



DIVISION OF  
CORPORATION FINANCE

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

January 3, 2023

Jenna Cooper  
Latham & Watkins LLP

Re: Apple Inc. (the "Company")  
Incoming letter dated October 24, 2022

Dear Jenna Cooper:

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

The Proposal requests that the board adopt a policy that, should holders of a majority of non-insider shares voted support a shareholder proposal, a board member or members, identified by the nominating committee chair, will be made available for a discussion with the proposal's proponents within three months of the Company filing its Form 8-K containing the voting results.

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

Copies of all of the correspondence on which this response is based will be made available on our website at <https://www.sec.gov/corpfin/2022-2023-shareholder-proposals-no-action>.

Sincerely,

Rule 14a-8 Review Team

cc: Meredith Benton  
Whistle Stop Capital

FIRM / AFFILIATE OFFICES

Austin	Milan
Beijing	Munich
Boston	New York
Brussels	Orange County
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Houston	Singapore
London	Tel Aviv
Los Angeles	Tokyo
Madrid	Washington, D.C.

October 24, 2022

**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  
shareholderproposals@sec.gov

Re: **Apple Inc. Shareholder Proposal from Nia Impact Capital and the Minderoo Foundation Ltd**

Ladies and Gentlemen:

This letter is submitted pursuant to Rule 14a-8(j) under the Securities Exchange Act of 1934, as amended, on behalf of Apple Inc., a California corporation (“*Apple*” or the “*Company*”). The Company has received a shareholder proposal (the “*Proposal*”) and related supporting statement (the “*Supporting Statement*”) from Nia Impact Capital and the Minderoo Foundation Ltd (collectively, the “*Proponents*”) for inclusion in the Company’s proxy statement (the “*Proxy Materials*”) for the Company’s 2023 Annual Meeting of Shareholders. A copy of the Proposal and the Supporting Statement, together with other relevant correspondence relating to the Proposal, is attached hereto as Exhibit A.

On behalf of the Company, we hereby advise the staff of the Division of Corporation Finance (the “*Staff*”) that the Company intends to exclude the Proposal from its Proxy Materials. The Company respectfully requests confirmation that the Staff will not recommend enforcement action to the Securities and Exchange Commission (the “*Commission*”) if the Company excludes the Proposal pursuant to Rule 14a-8(i)(7), as the Proposal relates to ordinary business matters.

By copy of this letter, we are advising the Proponents of the Company’s intention to exclude the Proposal as described above. In accordance with Rule 14a-8(j)(2) and Staff Legal Bulletin No. 14D (Nov. 7, 2008), the Company is submitting by electronic mail (i) this letter, which sets forth its reasons for excluding the Proposal; and (ii) the Proponents’ respective letters submitting the Proposal.

Pursuant to Rule 14a-8(j), we are submitting this letter on the Company’s behalf not less than 80 days before the Company intends to file its Proxy Materials and are sending a copy of this letter concurrently to the Proponents.

**I. The Proposal.**

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

“Resolved:

Apple shareholders urge the Board to adopt a policy that, should holders of a majority of non-insider shares voted support a shareholder proposal (calculated by dividing (i) “For” votes by (ii) the sum of votes cast “For” and “Against”, minus the shares held by current executive officers and Board members as reported in the proxy statement), a Board member or members, identified by the Nominating Committee Chair, will be made available for a discussion with the proposal's proponents within three months of Apple filing its Report on Form 8-K containing the voting results.”

## **II. The Proposal May Be Excluded Under Rule 14a-8(i)(7) Because It Relates To The Company’s Ordinary Business Operations**

### **A. Background On The Ordinary Business Standard**

Rule 14a-8(i)(7) permits a company to exclude a shareholder proposal if the proposal “deals with a matter relating to the company’s ordinary business operations.” According to the Commission’s release accompanying the 1998 amendments to Rule 14a-8, the term “ordinary business” “refers to matters that are not necessarily ‘ordinary’ in the common meaning of the word,” but instead the term “is rooted in the corporate law concept providing management with flexibility in directing certain core matters involving the company’s business and operations.” Exchange Act Release No. 40018 (May 21, 1998) (the “**1998 Release**”). In the 1998 Release, the Commission noted that the underlying policy of the ordinary business exclusion is “to confine the resolution of ordinary business problems to management and the board of directors, since it is impracticable for shareholders to decide how to solve such problems at an annual shareholders meeting.” As set out in the 1998 Release, there are two “central considerations” underlying the ordinary business exclusion. The first is that “[c]ertain tasks are so fundamental to management’s ability to run a company on a day-to-day basis that they could not, as a practical matter, be subject to direct shareholder oversight.” *Id.* The other is whether a proposal seeks to “micromanage” a company by probing too deeply into matters upon which shareholders would not be in a position to make an informed judgment. *Id.* The 1998 Release notes that these considerations may come into play in circumstances “where the proposal involves intricate detail, or seeks to impose specific time-frames or methods for implementing complex policies.”

