



DIVISION OF
CORPORATION FINANCE

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

December 22, 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 proposals submitted to the Company by the National Center for Public Policy Research ("NCPFR Proposal") and Myra K. Young and James McRitchie ("Young Proposal") for inclusion in the Company's proxy materials for its upcoming annual meeting of security holders.

The NCPFR Proposal requests that the board take the steps necessary to amend the Company's certificate of incorporation and, if necessary, bylaws to become a public benefit corporation (a "PBC"). The Young Proposal requests that the board take steps necessary to amend the Company's articles of incorporation and, if necessary, bylaws to become a Social Purpose Corporation and to adopt specific social purposes.

There appears to be some basis for your view that the Company may exclude the NCPFR Proposal under Rule 14a-8(i)(3), as vague and indefinite. We note in particular your view that, in applying this proposal to the Company, neither shareholders nor the Company would be able to determine with reasonable certainty exactly what actions or measures the NCPFR Proposal requests. In this regard, the proposal creates uncertainty regarding the statutory form the Company must take to implement the proposal. Specifically, it does not sufficiently explain whether the Company, a California corporation, must become a public benefit corporation and therefore reincorporate in Delaware to implement the proposal, or whether the Company should instead covert to a form of benefit corporation recognized under California law. Accordingly, we will not recommend enforcement action to the Commission if the Company omits the NCPFR Proposal from its proxy materials in reliance on Rule 14a-8(i)(3).

We are unable to concur in your view that the Company may exclude the Young Proposal under Rule 14a-8(i)(11) because it appears the Company will omit the NCPFR Proposal from its 2022 proxy materials.

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](#).

Sincerely,

Rule 14a-8 Review Team

cc: Scott Shepard
National Center for Public Policy Research

Sara E. Murphy
The Shareholder Commons



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 Proposals from the National Center for Public Policy Research and Myra K. Young and James McRitchie**

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 (the "**Company**"), has received (i) a shareholder proposal (the "**NCPPR Proposal**") and related supporting statement (the "**NCPPR Supporting Statement**") from the National Center for Public Policy Research ("**NCPPR**") and (ii) a shareholder proposal (the "**Young Proposal**" and, together with the NCPPR Proposal, the "**Proposals**") and related supporting statement (the "**Young Supporting Statement**" and, together with the NCPPR Supporting Statement, the "**Supporting Statements**") from Myra K. Young and James McRitchie (together, "**Young**" and, collectively with NCPPR, the "**Proponents**") for inclusion in the Company's proxy statement (the "**Proxy Materials**") for the Company's 2022 Annual Meeting of Shareholders. A copy of the NCPPR Proposal and the NCPPR Supporting Statement, together with other correspondence relating to the NCPPR Proposal, is attached hereto as [Exhibit A](#) and a copy of the Young Proposal and the Young Supporting Statement, together with other correspondence relating to the Young Proposal, is attached hereto as [Exhibit B](#).

The Company hereby advises the staff of the Division of Corporation Finance (the "**Staff**") that it intends to exclude the NCPPR 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 NCPPR Proposal pursuant to Rule 14a-8(i)(3), as the NCPPR Proposal is contrary to the proxy rules because it is overly vague and lacks direction about its implementation.

In addition, to the extent the Staff is unable to concur in the Company's view that the NCPPR Proposal is excludable under Rule 14a-8(i)(3), the Company respectfully requests confirmation that the Staff will not recommend enforcement action to the Commission if the Company excludes the Young Proposal pursuant to Rule 14a-8(i)(11), as the Young Proposal substantially duplicates the NCPPR Proposal, which the Company would in that case include in its Proxy Materials.

By copy of this letter, the Company is advising NCPPR of its intention to exclude the NCPPR Proposal and advising Young of its intention to exclude the Young Proposal to the extent the Staff is unable to concur with the Company's request to exclude the NCPPR 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 each of the Proposals; and (ii) the Proponents' respective letters submitting the Proposals.

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 Proponents.

I. The NCPPR Proposal May Be Excluded under Rule 14a-8(i)(3) Because It Is Contrary to The Proxy Rules.

The NCPPR Proposal requests that the Company's shareholders approve the following:

"RESOLVED: Apple, Inc. ("Company") shareholders request that our Board of Directors take the steps necessary to amend our certificate of incorporation and, if necessary, bylaws to become a public benefit corporation (a "PBC") in light of its adoption of the Business Roundtable Statement of the Purpose of a Corporation (the Statement") [referred to in a footnote]." Shareholders further request that the Board then present such amendments to the shareholders for approval, along with a full disclosure of the implications for shareholders that will follow from approval and adoption of the amendments, and the risks that append to such approval and adoption."

The Company requests that the Staff concur in its view that the Company may exclude the NCPPR Proposal from the Proxy Materials pursuant to Rule 14a-8(i)(3) because it is contrary to the proxy rules, as it is overly vague and lacks direction about its implementation.

A. Rule 14a-8(i)(3)

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. The Staff has taken the position that a shareholder proposal is excludable under Rule 14a-8(i)(3) if the proposal is so vague and 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 (Staff Legal Bulletin No. 14B (September 15, 2004)) ("**SLB 14B**").

Under this standard, the Staff has routinely permitted exclusion of proposals that fail to define key terms, contain only general or uninformative references regarding the steps to be taken, or otherwise fail to provide sufficient clarity or guidance to enable either shareholders or the company to understand how the proposal would be implemented.

For example, the Staff previously permitted the Company to exclude, as vague and indefinite, a proposal submitted by a proponent requesting that the Company "improve guiding principles of executive compensation" (*Apple Inc.* (avail. Dec. 6, 2019)). The proposal did not define what it means to "improve" such guiding principles and the supporting statement did not clarify the nature of the requested "improvements". In its response, the Staff noted that "neither

shareholders nor the Company would be able to determine with reasonable certainty how the Proposal seeks to "improve [the] guiding principles of executive compensation" and that the proposal therefore "lack[ed] sufficient description about the changes, actions or ideas for the Company and its shareholders to consider" In *Alcoa, Inc.* (avail. Dec. 24, 2002), the Staff concurred that the company could exclude as vague and indefinite a proposal calling for the full implementation of "human rights standards." In its letter to the Staff, the company pointed out that, although the supporting statement referenced a variety of International Labor Organization human rights goals, the reference to "standards" did not clarify for either stockholders or the company what standards were being referenced or precisely what actions were contemplated under the proposal. See also *Kroger Co.* (avail. Mar. 19, 2004) (concurring with the exclusion under Rule 14a-8(i)(3) of a proposal requesting that the company prepare a sustainability report based on the Global Reporting Initiative's sustainability reporting guidelines, where the company argued that the proposal's "extremely brief and basic description of the voluminous and highly complex Guidelines" did not adequately inform the company of the actions necessary to implement the proposal).

The Staff has also allowed exclusion of proposals under Rule 14a-8(i)(3) where the meaning and application of key terms used in the proposal may be subject to differing interpretations, such that shareholders in voting on the proposal and the company in implementing it might be uncertain what the proposal calls for or reach different conclusions regarding the manner in which the proposal should be implemented. Ambiguities in a proposal may render the proposal materially misleading, because "any action ultimately taken by the Company upon implementation could be significantly different from the actions envisioned by shareholders voting on the proposal." *Fuqua Industries, Inc.* (avail. Mar. 12, 1991) (allowing exclusion of proposal to prohibit "any major shareholder . . . which currently owns 25% of the Company and has three Board seats from compromising the ownership of the other stockholders," where the meaning and application of such terms as "any major shareholder," "assets/interest" and "obtaining control" would be subject to differing interpretations). See also *The Boeing Company* (avail. Feb. 23, 2021) (allowing exclusion of proposal seeking to require that 60% of the directors have an "aerospace/aviation/engineering executive background" where the qualification requirements were not defined and were subject to various interpretations); *Alaska Air Group, Inc.* (avail. Mar. 10, 2016)) (allowing exclusion of a proposal requesting amendment of the bylaws to require that management "strictly honor shareholders rights to disclosure identification and contact information to the fullest extent possible by technology" as "neither the shareholders nor the company would be able to determine with any reasonable certainty exactly what actions or measures the proposal requires"); and *Exxon Mobil Corporation* (avail. Jan. 29, 1992) (allowing exclusion of proposal seeking to require that director nominees meet the criteria that they not have "taken the company into bankruptcy . . . after losing a considerable amount of money" because certain terms, including "bankruptcy" and "considerable amount of money," were subject to differing interpretations).

The courts have also ruled on this issue, finding that "shareholders are entitled to know precisely the breadth of the proposal on which they are asked to vote" (*New York City Employees' Retirement System v. Brunswick Corp.*, 789 F. Supp. 144, 146 (S.D.N.Y. 1992)).

Under these standards, the NCPPR Proposal is so vague and indefinite as to be materially misleading, and therefore excludable under Rule 14a-8(i)(3) for the reasons discussed below.

B. The NCPPR Proposal is So Vague that it Would Be Impossible for the Shareholders to Know What They are Voting on and for the Company to Know How to Implement the Proposal

The NCPPR Proposal calls for the amendment of the Company's "certificate of incorporation and, if necessary, bylaws" in order to convert into a "public benefit corporation" (a "**PBC**"). A PBC is a corporate form established under Delaware law. Specifically, Section 362 of the Delaware General Corporation Law (the "**DGCL**") provides that a PBC is a for-profit corporation that is intended to produce a public benefit and to operate in a responsible and sustainable manner. The Supporting Statement further cites Section 365 of the DGCL when explaining how directors of a PBC must balance the interests of shareholders, stakeholders and a "specified public benefit."

However, neither the NCPPR Proposal nor the NCPPR Supporting Statement addresses the fact that the Company is not incorporated in Delaware. The Company is incorporated in California. California law does not recognize the corporate form of a PBC. Instead, in California there is a choice of corporate forms, including organizing as a "benefit corporation" (Cal.Corp.Code §14602) or as a "social purpose corporation" (Cal.Corp.Code §2602). The NCPPR Proposal requests that the Company's Board of Directors take the steps necessary to "amend our certificate of incorporation and, if necessary, bylaws to become a public benefit corporation." Because the Company is incorporated in California, it cannot become a PBC simply by amending its certificate of incorporation and bylaws as called for by the NCPPR Proposal. Instead, to become a PBC the Company would need to reincorporate in Delaware, which is a significantly more involved process than simply amending the certificate of incorporation, and neither the process nor its consequences are discussed in the NCPPR Proposal or NCPPR Supporting Statement. In contrast, the Company could, in the language of the NCPPR Proposal, "amend our certificate of incorporation and, if necessary, bylaws to become" either a "benefit corporation" or "social purpose corporation" under California law.

As a result, if the NCPPR Proposal were to be included in the Proxy Materials, it would be impossible for shareholders to know, in voting on the proposal, whether they are being asked to vote for the Company to:

- (a) reincorporate in Delaware and become a PBC;
- (b) remain incorporated in California and become a "benefit corporation;" or
- (c) remain incorporated in California and become a "social purpose corporation."

