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

DIVISION OF
CORPORATION FINANCE

January 2, 2025

Ronald O. Mueller
Gibson, Dunn & Crutcher LLP

Re: Apple Inc. (the "Company")
Incoming letter dated October 21, 2024

Dear Ronald O. Mueller:

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

The Proposal requests that the Company prepare a transparency report on the costs and benefits of the Company's decisions regarding its use of child sex abuse material identifying software.

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

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/2024-2025-shareholder-proposals-no-action.

Sincerely,

Rule 14a-8 Review Team

cc: Jerry Bowyer
Bowyer Research, Inc.

GIBSON DUNN

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October 21, 2024

VIA ONLINE PORTAL SUBMISSION

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

Re: *Apple Inc.*
Shareholder Proposal of American Family Association
Securities Exchange Act of 1934—Rule 14a-8

Ladies and Gentlemen:

This letter is to inform you that our client, Apple Inc. (the "Company" or "Apple"), intends to omit from its proxy statement and form of proxy for its 2025 Annual Meeting of Shareholders (collectively, the "2025 Proxy Materials") a shareholder proposal (the "Proposal") and statement in support thereof (the "Supporting Statement") received from American Family Association (the "Proponent").

Pursuant to Rule 14a-8(j), we have:

- filed this letter with the Securities and Exchange Commission (the "Commission") no later than eighty (80) calendar days before the Company intends to file its definitive 2025 Proxy Materials with the Commission; and

- concurrently sent copies of this correspondence to the Proponent.

Rule 14a-8(k) and Staff Legal Bulletin No. 14D (Nov. 7, 2008) ("SLB 14D") provide that shareholder proponents are required to send companies a copy of any correspondence that the proponents elect to submit to the Commission or the staff of the Division of Corporation Finance (the "Staff"). Accordingly, we are taking this opportunity to inform the Proponent that if the Proponent elects to submit additional correspondence to the Commission or the Staff with respect to this Proposal, a copy of that correspondence should be furnished concurrently to the undersigned on behalf of the Company pursuant to Rule 14a-8(k) and SLB 14D.

THE PROPOSAL

The Proposal states:

> **Resolved**: Shareholders request that Apple Inc. prepare a transparency report on the costs and benefits of the company's decisions regarding its use of child sex abuse material (CSAM) identifying software. This report shall be made publicly available to the company's shareholders on the company's website, be prepared at a reasonable cost, and omit proprietary information, litigation strategy and legal compliance information.

The Supporting Statement elaborates on the subject of the Proposal by asserting that "the balance of privacy and safety at Apple has tilted in a concerning direction" and stating, "[s]uch instances include Apple's decision to reverse the implementation of NeuralHash, a program designed to scan for child sexual abuse material while maintaining user privacy. . . . Shareholders who care about both user privacy and child safety deserve further information on the way in which Apple arrived at this decision."

A copy of the Proposal and the Supporting Statement is attached to this letter as Exhibit A.

BACKGROUND

Apple's goal has been and remains to create technology that empowers and enriches people's lives. Apple agrees that child sexual abuse material ("CSAM") is abhorrent, and Apple is intently focused on breaking the chain of coercion and influence that makes children susceptible to exploitation.

Apple already has deployed many technologies to protect children online, and it intends to continue working collaboratively with child safety organizations, technologists, and governments on enduring solutions that help protect the most vulnerable members of our society, while avoiding broad-based monitoring and surveillance which could imperil users' security and privacy. For example, in December 2021, Apple introduced Communication Safety, a feature designed to address online exploitation and the unwanted sharing of images, and has continued to expand this powerful tool. Communication Safety aims to help keep children safe by warning them when they receive or attempt to send images or videos containing nudity in Messages, AirDrop, Contact Posters in the Phone app, FaceTime video messages, and the system Photos picker. When receiving this type of content, the photo or video will be blurred and the user will be warned, presented with helpful resources, and reassured it is okay if they do not want to view the photo or video. Similar protections are available if a child attempts to send photos or videos that contain nudity. In both cases, children are given the option to message someone they trust for help if they choose.