As the Commission noted in the 1998 Release, proposals relating to ordinary business matters are distinguishable from those “focusing on sufficiently significant social policy issues,” which generally are not excludable under Rule 14a-8(i)(7) because “the proposals would transcend the day-to-day business matters and raise policy issues so significant that it would be appropriate for a shareholder vote.” The ordinary business exception therefore “recognize[s] the board’s authority over most day-to-day business matters,” while at the same time “preserving shareholders’ right to bring important issues before other shareholders by means of the company’s proxy statement.” See Staff Legal Bulletin No. 14L, Part B.2 (November 3, 2021) (“**SLB 14L**”).

### **B. The Proposal May Be Excluded Because The Subject Matter Directly Concerns Ordinary Business Matters Within The Board And Management’s Discretion**

The Proposal may be excluded under Rule 14a-8(i)(7) because it primarily concerns the Company’s practices with respect to shareholder communications, in particular regarding shareholder proposals. The Proposal asks the Company’s Board to adopt a policy that would require members of the Board to be made available for a discussion with a shareholder proponent, in the event that the proponent’s proposal receives

a certain level of support at the Company's annual meeting of shareholders. However, the question of when and how a company chooses to communicate with its shareholders, and who at the company should be involved in such communication, is a decision in management's and the Board's purview that falls squarely within the ordinary business exclusion according to long-standing precedent.

The Commission and Staff have consistently held that shareholder proposals seeking to compel the form, volume and timing of direct communication between the Company and its shareholders are excludable under Rule 14a-8(i)(7) as "fundamental tasks" of management. For example, in *Citigroup Inc.* (avail. Jan. 6, 2012), the Staff concurred with the exclusion of a proposal that, among other things, would require a new director to have the "right of directly communicating with share holders (sic) by e-mail," noting that "[p]roposals concerning procedures for enabling shareholder communications on matters relating to ordinary business are generally excludable under rule 14a-8(i)(7)." *See also ARIAD Pharmaceuticals, Inc.* (avail. June 1, 2016) (concurring with the exclusion of a proposal requesting that the company's board respond to questions specified in the proposal, where the company argued it related to "shareholder relations and communications," and the Staff noted that the proposal related to the company's "ordinary business operations"); *Ford Motor Co.* (avail. Mar. 1, 2010) (concurring with the exclusion of a proposal relating to how the company distributes restated financial statements to shareholders because "[p]roposals concerning the methods used by a company to distribute or present information to its shareholders are generally excludable under rule 14a-8(i)(7)"); *XM Satellite Radio Holdings Inc.* (avail. May 14, 2007) (concurring with the exclusion of a shareholder proposal requesting that the board "impose a monetary fine upon the [c]ompany [o]fficers for failing to promptly respond to shareholder letters" and implement a shareholder response policy specified in the proposal, where the Staff noted that the proposal related to "procedures for improving shareholder communications"); *Peregrine Pharmaceuticals, Inc.* (avail. June 28, 2005) (concurring with the exclusion of a proposal "designed to require the company to communicate to the [share]holders and other interested parties through public conference calls," according to certain timing, frequency, and other requirements, as relating to "ordinary business operations (i.e., procedures for establishing regular communications and updates with shareholders)"); *Comverse Technology, Inc.* (avail. Sept. 8, 2003, *recon. denied* Mar. 15, 2004) (concurring with the exclusion of a shareholder proposal that requested the establishment of an "Office of the Board of Directors" to facilitate communication among non-management directors and shareholders, noting that it relates to "procedures for enabling shareholder communications"); *Servotronics, Inc.* (avail. Feb. 19, 2015) (concurring with the company's exclusion of a proposal requesting that "a question-and-answer period be included in conjunction with the Servotronics Annual Shareholder Meetings" as relating to the company's ordinary business); *Citigroup Inc.* (avail. Feb. 7, 2013) (concurring with exclusion of a proposal to "allocate a reasonable amount of time before and after the annual meeting for shareholder dialogue with our directors . . . regarding the operations of our company" as relating to the company's ordinary business); *Exxon Mobil Corp.* (avail. Mar. 2, 2005) (concurring with the exclusion of a proposal requesting that the company "set aside [time] on the agenda at each annual meeting for shareholders to ask questions, and receive replies directly from, the non-employee directors" as relating to the company's ordinary business); and *AmSouth Bancorp* (avail. Jan. 15, 2002) (concurring with the exclusion of a proposal that requested that the company provide shareholders a minimum of 30 minutes at shareholder meetings to ask questions as relating to the company's ordinary business).