Because neither the NCPPR Proposal nor NCPPR Supporting Statement acknowledges that the Company is incorporated in California, it is impossible for the Company and shareholders to know whether NCPPR was simply unaware of the Company's state of incorporation and referred to the Delaware form in error (which interpretation is supported by the NCPPR Proposal's request to accomplish the conversion through an amendment to the Company's certificate of incorporation) or whether NCPPR in fact intended to request that the Company reincorporate in Delaware as a PBC (which interpretation is supported by the NCPPR Proposal's reference to a PBC). Each of these interpretations is equally plausible and would result in fundamentally different outcomes. The chart attached to this letter as [Exhibit C](#) summarizes key differences between a Delaware PBC, a California benefit corporation and a California social purpose corporation.

This lack of clarity in the NCPPR Proposal is precisely what SLB 14B provides is impermissible. The Company's state of incorporation is fundamental – it dictates the corporate laws and regulations the Company is subject to and establishes the fiduciary duties to which the Company's directors and officers are bound. It is imperative, therefore, that shareholders understand whether they are being asked to vote for the Company to reincorporate in a new jurisdiction. The NCPPR Proposal provides no such clarity, leaving shareholders to guess without sufficient information to make an informed voting decision.

Given how fundamental the jurisdiction of incorporation is to every company, if NCPPR intended to request the Company to reincorporate in Delaware, a reasonable shareholder might assume that NCPPR would have stated that intention in the NCPPR Proposal. But even if shareholders were to assume that NCPPR's references to Delaware law were in error and NCPPR did not intend for the Company to reincorporate in Delaware, the NCPPR Proposal fails to provide any clarity as to the specific California corporate form NCPPR is requesting the Company to adopt. As mentioned above, under California law, there is no concept of a "public benefit corporation"; instead, California offers a choice of corporate forms, including a "benefit corporation" and a "social purpose corporation," which have different emphases of purpose. As described in [Exhibit C](#), a California benefit corporation must have a purpose of "creating general public benefit," defined as having a "material positive impact on society and the environment, taken as a whole" in addition to any specific purpose of the corporation contained in its articles (Cal.Corp.Code §14601), whereas a California social purpose corporation does not have the requirement of creating a general public benefit. Instead, a social purpose corporation must have one or more specific purposes as enumerated in the Social Purpose Corporation Act (these include promoting positive effects of, or minimizing adverse effects of, the social purpose corporation's employees, suppliers, customers, and creditors; the community and society; or the environment) (Cal.Corp.Code §2602).

One reasonable shareholder might assume that NCPPR meant to request that the Company convert to a "benefit corporation" as that name is very similar to the "public benefit corporation" referred to in the NCPPR Proposal. Another reasonable shareholder might assume that NCPPR meant to request that the Company convert to a "social purpose corporation" because that construct under California law appears to be more similar to the "public benefit corporation" referred to in the NCPPR Proposal, than does a "benefit corporation", which requires a broader purpose of "creating general public benefit" (See [Exhibit C](#)). In reality, neither shareholder would know what they were voting on. As a result, even assuming that the NCPPR Proposal is not requesting that the Company reincorporate in Delaware, shareholders would not know, in voting on the NCPPR Proposal, whether they would be voting for a benefit corporation or a social purpose corporation – two different corporate forms with different statutory requirements.

In addition to failing to provide shareholders with sufficient information to make an informed voting decision, the NCPPR Proposal, if approved, would leave management lacking "any reasonable certainty the nature of the 'reform' the Proposal is requesting" (*Ebay, Inc.* (avail. Apr. 10, 2019)) for the same reasons. As provided in [Exhibit C](#), the process for converting to a Delaware PBC, on the one hand, or a California benefit corporation or social purpose corporation, on the other hand, is significantly different. Should management take the steps necessary for the Company to reincorporate in Delaware and convert to a PBC established in accordance with the requirements of DGCL §362? Or should management read the NCPPR Proposal not to require reincorporation in Delaware (given the lack of any reference to reincorporation in the NCPPR

Proposal and its request to accomplish the conversion by amending the Company's certificate of incorporation)? If so, should the Company convert to a benefit corporation or a social purpose corporation? The NCPPR Proposal provides no guidance as to how management should answer these questions.

Because the NCPPR Proposal does not specify whether or not it is requesting the Company to reincorporate in Delaware or otherwise specify the specific corporate form the NCPPR Proposal is seeking the Company to convert to, any action taken by the Company in response to the NCPPR Proposal, if it were approved, could be significantly different from the action envisioned by the shareholders voting on the NCPPR Proposal. It is possible, for example, that shareholders could interpret the NCPPR Proposal as requesting conversion to a Delaware PBC, while the Company could interpret the NCPPR Proposal as not requiring reincorporation and instead requesting conversion to one of the corporate forms recognized in California. In this case, if the NCPPR Proposal were to be approved and the Company were to convert to a California social purpose corporation, for example, this result could be contrary to what shareholders had envisioned.

For the reasons described above, the NCPPR Proposal is impermissibly vague. Neither the shareholders voting on the NCPPR 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 NCPPR Proposal requires. For these reasons, it is the Company's view that it may exclude the NCPPR Proposal from its Proxy Materials pursuant to Rule 14a-8(i)(3). The Company requests 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 NCPPR Proposal.

II. To the Extent the Staff Is Unable to Concur That the NCPPR Proposal May Be Excluded Under Rule 14a-8(i)(3), The Young Proposal May Be Excluded Under Rule 14a-8(i)(11) Because It Substantially Duplicates the NCPPR Proposal.

To the extent the Staff is unable to concur in the Company's view that the NCPPR Proposal is excludable under Rule 14a-8(i)(3), the Company requests that the Staff concur in its view that the Company may exclude the Young Proposal from the Proxy Materials pursuant to Rule 14a-8(i)(11) because it substantially duplicates the NCPPR Proposal, which would in that case be included in the Company's Proxy Materials.

The Young Proposal requests that the Company's shareholders approve the following:

"RESOLVED: Shareholders request our Board of Directors take steps necessary to amend our articles of incorporation and, if necessary, bylaws (including presenting such amendments to shareholders for approval) to become a Social Purpose Corporation and to adopt specific social purposes such as (A) benefitting (1) the corporation's employees, suppliers, customers, and creditors; (2) the community and society; and (3) the environment and (B) exercising reasonable care to ensure the Company's operations do not impose social and environmental costs materially contributing to the degradation or destruction of important social and environmental systems."

A. Rule 14a-8(i)(11)

Rule 14a-8(i)(11) permits a company to exclude a proposal if it substantially duplicates a proposal previously submitted by another proponent that will be included in the company's proxy materials. The purpose for this exclusion, according to the Commission, is to "eliminate the possibility of shareholders having to consider two or more substantially identical proposals submitted to an issuer by proponents acting independent of each other." (*Exchange Act Release No. 12,999, 10 SEC Dock. 1006, 1013 (1976)*). It also ensures that a company is not burdened with the need to include several versions of essentially the same proposal in its proxy materials.

Proposals need not be identical to warrant exclusion under Rule 14a-8(i)(11). The standard that the Staff has applied for determining whether a proposal substantially duplicates an earlier-received proposal is whether the proposals present the same "principal thrust" or "principal focus," not whether the proposals are identical and even where there is a difference in the breadth of the proposals (see *Pacific Gas & Electric Co.* (avail. Feb. 1, 1993); *Exxon Mobil Corporation* (Mar. 19, 2010); and *Union Pacific Corp.* (avail. Feb. 1, 2012, recon. denied Mar. 30, 2012). For example, in *Union Pacific Corp.*, the Staff concurred that a proposal calling for disclosure of the company's "political contributions and expenditures" was substantially duplicative of a proposal calling for disclosure of the company's policies regarding "lobbying of legislators and regulators." While contributing to political campaigns is a different activity than lobbying government officials, the two proposals addressed the same broad policy issue – disclosure of corporate political activity.

The Staff has consistently permitted a company to exclude a proposal substantially duplicative of an earlier proposal despite differences in action requested. In *Cooper Industries, Ltd.* (avail. Jan. 17, 2006), for example, the Staff determined that a proposal requesting that the company "review its policies related to human rights to assess areas where the company needs to adopt and implement additional policies and report its findings" was substantially duplicative of an earlier submitted proposal requesting that the company "commit itself to the implementation of a code of conduct" based on identified, internationally-recognized human rights standards. In *Apple Inc.* (avail. Dec. 21, 2017), the Staff concurred that a proposal requesting that the Company issue a report on its role in promoting freedom of expression, particularly "policy options" available to the Company to assure that citizens of all countries have unfettered access to the Internet, was substantially duplicative of a proposal requesting that the Company assess, enhance, and issue a report on its human rights policies and practices. In its request for no-action relief, the Company argued that, "while the two proposals call for different actions, they share a single common concern—access to the internet in China". In *Exxon Mobil Corporation* (avail. Mar. 13, 2020), the Staff concurred with the exclusion of a proposal requesting that the board evaluate and report on how the company's lobbying activities align with the goal of limiting average global warming to well below 2 degrees Celsius as substantially duplicative of an earlier proposal requesting that the company report on lobbying, including policies and procedures, payments made and the oversight process for such payments. In responding to the company's request for no action, the Staff noted that the "two proposals share a concern for seeking additional transparency from the Company about its lobbying activities and how these activities align with the Company's expressed policy positions" despite the proposal requesting different disclosures. See also *Chevron Corp.* (avail. Mar. 28, 2019) (concurring that a proposal that seeks annual disclosure of greenhouse gas targets was substantially duplicative of a proposal requesting the preparation of a report on how the company can reduce its carbon footprint in alignment with greenhouse gas reductions necessary to achieve the Paris Climate

Agreements goals); *Chevron Corp.* (avail. Mar. 23, 2009, recon. denied April 6, 2009) (concurring that a proposal requesting that an independent committee prepare a report on the environmental damage that would result from the company’s expanding oil sands operations in the Canadian boreal forest was substantially duplicative of a proposal to adopt goals for reducing total greenhouse gas emissions from the company’s products and operations); *Wells Fargo & Co.* (avail. Feb. 8, 2011) (concurring that a proposal seeking a review and report on internal controls related to loan modifications, foreclosures and securitizations was substantially duplicative of a proposal requesting a report on the company’s residential mortgage loss mitigation policies and outcomes).

B. The Young Proposal Substantially Duplicates the NCPPR Proposal

The Company received the NCPPR Proposal on August 30, 2021. A copy of the correspondence regarding the NCPPR Proposal is attached hereto as [Exhibit A](#). More than one week later, on September 7, 2021, the Company received the first version of the Young Proposal, which was later amended and resubmitted to the Company on September 21, 2021 (the correspondence regarding the Young Proposal is attached hereto as [Exhibit B](#)). As discussed in Section I above, the Company is requesting the Staff’s concurrence that the NCPPR Proposal is excludable under Rule 14a-8(i)(3). If the Staff is unable to concur that the Company may exclude the NCPPR Proposal under Rule 14a-8(i)(3), then the Company intends to include the NCPPR Proposal in its Proxy Materials. As discussed below, the principal thrust and focus of both the NCPPR Proposal and the Young Proposal are the same, and the Young Proposal therefore should be excluded under Rule 14a-8(i)(11).

