest-workplace-discrimination-finance-team-unequal-culture-bias>

culture of discrimination and retaliation.”⁸ Similarly, in 2020, as part of a \$300 million settlement of shareholder lawsuits alleging the company created a toxic work environment, Alphabet agreed to limit confidentiality restrictions associated with harassment and discrimination cases.⁹

Investors have reason to be concerned with Apple, where allegations that the company retaliated against employees complaining of discrimination and potential labor law violations¹⁰ have led workers to organize under the banner #AppleToo.^{11,12}

⁸<https://www.institutionalinvestor.com/article/b1phvnsfffr2bp/Retirement-System-Sues-Pinterest-Board-and-Execs-Over-Discrimination>

⁹ <https://www.nytimes.com/2020/09/25/technology/google-sexual-harassment-lawsuit-settlement.html>

¹⁰<https://www.theverge.com/platform/amp/2021/8/9/22609687/apple-pay-equity-employee-surveys-protected-activity>

¹¹ <https://www.theverge.com/2021/8/23/22638150/apple-appletoo-employee-harassment-discord>

¹² <https://appletoo.us/>

Jenna Cooper
Direct Dial: 212.906.1324
Jenna.Cooper@lw.com

1271 Avenue of the Americas
New York, New York 10020-1401
Tel: +1.212.906.1200 Fax: +1.212.751.4864
www.lw.com

LATHAM & WATKINS LLP

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Houston	Silicon Valley
London	Singapore
Los Angeles	Tokyo
Madrid	Washington, D.C.
Milan	

September 15, 2021

BY ELECTRONIC MAIL

Whistle Stop Capital
Attn: Meredith Benton
benton@whistlestop.capital

Re: Shareholder Proposal to Apple Inc.

Dear Ms. Benton,

On September 7, 2021, Apple Inc. (the “Company”) received correspondence from Nia Impact Capital (the “Proponent”) purportedly submitting a shareholder proposal and an accompanying supporting statement (the “Proposal”) for inclusion in the Company’s proxy statement for its 2022 annual meeting of shareholders and designating you as the Proponent’s representative for future correspondence and communications. The correspondence from the Proponent indicates that the Proponent intended for the Proposal to meet the requirements of Rule 14a-8 of the Securities Exchange Act of 1934, as amended (“Rule 14a-8”), including providing proof of the continuous ownership of the required share value of the Company’s securities for an applicable period as provided in Rule 14a-8(b)(1)(i).

This notice is to inform you that the Company has not received proper verification of the Proponent’s share ownership. As a result, the Proponent has not demonstrated that it is eligible to submit the Proposal under Rule 14a-8. In order for the Proposal to be properly submitted, you must remedy this procedural deficiency no later than 14 calendar days from the date you receive this notice.

I. PROOF OF SHARE OWNERSHIP.

Rule 14a-8(b)(1)(i) provides that, in order to be eligible to submit a proposal to the Company, the Proponent must have continuously held as of the submission date:

- at least \$2,000 in market value of the Company’s securities entitled to vote on the Proposal for at least three years; or

- at least \$15,000 in market value of the Company's securities entitled to vote on the Proposal for at least two years; or
- at least \$25,000 in market value of the Company's securities entitled to vote on the Proposal for at least one year.

In addition, Rules 14a-8(b)(1)(i) and (b)(3) also provide that, for annual or special meetings to be held prior to January 1, 2023, the Proponent can satisfy the proof of ownership requirement by demonstrating that the Proponent continuously held at least \$2,000 of the Company's securities entitled to vote on the Proposal for at least one year as of January 4, 2021, so long as the Proponent continuously held at least \$2,000 of such securities from January 4, 2021 through the date the Proposal was submitted to the Company, which was September 7, 2021.

In its correspondence with the Company, the Proponent stated that it had continuously beneficially owned for at least one year as of September 7, 2021, at least \$25,000 worth of the Company's common stock. However, the Proponent does not appear on the Company's books and records as a shareholder of the Company and the Proponent has not provided other evidence of its ownership.