Here, the primary focus of the Proposal is to control when and how the Company will communicate with its shareholders and who at the Company will participate in such communication. The Company must regularly determine who is authorized to communicate with shareholders, taking into consideration a number of factors, including familiarity with the subject matter, availability, legal or regulatory considerations, and more. The Company has determined that as a general matter, members of management should assume that role first (*see* the Company's Corporate Governance Guidelines adopted by the Company's Board of Directors, which state: "[t]he Board believes that management speaks for the

[Company]”). The Corporate Governance Guidelines acknowledge that there will be circumstances where the Board will authorize individual directors to speak to investors or other stakeholders about the Company, however these considerations are made on a case-by-case basis and fall squarely within the Board’s and management’s realm to determine. Therefore, the Proposal should be excluded under Rule 14a-8(i)(7).

**C. The Proposal Does Not Focus On Any Significant Social Policy Issues That Transcend The Company’s Ordinary Business Operations**

The Commission clarified in the 1998 Release that proposals “focusing on” significant social policy issues may not be excludable under Rule 14a-8(i)(7), as these “transcend the day-to-day business matters” discussed in the proposals. Such proposals are distinguishable from ordinary business proposals that reference significant social policy issues, but that do not focus on or have only tangential implications for such issues, which are excludable under Rule 14a-8(i)(7). In SLB 14L, the Staff articulated its present approach to evaluating proposals that raise social policy issues, noting the absence of a bright-line test and confirming the Staff’s “return to a case-by-case analytical approach” that focuses on “the social policy significance of the issue that is the subject of the shareholder proposal” rather than “the nexus between a policy issue and the company.”

Here, the Proposal does not raise a significant social policy issue that transcends ordinary business matters. In *Exxon Mobil Corp.* (avail. Mar. 2, 2005), the proponent unsuccessfully argued that shareholder-board member communications in general constituted an important policy consideration that should preclude the proposal’s exclusion pursuant to Rule 14a-8(i)(7). The Staff declined to concur with this view. *See also ARIAD Pharmaceuticals, Inc.* (avail. Jun. 1, 2016) (concurring with exclusion of a proposal seeking to compel responses to certain shareholder questions where the company argued that the proponent had not identified any social policy issue with broad societal impact). While the Proponents’ Supporting Statement describes concerns regarding restrictions on the Board’s ability to speak with stakeholders, this concern relates specifically to the Company and does not invoke a policy issue of broad social import.

For the reasons discussed above, as the Proposal does not transcend the Company’s ordinary business, it is excludable under Rule 14a-8(i)(7).

\* \* \* \*

**III. Conclusion**

For all of the reasons stated above, it is the Company’s position that the Proposal may be excluded from the Proxy Materials pursuant to Rule 14a-8(i)(7). We request that the Staff concur in our view or, alternatively, confirm that the Staff will not recommend any enforcement action to the Commission if the Company so excludes the Proposal.

If the Staff is unable to concur with the Company’s position, we would appreciate an opportunity to confer with the Staff concerning this matter prior to the determination of the Staff’s final position. In addition, the Company requests that the Proponents copy the undersigned on any response they may choose to make to the Staff, pursuant to Rule 14a-8(k).

**LATHAM & WATKINS** LLP

Please contact the undersigned at (212) 906-1324 or by email at [jenna.cooper@lw.com](mailto:jenna.cooper@lw.com) to discuss any questions you may have regarding this matter.

Sincerely,



Jenna Cooper  
of LATHAM & WATKINS LLP

Enclosures

cc: Meredith Benton  
Sarah Wynn-Williams, Minderoo Foundation Ltd  
Sam Whittington, Apple Inc.

## **Exhibit A**

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

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

Whereas:

In 1947, the Court of Appeals for the Third Circuit upheld the right of a shareholder to submit a proposal on shareholder approval of the auditor, stating that “A corporation is run for the benefit of its stockholders and not for that of its managers.”<sup>1</sup> The SEC’s Staff has made clear that “a cornerstone of shareholder engagement on important matters”<sup>2</sup> is the shareholder resolution process.

In our view, a high vote for a shareholder proposal indicates that investors believe insufficient attention has been paid by the company’s management or Board to the issue at hand.

Apple’s Corporate Governance Guidelines state that the Board of Directors oversees the CEO and senior management and “seeks to ensure that the long-term interests of shareholders are being served.” The Guidelines also state that “The Board believes that management speaks for the Corporation” and that it is only in “unusual circumstances” that individual directors will to be authorized to speak with investors or other stakeholders.

If Apple’s Board members are restricted in when they speak with stakeholders, this may undermine the Board’s ability to, per the Corporate Governance Guidelines, proactively “ensure that the Corporation is committed to business success through the maintenance of high standards of responsibility and ethics.”<sup>3</sup>

For example, in 2022, Nia Impact Capital (“Nia”) submitted a resolution requesting that the Board review Apple’s use of concealment clauses in the context of harassment, discrimination and other unlawful acts. The resolution received support from 50.4% of all shares voted “For” and “Against.”