For accounts of children under 13, Communication Safety is now on by default, and parents who have enabled a Screen Time passcode can prevent their children under 13 from being able to view or send an image or video that the system has detected as containing nudity, unless the Screen Time passcode is entered on the child's device.

Importantly, this feature analyzes image and video attachments and determines if the content contains nudity without sending information off the device. The feature is designed so that no indication of the detection of nudity leaves the device.

Apple also has made Communication Safety available to third parties with the Sensitive Content Analysis Framework, and developers of communication apps are actively incorporating this advanced technology into their products.

In addition, Apple deploys other technologies to help protect children online. It expanded guidance in Siri, Spotlight, and Safari Search by providing additional resources to help children and parents stay safe online and obtain assistance if they encounter unsafe situations, and updated Siri, Spotlight, and Safari Search to intervene when users perform searches for queries related to child exploitation. It also has deployed features that allow parents to understand the time their children spend using their devices, set limits on specific apps and features, define specific contacts with whom their children may communicate, and restrict their children's ability to listen to or watch certain content. The Limit Adult Websites setting is also on by default in Safari for children under 13, and for accounts that have Screen Time passcode enabled, this means that the Limit Adult Websites setting will not allow children under 13 to access the restricted content unless the Screen Time passcode is entered.

Both Communication Safety and the Limit Adult Websites setting can be applied by the family organizer for users between the ages of 13 and 17.

BASES FOR EXCLUSION

We hereby respectfully request that the Staff concur in our view that the Proposal may be excluded from the 2025 Proxy Materials pursuant to Rule 14a-8(i)(7) because (1) the Proposal deals with a matter relating to the Company's ordinary business operations, and (2) the Proposal seeks to micromanage the Company. The Proposal focuses on the Company's choice of technologies and decisions regarding product development and particular service offerings deployed by the Company in its efforts to combat CSAM. In addition, the Proposal does not raise issues with a broad societal impact, such that they transcend the Company's ordinary business, but instead focuses on a cost/benefit analysis of a specific technology. Because the Proposal is narrowly focused on the Company's choice of technologies and decisions regarding product development and particular service offerings and a cost/benefit analysis of one particular technology, it implicates ordinary business considerations and seeks to micromanage the

Company within the scope of Rule 14a-8(i)(7), and accordingly the Proposal can properly be omitted.

ANALYSIS

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

A. Background On The Ordinary Business Standard.

Rule 14a-8(i)(7) permits a company to omit from its proxy materials a shareholder proposal that relates to the company's ordinary business operations. According to the Commission's release accompanying the 1998 amendments to Rule 14a-8, the term "ordinary business" does not "refer[] to matters that are . . . 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 stated 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."

The 1998 Release identified two central considerations that underlie this policy. *Id.* The first of those considerations 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 Commission stated that examples of tasks that implicate the ordinary business standard include "the management of the workforce . . . decisions on production quality and quantity, and the retention of suppliers." *Id.* The second consideration relates to "the degree to which the proposal seeks to 'micro-manage' the company by probing too deeply into matters of a complex nature upon which shareholders, as a group, would not be in a position to make an informed judgment." *Id.*, *citing* Exchange Act Release No. 12999 (Nov. 22, 1976) (the "1976 Release").

When assessing proposals under Rule 14a-8(i)(7), the Staff considers the terms of the resolution and its supporting statement as a whole. *See* Staff Legal Bulletin No. 14C, part D.2 (June 28, 2005) ("[i]n determining whether the focus of these proposals is a significant social policy issue, we consider both the proposal and the supporting statement as a whole."). A shareholder proposal being framed in the form of a request for a report does not change the nature of the proposal. The Commission has stated that a proposal requesting the dissemination of a report may be excludable under Rule 14a-8(i)(7) if the subject matter of the proposed report is within the ordinary business of the issuer. *See* Exchange Act Release No. 20091 (Aug. 16, 1983); *Johnson Controls, Inc.* (avail. Oct. 26, 1999) ("[w]here the subject matter of the

additional disclosure sought in a particular proposal involves a matter of ordinary business . . . it may be excluded under [R]ule 14a-8(i)(7).").