Although the requests are phrased slightly differently, the principal thrust and focus of the Young Proposal and the NCPPR Proposal are the same: both seek to cause the Company to change its corporate form to consider stakeholders and additional corporate purposes beyond maximizing shareholder return. This is clear from a line-by-line comparison of the proposals:

	The Young Proposal	The NCPPR Proposal
Action requested	"...take steps necessary to amend our articles of incorporation and, if necessary, bylaws..."	"...amend our certificate of incorporation and, if necessary, bylaws..."
The subject matter of the amendments	"...to become a Social Purpose Corporation..."	"...to become a public benefit corporation..."
Suggested amendments to be approved by the shareholders	"...including presenting such amendments to shareholders for approval..."	"Shareholders further request that the Board then present such amendments to the shareholders for approval..."

The overlap of the proposals is further demonstrated by the text of the respective supporting statements:

	The Young Proposal	The NCPPR Proposal
Reference to Signing of Business Roundtable Statement on the Purpose of a Corporation (the "Statement of Purpose").	"Apple's CEO Tim Cook signed the Business Roundtable Statement on the Purpose of a Corporation..."	"The Company signed the Statement [defined as the Business Roundtable Statement of the Purpose of a Corporation]..."
Argument that current corporate form may not be aligned with the Statement of Purpose.	"However, Apple incorporated with an uninspiring purpose: 'The purpose of this corporation is to engage in any lawful act or activity for which a corporation may be organized under the General Corporation Law of California...'"	However, the Company is a conventional business corporation, so that directors' fiduciary duties emphasize the company and its shareholders, but not stakeholders..."
Call to expand Company's corporate purposes to consider stakeholders and objectives beyond maximization of shareholder return.	"Rechartering around deeper social purposes would align all actions around common goals... By adopting specific social purposes our stakeholders will know Apple's values are built into Apple's very reason for existing."	"... directors of a PBC must 'balance' the interests of shareholders, stakeholders and a specified public benefit, giving legal status to the Statement's otherwise empty promise."

As shown in the above chart, the NCPPR Proposal and the Young Proposal have the same principal thrust and focus – to cause the Company to change its corporate form in order to consider stakeholders and additional corporate purposes in addition to maximizing shareholder return. In addition, the Supporting Statements indicate that the Proposals are motivated by the same factors – both rely on Apple CEO Tim Cook's signing of the Statement of Purpose to underpin the argument that the Company should change its corporate form and expand its corporate purpose.

As discussed above, the Staff has permitted the exclusion of proposals on substantially duplicative grounds where the requests of the two proposals differ in terms or scope and even if the proposals request different actions (see, e.g., *Cooper Industries, Ltd.* (avail. Jan. 17, 2006); *Union Pacific Corp.* (avail. Feb. 1, 2012, recon. denied Mar. 30, 2012); *Apple Inc.* (avail. Dec. 21, 2017)). Here, the NCPPR Proposal purports to reference conversion to a "public benefit corporation" while the Young Proposal requests conversion to a "social purpose corporation". As described in [Exhibit C](#), there are certain distinctions between the specific terms of these two corporate forms. For example, DGCL §362 defines "public benefit" differently than California

Corporations Code §2602 defines what constitutes a valid social purpose; and DGCL §365 provides that directors of a PBC must balance the interests of stockholders, those materially affected by the corporation's conduct and the specific public benefits identified in the certificate of incorporation, while California Corporations Code §2700 provides that directors of a social purpose corporation are permitted to assign weight to various factors as the directors deem relevant. However, these differences in the specific terms of these two corporate forms do not alter the fact that the Proposals have the same principal thrust and focus: to require the Company to consider stakeholders and additional corporate purposes in addition to maximizing shareholder return.

For the reasons described above, the inclusion of both Proposals in the Proxy Materials would cause shareholders to have to consider two substantially identical proposals, contrary to the stated purpose of Rule 14a-8(i)(11). Therefore, the Company respectfully requests that the Staff concur that the Young Proposal is substantially duplicative of the NCPPR Proposal and, as a result, may be excluded from the Company's Proxy Materials pursuant to Rule 14a-8(i)(11).

* * * *

III. Conclusion

If the Staff is unable to concur with the Company's position that the NCPPR Proposal may be excluded pursuant to Rule 14a-8(i)(3) or, alternatively, with the Company's position that the Young Proposal may be excluded pursuant to Rule 14a-8(i)(11), 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 NCPPR and Young copy the undersigned on any response they 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: Scott Shepard, National Center for Public Policy Research
Myra Young
James McRitchie
Jenna Cooper, Latham & Watkins LLP

Exhibit A

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

Copy of the NCPPR Proposal and NCPPR Supporting Statement

Conversion to Public Benefit Corporation

RESOLVED: Apple, Inc. ('Company') shareholders request that our Board of Directors take the steps necessary to amend our certificate of incorporation and, if necessary, bylaws to become a public benefit corporation (a "PBC") in light of its adoption of the Business Roundtable Statement of the Purpose of a Corporation (the "Statement").¹ Shareholders further request that the Board then present such amendments to the shareholders for approval, along with a full disclosure of the implications for shareholders that will follow from approval and adoption of the amendments, and the risks that append to such approval and adoption.

SUPPORTING STATEMENT: The Company signed the Statement, which proclaims that "we share a fundamental commitment to all of our stakeholders We commit to deliver value to all of them, for the future success of our companies, our communities and our country."²

However, the Company is a conventional business corporation, so that directors' fiduciary duties emphasize the company and its shareholders, but not stakeholders (except to the extent that stakeholder-regarding decisions create value for shareholders over time). Accordingly, when the interests of shareholders and stakeholders such as workers or customers clash, the Company's legal duty excludes all but shareholders. As one Delaware law firm reported to another signatory considering conversion, directors may consider stakeholder interests only if "any decisions made with respect to such stakeholders are in the best interests of the corporation and its stockholders."³

That contradicts the commitment made in the Statement.

In contrast, directors of a PBC must "balance" the interests of shareholders, stakeholders and a specified public benefit,⁴ giving legal status to the Statement's otherwise empty promise. A company required to balance stakeholder interests could prioritize stakeholder interests, even if doing so sacrificed higher returns for shareholders.

A company that opposes conversion to the public-benefit corporation form, on the other hand, thereby recognizes that the Statement was simply a recital of well-understood old principles that changed nothing, and that leaves the overriding duty to shareholders fully in place. Such a company would reduce reputational and legal risks by withdrawing from a Statement that was aggressively sold to the public as making significant new commitments that cannot be achieved under the Delaware business-corporation form.⁵

¹ <https://opportunity.businessroundtable.org/ourcommitment/>

² *Id.*

³ <https://www.sec.gov/divisions/corpfin/cf-noaction/14a-8/2020/harringtonwellsfargo021220-14a8.pdf>

⁴ 8 Del. Code §365

⁵ <https://opportunity.businessroundtable.org/ourcommitment/>

Copy of Related Correspondence

From: Scott Shepard <sshepard@nationalcenter.org>
Date: August 30, 2021 at 06:00:33 PDT
To: SHAREHOLDERPROPOSAL@apple.com
Subject: NCPPR Shareholder Proposal for inclusion on 2022 proxy statement

Ladies and Gentlemen,

I have attached a letter which includes a shareholder proposal to be included in Apple's 2022 proxy statement for a vote by shareholders.

Very best,

Scott Shepard

--

Scott Shepard
Director
Free Enterprise Project
National Center for Public Policy Research



Via email to shareholderproposal@apple.com

August 30, 2021

Katherine Adams
Corporate Secretary
One Apple Park Way
MS:169-5GC
Cupertino, CA95014

Dear Ms. Adams,

I hereby submit the enclosed shareholder proposal ("Proposal") for inclusion in the Apple, Inc. (the "Company") proxy statement to be circulated to Company shareholders in conjunction with the next annual meeting of shareholders. The Proposal is submitted under Rule 14(a)-8 (Proposals of Security Holders) of the United States Securities and Exchange Commission's proxy regulations.

I submit the Proposal as the Director of the Free Enterprise Project of the National Center for Public Policy Research, which has continuously owned Company stock with a value exceeding \$2,000 for at least 3 years prior to and including the date of this Proposal and which intends to hold these shares through the date of the Company's 2022 annual meeting of shareholders. A Proof of Ownership letter is forthcoming and will be delivered to the Company.

Copies of correspondence or a request for a "no-action" letter should be sent to me at the National Center for Public Policy Research, 20 F Street, NW, Suite 700, Washington, DC 20001 and emailed to sshepard@nationalcenter.org.

Sincerely,

A handwritten signature in black ink, appearing to read "Scott Shepard", with a long horizontal flourish extending to the right.

Scott Shepard

Enclosure: Shareholder Proposal

Conversion to Public Benefit Corporation

RESOLVED: Apple, Inc. ('Company') shareholders request that our Board of Directors take the steps necessary to amend our certificate of incorporation and, if necessary, bylaws to become a public benefit corporation (a "PBC") in light of its adoption of the Business Roundtable Statement of the Purpose of a Corporation (the "Statement").¹ Shareholders further request that the Board then present such amendments to the shareholders for approval, along with a full disclosure of the implications for shareholders that will follow from approval and adoption of the amendments, and the risks that append to such approval and adoption.

SUPPORTING STATEMENT: The Company signed the Statement, which proclaims that "we share a fundamental commitment to all of our stakeholders We commit to deliver value to all of them, for the future success of our companies, our communities and our country."²

However, the Company is a conventional business corporation, so that directors' fiduciary duties emphasize the company and its shareholders, but not stakeholders (except to the extent that stakeholder-regarding decisions create value for shareholders over time). Accordingly, when the interests of shareholders and stakeholders such as workers or customers clash, the Company's legal duty excludes all but shareholders. As one Delaware law firm reported to another signatory considering conversion, directors may consider stakeholder interests only if "any decisions made with respect to such stakeholders are in the best interests of the corporation and its stockholders."³

That contradicts the commitment made in the Statement.

In contrast, directors of a PBC must "balance" the interests of shareholders, stakeholders and a specified public benefit,⁴ giving legal status to the Statement's otherwise empty promise. A company required to balance stakeholder interests could prioritize stakeholder interests, even if doing so sacrificed higher returns for shareholders.

A company that opposes conversion to the public-benefit corporation form, on the other hand, thereby recognizes that the Statement was simply a recital of well-understood old principles that changed nothing, and that leaves the overriding duty to shareholders fully in place. Such a company would reduce reputational and legal risks by withdrawing from a Statement that was aggressively sold to the public as making significant new commitments that cannot be achieved under the Delaware business-corporation form.⁵

¹ <https://opportunity.businessroundtable.org/ourcommitment/>

² *Id.*

³ <https://www.sec.gov/divisions/corpfin/cf-noaction/14a-8/2020/harringtonwellsfargo021220-14a8.pdf>

⁴ 8 Del. Code §365

⁵ <https://opportunity.businessroundtable.org/ourcommitment/>

From: Marren, Katie (NY)
Sent: Wednesday, September 8, 2021 2:49 PM
To: sshepard@nationalcenter.org
Cc: Cooper, Jenna (NY)
Subject: Apple Shareholder Proposal
Attachments: 14a-8 - Apple - Letter to NCPPR - Sept. 8, 2021.PDF

Mr. Shepard,

Please find attached a letter on behalf of Apple Inc. in reference to a shareholder proposal submitted by you on behalf of the National Center for Public Policy Research. A hard copy of this letter has also been sent to you via FedEx.