In order to establish the Proponent's eligibility to submit the Proposal under Rule 14a-8, the Proponent is required to provide the Company with documentation regarding the Proponent's ownership of Company securities, or the Proponent must direct its broker or bank to send such documentation to the Company. Rule 14a-8(b) provides that the Proponent may demonstrate its eligibility to the Company in two ways. You or the Proponent may either submit:

- a written statement from the "record" holder of the Proponent's securities (usually a broker or bank) verifying that, at the time the Proponent submitted the Proposal, which was on September 7, 2021, the Proponent continuously held the required share value for an applicable period of time as determined in accordance with Rule 14a-8(b)(1)(i); or
- a copy of a Schedule 13D, Schedule 13G, Form 3, Form 4, Form 5, or amendments to those documents or updated forms, reflecting the Proponent's ownership of the required share value as of or before the date on which the applicable eligibility period under Rule 14a-8(b)(1)(i) began.

To help shareholders comply with the requirement to prove ownership by providing a written statement from the "record" holder of the shares, the staff of the SEC's Division of Corporation Finance (the "SEC Staff") published Staff Legal Bulletin No. 14F ("SLB 14F"). In SLB 14F, the SEC Staff stated that only brokers or banks that are Depository Trust Company ("DTC") participants will be viewed as "record" holders for the purposes of Rule 14a-8. Thus, shareholders must obtain the required written statement from the DTC participant through which their shares are held.

If you or the Proponent are not certain whether the Proponent's broker or bank is a DTC participant, you may check the DTC's participant list, which is currently available on the Internet at:

<http://www.dtcc.com/~media/Files/Downloads/client-center/DTC/alpha.ashx>

If the Proponent's broker or bank is not on the DTC's participant list, the Proponent will need to obtain proof of ownership from the DTC participant through which the Proponent's securities are held. The Proponent should be able to find out who the DTC participant is by asking its broker or bank. If the DTC participant knows of the holdings of the Proponent's broker or bank, but does not know the Proponent's holdings, you or the Proponent may satisfy the proof of ownership requirement by obtaining and submitting two proof of ownership statements verifying that, at the time the Proposal was submitted, which was on September 7, 2021, the required value of securities was continuously held by the Proponent for the applicable period of time as provided in Rule 14a-8(b)(1)(i) – with one statement from the broker or bank confirming the Proponent's ownership, and the other statement from the DTC participant confirming the broker or bank's ownership. Please see the enclosed copy of SLB 14F for further information.

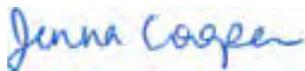
Please note that the documentation must establish the Proponent's ownership of the required share value for at least the minimum period required by Rule 14a-8(b)(1)(i) by the date the Proponent submitted the Proposal, which was September 7, 2021.

* * *

In order for the Proposal to be properly submitted, you or the Proponent must respond to this letter with the proper verification of the Proponent's share ownership as described above. The response must be postmarked or transmitted no later than 14 calendar days from the date you receive this notice. For your information, we have attached a copy of Rule 14a-8 regarding shareholder proposals.

Please note that the Company has made no inquiry as to whether or not the Proposal, if properly submitted, may be excluded pursuant to Rule 14a-8(i) or for any other reason. The Company will make such a determination once the Proposal has been properly submitted.

Sincerely,



Jenna B. Cooper
of LATHAM & WATKINS LLP

Enclosures

cc: Sam Whittington, Apple Inc.
Brian Miller, Latham & Watkins LLP

On Wed, Sep 29, 2021 at 1:59 PM Kelly Hall <kelly@niaimpactcapital.com> wrote:

Hello Katie and Jenna,

I hope you're both well.

Please see attached for two separate proof of ownership letters, one from Fidelity, and one from Schwab, both confirming Nia's beneficial ownership of Apple common stock.

If there's anything additional we can provide, please let me know.

Please confirm receipt of this email and the attached letters.

Warmly,
Kelly

On Wed, Sep 15, 2021 at 8:00 AM <Katie.Marren@lw.com> wrote:

Ms. Benton,

Please find attached a letter on behalf of Apple Inc. in reference to a shareholder proposal submitted by Nia Impact Capital, appointing you as the proponent's representative for future communications.

Regards,

Katherine Macrae Marren

LATHAM & WATKINS LLP

1271 Avenue of the Americas

New York, NY 10020

Direct Dial: +1.212.906.2980

Email: katie.marren@lw.com

<https://www.lw.com>

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September 29, 2021

Account #: ****-PII
Questions: Please call Schwab Alliance at
1-800-515-2157

Nia Impact Advisors Llc
1212 Preservation Park Way
Suite 200
Oakland, CA 94612
US

To Whom It May Concern,

The accounts managed by Nia Impact Advisors LLC holds 9,066.92400 shares of Apple Inc shares totaling \$1,305,002.37 in market value. Schwab is DTC member. The position has been owned for at least 1 year.