Apple management had stated that it was “not aware” of the use of concealment clauses and that “Apple does not limit employees’ and contractors’ ability to speak freely about harassment, discrimination, and other unlawful acts in the workplace.”<sup>4</sup> However, shortly after this statement a former Apple employee went public with a severance agreement that Apple had asked her to sign which included non-disclosure and non-disparagement clauses related to workplace conditions.<sup>5</sup>

This discrepancy undermined Nia’s confidence in management’s representation of Apple’s use of concealment clauses. Despite the high vote showing that other investors shared

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<sup>1</sup> <https://casetext.com/case/securities-exch-comn-v-transamerica-corp>

<sup>2</sup> <https://www.sec.gov/corpfin/staff-legal-bulletin-14l-shareholder-proposals>

<sup>3</sup> [https://s2.q4cdn.com/470004039/files/doc\\_downloads/gov\\_docs/Corporate-Governance-Guidelines.pdf](https://s2.q4cdn.com/470004039/files/doc_downloads/gov_docs/Corporate-Governance-Guidelines.pdf)

<sup>4</sup> <https://www.sec.gov/divisions/corpfin/cf-noaction/14a-8/2021/niaapple122021-14a8.pdf>

<sup>5</sup>

<https://www.businessinsider.com/apple-sec-response-under-scrutiny-after-whistleblower-comes-forward?r=US&IR=T>

these concerns and an explicit request made by Nia and other investors for a meeting, no Board member has agreed to a meeting.

Resolved:

Apple shareholders urge the Board to adopt a policy that, should holders of a majority of non-insider shares voted support a shareholder proposal (calculated by dividing (i) "For" votes by (ii) the sum of votes cast "For" and "Against", minus the shares held by current executive officers and Board members as reported in the proxy statement), a Board member or members, identified by the Nominating Committee Chair, will be made available for a discussion with the proposal's proponents within three months of Apple filing its Report on Form 8-K containing the voting results.

Supporting statement:

Neither the Board nor Apple or the resolution's proponents would be obligated to take any action as a result of this discussion.

## Copy of Related Correspondence

**From:** Kelly Hall [REDACTED]  
**Subject:** Nia Impact Capital Shareholder Resolution  
**Date:** September 2, 2022 at 3:49:45 PM PDT  
**To:** [shareholderproposal@apple.com](mailto:shareholderproposal@apple.com)  
**Cc:** Meredith Benton [REDACTED], Jaylen Spann [REDACTED], Kristin Hull [REDACTED], Tejas Gala [REDACTED]

Hello,

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

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

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

Warm regards,  
Kelly

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



September 2nd, 2022

**Via email to shareholderproposal@apple.com:**

Attn: Corporate Secretary  
One Apple Park Way  
MS: 927-4GC  
Cupertino, CA 95014 USA

Re: Shareholder proposal for 2023 Annual Shareholder Meeting

To the Corporate Secretary:

Nia Impact Capital is submitting the attached proposal (the “Proposal”) pursuant to the Securities and Exchange Commission’s Rule 14a-8 to be included in the proxy statement of Apple Inc. (the “Company”) for its 2023 annual meeting of shareholders. Nia Impact Capital is the lead filer of this resolution and may be joined by other shareholders as co-filers.

Nia Impact Capital has continuously beneficially owned, for at least 2 years as of the date hereof, at least \$15,000 worth of the Company’s common stock. Verification of this ownership will be sent under separate cover. Nia Impact Capital intends to continue to hold such shares through the date of the Company’s 2023 annual meeting of shareholders.

Nia Impact Capital is available to meet with the Company in person or via teleconference on Tuesday, September 13th  
2:00 – 3:00pm PDT

Monday, September 19  
12:30 – 1:30pm PDT

Friday, September 23  
12:00 – 1:00pm PDT

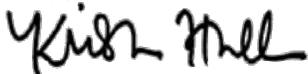
Monday, September 26  
12:00 – 1:00pm PDT

Tuesday, September 27  
12:00 – 1:00pm PDT

Any co-filers will either (a) be available on those dates and times or (b) in their submission letters, authorize us to engage with the Company on their behalf, within the meaning of Rule 14a-8(b)(iii)(B).

Please send future correspondence and communications regarding this proposal to my representative Meredith Benton who can be contacted at [REDACTED] or [REDACTED].

Sincerely,

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

Kristin Hull  
Founder, CEO  
cc. Sam Whittington, Meredith Benton

Whereas:

In 1947, the Court of Appeals for the Third Circuit upheld the right of a shareholder to submit a proposal on shareholder approval of the auditor, stating that “A corporation is run for the benefit of its stockholders and not for that of its managers.”<sup>1</sup> The SEC’s Staff has made clear that “a cornerstone of shareholder engagement on important matters”<sup>2</sup> is the shareholder resolution process.

In our view, a high vote for a shareholder proposal indicates that investors believe insufficient attention has been paid by the company’s management or Board to the issue at hand.