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>

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

September 8, 2021

BY FEDEX AND ELECTRONIC MAIL

National Center for Public Policy Research
Attn: Scott Shepard
20 F Street, NW, Suite 700
Washington, DC 20001
sshepard@nationalcenter.org

Re: Shareholder Proposal to Apple Inc.

Dear Mr. Shepard,

On August 30, 2021, Apple Inc. (the “Company”) received correspondence from you on behalf of the National Center for Public Policy Research (“NCPPR”) 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. This notice is to inform you that the correspondence fails to meet the requirements of Rule 14a-8 of the Securities Exchange Act of 1934, as amended (“Rule 14a-8”), including providing proof of NCPPR’s 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) and providing a written statement that NCPPR is able to meet with the Company in person or via teleconference no less than 10 calendar days, nor more than 30 calendar days, after submission of the Proposal, including providing business days and specific times within the regular business hours of the Company’s principal executive offices that NCPPR is available to discuss the Proposal with the Company.

Specifically, the Company has not received proper verification of NCPPR’s share ownership. In addition, NCPPR has not provided a written statement that it is able to meet with the Company in person or via teleconference no less than 10 calendar days, nor more than 30 calendar days, after submission of the Proposal, including providing business days and specific times within the regular business hours of the Company’s principal executive offices that NCPPR is available to discuss the Proposal with the Company. As a result, NCPPR has not demonstrated that it is eligible to submit the Proposal under Rule 14a-8. In order for the Proposal to be properly submitted, NCPPR must remedy these procedural deficiencies 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, NCPPR 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, NCPPR can satisfy the proof of ownership requirement by demonstrating that NCPPR 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 NCPPR 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 August 30, 2021.

In your correspondence with the Company, you stated that NCPPR has continuously owned for at least three years as of August 30, 2021, more than \$2,000 worth of "Apple, Inc." common stock. However, NCPPR does not appear on the Company's books and records as a stockholder of the Company and NCPPR has not provided other evidence of its ownership. In addition, "Apple, Inc." is not the name of the Company; the name of the Company is "Apple Inc."

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

- a written statement from the "record" holder of NCPPR's securities (usually a broker or bank) verifying that, at the time NCPPR submitted the Proposal, which was on August 30, 2021, NCPPR 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 NCPPR'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 are not certain whether NCPPR’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 NCPPR’s broker or bank is not on the DTC’s participant list, NCPPR will need to obtain proof of ownership from the DTC participant through which NCPPR’s securities are held. NCPPR 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 NCPPR’s broker or bank, but does not know NCPPR’s holdings, NCPPR 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 August 30, 2021, the required value of securities was continuously held by NCPPR for the applicable period of time as provided in Rule 14a-8(b)(1)(i) – with one statement from the broker or bank confirming NCPPR’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 NCPPR’s ownership of the required share value for at least the minimum period required by Rule 14a-8(b)(1)(i) by the date NCPPR submitted the Proposal, which was August 30, 2021.

II. STATEMENT OF AVAILABILITY.

In order to establish NCPPR’s eligibility to submit the Proposal under Rule 14a-8, NCPPR is also required to provide a written statement that NCPPR is able to meet with the Company in person or via teleconference no less than 10 calendar days, nor more than 30 calendar days, after submission of the Proposal (see Rule 14a-8(b)(1)(iii)). The statement must include NCPPR’s contact information and provide business days and specific times within the regular business hours of the Company’s principal executive offices that NCPPR is available to discuss the proposal with the Company. NCPPR has not provided such a statement to the Company and therefore has failed to meet the requirements of Rule 14a-8(b)(1)(iii).

* * *

In order for the Proposal to be properly submitted, NCPPR must respond to this letter with the proper verification of its ownership of the Company’s securities as described above and a statement of its availability to discuss the Proposal with the Company as described above. The

LATHAM & WATKINS LLP

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

From: Scott Shepard <sshepard@nationalcenter.org>
Sent: Thursday, September 16, 2021 3:02 PM
To: Marren, Katie (NY)
Cc: Cooper, Jenna (NY); shareholderproposal@apple.com
Subject: Re: Apple Shareholder Proposal
Attachments: Apple 2022 UBS Letter.pdf

Ms. Cooper & Ms. Marren,

Good afternoon. I attach to this email NCPPR's proof of ownership of Apple stock. Additionally, I would like to offer next Monday, Wednesday or Thursday afternoon (2-5 p.m. eastern) as times at which I can be free to discuss the contents of our proposal. If any of those times works, let me know. If not, I'm sure we can find other times to talk. I look forward to our discussions.

Please let me know if I can be of any further assistance in validating the propriety of our proposal.

Scott

On Wed, Sep 8, 2021 at 2:49 PM <Katie.Marren@lw.com> wrote:

Mr. Shepard,

Please find attached a letter on behalf of Apple Inc. in reference to a shareholder proposal submitted by you on behalf of the National Center for Public Policy Research. A hard copy of this letter has also been sent to you via FedEx.

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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--

Scott Shepard
Director
Free Enterprise Project
National Center for Public Policy Research



UBS Financial Services Inc.
1000 Harbor Boulevard
Weehawken, NJ 07086
Tel. 877-827-7870
FAX 877-785-8404

UBS Wealth Advice Center

www.ubs.com

Katherine Adams, Corporate Secretary
Apple Inc.
One Apple Park Way
MS: 169-5GC
Cupertino, CA 95014

September 16, 2021

Confirmation: Information regarding the account of The National Center for Public Policy Research

Dear Ms. Adams,

The following client has requested UBS Financial Services Inc. to provide you with a letter of reference to confirm its banking relationship with our firm.

The National Center for Public Policy Research has been a valued client of ours since October 2002 and as of the close of business on 8/30/2021, the National Center for Public Research held, and has held continuously for at least three years, more than \$2,000 of Apple Inc. common stock. UBS continues to hold the said stock

Please be aware this account is a securities account not a "bank" account. Securities, mutual funds, and other non-deposit investment products are not FDIC-insured or bank guaranteed and are subject to market fluctuation.

Questions

If you have any questions about this information, please contact Benjamin Valdes at (877) 827-7870.

UBS Financial Services is a member firm of the Securities Investor Protection Corporation (SIPC).

Sincerely

Benjamin Valdes

Benjamin Valdes
Financial Advisor
UBS Financial Services Inc.

From: Scott Shepard <sshepard@nationalcenter.org>
Sent: Thursday, September 16, 2021 4:27 PM
To: Marren, Katie (NY)
Cc: Cooper, Jenna (NY); shareholderproposal@apple.com
Subject: Re: Apple Shareholder Proposal

Ms. Cooper & Ms. Marren,

BTW, and per the letter of the regulation, I can be reached, when we do talk, at (703) 863-6993. But we can also use other methods if you prefer.

Very best,

Scott

On Thu, Sep 16, 2021 at 3:02 PM Scott Shepard <sshepard@nationalcenter.org> wrote:

Ms. Cooper & Ms. Marren,

Good afternoon. I attach to this email NCPPR's proof of ownership of Apple stock. Additionally, I would like to offer next Monday, Wednesday or Thursday afternoon (2-5 p.m. eastern) as times at which I can be free to discuss the contents of our proposal. If any of those times works, let me know. If not, I'm sure we can find other times to talk. I look forward to our discussions.

Please let me know if I can be of any further assistance in validating the propriety of our proposal.

Scott

On Wed, Sep 8, 2021 at 2:49 PM <Katie.Marren@lw.com> wrote:

Mr. Shepard,

Please find attached a letter on behalf of Apple Inc. in reference to a shareholder proposal submitted by you on behalf of the National Center for Public Policy Research. A hard copy of this letter has also been sent to you via FedEx.

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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Scott Shepard
Director
Free Enterprise Project
National Center for Public Policy Research

--

Scott Shepard
Director
Free Enterprise Project
National Center for Public Policy Research

Exhibit B

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

Copy of the Young Proposal and Young Supporting Statement (as revised)

ITEM 4* — Reincorporate with Deeper Purpose



RESOLVED: Shareholders request our Board of Directors take steps necessary to amend our articles of incorporation and, if necessary, bylaws (including presenting such amendments to shareholders for approval) to become a Social Purpose Corporation and to adopt specific social purposes such as (A) benefitting (1) the corporation’s employees, suppliers, customers, and creditors; (2) the community and society; and (3) the environment and (B) exercising reasonable care to ensure the Company’s operations do not impose social and environmental costs materially contributing to the degradation or destruction of important social and environmental systems.

SUPPORTING STATEMENT: Apple’s CEO Tim Cook signed the Business Roundtable Statement on the Purpose of a Corporation (“Statement”).¹ We applaud the Statement, which proclaims “we share a fundamental commitment to all of our stakeholders.... We commit to deliver value to all of them, for the future success of our companies, our communities and our country.”

However, Apple incorporated with an uninspiring purpose:

“The purpose of this corporation is to engage in any lawful act or activity for which a corporation may be organized under the General Corporation Law of California...”

Rechartering around deeper social purposes would align all actions around common goals. It would motivate shareholders, employees, and other stakeholders, guiding our Company on a more inspiring mission than engaging “in any lawful act or activity.”

Purpose is the most distilled form of strategy. It clarifies how a corporation should spend its time and resources. It aligns all actions around a common goal. And it motivates all stakeholders through a mission that is more inspiring than profit maximization.²

Our employees are striving to address issues like climate risk, wealth inequality, diversity, equity, and inclusion. We should identify employee values through Slack³ or other channels and adopt specific social purposes in better alignment. Apple should also explore policies and practices to embed and amplify worker voice inside corporate decision-making and accountability systems.⁴ “Millennial employees, consumers, and investors will fact check claims and callout companies that fail to live up to their own rhetoric, often with significant economic consequences.”⁵

¹ <https://s3.amazonaws.com/brt.org/BRT-StatementonthePurposeofaCorporationOctober2020.pdf>

² <https://www.harpercollins.com/products/accountable-michael-olearywarren-valdmanis?variant=32127314755618>

³ <https://www.theverge.com/22659497/apple-slack-organizing-zoe-schiffer-decoder-interview>

⁴ <https://www.aspeninstitute.org/our-people/>

⁵ https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3918443

Listed companies create annual social and environmental costs of \$2.2 trillion through many sources, including pollution, climate change and employee stress.⁶ Being guided by a legally adopted North Star would lead Apple to further reduce externalized costs and more fully engage stakeholders.

By adopting specific social purposes our stakeholders will know Apple's values are built into Apple's very reason for existing. Those social purposes would not be seen as public relations gimmicks. Our social purposes will be our North Star, guiding and engaging stakeholders on a path to a better future.

Please vote for: Reincorporate with Deeper Purpose – Proposal [4*]

[This line and any below are *not* for publication]
Number 4* to be assigned by the Company

The graphic above is intended to be published with the rule 14a-8 proposal. The graphic would be the same size as the largest management graphic (and accompanying bold or highlighted management text with a graphic) or any highlighted management executive summary used in conjunction with a management proposal or a rule 14a-8 shareholder proposal in the 2021 proxy.

The proponent is willing to discuss mutual elimination of both shareholder graphic and any management graphic in the proxy in regard to this specific proposal.

Reference SEC Staff Legal Bulletin No. 14I (CF)

[16] Companies should not minimize or otherwise diminish the appearance of a shareholder's graphic. For example, if the company includes its own graphics in its proxy statement, it should give similar prominence to a shareholder's graphics. If a company's proxy statement appears in black and white, however, the shareholder proposal and accompanying graphics may also appear in black and white.