Sincerely,

Alycia Gipson Relationship Specialist | Advisor Services 3000 Schwab Way,
Westlake TX 76262

09292021

Independent investment advisors are not owned by, affiliated with, or supervised by Charles Schwab & Co., Inc. ("Schwab").

Schwab Advisor Services serves independent investment advisors and includes the custody, trading, and support services of Schwab.



Fidelity InstitutionalSM

100 Crosby Parkway KCIJ
Covington, KY 41015
September 29, 2021

Kristin Hull
Nia Impact Capital
4900 Shattuck Ave
#3648
Oakland, CA 94609
kristin@niaimpactcapital.com

Re: Shareholder proposal submitted by Nia Impact Capital

Dear Dr. Hull,

I write concerning a shareholder proposal (the "Proposal") submitted to Apple Inc. (the "Company") by Nia Impact Capital.

For the period from September 7, 2020 through September 7, 2021, Nia Impact Capital beneficially owned, and had beneficially owned continuously shares of Apple common stock worth at least \$25,000 (the "Shares").

National Financial Services (NFS) acts as the record holder and DTC member for the shares.

If you require any additional information, please do not hesitate to contact me at westsilver@fmr.com.

Very truly yours,

A handwritten signature in cursive script that reads "Dorothy Jones".

Dorothy Jones
Senior Director
Our file: W661130-29SEP21

200 Seaport Boulevard, Boston, MA 02210

Fidelity Clearing & Custody Solutions[®] provides clearing, custody, or other brokerage services through National Financial Services LLC or Fidelity Brokerage Services LLC, Members NYSE, SIPC.

981775.1.0

From: Kelly Hall <kelly@niaimpactcapital.com>
Sent: Wednesday, September 29, 2021 5:22 PM
To: Marren, Katie (NY)
Cc: Meredith Benton; Cooper, Jenna (NY); Kristin Hull; Jacklyn Simon; Tejas Gala
Subject: Re: Apple Shareholder Proposal
Attachments: Nia Impact Capital Proof of Ownership Letter-Schwab.pdf; Nia Impact Capital Proof of Ownership Letter-Fidelity.pdf

Hello All,

My apologies Tejas, I noticed you were not on the original email and I wanted to make sure that you received the attached proof of ownership letters from both Fidelity and Schwab.

Please confirm receipt of this email, and feel free to reach out if you have any questions.

Warmly,
Kelly

On Wed, Sep 29, 2021 at 1:59 PM Kelly Hall <kelly@niaimpactcapital.com> wrote:
Hello Katie and Jenna,

I hope you're both well.

Please see attached for two separate proof of ownership letters, one from Fidelity, and one from Schwab, both confirming Nia's beneficial ownership of Apple common stock.

If there's anything additional we can provide, please let me know.

Please confirm receipt of this email and the attached letters.

Warmly,
Kelly

On Wed, Sep 15, 2021 at 8:00 AM <Katie.Marren@lw.com> wrote:

Ms. Benton,

Please find attached a letter on behalf of Apple Inc. in reference to a shareholder proposal submitted by Nia Impact Capital, appointing you as the proponent's representative for future communications.

Regards,

Katherine Macrae Marren

LATHAM & WATKINS LLP

1271 Avenue of the Americas

New York, NY 10020

Direct Dial: +1.212.906.2980

Email: katie.marren@lw.com

<https://www.lw.com>

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From: Marren, Katie (NY)
Sent: Monday, October 4, 2021 3:19 PM
To: Kelly Hall
Cc: Meredith Benton; Cooper, Jenna (NY); Kristin Hull; Jacklyn Simon; Tejas Gala
Subject: RE: Apple Shareholder Proposal

Hi Kelly,

Yes, confirming receipt.

Best,
Katie

Katherine Macrae Marren

LATHAM & WATKINS LLP

1271 Avenue of the Americas | New York, NY 10020
D: +1.212.906.2980

From: Kelly Hall <kelly@niaimpactcapital.com>
Sent: Monday, October 4, 2021 3:17 PM
To: Marren, Katie (NY) <Katie.Marren@lw.com>
Cc: Meredith Benton <benton@whistlestop.capital>; Cooper, Jenna (NY) <Jenna.Cooper@lw.com>; Kristin Hull <kristin@niaimpactcapital.com>; Jacklyn Simon <jacklyn@niaimpactcapital.com>; Tejas Gala <tgala@apple.com>
Subject: Re: Apple Shareholder Proposal

Hello all,

I hope you all had a great weekend.