Apple’s Corporate Governance Guidelines state that the Board of Directors oversees the CEO and senior management and “seeks to ensure that the long-term interests of shareholders are being served.” The Guidelines also state that “The Board believes that management speaks for the Corporation” and that it is only in “unusual circumstances” that individual directors will to be authorized to speak with investors or other stakeholders.

If Apple’s Board members are restricted in when they speak with stakeholders, this may undermine the Board’s ability to, per the Corporate Governance Guidelines, proactively “ensure that the Corporation is committed to business success through the maintenance of high standards of responsibility and ethics.”<sup>3</sup>

For example, in 2022, Nia Impact Capital (“Nia”) submitted a resolution requesting that the Board review Apple’s use of concealment clauses in the context of harassment, discrimination and other unlawful acts. The resolution received support from 50.4% of all shares voted “For” and “Against.”

Apple management had stated that it was “not aware” of the use of concealment clauses and that “Apple does not limit employees’ and contractors’ ability to speak freely about harassment, discrimination, and other unlawful acts in the workplace.”<sup>4</sup> However, shortly after this statement a former Apple employee went public with a severance agreement that Apple had asked her to sign which included non-disclosure and non-disparagement clauses related to workplace conditions.<sup>5</sup>

This discrepancy undermined Nia’s confidence in management’s representation of Apple’s use of concealment clauses. Despite the high vote showing that other investors shared

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<sup>1</sup> <https://casetext.com/case/securities-exch-com-v-transamerica-corp>

<sup>2</sup> <https://www.sec.gov/corpfin/staff-legal-bulletin-14l-shareholder-proposals>

<sup>3</sup> [https://s2.q4cdn.com/470004039/files/doc\\_downloads/gov\\_docs/Corporate-Governance-Guidelines.pdf](https://s2.q4cdn.com/470004039/files/doc_downloads/gov_docs/Corporate-Governance-Guidelines.pdf)

<sup>4</sup> <https://www.sec.gov/divisions/corpfin/cf-noaction/14a-8/2021/niaapple122021-14a8.pdf>

<sup>5</sup>

<https://www.businessinsider.com/apple-sec-response-under-scrutiny-after-whistleblower-comes-forward?r=US&IR=T>

these concerns and an explicit request made by Nia and other investors for a meeting, no Board member has agreed to a meeting.

Resolved:

Apple shareholders urge the Board to adopt a policy that, should holders of a majority of non-insider shares voted support a shareholder proposal (calculated by dividing (i) "For" votes by (ii) the sum of votes cast "For" and "Against", minus the shares held by current executive officers and Board members as reported in the proxy statement), a Board member or members, identified by the Nominating Committee Chair, will be made available for a discussion with the proposal's proponents within three months of Apple filing its Report on Form 8-K containing the voting results.

Supporting statement:

Neither the Board nor Apple or the resolution's proponents would be obligated to take any action as a result of this discussion.

**From:** Sarah Wynn-Williams [REDACTED]  
**Subject:** Shareholder Resolution: Minderoo Co-Filing  
**Date:** September 8, 2022 at 12:04:25 PM PDT  
**To:** "[shareholderproposal@apple.com](mailto:shareholderproposal@apple.com)" <[shareholderproposal@apple.com](mailto:shareholderproposal@apple.com)>

Dear Corporate Secretary,

Please find attached Minderoo's Shareholder Proposal Co-Filing.

We ask that you confirm receipt.

Kind regards,

Sarah Wynn-Williams

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**Sarah Wynn-Williams**  
Minderoo Foundation • Frontier Technology



M [REDACTED]  
P [REDACTED]  
L London (GMT+0)

E [REDACTED]  
W [minderoo.org](http://minderoo.org)

Please consider the environment before printing this email.

This email and any attachments may contain confidential information and may be subject to legal professional privilege. This email and attachments are intended only for the named addressee. If you are not the named addressee your access to this material is not authorised and you should not disseminate, distribute or copy this e-mail or use the information contained in it. Please notify the sender immediately by e-mail if you have received this e-mail by mistake and delete this e-mail from your system. The sender does not guarantee that this e-mail or any attachments are secure, error-free or free from viruses. The sender therefore does not accept liability for any loss or damage resulting (either directly or indirectly) from any such error or virus. The content and opinions set out in this email and any attachments are not necessarily those of Minderoo Foundation Limited, Tattarang Pty Ltd, their respective related entities, nor any person or entity who is or becomes a director, company secretary, officer, member, manager, employee or contractor (whether directly or indirectly) or related entity of the previously specified entities. This email and any attachments are also subject to copyright and may not be reproduced without permission.