B. The Proposal May Be Excluded Under Rule 14a-8(i)(7) Because It Relates To The Company's Choice of Technology And Product Development.

The Proposal relates to the Company's choice of technologies and decisions regarding product development and particular service offerings deployed by the Company in its efforts to combat CSAM. This focus is demonstrated by both the wording of the Proposal, which addresses the Company's decisions regarding a specific technology ("use of [CSAM] identifying software"), and the Supporting Statement, which addresses "Apple's decision to reverse the implementation of NeuralHash."[1] Moreover, the Proposal is not focused on the societal implications of the Company's choice of technology, which Apple has already publicly addressed through an open letter,[2] but instead on the "costs and benefits" of the decision, asserting that "[s]hareholders . . . deserve further information on the way in which Apple arrived at this decision."[3] As such, the Proposal is not focused on a broad societal issue, such as whether to address the problem of CSAM, which the Company is already working to address through its use of other, privacy-protecting, technology. Instead, the Proposal focuses on the Company's choice of technologies and decisions regarding product development and particular service offerings deployed to try to combat this problem.

Determining which technologies and services to employ in furthering detection and deterrence of CSAM within the Company's product offerings involves management considerations of complex factors, such as the impacts of such technology on users' data security and privacy, the reliability of various technologies, the potential for misuse or reconfiguration of technologies, legal and compliance considerations, and the potential impacts of such programs on customer relations and brand reputation. In fact, as set forth in Exhibit B to this letter, the Company has already publicly reported that these considerations supported its determination not to pursue development and implementation of the NeuralHash CSAM-identifying software within iCloud Photos. In determining which technologies to deploy, the Company consulted extensively with child safety advocates, human rights organizations, privacy and security technologists, and academics and concluded it was not practically possible to implement the NeuralHash program within iCloud Photos without ultimately imperiling the security and privacy of those using the Company's products and services. Instead, the Company has developed a number of innovative

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[1] "NeuralHash" is a perceptual hashing technology which Apple developed and separately proposed using as part of a hybrid client-server approach to CSAM detection for iCloud Photos.

[2] *See* publicly available Apple Letter to Heat Initiative (Aug. 31, 2023), at Exhibit B.

[3] The final paragraph of the Supporting Statement also makes assertions about various other alleged practices which do not relate directly to the use of CSAM identifying software.

technologies, such as its Communication Safety feature, which help protect children online, and do so in a privacy-protecting way.

Decisions regarding which technologies to deploy to address a particular situation are exactly the type of management decisions that are not appropriate for shareholder oversight through the shareholder proposal process. The Staff has repeatedly concurred that proposals that concern a company's choice of technologies for use in its operations are generally excludable under Rule 14a-8(i)(7) as related to ordinary business matters. For example, in *FirstEnergy Corp.* (avail. Mar. 8, 2013), the proposal requested that the company report on actions it is taking or could take to "diversify[] the [c]ompany's energy resources to include increased energy efficiency and renewable energy sources." The Staff concurred with exclusion of the proposal under Rule 14a-8(i)(7), stating, "[p]roposals that concern a company's choice of technologies for use in its operations are generally excludable under rule 14a-8(i)(7)." *See also AT&T Inc.* (avail. Jan. 4, 2017) (concurring with exclusion under Rule 14a-8(i)(7) of a proposal requesting a report on the company's progress toward providing Internet service and products for low-income customers); *PG&E Corp.* (avail. Mar. 10, 2014) (concurring with the exclusion under Rule 14a-8(i)(7) of a proposal advocating that the company make analog electrical meters available instead of "smart" meters); *AT&T Inc.* (avail. Feb. 13, 2012) (concurring with exclusion under Rule 14a-8(i)(7) of a proposal requesting a report on financial and reputational risks posed by continuing to use technology that inefficiently consumed electricity); *CSX Corp.* (avail. Jan. 24, 2011) (concurring with the exclusion of a proposal requesting that the company develop a kit to convert its fleet to fuel cell power, noting that "[p]roposals that concern a company's choice of technologies for use in its operations are generally excludable under rule 14a-8(i)(7)").