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

Accordingly, going forward, we believe 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:

- 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)

⁶ <https://www.schroders.com/en/sysglobalassets/digital/insights/2019/pdfs/sustainability/sustainex/sustainex-short.pdf>

Copy of Related Correspondence

From: MKY <MKY@corp.gov>
Subject: Rule 14a-8 Proposal (AAPL)
Date: September 7, 2021 at 14:14:04 PDT
To: shareholderproposal@apple.com
Cc: Jennifer Mar <jmar@apple.com>, Sam Whittington <sam_whittington@apple.com>, Katerina Kousoula <kkousoula@apple.com>, John Chevedden
[REDACTED] PII, Sara Murphy <sara@theshareholdercommons.com>

Dear Ms. Adams,

Please see the attached letter and shareholder proposal. Upon confirmation of receipt, I will request proof of ownership from my broker. Thanks.

Myra K. Young
9295 Yorkship Court
Elk Grove, CA 95758

Ms. Katherine Adams
Corporate Secretary, Apple Inc. (AAPL)
One Apple Park Way, MS: 169-5GC
Cupertino, CA 85014
Emailed to: shareholderproposal@apple.com
PH: 408 996-1010
FX: 408-974-2483
FX: 408-253-7457

Dear Ms. Adams,

I am submitting the attached shareholder proposal, which I support, requesting Apple **Reincorporate with Deeper Purpose** for presentation at the next shareholder meeting. I pledge to continue to hold the required amount of stock until after the date of that meeting.

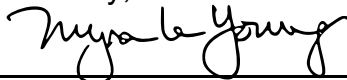
I will meet Rule 14a-8 requirements including the continuous ownership of the required stock value until after the date of the next shareholder meeting. I have owned the stock continuously since before January 4, 2020. My submitted format, with the shareholder-supplied emphasis, is intended to be used for definitive proxy publication.

I am available to meet with the Company representative via phone on September 20 or 21st at 10:45 a.m. Pacific or at a time that is mutually convenient.

This letter confirms that I am delegating my husband, James McRitchie, to act as my agent regarding this Rule 14a-8 proposal, including negotiations and/or modification, and presentation at the forthcoming shareholder meeting. Please direct all future communications regarding my rule 14a-8 proposal to James McRitchie at jm@corpgov.net (PH: 916-869-2402, 9295 Yorkship Ct, Elk Grove, CA 95758). Please identify Myra K. Young as the proponent of the proposal.

Your consideration and that of the Board of Directors is appreciated in support of the long-term performance of our company. You can avoid the time and expense of filing a deficiency letter to verify ownership by simply acknowledging receipt of my proposal promptly by email to jm@corpgov.net. That will prompt me to request the required letter from my broker and to submit it to the Company.

Sincerely,



Myra K. Young

September 7, 2021

Date

[AAPL: Rule 14a-8 Proposal, September 07, 2021
[This line and any line above it – *Not* for publication.]

ITEM 4* — Reincorporate with Deeper Purpose



RESOLVED: Shareholders request our Board of Directors take steps necessary to amend our articles of incorporation and, if necessary, bylaws (including presenting such amendments to shareholders for approval) to become a Social Purpose Corporation and to adopt specific social purposes such as (A) benefitting (1) the corporation’s employees, suppliers, customers, and creditors; (2) the community and society; and (3) the environment and (B) exercising reasonable care to ensure that the Company’s operations do not impose social and environmental costs that materially contribute to the degradation or destruction of important social and environmental systems.

SUPPORTING STATEMENT: Apple’s CEO Tim Cook signed the Business Roundtable Statement on the Purpose of a Corporation (the “Statement”).¹ We applaud the Statement, which proclaims “we share a fundamental commitment to all of our stakeholders.... We commit to deliver value to all of them, for the future success of our companies, our communities and our country.”

However, Apple incorporated with an uninspiring purpose:

“The purpose of this corporation is to engage in any lawful act or activity for which a corporation may be organized under the General Corporation Law of California...”

Rechartering around deeper social purposes would help Apple align all actions around common goals. It would motivate shareholders, employees, and other stakeholders, guiding our Company on a more inspiring mission than engaging “in any lawful act or activity.”

Purpose is the most distilled form of strategy. It clarifies how a corporation should spend its time and resources. It aligns all actions around a common goal. And it motivates all stakeholders through a mission that is more inspiring than profit maximization.²

Our employees are striving to address issues such as climate risk, wealth inequality, diversity, equity, and inclusion. We should identify employee values through Slack³ or other channels and adopt specific social purposes in better alignment. Apple should also explore policies and practices to embed and amplify worker voice inside corporate decision-making and accountability systems.⁴ “Millennial employees, consumers, and investors will fact check claims and callout companies that fail to live up to their own rhetoric, often with significant economic consequences.”⁵

¹ <https://s3.amazonaws.com/brt.org/BRT-StatementonthePurposeofaCorporationOctober2020.pdf>

² <https://www.harpercollins.com/products/accountable-michael-olearywarren-valdmanis?variant=32127314755618>

³ <https://www.theverge.com/22659497/apple-slack-organizing-zoe-schiffer-decoder-interview>

⁴ <https://www.aspeninstitute.org/our-people/>

⁵ https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3918443

■ Myra K. Young

A recent study determined that listed companies create annual social and environmental costs of \$2.2 trillion. These costs have many sources, including pollution, climate change and employee stress.⁶ Being guided by a legally adopted North Star would likely lead Apple to further reduce externalized costs and even more fully engage stakeholders.

By adopting specific social purposes our stakeholders will know Apple's values are built into Apple's very reason for existing. Those social purposes would not be seen as public relations statements that can be changed according to the latest fad. Our social purposes will be our North Star, guiding and engaging stakeholders on a path to a better future.

Please vote for: Reincorporate with Deeper Purpose – Proposal [4*]

[This line and any below are *not* for publication]
Number 4* to be assigned by the Company

The graphic above is intended to be published with the rule 14a-8 proposal. The graphic would be the same size as the largest management graphic (and accompanying bold or highlighted management text with a graphic) or any highlighted management executive summary used in conjunction with a management proposal or a rule 14a-8 shareholder proposal in the 2021 proxy.

The proponent is willing to discuss mutual elimination of both shareholder graphic and any management graphic in the proxy in regard to this specific proposal.

Reference SEC Staff Legal Bulletin No. 14I (CF)

[16] Companies should not minimize or otherwise diminish the appearance of a shareholder's graphic. For example, if the company includes its own graphics in its proxy statement, it should give similar prominence to a shareholder's graphics. If a company's proxy statement appears in black and white, however, the shareholder proposal and accompanying graphics may also appear in black and white.

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

Accordingly, going forward, we believe 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:

- 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)

⁶ <https://www.schroders.com/en/sysglobalassets/digital/insights/2019/pdfs/sustainability/sustainex/sustainex-short.pdf>

From: James McRitchie <jm@corp.gov>
Subject: Re: Rule 14a-8 Proposal (AAPL)
Date: September 13, 2021 at 09:05:31 PDT
To: Sam Whittington <sam_whittington@apple.com>
Cc: John Chevedden [REDACTED], mky <mky@corp.gov>

Sam

Please find attached evidence of ownership information for proposals submitted by me and my wife, Myra K. Young. Please acknowledge receipt.



09/11/2021

Myra Young
9295 Yorkship Ct
Elk Grove, CA 95758

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

Dear Myra Young,

Thank you for allowing me to assist you today. Pursuant to your request, this letter is to confirm that as of the date of this letter, Myra Young held and had held continuously since before January 4, 2020, 100 or more common shares of shares of Apple Inc (AAPL) in an account ending in **PII** at TD Ameritrade. Based on the highest selling price within 60 days prior to January 4, 2021, the value of the shares exceeded \$2,000. Further, the value of the shares exceeded \$2,000 within 60 days the last 13 months. 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 black ink that reads 'Daniel Bliss'.

Daniel Bliss
Sr Specialist – Escalation Support
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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Distributed by TD Ameritrade, Inc., 200 South 108th Avenue, Omaha, NE 68154-2631.



September 9, 2021

James McRitchie
9295 Yorkship Court
Elk Grove, CA 95758

Re: Your TD Ameritrade Roth IRA account ending in **PII**

Dear James McRitchie,

Thank you for allowing me to assist you today. Pursuant to your request, this letter is to confirm that as of the date of this letter, James McRitchie held and had held continuously since before January 4, 2020, 100 or more common shares of Apple Inc (AAPL) in an account ending in **PII** at TD Ameritrade. Based on the highest selling price within 60 days prior to January 4, 2021, the value of the shares exceeded \$2,000. Further, the value of the shares exceeded \$2,000 within 60 days the last 13 months. 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 Client Services > Message Center to write us. You can also call Private Client Services at 800-400-4078. We're available 24 hours a day, seven days a week.

Sincerely,

A handwritten signature in black ink that reads 'Jennifer Hickman' in a cursive script.

Jennifer Hickman
Resource Specialist
TD Ameritrade

TD Ameritrade understands the importance of protecting your privacy. From time to time we need to send you notifications like this one to give you important information about your account. If you've opted out of receiving promotional marketing communications from us, containing news about new and valuable TD Ameritrade services, we will continue to honor your request.

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

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TDA 1002212 02/21

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September 16, 2021

BY FEDEX AND ELECTRONIC MAIL

James McRitchie
9295 Yorkship Ct.
Elk Grove, CA 95758
jm@corp.gov.net

Re: Shareholder Proposal to Apple Inc.

Dear Mr. McRitchie,

On September 7, 2021, Apple Inc. (the “Company”) received correspondence from Myra K. Young (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”). Also on September 7, 2021, you purportedly submitted a separate shareholder proposal and an accompanying supporting statement for inclusion in the Company’s proxy statement for its 2022 annual meeting of shareholders (the “McRitchie Proposal”).

This notice is to inform you that, in light of the submission of the McRitchie Proposal, the Company believes the Proponent is in violation of the requirement under Rule 14a-8(c) that “[e]ach person may submit no more than one proposal, directly or indirectly, to a company for a particular shareholders’ meeting” (the “One Proposal Rule”). As disclosed in the Proponent’s submission of the Proposal and other correspondence between you and the Company, you and the Proponent are married and both you and the Proponent are residents of California. We note that California is a community property state, meaning that, as a matter of law, a presumption exists that each spouse has an automatic half interest in the other spouse’s property acquired during the marriage. As a result, and as explained further below, the Proponent has not demonstrated that she has complied with the One Proposal Rule under Rule 14a-8(c).

In order for the Proposal to be properly submitted, you must provide documentary proof that the Proponent has not violated the One Proposal Rule no later than 14 calendar days from the date you receive this notice.

I. SUBMISSION OF MORE THAN ONE PROPOSAL.

Rule 14a-8(c) provides that “[e]ach person may submit no more than one proposal, *directly or indirectly*, to a company for a particular shareholders’ meeting” (emphasis added). In the 1976 adopting release for amendments to Rule 14a-8 (see Release No. 34-12999 (Nov. 22, 1976)), the staff of the Securities and Exchange Commission (the “Staff”) clarified that the One Proposal Rule “will apply collectively to *all persons having an interest in the same securities* (e.g., the record owner and the beneficial owner, and joint tenants)” (emphasis added). In the adopting release for the 2020 amendments to Rule 14a-8 (see Release No. 34-89964 (Nov. 4, 2020)), the Staff reaffirmed this position.