Co-filer filing on own behalf (no representative)

8 September 2022

**Via Email**

Apple  
One Apple Park Way, MS: 927-4GC, Cupertino, CA 95014 USA  
Attn: Corporate Secretary

Re: Shareholder proposal for 2023 Annual Shareholder Meeting

Dear Corporate Secretary,

Minderoo Foundation Ltd, as trustee for Minderoo Foundation Trust is submitting the attached proposal (the “Proposal”) pursuant to the Securities and Exchange Commission’s Rule 14a-8 to be included in the proxy statement of Apple (the “Company”) for its 2023 Annual Meeting of Shareholders. Minderoo Foundation Ltd, as trustee for Minderoo Foundation Trust is co-filing the Proposal with lead filer Nia Impact Capital. In its submission letter, Nia Impact Capital will provide dates and times of ability to meet. We designate the lead filer to meet initially with the Company but may join the meeting subject to our availability.

Minderoo Foundation Ltd, as trustee for Minderoo Foundation Trust has continuously beneficially owned, for at least three years as of the date hereof, at least \$10 000 000 worth of the Company’s common stock. Verification of this ownership will be sent under separate cover. Minderoo Foundation Ltd, as trustee for Minderoo Foundation Trust intends to continue to hold such shares through the date of the Company’s 2023 annual meeting of shareholders.

If you have any questions or need additional information, I can be contacted on [REDACTED]  
or by email at [REDACTED]

Sincerely,



Sarah Wynn-Williams

**Sarah Wynn-Williams**

Minderoo Foundation • Frontier Technology



M [REDACTED]  
P [REDACTED]  
L London (GMT+0)

E [REDACTED]  
W [minderoo.org](http://minderoo.org)

Whereas:

In 1947, the Court of Appeals for the Third Circuit upheld the right of a shareholder to submit a proposal on shareholder approval of the auditor, stating that “A corporation is run for the benefit of its stockholders and not for that of its managers.”<sup>1</sup> The SEC’s Staff has made clear that “a cornerstone of shareholder engagement on important matters”<sup>2</sup> is the shareholder resolution process.

In our view, a high vote for a shareholder proposal indicates that investors believe insufficient attention has been paid by the company’s management or Board to the issue at hand.

Apple’s Corporate Governance Guidelines state that the Board of Directors oversees the CEO and senior management and “seeks to ensure that the long-term interests of shareholders are being served.” The Guidelines also state that “The Board believes that management speaks for the Corporation” and that it is only in “unusual circumstances” that individual directors will to be authorized to speak with investors or other stakeholders.

If Apple’s Board members are restricted in when they speak with stakeholders, this may undermine the Board’s ability to, per the Corporate Governance Guidelines, proactively “ensure that the Corporation is committed to business success through the maintenance of high standards of responsibility and ethics.”<sup>3</sup>

For example, in 2022, Nia Impact Capital (“Nia”) submitted a resolution requesting that the Board review Apple’s use of concealment clauses in the context of harassment, discrimination and other unlawful acts. The resolution received support from 50.4% of all shares voted “For” and “Against.”

Apple management had stated that it was “not aware” of the use of concealment clauses and that “Apple does not limit employees’ and contractors’ ability to speak freely about harassment, discrimination, and other unlawful acts in the workplace.”<sup>4</sup> However, shortly after this statement a former Apple employee went public with a severance agreement that Apple had asked her to sign which included non-disclosure and non-disparagement clauses related to workplace conditions.<sup>5</sup>

This discrepancy undermined Nia’s confidence in management’s representation of Apple’s use of concealment clauses. Despite the high vote showing that other investors shared

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<sup>2</sup> <https://www.sec.gov/corpfin/staff-legal-bulletin-14l-shareholder-proposals>

<sup>3</sup> [https://s2.q4cdn.com/470004039/files/doc\\_downloads/gov\\_docs/Corporate-Governance-Guidelines.pdf](https://s2.q4cdn.com/470004039/files/doc_downloads/gov_docs/Corporate-Governance-Guidelines.pdf)

<sup>4</sup> <https://www.sec.gov/divisions/corpfin/cf-noaction/14a-8/2021/niaapple122021-14a8.pdf>

<sup>5</sup>

<https://www.businessinsider.com/apple-sec-response-under-scrutiny-after-whistleblower-comes-forward?r=US&IR=T>

these concerns and an explicit request made by Nia and other investors for a meeting, no Board member has agreed to a meeting.

Resolved:

Apple shareholders urge the Board to adopt a policy that, should holders of a majority of non-insider shares voted support a shareholder proposal (calculated by dividing (i) "For" votes by (ii) the sum of votes cast "For" and "Against", minus the shares held by current executive officers and Board members as reported in the proxy statement), a Board member or members, identified by the Nominating Committee Chair, will be made available for a discussion with the proposal's proponents within three months of Apple filing its Report on Form 8-K containing the voting results.

Supporting statement:

Neither the Board nor Apple or the resolution's proponents would be obligated to take any action as a result of this discussion.

November 18, 2023

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

Re: Request by Apple Inc. to omit proposal submitted by Nia Impact Capital and the Mindereroo Foundation Ltd.