I'm reaching out to confirm that you've received the attached letters.

We look forward to connecting soon.

Warmly,
Kelly

On Wed, Sep 29, 2021 at 2:21 PM Kelly Hall <kelly@niaimpactcapital.com> wrote:

Hello All,

My apologies Tejas, I noticed you were not on the original email and I wanted to make sure that you received the attached proof of ownership letters from both Fidelity and Schwab.

Please confirm receipt of this email, and feel free to reach out if you have any questions.

Warmly,
Kelly

November 22, 2021

Via e-mail at shareholderproposals@sec.gov
Securities and Exchange Commission
Office of the Chief Counsel
Division of Corporation Finance
100 F Street, NE
Washington, DC 20549

Re: Request by Apple Inc. to omit proposal submitted by Nia Impact Capital Ladies and Gentlemen,

Pursuant to Rule 14a-8 under the Securities Exchange Act of 1934, Nia Impact Capital (“Nia” or the “Proponent”) submitted a shareholder proposal (the “Proposal”) to Apple Inc. (“Apple” or the “Company”). The Proposal asks Apple’s board of directors to report on the risks to the Company associated with its use of concealment clauses in the context of harassment, discrimination and other unlawful acts.

In a letter to the Division dated October 18, 2021 (the “No-Action Request”), Apple stated that it intends to omit the Proposal from its proxy materials to be distributed to shareholders in connection with the Company's 2021 annual meeting of shareholders. Apple argues that it is entitled to exclude the Proposal in reliance on Rule 14a-8(i)(10), on the ground that it has substantially implemented the Proposal; and Rule 14a-8(i)(7), arguing that the Proposal relates to Apple’s ordinary business operations. Because Apple has not shown that its policies prevent all use of concealment clauses in the harassment and discrimination context, and because the Proposal’s subject is a significant social policy issue transcending ordinary business, Apple has not met its burden of showing it is entitled to omit the Proposal, and Nia respectfully requests that the Company’s request for relief be denied.

The Proposal

The Proposal states:

Resolved: Shareholders of Apple Inc. (“Apple”) ask that the Board of Directors prepare a public report assessing the potential risks to the company associated with its use of concealment clauses in the context of harassment, discrimination and other unlawful acts. The report should be prepared at reasonable cost and omit proprietary and personal information.

Substantial Implementation

Rule 14a-8(i)(10) allows a company to exclude a proposal that has been substantially implemented. A proposal need not be “fully effected” to be considered substantially implemented, yet a company’s own practices must “compare favorably”¹ to the request set forth in the proposal to justify exclusion. Another way the Division’s Staff has expressed the standard is that a substantially implemented proposal satisfies the “essential objectives” of the proposal. Here, the essential objective of the Proposal is a full understanding of the risks created by the use of concealment clauses, which the supporting statement defines to include arbitration, non-disclosure (“NDAs”) and non-disparagement provisions entered into before, during or after someone worked for the Company.

Apple argues that the disclosure requested by the Proposal is unnecessary because there is nothing to disclose. Reading between the lines of Apple’s carefully worded protestations, though, reveals gaps that preclude a finding that the Proposal has been substantially implemented.

The No-Action Request leans heavily on Apple’s Business Conduct Policy (“BCP”). Apple asserts that the BCP “sets out Apple’s expectations regarding confidentiality of unreleased products and non-public business information and provides that ‘nothing in this Policy should be interpreted as being restrictive of your right to speak freely about your wages, hours, or working conditions.’ Apple broadly interprets ‘working conditions’ to include unlawful acts in the workplace, including harassment and discrimination.”²

Because Apple “expects” its suppliers and contractors to follow the “principles” of the BCP, Apple appears to conclude, without any investigation, that no supplier or contractor would use an agreement with provisions like concealment clauses that violate the BCP. The jury’s damages award last month of \$137 million in a racial harassment case brought against Tesla by a contractor shows that risks are not confined to the employee population.³

Apple’s careful wording also raises questions about what Apple actually knows about practices throughout the Company. Repeatedly, Apple points out the absence of concealment clauses in “standard” agreements of various kinds. But Apple does not represent that standard agreements are the only agreements used; indeed, one might expect that an agreement hammered out as part of a discrimination or harassment claim settlement might differ from the standard agreement, though Apple is silent on that question. Similarly, Apple asserts that it is “not aware” of the use of concealment clauses,⁴ which falls short of the definitive statement necessary to show substantial implementation.