Your and the Proponent’s correspondence with the Company with regard to the Proposal and the McRitchie Proposal indicates that the Proponent resides at 9295 Yorkship Court in Elk Grove, California, that you reside at the same address and that you are the Proponent’s “husband.”

California is a community property state. The California Family Code §760 provides that, “[e]xcept as otherwise provided by statute, all property, real or personal, wherever situated, acquired by a married person during the marriage while domiciled in this state is community property.” In Part 25, Section 25.18.1.3.2 of the Internal Revenue Manual (the “IRS Manual”), the U.S. Internal Revenue Service summarizes¹ the concepts underpinning community property law in states like California as follows:

“Under community property law, title to property generally carries relatively little weight in determining whether property is separate or community property. The property is presumed to be community property in spite of the form in which title is held. When property is acquired as community property, each spouse acquires an automatic half interest. No special acts are required to vest interest in the non-acquiring spouse, such as conveyance of title, or obtaining dominion and control over the property. Thus, the fact that title is held solely in the name of the spouse who acquired the property, by itself, is insufficient to rebut the community property presumption.”

For property acquired by California residents during the marriage, the community property presumption described above can only be rebutted by specific documentation that the community property has been transmuted to “separate property” (defined in California Family Code § 770) in compliance with the requirements of California Family Code § 852. Section 852 provides that “transmutation of real or personal property is not valid unless made in writing by

¹ See https://www.irs.gov/irm/part25/irm_25-018-001, a copy of which is attached hereto.

an express declaration that is made, joined in, consented to, or accepted by the spouse whose interest in the property is adversely affected” (a “Transmutation Agreement”).

Accordingly, under California law, the Proponent is presumed to have an “automatic half interest” in any property, including securities, held nominally in your name. You submitted the McRitchie Proposal on the basis that you have owned the requisite value of the Company’s common stock since before January 4, 2020 and provided a statement from TD Ameritrade demonstrating your proof of ownership. While the TD Ameritrade statement indicates that your shares are held in an individual account in your own name, because California is a community property state, a presumption exists that the Proponent also has an interest in your shares. As a result, absent documentary proof that community property laws do not apply to the shares of the Company’s common stock in your TD Ameritrade account, the Proponent has submitted two Rule 14a-8 shareholder proposals, one directly and one indirectly, in violation of Rule 14a-8(c).

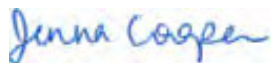
The Proponent can establish that the Proposal has been properly submitted by providing documentary proof that rebuts the presumption that the Company shares held nominally by you are, and as of the date of submission of the McRitchie Proposal were, community property. For example, you or the Proponent could provide a statement from your and/or the Proponent’s estate planning attorney, broker or financial advisor confirming that, pursuant to a Transmutation Agreement entered into in compliance with California Family Code § 852, the shares held by you are, and as of the date of submission of the McRitchie Proposal, were in fact separate property belonging only to you. Alternatively, you or the Proponent could provide documentary proof that your shares were acquired prior to your marriage to the Proponent or are otherwise “separate property” within the meaning of California Family Code § 770.

* * *

In order for the Proposal to be properly submitted, you or the Proponent must respond to this letter providing documentary proof that rebuts the presumption that your shares of the Company’s common stock are, and as of the date of the submission of the McRitchie Proposal were, held as community property 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, relevant sections of SEC Release Nos. 34-12999 and 34-89964, relevant sections of Part 25 of the IRS Manual and relevant sections of the California Family Code.

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

LATHAM & WATKINS LLP

Enclosures

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

From: James McRitchie <jm@corpgov.net>

Sent: Tuesday, September 21, 2021 11:37 AM

To: shareholderproposal@apple.com

Cc: Cooper, Jenna (NY) <Jenna.Cooper@lw.com>; Sam Whittington <sam_whittington@apple.com>; Sara Murphy <sara@theshareholdercommons.com>; John Chevedden [REDACTED] PII

Subject: Apple Shareholder Proposals

Dear Ms. Adams,

Please see the attached withdrawal of the proxy access amendment proposal and amended proposal requesting Apple Reincorporate with Deeper Purpose. We would welcome an opportunity to discuss that proposal.

Sincerely,

James McRitchie
Shareholder Advocate
Corporate Governance
<http://www.corpgov.net>
9295 Yorkship Court
Elk Grove, CA 95758

916.869.2402

Corporate Governance

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

James McRitchie and Myra K. Young
9295 Yorkship Court
Elk Grove, CA 95758

Ms. Katherine Adams
Corporate Secretary, Apple Inc. (AAPL)
One Apple Park Way, MS: 169-5GC
Cupertino, CA 85014
Emailed to: shareholderproposal@apple.com
PH: 408 996-1010
FX: 408-974-2483
FX: 408-253-7457

Dear Ms. Adams,

Considering the September 16, 2021, letter of Jenna B. Cooper with Latham & Watkins LLP, we hereby withdraw our proposal on proxy access amendments, which Ms. Cooper refers to as the "McRitchie proposal."

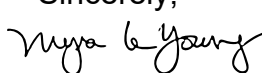
When we opened our Roth IRA accounts, our broker insisted that unlike our other accounts, our Roth IRA accounts were *not* community property. Therefore, we have always considered them as separate property. Although our respective Apple shares in those accounts may precede our marriage, we do not care to explore documenting that option.

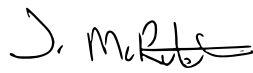
Therefore, as stated above, we are hereby withdrawing the proposal on proxy access amendments, leaving only the one proposal requesting Apple **Reincorporate with Deeper Purpose** for presentation at the next shareholder meeting.

Since Ms. Cooper contends the original submission exceeded the 500-word limit by 14 words, we have revised that proposal by removing many more than 14 words. Please let us know if you have any further issues with the attached revised proposal, especially if you would like to discuss the proposal substantively.

We are hereby appointing Sara E. Murphy, of The Shareholder Commons to act as our agent regarding this Rule 14a-8 proposal, including its negotiations and/or modification, and presentation at the forthcoming shareholder meeting. Please direct all future communications regarding our rule 14a-8 proposal to Sara E. Murphy (PH: 202-578-0261, 723 E 48th St., Savannah, GA 31405) at: sara@theshareholdercommons.com to facilitate prompt communication. Frederick Alexander, Rick@theshareholdercommons.com, is also authorized to act as our agent regarding this proposal. Please identify James McRitchie and Myra K. Young as the proponents of the proposal.

Sincerely,


Myra K. Young


James McRitchie

September 21, 2021

Date

cc: Sam Whittington, Director of Corporate Law at Apple, sam_whittington@apple.com

ITEM 4* — Reincorporate with Deeper Purpose



RESOLVED: Shareholders request our Board of Directors take steps necessary to amend our articles of incorporation and, if necessary, bylaws (including presenting such amendments to shareholders for approval) to become a Social Purpose Corporation and to adopt specific social purposes such as (A) benefitting (1) the corporation’s employees, suppliers, customers, and creditors; (2) the community and society; and (3) the environment and (B) exercising reasonable care to ensure the Company’s operations do not impose social and environmental costs materially contributing to the degradation or destruction of important social and environmental systems.

SUPPORTING STATEMENT: Apple’s CEO Tim Cook signed the Business Roundtable Statement on the Purpose of a Corporation (“Statement”).¹ We applaud the Statement, which proclaims “we share a fundamental commitment to all of our stakeholders.... We commit to deliver value to all of them, for the future success of our companies, our communities and our country.”

However, Apple incorporated with an uninspiring purpose:

“The purpose of this corporation is to engage in any lawful act or activity for which a corporation may be organized under the General Corporation Law of California...”

Rechartering around deeper social purposes would align all actions around common goals. It would motivate shareholders, employees, and other stakeholders, guiding our Company on a more inspiring mission than engaging “in any lawful act or activity.”

Purpose is the most distilled form of strategy. It clarifies how a corporation should spend its time and resources. It aligns all actions around a common goal. And it motivates all stakeholders through a mission that is more inspiring than profit maximization.²

Our employees are striving to address issues like climate risk, wealth inequality, diversity, equity, and inclusion. We should identify employee values through Slack³ or other channels and adopt specific social purposes in better alignment. Apple should also explore policies and practices to embed and amplify worker voice inside corporate decision-making and accountability systems.⁴ “Millennial employees, consumers, and investors will fact check claims and callout companies that fail to live up to their own rhetoric, often with significant economic consequences.”⁵

¹ <https://s3.amazonaws.com/brt.org/BRT-StatementonthePurposeofaCorporationOctober2020.pdf>

² <https://www.harpercollins.com/products/accountable-michael-olearywarren-valdmanis?variant=32127314755618>

³ <https://www.theverge.com/22659497/apple-slack-organizing-zoe-schiffer-decoder-interview>

⁴ <https://www.aspeninstitute.org/our-people/>

⁵ https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3918443

Listed companies create annual social and environmental costs of \$2.2 trillion through many sources, including pollution, climate change and employee stress.⁶ Being guided by a legally adopted North Star would lead Apple to further reduce externalized costs and more fully engage stakeholders.

By adopting specific social purposes our stakeholders will know Apple's values are built into Apple's very reason for existing. Those social purposes would not be seen as public relations gimmicks. Our social purposes will be our North Star, guiding and engaging stakeholders on a path to a better future.

Please vote for: Reincorporate with Deeper Purpose – Proposal [4*]

[This line and any below are *not* for publication]
Number 4* to be assigned by the Company

The graphic above is intended to be published with the rule 14a-8 proposal. The graphic would be the same size as the largest management graphic (and accompanying bold or highlighted management text with a graphic) or any highlighted management executive summary used in conjunction with a management proposal or a rule 14a-8 shareholder proposal in the 2021 proxy.

The proponent is willing to discuss mutual elimination of both shareholder graphic and any management graphic in the proxy in regard to this specific proposal.

Reference SEC Staff Legal Bulletin No. 14I (CF)

[16] Companies should not minimize or otherwise diminish the appearance of a shareholder's graphic. For example, if the company includes its own graphics in its proxy statement, it should give similar prominence to a shareholder's graphics. If a company's proxy statement appears in black and white, however, the shareholder proposal and accompanying graphics may also appear in black and white.

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

Accordingly, going forward, we believe 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:

- 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)

⁶ <https://www.schroders.com/en/sysglobalassets/digital/insights/2019/pdfs/sustainability/sustainex/sustainex-short.pdf>

Exhibit C

Comparison of a Public Benefit Corporation, a Benefit Corporation and a Social Purpose Corporation

	Public Benefit Corporation	Benefit Corporation	Social Purpose Corporation
Jurisdiction of incorporation	Delaware	California	California
General public benefit purpose	N/A	Must have a purpose of “creating general public benefit” defined as having a “material positive impact on society and the environment, taken as a whole.” ¹	N/A
Defined special purpose	Must identify specific public benefit or benefits to be promoted by the company. ²	Optional ³	Must have one or more specific purposes as enumerated in the Social Purpose Corporation Act. ⁴
Factors that directors are allowed to consider	Balance the pecuniary interests of the stockholders, the best interests of those materially affected by the corporation’s conduct, and the specific public benefit or public benefits identified in its certificate of incorporation. ⁵	The ability of the corporation to accomplish its the general and any specific public benefit purpose, and the impact on shareholders and other stakeholders, including employees, customers, the community and the environment.	The overall prospects of the social purpose corporation, the best interests of the social purpose corporation and its shareholders, and the purposes of the social purpose corporation as set forth in its articles.