Ladies and Gentlemen,

Pursuant to Rule 14a-8 under the Securities Exchange Act of 1934, Nia Impact Capital and the Mindereroo Foundation Ltd. (collectively, the “Proponents”) submitted a shareholder proposal (the “Proposal”) to Apple Inc. (“Apple” or the “Company”). The Proposal asks Apple’s board to adopt a policy of making one or more board members, to be identified by the Nominating Committee chair, available to meet with the proponent(s) of a shareholder proposal that obtains support from holders of a majority of non-insider shares voted for and against the proposal at a shareholder meeting.

In a letter to the Division dated October 24, 2022 (the “No-Action Request”), Apple stated that it intends to omit the Proposal from its proxy materials to be distributed to shareholders in connection with the Company's 2023 annual meeting of shareholders. Apple argues that it is entitled to exclude the Proposal in reliance on Rule 14a-8(i)(7), on the ground that the Proposal relates to Apple’s ordinary business operations. Because the Proposal addresses a board-level governance process, and not simply “when and how a company chooses to communicate with its shareholders,” Apple has not met its burden of showing it is entitled to omit the Proposal. Accordingly, the Proponents respectfully request that Apple’s request for relief be denied.

### **The Proposal**

The Proposal states:

Resolved: Apple shareholders urge the Board to adopt a policy that, should holders of a majority of non-insider shares voted support a shareholder proposal (calculated by dividing (i) “For” votes by (ii) the sum of votes cast “For” and “Against”, minus the shares held by current executive officers and Board members as reported in the proxy statement), a Board member or members, identified by the Nominating Committee Chair, will be made available for a discussion with the proposal's proponents within three months of Apple filing its Report on Form 8-K containing the voting results.

### **Ordinary Business**

Rule 14a-8(i)(7) allows omission of a proposal that relates to a company's ordinary business operations. Apple claims that the subject matter of the Proposal makes it excludable on ordinary business grounds. Specifically, Apple claims that the Proposal addresses shareholder communications, which Apple argues is invariably an ordinary business matter. This argument is unpersuasive.

The ordinary business exclusion is grounded in the notion that it is impractical to allow "direct shareholder oversight" of "tasks that are "fundamental to management's ability to run a company on a day-to-day basis."<sup>1</sup> That concern is not implicated by the Proposal. The aim of the Proposal is to establish a corporate governance mechanism for elevating to the board level discussion of a shareholder proposal where, as indicated by the majority support vote received, investors feel that the actions taken thus far by management have not fully addressed the issue.

A company's board and management serve different yet overlapping interests and have different perspectives on governance issues: The board's oversight responsibilities lead it to take a longer-term view which may give greater emphasis to risk mitigation, while management's time horizon, which is shaped by employment-related incentives, is often shorter. As well, shareholder proposals may press for governance changes, such as shifts in senior executive pay policies and practices, on which management has a conflict of interest. For these reasons, the Proponents believe that a governance mechanism providing for director engagement in the event of a majority-vote shareholder proposal can create greater alignment with shareholder interests

The determinations Apple cites, which take up nearly a page of the No-Action Request, reflect the policy set forth in the 1998 Release: Most of the proposals sought to influence companies' regular, ongoing processes for communicating with shareholders. For example, the proposals submitted to Citigroup<sup>2</sup> and Peregrine Pharmaceuticals<sup>3</sup> urged the companies to adopt specific modalities (email and public conference calls, respectively) for ongoing communications with shareholders. Similarly, Comverse Technology<sup>4</sup> involved a proposal requesting the establishment of an "Office of the Board of Directors" to facilitate communication between outside directors and shareholders. Thus, those proposals clearly would have given shareholders input into the details of day-to-day shareholder communications.

Five of the determinations on which Apple relies did not even cite "shareholder communications" as the reason exclusion was allowed. In ARIAD Pharmaceuticals,<sup>5</sup> the proposal itself posed six questions for the company to answer regarding recent events related to a threatened proxy contest, rather than trying to influence the process of ongoing shareholder communications. The questions did not clearly relate to non-ordinary business matters, and the supporting statement referred to the company's code of conduct, a matter the Staff has consistently treated as ordinary business. The determination did not mention shareholder communications. The other four determinations on which Apple relies allowed exclusion of proposals that suggested changes to how the companies' annual shareholder meetings were conducted, also a topic long considered ordinary business by the Staff.<sup>6</sup>

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<sup>1</sup> Exchange Act Release No. 40018 (May 21, 1998) (hereinafter, the "1998 Release").

<sup>2</sup> Citigroup, Inc. (Jan. 6, 2012).

<sup>3</sup> Peregrine Pharmaceuticals, Inc. (June 28, 2005).

<sup>4</sup> Comverse Technology, Inc. (Sept. 8, 2003), *recon. denied* (Mar. 15, 2004).