The precedents demonstrating that choice of technology implicates the ordinary business standard are consistent with similar well-established precedents establishing that shareholder proposals relating to the development of products and service offerings, including the choices implicated therein, are excludable as relating to a company's ordinary business operations. For instance, in *The Coca-Cola Co.* (avail. Mar. 6, 2024), the Staff concurred with the exclusion under Rule 14a-8(i)(7) of a proposal requesting that the company "move toward more healthy products." There, the company argued that the proposal "[sought] to steer the direction of the Company's product portfolio," implicating the company's routine business decisions in its approach to its product lines. Similarly, in *Ball Corp.* (avail. Feb. 4, 2016), the Staff concurred with the exclusion under Rule 14a 8(i)(7) of a proposal requesting that the company issue a report on the company's policies, actions and plans to reduce BPA use in its products, noting that "[i]n this regard . . . the proposal relates to Ball's product development." *See also, Mondelēz International, Inc.* (avail. Feb. 23, 2016) (concurring with the exclusion under Rule 14a-8(i)(7) of a proposal requesting that the company report on its use of nanomaterials in its products or packaging, noting that "the proposal relates to Mondelēz's product development"); *DENTSPLY International Inc.* (avail. Mar. 21, 2013) (concurring with the

exclusion under Rule 14a-8(i)(7) of a proposal requesting a report on the company's policies and plans for phasing out mercury from its products, stating that "we note that the proposal relates to DENTSPLY's product development. Proposals concerning product development are generally excludable under rule 14a-8(i)(7)").

The Supporting Statement indicates that the goal of the Proposal is to have the Company explain, in terms of costs and benefits, the Company's business decision on whether to use a particular approach to try to combat CSAM, stating, "[s]hareholders who care about both user privacy and child safety deserve further information on the way in which Apple arrived at this decision." However, weighing these and numerous other considerations to determine how to address an issue is inherently the type of routine business determination that Rule 14a-8(i)(7) was intended to address, as choices on the use of technology that a company deploys in its business cannot, in the words of the 1998 Release, "as a practical matter, be subject to direct shareholder oversight." Just as in *FirstEnergy*, where the proposal related to differing technologies that could be employed to address the goal of diversifying the company's energy resources, and *The Coca-Cola Co.*, where the proposal related to how the company determined to pursue more healthy products, here the Proposal addresses which technologies and service offerings the Company has determined to deploy in its efforts to combat CSAM. Because the subject matter of the requested report addresses the Company's choice of technologies and product development decisions, the Proposal is excludable under Rule 14a-8(i)(7).

C. The Proposal Does Not Focus On A Significant Social Policy Issue That Transcends The Company's Ordinary Business Operations.

In the 1998 Release, the Commission reaffirmed the standards for when proposals are excludable under the "ordinary business" provision that the Commission initially articulated in the 1976 Release. In the 1998 Release, the Commission also distinguished proposals pertaining to ordinary business matters that are excludable under Rule 14a-8(i)(7) from those that "focus on" significant social policy issues. The Commission stated, "proposals relating to [ordinary business] matters but focusing on sufficiently significant social policy issues (e.g., significant discrimination matters) generally would not be considered to be excludable, 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." 1998 Release. When assessing proposals under Rule 14a-8(i)(7), the Staff considers the terms of the resolution and its supporting statement as a whole. *See* Staff Legal Bulletin No. 14C, part D.2 (June 28, 2005) ("[i]n determining whether the focus of these proposals is a significant social policy issue, we consider both the proposal and the supporting statement as a whole.").