¹ Cal Corp Code § 14610.

² “public benefit” means a positive effect (or reduction of negative effects) on one or more categories of persons, entities, communities or interests (other than stockholders in their capacities as stockholders) including, but not limited to, effects of an artistic, charitable, cultural, economic, educational, environmental, literary, medical, religious, scientific or technological nature. 8 Del.C. §362.

³ Cal Corp Code § 14610.

⁴ A special purpose corporation must have one or more of the following purposes: (1) one or more charitable or public purpose activities that a nonprofit public benefit corporation is authorized to carry out; or (2) the purpose of promoting positive effects of, or minimizing adverse effects of, the social purpose corporation’s activities upon any of the following, provided that the corporation considers the purpose in addition to or together with the financial interests of the shareholders and compliance with legal obligations, and take action consistent with that purpose: (i) the social purpose corporation’s employees, suppliers, customers, and creditors (ii) the community and society (iii) the environment. Cal Corp Code § 2602.

⁵ 8 Del. C. § 365.

		There is no requirement to give priority to a specific interest or factor. ⁶	The directors can give weight to these factors as they deem relevant. ⁷
Actions to be taken for a conversion	<ul style="list-style-type: none"> • Step 1: Reorganization in Delaware Via a merger (will require incorporating a new corporation in Delaware, adopting an agreement of merger and file a certificate of merger).⁸ • Step 2: The company's organizational documents must be amended and the new certificate of incorporation must comply with the general requirements of the Delaware General Corporation Law and the specific requirements of a public benefit corporation. 	Amending the articles of incorporation.	Amending the articles of incorporation.
Super-majority vote of shareholders for the conversion	N/A	The amendment of the articles of incorporation shall not be effective unless it is adopted by at least the "minimum status vote". ⁹	The amendment of the articles of incorporation shall be approved by the affirmative vote of at least two-thirds of each class, or a greater vote if required in the articles. ¹⁰

⁶ Cal Corp Code § 14610 and § 14620.

⁷ Cal Corp Code § 2700.

⁸ 8 Del. C. § 252

⁹ Cal Corp Code § 14603. "Minimum status vote" means that: (1) In the case of a corporation... both of the following shall apply: (A) The shareholders of every class or series shall be entitled to vote on the corporate action regardless of any limitation stated in the articles or bylaws on the voting rights of any class or series and (B) the corporate action shall be approved by the outstanding shares of each class or series by at least two-thirds of the votes, or greater vote if required in the articles of incorporation, that all shareholders of the class or series are entitled to cast on that action. Cal Corp Code § 14601.

¹⁰ Cal Corp Code § 911.



Frederick H. Alexander
rick@theshareholdercommons.com
+1.302.593.0917

November 2, 2021

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

RE: Apple Inc. Shareholder Proposals from the National Center for Public Policy Research and Myra K. Young and James McRitchie

Dear Sir or Madam:

We write with respect to a request (the “Company Request”) by Apple Inc., a California corporation (the “Company”), to exclude a shareholder proposal (the “NCCPR Proposal”) and related supporting statement from the National Center for Public Policy Research (“NCCPR”), or (ii) a shareholder proposal (the “Young Proposal”) and related supporting statement from Myra K. Young and James McRitchie (together, “Young”) for inclusion in the Company’s proxy statement (the “Proxy Materials”) for the Company’s 2022 Annual Meeting of Shareholders. We write on behalf of Young.

The Company has requested the Staff’s concurrence that the NCCPR Proposal can be excluded pursuant to Rule 14a-8(i)(3) because it is contrary to the proxy rules. In the alternative, if the Staff does not concur in that conclusion, the Company has asked the Staff to concur in its conclusion that the Young Proposal may be excluded under Rule 14a-8(i)(11) as duplicative.

We write in support of the exclusion of the NCCPR Proposal and in particular to point out that the NCCPR Proposal comes within the ambit of Rule 14a-8(i)(2) because, if implemented, it will cause the Company to violate state law.

The NCCPR Proposal requests that the Company’s shareholders approve the following:

RESOLVED: Apple, Inc. (“Company”) shareholders request that our Board of Directors take the steps necessary to amend our certificate of incorporation and, if necessary, bylaws to become a public benefit corporation (a “PBC”) in light of its adoption of the Business Roundtable Statement of the Purpose of a Corporation (the Statement”) [referred to in a footnote].” Shareholders further request that the Board then present such amendments to the shareholders for approval, along with a full disclosure of the implications for shareholders that will follow from approval and adoption of the amendments, and the risks that attend to such approval and adoption.

The request is contrary to the proxy rules because it would violate California law if implemented.

A. Rule 14a-8(i)(2)

Rule 14a-8(i)(2) permits exclusion of a proposal if the proposal would violate, among other things, state law if implemented. If implemented, the NCPPR Proposal would require the Company, which is incorporated in California, to amend its corporate charter documents to become a public benefit corporation (a “PBC”).

California law, however, does not permit corporations formed under its laws to become PBCs. While California authorizes the creation of corporations with characteristics established by the Model Benefit Corporation Legislation (“MBCs”) and social purpose corporations (“SPCs”), these are very different entities from PBCs, and an attempt to change the governance of a California corporation to the governance of a PBC would violate California law. PBC governance is permitted in Delaware and other states, but not California.

B. History of benefit corporations

Traditionally, for-profit corporations in the United States have been legally required or permitted to prioritize the interests of shareholders over other stakeholders—the doctrine of shareholder primacy. In the first decade of the 21st Century, a movement was initiated that promoted an alternative form of corporation that was operated for profit, but that would be required to consider other interests as well. This category of entity, generally referred to as a “benefit corporation,” includes PBCs, MBCs, and additional variations, but each type of entity is quite different. The SPC is a further variation.

In 2010, Maryland adopted the first statute authorizing benefit corporations (MBCs in particular) and was quickly followed by other states around the United States. Benefit corporation statutes have now been adopted in 39 U.S. jurisdictions, one Canadian province, and four other countries.

C. The alphabet soup of benefit corporations

The types of benefit corporations that have evolved have significant differences. These characteristics were explained in a recent law-review article.¹ The purpose of the statutes generally was to change corporate duties so that directors were not required or permitted to put the interests of shareholders ahead of the interests of other stakeholders:

[T]he corporate law of many jurisdictions (including Delaware) required directors to favor shareholder interests, and even where shareholder primacy was not a strict rule, it was often the easiest route for directors to take because shareholders generally hold the ultimate power over who comprises the board and, thus, the management of the corporation. They conceived of the benefit corporation as a remedy for this circumstance.²

Different jurisdictions have addressed this issue in different ways. Thirty-three U.S. states have adopted the MBC version, while four have adopted the PBC version pioneered in Delaware.³ Outside the United States, additional

¹ Frederick Alexander, *Putting Benefit Corporation Statutes into Context by Putting Context into the Statutes*, 76 Business Lawyer 109 (2021).

² *Id.* at 126.

³ *Id.* at 113.

permutations have been added by Italy, Colombia, and the Canadian province of British Columbia.⁴ Yet another version was recently adopted by the American Bar Association (which maintains a model corporation law) and at least one U.S. state.⁵

MBCs and PBCs operate very differently in tackling the problem of altering shareholder primacy. The former aims to have the corporation ensure that its overall effect on the environment and society is positive.⁶ In contrast, PBCs must balance the interests of all stakeholders in managing the business, implying a decision-by-decision basis for interest balancing.⁷ As one commentator noted:

First, recall that [unlike the MBCL,] the Delaware Act does not create a “floor” purpose that must be met; instead, it operates solely through directors’ fiduciary duties, not through regulation of the corporation or its output. Those duties require directors to “balance” the interests of shareholders with the interests of others affected by the corporation’s conduct (and the company’s specific benefit). The definition of the word balance is “to bring into harmony or proportion,” which does appear to be an actual substantive principle associated with the directors’ new obligation, in contrast to the more procedural consideration requirement of the MBCL (even if the substantive principle is admittedly fuzzy). That is, considering important negative stakeholder impacts but then simply dismissing them as factors in decision making would arguably not be enough to “harmonize” those interests.⁸

There are other critical differences: PBC law requires that the corporate charter specify a public benefit in addition to balancing stakeholder interests generally;⁹ the MBCL has no such requirement. The Delaware PBC preserves board discretion for decisions related to the new benefit corporation duties; the MBCL does not.¹⁰ There are many other differences as well.¹¹

The differences between a PBC and an SPC are even greater still. The SPC is a form of corporation that allows companies to escape shareholder primacy not by expanding duties to all stakeholders in the manner of a benefit corporation, but by electing one or more specific benefits in addition to shareholder value maximization. It does little to regulate liabilities and lawsuits and has no specific safeguards to protect stakeholders generally.

⁴ *Id.* at 113-114.

⁵ The adoption of the MBCA version as part of the Iowa corporation law in 2021 is detailed on the state legislature’s webpage here: <https://www.legis.iowa.gov/legislation/BillBook?ga=89&ba=HF%20844>.

⁶ See the version of the MBCL maintained by B Lab and available on its website at https://benefitcorp.net/sites/default/files/Model%20benefit%20corp%20legislation%20_4_17_17.pdf.

⁷ 8 Del.C § 365(a).

⁸ *Supra*, n.1 at 131-132.

⁹ 8 Del. C. § 362(a).

¹⁰ *Supra*, n.1 at 113.

¹¹ See generally, *supra*, n.1.

D. Corporations must follow the corporate code under which they are formed

These distinctions matter, because they are the only path by which corporations can deviate from shareholder primacy and the default fiduciary duties that otherwise apply to them. Thus, if the shareholders want the Company to deviate from California's rule of shareholder primacy, they must propose that it follow the rules set out in the California Corporations Code for doing so, which means becoming an MBC or an SPC, not a PBC. Under the U.S. system of federalism, the rules that govern a corporation are dictated by the state in which it is incorporated: this is sometimes called "the internal affairs doctrine."¹² Thus, the change to the corporate charter requested in the proposal violates California law.

Nor can the proposal be viewed as consistent with California law by interpreting it as requesting that the Company reincorporate as a Delaware corporation. The proposal is quite specific, asking the Company to:

take the steps necessary to amend our certificate of incorporation and, if necessary, bylaws to become a public benefit corporation (a "PBC").

The concept of reincorporation necessitates the formation of a new corporation in Delaware, and it is that new corporation's certificate of incorporation that would be changed. Such a transaction would mean that all the Company's contracts would have to be examined to determine whether they would still apply to the successor Delaware entity. And the rights of the shareholders would be changed from those enjoyed by shareholders in California corporations to those that Delaware corporation shareholders have. Moreover, the Delaware statute is generally a more flexible one when it comes to regulating the relationship between shareholders and directors:

Delaware corporate statutes provide a great deal of flexibility in the organization of a corporation and the rights and duties of board members relative to stockholders. The principle of freedom to contract to adjust relationships is considered stronger under Delaware corporate law than under California corporate law.¹³

Thus, reincorporating to Delaware is clearly not what the Proposal contemplates. Instead, it contemplates amending the current certificate of incorporation, which would mean retain all the current characteristics of a California corporation, except for the specific amendments contemplated. But for all the reasons discussed above, such amendments would violate California law if adopted by the Company.