<sup>5</sup> ARIAD Pharmaceuticals, Inc. (June 1, 2016).

<sup>6</sup> Servotronics, Inc. (Feb. 19, 2015); Citigroup, Inc. (Feb. 7, 2013); Exxon Mobil Corp. (Mar. 2, 2005); AmSouth Bancorp (Jan. 15, 2002).

The Proposal is clearly distinguishable from the proposals in these determinations. Most importantly, the Proposal does not ask Apple to change how it generally communicates with shareholders. That the Proposal does not address day-to-day shareholder communications is evidenced by the narrow set of circumstances under which it would apply. The Proposal would apply only when a shareholder proposal has achieved support from a majority of non-insider shares voting for and against the proposal and, by implication, when Apple's management has not sufficiently addressed that proposal within three months of disclosure of the voting results.

Even the first of those two conditions occurs very rarely. At Apple, two majority votes were obtained on shareholder proposals at the 2022 annual meeting,<sup>7</sup> however, no shareholder proposal achieved majority support in 2021,<sup>8</sup> 2020,<sup>9</sup> 2019,<sup>10</sup> 2018,<sup>11</sup> 2017,<sup>12</sup> 2016,<sup>13</sup> 2015,<sup>14</sup> 2014,<sup>15</sup> or 2013.<sup>16</sup> A mechanism that is potentially triggered twice in ten years cannot reasonably be characterized as interfering in "management's ability to run a company on a day-to-day basis," as the 1998 Release put it.<sup>17</sup>

Apple does not concede any limit on the applicability of its argument that proposals dealing with when and how it communicates with shareholders are excludable. Under Apple's approach, any proposal suggesting that a company provide additional information to shareholders would be excludable on ordinary business grounds. But that cannot be the case. Many shareholder proposals seek additional reporting, and a significant number specify the interval (e.g., annually). The Staff has rejected no-action requests premised on the notion that a shareholder proposal can never suggest changes in when and how a company communicates with its shareholders. For example, in *Crescent Real Estate Equities*,<sup>18</sup> the company argued that a proposal requesting disclosure on related party transactions was excludable on ordinary business grounds because it addressed procedures for communicating with shareholders. The Staff declined to grant relief.

Finally, the Proponents do not take the position that the Proposal deals with a significant social policy issue transcending ordinary business. Rather, in our view, the Proposal does not address ordinary business matters in the first place, since it does not seek to influence Apple's general shareholder communications or the conduct of its annual shareholder meeting.

In sum, the Proposal urges the adoption of a governance mechanism applicable in a specific and rare set of circumstances, if supported by a majority of Apple's external shareholders. It is designed to provide input to the board regarding majority-supported shareholder proposals that Apple management has not implemented, not to restructure shareholder-director or shareholder-company communications. Accordingly, the Proponents respectfully asks that Apple's request to omit the Proposal in reliance on the ordinary business exclusion be denied.

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<sup>7</sup> <https://www.sec.gov/ix?doc=/Archives/edgar/data/0000320193/000119312522066169/d294699d8k.htm>

<sup>8</sup> <https://www.sec.gov/ix?doc=/Archives/edgar/data/0000320193/000119312521054710/d101693d8k.htm>

<sup>9</sup> <https://www.sec.gov/ix?doc=/Archives/edgar/data/0000320193/000119312520050884/d865740d8k.htm>

<sup>10</sup> <https://www.sec.gov/Archives/edgar/data/320193/000032019319000032/copyofreference8-kform8xkq.htm>

<sup>11</sup> <https://www.sec.gov/Archives/edgar/data/320193/000119312518045761/d374908d8k.htm>

<sup>12</sup> <https://www.sec.gov/Archives/edgar/data/320193/000119312517064019/d342218d8k.htm>

<sup>13</sup> <https://www.sec.gov/Archives/edgar/data/320193/000119312516488223/d150918d8k.htm>

<sup>14</sup> [https://www.sec.gov/Archives/edgar/data/320193/000110465915019336/a15-5624\\_18k.htm](https://www.sec.gov/Archives/edgar/data/320193/000110465915019336/a15-5624_18k.htm)

<sup>15</sup> <https://www.sec.gov/Archives/edgar/data/320193/000119312514084697/d684095d8k.htm>

<sup>16</sup> <https://www.sec.gov/Archives/edgar/data/320193/000119312513085842/d493940d8k.htm>

<sup>17</sup> Exchange Act Release No. 40018 (May 21, 1998).

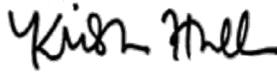
<sup>18</sup> *Crescent Real Estate Equities Co.* (Mar. 28, 2005).

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

Sincerely,



Kristin Hull, PhD  
Founder, CEO and CIO



Sarah Wynn-Williams  
Director,  
Frontier Technology  
Minderoo Foundation

cc: Jenna Cooper  
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