Apple’s statements about its global workforce are even more equivocal. When discussing the absence of concealment clauses in its “standard” separation agreements, Apple clarifies that it is referring only to separation agreements used

¹ Texaco, Inc. (Mar. 28, 1991).

² No-Action Request, at 4.

³ See <https://edition.cnn.com/2021/10/05/business/tesla-racial-harassment-jury-verdict/index.html>; <https://www.cnbc.com/2021/10/05/tesla-must-pay-137-million-to-ex-worker-over-hostile-work-environment-racism.html>

⁴ No-Action Request, at 4, 10.

for “departing U.S. employees.”⁵ Departing non-U.S. employees, as well as contractors, are not covered by even this standard agreement, and Apple does not discuss in the No-Action Request whether concealment clauses are or may be used in separation agreements with such workers. Conducting the analysis requested by the Proposal, which would involve collection of data about the use of concealment clauses, would fill these gaps and ensure that Apple’s board is informed about the practice.

The objective of the Proposal is a full understanding of the risks created by the use of concealment clauses, which the supporting statement defines to include arbitration, non-disclosure (“NDAs”) and non-disparagement provisions entered into before, during or after someone worked for the Company. Nia has received information, confidentially provided, that Apple has sought to use concealment clauses in the context of discrimination, harassment, and other workplace labor violation claims. The information was confidentially provided due to the expressed fear of retaliation⁶ that current and former Apple workers face. According to this information, Apple does use forced arbitration clauses in employment agreements for new hires and also uses NDAs and non-disparagement clauses in post-employment agreements. Assuming the veracity of this information, the fact that the author of the No-Action Request was “not aware” of these contracts further amplifies the proponents’ concerns and the need for a Board-level review.

Apple cannot be said to have substantially implemented the Proposal. Its disavowals of concealment clauses do not cover its whole workforce and suggest that their use may well occur without the knowledge of upper management or the board. The credible information Nia received supports this possibility. Apple should therefore not be permitted to exclude the Proposal pursuant to Rule 14a-8(i)(10).

Ordinary Business

Rule 14a-8(i)(7) allows omission of a proposal that relates to a company’s ordinary business operations. Apple claims that the Proposal is excludable on ordinary business grounds for two reasons: First, Apple argues that the subject matter is management of the workforce, which does not transcend ordinary business. Second, Apple urges that the Proposal would micromanage it by mandating the terms on which it enters into contractual arrangements with employees and contractors. Neither argument is persuasive, particularly given the Staff’s recent guidance in Staff Legal Bulletin 14L (“SLB 14L”).⁷

Apple characterizes the Proposal’s subject as “management of its workforce, specifically the terms of its contractual arrangements with employees, former employees and contractors.”⁸ It is true that, generally speaking, day-to-day workforce management issues are considered ordinary business matters. Yet not all proposals related to the workforce can be omitted; a proposal dealing with a

⁵ No-Action Request, at 4.

⁶ <https://www.nytimes.com/2021/11/02/technology/apple-worker-retaliation.html>

⁷ Staff Legal Bulletin 14L (Nov. 3, 2021).

⁸ No-Action Request, at 5.

significant social policy issue that transcends ordinary business is not subject to exclusion.

The Proposal does not deal with mundane contract terms, rather it addresses the risks associated with the use of concealment clauses: arbitration, NDAs or non-disparagement agreements that “limit [employees’] ability to discuss unlawful acts in the workplace, including harassment and discrimination,” as defined in the Proposal. In the words of SLB 14L, concealment clauses qualify as an issue “of broad social or ethical concern” with “broad societal impact.” Indeed, SLB 14L specifically cites “[m]atters related to employment discrimination”—which surely include the use of concealment clauses to suppress information about discrimination and harassment--as an example of “workforce management proposals that may rise to the level of transcending the company’s ordinary business operations.”⁹

The Staff has previously found that mandatory arbitration of sexual harassment claims is a significant policy issue. In 2019, CBRE Group challenged on ordinary business grounds a proposal much like the Proposal, asking it to “report on the impact of mandatory arbitration policies on the Company’s employees . . . [and] evaluate the risks that may result from the Company’s current mandatory arbitration policy on claims of sexual harassment.”¹⁰ The Proposal tracks the CBRE proposal closely: Both focus on harassment claims, address mandatory arbitration of such claims, and request a report on risks to the companies stemming from that practice.