E. The Young Proposal follows California law by proposing the Company become an SPC, a form of entity authorized by the jurisdiction in which the Company is incorporated

In contrast to the NCCPR Proposal, the Young Proposal accounts for the fact that in order to change fiduciary duties, an amendment to a corporation's organizational documents must conform to the requirements of the corporation law of the jurisdiction in which the corporation is incorporated. As discussed above, this is a key

¹² Frederick Alexander, BENEFIT CORPORATION LAW AND GOVERNANCE: PURSUING PROFIT WITH PURPOSE, 17, n.38 ("In the U.S., corporate law is a state law question, so that a corporation's internal affairs are guided by the law of the jurisdiction in which it is incorporated.") (2018).

¹³ Andrew Piunti, *Top 5 Reasons for a California Company to incorporate in Delaware*, (2016) available at <https://www.dpalawyers.com/2016/08/15/top-5-reasons-california-company-incorporate-delaware/>.

element of the doctrine of federalism, which provides that states have the authority to govern the internal affairs of their corporate citizens.

The Young Proposal seeks to effect a change in corporate purpose by converting the Company to an SPC and provides specific language that would overturn shareholder primacy and protect the Company's stakeholders. It also specifies that, as an alternative, the Company could consider reincorporating as a Delaware PBC. Thus, the Young Proposal provides a solution that would allow the Company to maintain its existence as a California corporation and address the question of shareholder primacy in the manner approved by California's legislature. The Young Proposal also allows that if the Company wished to become a PBC, it could do so, but only through a merger that would require the Company to incorporate in a different state, with all the changes in rights that would imply.

* * * *

For all the foregoing reasons, we respectfully request that the Company be permitted to exclude the NCCPR Proposal, as contemplated by Rule 14a-8(i)(2), so that the Company's shareholders are allowed to vote on a proposal that, if implemented, would not violate state law.

Sincerely,



Frederick Alexander

cc:

Jenna Cooper
James McRitchie
Scott Shepard
Myra Young



November 3, 2021

Via email: 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: Stockholder Proposal of the National Center for Public Policy Research, Securities Exchange Act of 1934 – Rule 14a-8

Ladies and Gentlemen,

This correspondence is in response to the letter of Sam Whittington on behalf of Apple Inc. (the “Company”) dated October 18, 2021, requesting that your office (the “Commission” or “Staff”) take no action if the Company omits our Shareholder Proposal (the “Proposal”) from its 2022 proxy materials for its 2022 annual shareholder meeting.

RESPONSE TO APPLE’S CLAIMS

Our Proposal asks the Board of Directors to seek approval from the shareholders to become a charitable corporation rather than a standard business corporation, in accord with the assertions of CEO Tim Cook as a member of the Business Roundtable and signatory of its Statement on the Purpose of a Corporation.

The Company seeks to exclude this Proposal pursuant to Rule 14a-8(i)(3) because the Proposal is too vague for the company to understand what it would oblige the Company to do if it received shareholder approval. But the Company’s arguments themselves undermine this claim, demonstrating that the Company knows exactly what the Proposal seeks and the limited number of concrete options that would be available to the Company were the Proposal to pass. While the Company is correct that the Proposal contains a technical error, that error could have been fixed

by negotiation or even by the Company's having sought the exclusion of a few words in the Proposal, but not exclusion of the entire Proposal.

Under Rule 14a-8(g), the Company bears the burden of persuading the Staff that it may omit our Proposal. The Company has failed to meet that burden. The Company has instead sought the wrong remedy after failing to participate in a discussion and negotiation process that it itself had initiated – as it turns out, in bad faith.

Analysis

Part I. Rule 14-8(i)(3).

Under Rule 14a-8(i)(3), a company may exclude a shareholder proposal *in its entirety* “if the language of the proposal or the supporting statement render the proposal *so vague and 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.”¹ When only portions of a proposal merit exclusion for causing vagueness or other difficulties, companies are only permitted “to exclude portions of the supporting statement, even if the balance of the proposal and the supporting statement may not be excluded.”²

Part II. As the Company's own no-action request establishes, there is no material question about what the Proposal seeks.

The Company is correct that the Proposal errs in designating Apple Inc. a Delaware company. But that error is not material. As the Company's no-action request itself establishes, there is no genuine confusion about what the Proposal seeks: a vote by shareholders about whether Apple Inc. should become a charitable rather than a business corporation, in accordance with its CEO's pledges and pronouncements made as a signatory to the Business Roundtable's Statement on the Purpose of a Corporation and otherwise.³

¹ See, e.g., Staff Legal Bulletin No. 14B (September 15, 2004) (“SLB 14B”) (emphasis added).

² See *id.*

³ See, e.g., See Business Roundtable, STATEMENT ON THE PURPOSE OF A CORPORATION (Aug. 19, 2019), available at <https://opportunity.businessroundtable.org/ourcommitment/> (last accessed Nov. 1, 2021). In relevant part, the Statement asserts that

While each of our individual companies serves its own corporate purpose, we share a fundamental commitment to all of our stakeholders. We commit to:

Delivering value to our customers. We will further the tradition of American companies leading the way in meeting or exceeding customer expectations.

The Company argues that the proposal is hopelessly vague because it would leave the Company with three options, but all of those options are essentially the same – to change its corporate form in line with its stated commitments and understandings of the purpose of corporations like it. The odds are good that had a very specific method of achieving that result been specified, the Company would instead have argued that our proposal should be excluded as an attempt to micromanage the Company.

At all events, both our immaterial error and any vagueness caused by it can be solved entirely by the amendment or excision of a mere handful of words. In such circumstances, the appropriate petition for the Company to have made would have been for the alteration or removal of those words. This is a solution that we not only would not have contested, but that we would happily have engaged with the Company to accomplish if it had contacted us directly. We would still be willing to reach cordial agreement should the Company be amenable. But the Company's request for entire exclusion here is wholly unwarranted.

Part III. The Company could have rectified any notional confusion that remains in the Proposal with a quick communication to us.

As has been noted, the Company failed to contact us in an effort to rectify the immaterial error upon which it now hangs its hat. This failure is particularly startling in light of the fact that the Company demanded that I provide suggested opportunities for just such consultation before accepting the validity of the Proposal. The Company wrote:

In order to establish NCPPR's eligibility to submit the Proposal under Rule 14a-8, NCPPR is also required to provide a written statement that NCPPR is able to meet with the Company in person or via teleconference no less than 10 calendar days, nor more than 30 calendar days, after submission of the Proposal (see Rule 14a-

Investing in our employees. This starts with compensating them fairly and providing important benefits. It also includes supporting them through training and education that help develop new skills for a rapidly changing world. We foster diversity and inclusion, dignity and respect.

Dealing fairly and ethically with our suppliers. We are dedicated to serving as good partners to the other companies, large and small, that help us meet our missions.

Supporting the communities in which we work. We respect the people in our communities and protect the environment by embracing sustainable practices across our businesses.

Generating long-term value for shareholders, who provide the capital that allows companies to invest, grow and innovate. We are committed to transparency and effective engagement with shareholders.

Id.

8(b)(1)(iii)). The statement must include NCPPR's contact information and provide business days and specific times within the regular business hours of the Company's principal executive offices that NCPPR is available to discuss the proposal with the Company. NCPPR has not provided such a statement to the Company and therefore has failed to meet the requirements of Rule 14a-8(b)(1)(iii).

I had suggested three different times for consultation, over a total of 9 hours, and made myself amenable to other suggestions. The Company failed to make the slightest effort to contact me at all.

This is straightforward bad faith. The purpose of the obligation in Rule 14a-8(b)(1)(iii) is to foster and facilitate discussion between companies and shareholder-proponents, and to minimize frivolous or avoidable no-action requests, not to give the Company one more "gotcha" opportunity.⁴ But that is exactly how the Company has used it here. This bad-faith failure to communicate to correct an easily fixable problem should itself disqualify the Company's request here.

Part IV. The Company's claim that our Proposal is substantially duplicated by a later proposal also wholly undermines its claim that our Proposal is so hopelessly vague that it won't know how to respond if it were approved by shareholders.

The Company undermines its claim about the hopeless vagueness of our Proposal by then arguing that our Proposal is "substantially duplicated" by a Proposal that comes later. This cannot be. If the Company really is baffled by what our Proposal seeks, then it can hardly say that a later-filed proposal is substantially duplicative – because it wouldn't know what our Proposal means. Instead, though, the Company knows exactly what our Proposal means, as this argument clearly admits.

This contradiction is intensified by the fact that the Company apparently will not attempt to exclude the later-received petition if ours is successfully excluded. But this is impermissible. Companies may not shop between shareholders to pick the proposals of those the Company particularly favors. It must take the first qualifying proposal.

Part V. The Creative Commons argument that enacting our Proposal would violate state law is refuted by the Company's own no-action letter.

Finally, we note that the contribution to this proceeding by the Creative Commons is contradicted by the content of the Company's own no-action letter. The Commons argues that our "Proposal comes within the ambit of Rule 14a-8(i)(2) because, if implemented, it will cause

⁴ See generally SLB 14B.

the cause the [sic] Company to violate state law.” But the Company itself provides three (and only three) actions that the Company could reasonably take in response to our Proposal that do not violate any law, thereby eviscerating in advance the claim of the Creative Commons. The Company pretends that three options are so many as to make the Proposal hopelessly vague. The Commons pretends that three legal options are really no legal options. Each of these claims is manifestly false. And, of course, if the Company had sought the appropriate remedy here, or had dealt with us in good faith, the minor excisions that would have created crystal clarity could easily have been achieved.

Conclusion

The Company has made a pretextual claim that our Proposal is too vague for it to understand, while contradicting its own argument by then spelling out explicitly what our Proposal means, and the clear and reasonable options it offers the Company. The Company might have had a reasonable claim to amend or excise small portions of our Proposal, but not to exclude it entirely. We would gladly have agreed to such changes if we had been approached, as the SEC encourages, but instead the Company demanded that we provide times at which to converse, and then failed itself to follow up. We are still willing to amend in good faith, but this no-action request is an exercise in pretense and bad faith that cannot succeed. For these reasons, we urge the Staff to find that our Proposal may not be omitted under Rule 14a-8(i)(3).

The Company has clearly failed to meet its burden that it may exclude our Proposal under Rule 14a-8(g). Therefore, based upon the analysis set forth above, we respectfully request that the Staff reject Apple’s request for a no-action letter concerning our Proposal.

A copy of this correspondence has been timely provided to the Company. If I can provide additional materials to address any queries the Commission may have with respect to this letter, please do not hesitate to call me at (202) 507-6398 or email me at sshepard@nationalcenter.org.

Sincerely,

A handwritten signature in black ink, appearing to read "Scott A. Shepard", with a long horizontal flourish extending to the right.

Scott Andrew Shepard

cc: Sam Whittington, Apple Inc. (sam_whittington@apple.com)