The Staff most recently discussed how it evaluates whether a proposal "transcends the day-to-day business matters" of a company in Staff Legal Bulletin No. 14L (Nov. 3, 2021) ("SLB 14L"), noting that it is "realign[ing]" its approach to determining whether a proposal relates to ordinary business with the standards the Commission initially articulated in 1976, and

reaffirmed in the 1998 Release. In addition, the Staff stated that it will "no longer tak[e] a company-specific approach to evaluating the significance of a policy issue under Rule 14a-8(i)(7)" but rather will consider only "whether the proposal raises issues with a broad societal impact, such that they transcend the ordinary business of the company."

The Company agrees that CSAM is a significant societal issue that needs to be addressed. The Proposal, however, does not raise a broad societal issue that transcends the Company's ordinary business, but instead focuses on the costs and benefits of the Company's decision regarding a particular technology to address that issue. As such, even though the Proposal references a topic with broad societal implications, that is not the focus of the Proposal. The Proposal therefore can be properly excluded under Rule 14a-8(i)(7).

The Staff consistently has concurred in the exclusion of proposals that reference or arise in the context of a significant policy matter but that address or focus on ordinary business matters. For example, the proposal in *PetSmart, Inc.* (avail. Mar. 24, 2011) requested that the board require its suppliers to certify they had not violated "the Animal Welfare Act, the Lacey Act, or any state law equivalents" which related to preventing animal cruelty. The Staff granted no-action relief under Rule 14a-8(i)(7) because the proposal addressed but did not focus on significant policy issues, stating "[a]lthough the humane treatment of animals is a significant policy issue, we note your view that the scope of the laws covered by the proposal is 'fairly broad in nature from serious violations such as animal abuse to violations of administrative matters such as record keeping.'" Likewise, in *First Energy Corp.*, discussed above, the company received a proposal which requested a report regarding diversification of the Company's energy resources. Despite the fact that the proponents argued that the proposal "ar[ose] from a significant policy issue – alternative energy strategies geared toward reducing power generation's impacts on the climate," the Staff concurred with the exclusion of the proposal, stating that, "[p]roposals that concern a company's choice of technologies for use in its operations are generally excludable under rule 14a-8(i)(7)."

Recent precedents where the Staff concurred with exclusion of proposals that reference or arise in the context of a significant policy matter but that address or focus on ordinary business matters include *Fox Corp.* (avail. Sept. 19, 2024). There, the company received a proposal requesting a report on the social impact and risks to the company from inadequately distinguishing between news content and opinion content and the viability and benefits of such public differentiation, and the company argued that "potential social policy implications in a proposal does not qualify as 'focusing' on such issues, even if the social policies happen to be the subject of substantial public focus." The Staff concurred with the exclusion of the proposal under Rule 14a-8(i)(7). Likewise, in *Shake Shack Inc.* (Apr. 23, 2024), the Staff concurred in the exclusion of a proposal requesting details about the company's claims that its chicken products were hormone-free. The company argued that the proposal was not focused on animal health but instead focused on the company's marketing and advertising of its chicken products, which related to the company's ordinary business. Similarly, in *The Coca-Cola Co.*, discussed above, the Staff concurred in

exclusion under Rule 14a-8(i)(7) because the proposal was not focused on addressing public health concerns but instead questioned the manner in which the company was pursuing those goals, asserting that the company "has addressed this topic until now solely by focusing on sugar and calorie reduction," which the proponent viewed as "insufficient."

Similarly, the Staff has concurred that proposals focusing on a company's costs or financial management do not raise significant policy issues, even if they reference or arise in the context of a significant policy topic. For example, in *Amazon.com, Inc.* (avail. Apr. 10, 2018), the company received a proposal requesting a report on company-wide efforts to assess, reduce, and optimally manage food-waste. In response, the company argued that the proposal focused on the financial implications of the company's grocery operations, which were inherent to the day-to-day operation of the company's business, and that by addressing the costs of food waste the proposal did not focus on a significant social policy issue but instead related to the company's financial management, which was a matter of ordinary business and operational strategy. The Staff concurred with the exclusion of the proposal on Rule 14a-8(i)(7) grounds. *See also CVS Health Corp. (Parker)* (avail. Mar. 8, 2016) (concurring with the exclusion of a proposal under Rule 14a-8(i)(7) that required the company to set targets to increase renewable energy sourcing, followed by several statements pointing to cost savings as a driving factor for the targets, noting that the proposal "reveal[s] a central theme of financial management by emphasizing the creation of cost-savings for the Company."); *FLIR Systems, Inc.* (avail. Feb. 6, 2013) ("[p]roposals that concern the manner in which a company manages its expenses are generally excludable under rule 14a-8(i)(7).").