CBRE framed the subject of the proposal, as Apple does here, as “the Company’s contractual relationships with its employees,” which CBRE said involved balancing numerous factors, including legal and regulatory regimes, the logistics of workforce management, and the welfare of employees. The proponent urged that sexual discrimination and harassment were significant policy issues, as shown by press coverage and legislative activity. The Staff rejected CBRE’s request for relief, stating that the proposal’s subject “transcends ordinary business matters.”

The use of mandatory arbitration provisions for discrimination and harassment claims has generated significant controversy, as the #MeToo and racial justice movements called attention to how provisions limiting workers’ (or former workers’) ability to speak freely about their experiences can perpetuate abuse. The fairness of forcing employees to give up their right to sue, given workers’ lack of bargaining power, and the consequences of promoting secrecy, are issues of broad social and ethical concern. Organized groups of tech workers, members of Congress and presidential candidates expressed opposition to mandatory arbitration; press coverage has been abundant.¹¹ Democratic presidential candidates Elizabeth

⁹ SLB 14L, n.4.

¹⁰ CBRE Group, Inc. (Mar. 6, 2019).

¹¹ E.g.,

<https://www.newsweek.com/hollywoods-times-campaign-forced-arbitrationnon-disclosure-agreements-768539>; <https://www.nytimes.com/2018/11/09/technology/facebook-arbitration-harassment.html>; <https://www.nytimes.com/2018/11/14/opinion/arbitration-google-facebook-employment.html>;

Warren, Bernie Sanders and Kamala Harris condemned the practice. Several Congressional bills were introduced, with one passing in the House.¹² California passed a law requiring that an employee agree “voluntarily and affirmatively” to enter into an agreement to arbitrate employment-related claims and barring retaliation against an employee who declines.¹³ Google agreed to stop requiring arbitration of employment-related claims, following an earlier agreement not to use it for sexual harassment claims. Twenty thousand Google employees had participated in a walkout to protest the practice. Other large tech companies such as Facebook, eBay and Airbnb followed suit.¹⁴

Like mandatory arbitration, the use of NDAs and non-disparagement provisions in connection with discrimination and harassment claims can prevent information about discrimination and harassment from surfacing, allowing wrongdoers to continue their behavior and preventing shareholders from accurately assessing corporate culture. In 2018, California prohibited agreements settling sexual discrimination, harassment, and assault claims from including limits on the disclosure of factual information related to the claims, and just last month, in the “Silenced No More” Act, California extended that prohibition to claims based on race, age, disability, and all other protected categories.¹⁵

The Staff has consistently declined to concur with requests to omit proposals under Rule 14a-8(i)(7) that address employment discrimination.¹⁶ Proposals in which employment discrimination is not the central focus have also survived

<https://www.bloomberg.com/news/articles/2018-11-08/google-changes-policies-on-sexual-misconduct-after-staff-walkout>;

<https://www.bloomberg.com/opinion/articles/2019-06-12/forced-arbitration-enables-sexual-harassment>;

<https://www.theguardian.com/commentisfree/2019/jan/08/forced-arbitration-sexual-harassment-metoo>;

https://www.washingtonpost.com/business/why-companies-now-want-harassment-out-in-the-light/2021/06/08/2c2c5884-c8ce-11eb-8708-64991f2acf28_story.html

¹² See Forced Arbitration Injustice Repeal Act (116th Congress H.R. 1423, S. 610) (passed the House); Restoring Justice for Workers Act (116th Congress H.R. 2749, S. 1491); Arbitration Fairness Act (115th Congress H.R.1374, S.537 and S.2591); Restoring Statutory Rights and Interests of the States Act (115th Congress H.R.1396, S.550); Ending Forced Arbitration of Sexual Harassment Act (115th Congress H.R.4570, S.2203); Mandatory Arbitration Transparency Act (115th Congress H.R.4130, S.647).

¹³

<https://www.natlawreview.com/article/california-governor-signs-legislation-outlawing-mandatory-arbitration-agreements>

¹⁴

<https://www.cnn.com/2018/11/19/google-facebook-airbnb-employees-can-now-sue-over-sexual-harassment.html>

¹⁵

<https://www.marketwatch.com/story/silenced-no-more-act-becomes-law-in-california-crippling-ndas-11633705395>

¹⁶ E.g., Procter & Gamble Co. (August 16, 2016) (discrimination based on sexual orientation), Exxon Mobil Corp. (March 20, 2012) (same); Bank of America (February 22, 2006) (same).

challenge on ordinary business grounds.¹⁷ Given the close connection between the use of concealment clauses and perpetuation of discrimination and harassment, the same result is appropriate here.

Apple points to the “delta”—the difference between what the Proposal requests and what Apple is already doing—to argue that the Proposal’s subject is not a significant policy issue for Apple.¹⁸ SLB 14L, however, eliminates the delta analysis, which was part of the now-rescinded requirement that a proposal establish a nexus between the significant policy issue and the company. SLB 14L states that “staff will no longer focus on determining the nexus between a policy issue and the company, but will instead focus on the social policy significance of the issue that is the subject of the shareholder proposal.”¹⁹ Staff Legal Bulletin 14K, on which Apple relies,²⁰ was rescinded in SLB 14L, and the delta is accordingly no longer relevant. Elimination of the delta analysis also dooms Apple’s effort to distinguish the CBRE no-action request, which was based on the absence of a delta analysis; Apple argued CBRE “failed to provide any evidence that the company had taken actions to address the specific concerns raised by the proposal or demonstrate that the policy issues raised in that proposal were not significant for the company.”²¹

Finally, Apple urges that the Proposal would micromanage it, claiming that “[a]t its core, the Proposal attempts to mandate how Apple drafts and negotiates any non-disclosure or non-disparagement provisions in the employment agreements and post-employment agreements it may choose to enter into with employees and contractors around the world.”²² As a result, Apple asserts, “the Proposal attempts to replace management’s fundamental tasks with a shareholder vote.”²³ That characterization flies in the face of the Proposal’s clear language, which seeks a report rather than requiring a change in practice. Shareholders are not being asked to vote on whether, or to what extent, Apple should use concealment clauses.

SLB 14L clarifies the contours of the Staff’s application of micromanagement, explaining that it had “expanded the concept of micromanagement beyond the Commission’s policy directives” to the point where “any limit on company or board discretion” was deemed micromanagement.²⁴ Going forward, the relevant factors in the micromanagement analysis will be “the level of granularity sought in the proposal and whether and to what extent it inappropriately limits discretion of the board or management.” SLB 14L states that the Staff “would expect the level of detail included in a shareholder proposal to be consistent with that needed to enable

¹⁷ TJX Companies (April 1, 1999) (employment discrimination as element of MacBride Principles); PPG Industries (January 22, 2001) (as part of ILO Conventions); General Electric (February 10, 2015) (as element of Holy Land Principles).

¹⁸ No-Action Request, at 9-12.

¹⁹ SLB 14L, section 2.

²⁰ See No-Action Request, at 9.

²¹ No-Action Request, at 11.

²² No-Action Request, at 8.

²³ No-Action Request, at 9.

²⁴ SLB 14L, section 3.

investors to assess an issuer's impacts, progress towards goals, risks or other strategic matters appropriate for shareholder input.”

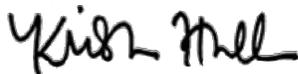
Under that standard, the Proposal does not micromanage. It seeks a report, rather than to control the use of concealment clauses. It does not seek granular data regarding the prevalence of such clauses, but rather asks for a high-level assessment of risks. And the level of detail requested is appropriate in order to allow shareholders to evaluate those risks.

In sum, the Proposal deals with the significant social policy issue of the use of concealment clauses in the context of discrimination and harassment claims, which is a matter of broad social and ethical concern. The Proposal is designed to provide shareholders with more information about how Apple's board views the risk associated with using such clauses, and the level of granularity falls well below that needed to constitute micromanagement. Accordingly, Nia respectfully asks that Apple's request to omit the Proposal in reliance on the ordinary business exclusion be denied.

* * *

For the reasons set forth above, Apple has not satisfied its burden of showing that it is entitled to omit the Proposal in reliance on Rule 14a-8(i)(10) or Rule 14a-8(i)(7). Nia appreciates the opportunity to be of assistance in this matter. If you have any questions or need additional information, please contact me at (510) 806-7287.

Sincerely,



Kristin Hull
Founder, CEO
Nia Impact Capital

cc: Sam Whittington, Assistant Secretary
Apple Inc.
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