Just as in the precedents cited above, where the proposals arose in a context that touched on a significant policy issue, but focused on the choices management had made to address that issue, here the Proposal likewise does not focus on a significant policy issue, but instead focuses on use of a very specific technology that has been thoroughly assessed by the Company. Specifically, even though the Proposal relates to CSAM, the focus of the Proposal is on issues that squarely fall within the scope of management's routine management under the ordinary business standard: the "costs and benefits of the company's decisions regarding its use of child sex abuse material (CSAM) identifying software." By focusing on a single type of technology, and a cost/benefit analysis of only that technology, the Proposal seeks to constrain the many different considerations that management evaluates when assessing which technology, and which product and service offerings, to deploy, as well as how management evaluates the pros and cons (both financial and otherwise) of one technology in comparison to other approaches to addressing the same issue. Thus, just as with *FirstEnergy*, *The Coca-Cola Co.*, *Amazon.com* and the other precedents cited above, the Proposal properly may be excluded under Rule 14a-8(i)(7).

D. The Proposal Is Excludable Because It Seeks To Micromanage The Company.

As explained above, the Commission stated in the 1998 Release that one of the considerations underlying the ordinary business exclusion is "the degree to which the proposal seeks to

'micro-manage' the company by probing too deeply into matters of a complex nature upon which shareholders, as a group, would not be in a position to make an informed judgment." The 1998 Release further states that "[t]his consideration may come into play in a number of circumstances, such as where the proposal involves intricate detail, or seeks to impose specific time-frames or methods for implementing complex policies." In addition, SLB 14L stated that in considering arguments for exclusion based on micromanagement, the Staff "will focus on the level of granularity sought in the proposal and whether and to what extent it inappropriately limits discretion of the board or management." In assessing whether a proposal probes matters "too complex" for shareholders, as a group, to make an informed judgment, the Staff "may consider the sophistication of investors generally on the matter, the availability of data, and the robustness of public discussion and analysis on the topic." The Staff also affirmed that the ordinary business exclusion "is designed to preserve management's discretion on ordinary business matters but not prevent shareholders from providing high-level direction on large strategic corporate matters." SLB 14L.

In assessing the "granularity" of a proposal and the extent to which a proposal seeks to micromanage a company's ordinary business operations, the Staff evaluates not just the wording of the proposal but also the action called for by the proposal and the manner in which the action called for under a proposal would affect a company's activities and management discretion. For example, in *Delta Air Lines, Inc.* (avail. Apr. 24, 2024), the Staff concurred that a proposal asking the company to report on "expenditures that are intended or could be viewed as intended to dissuade employees from joining or supporting unions" could be excluded because it sought to micromanage the company. In *Delta Air Lines*, the company argued that the information required by the proposal would delve deeply into ordinary business operations, noting that workforce management matters are "multi-faceted, complex and based on a range of considerations, and they are the subject of laws of multiple states and foreign countries." In *Phillips 66* (avail. Mar. 20, 2023), the Staff concurred that a proposal requesting a report on the undiscounted expected value to settle the company's asset retirement obligations ("AROs") with indeterminate settlement dates could be excluded because the proposal micromanaged the company, where the company argued that the proposal prescribed a specific approach for assessing the value of AROs with indeterminate settlement dates. Likewise, in *SeaWorld Entertainment, Inc.* (avail. Apr. 20, 2021), the Staff concurred that a proposal requesting a feasibility study to determine how soon the company could eliminate animal-based programs could be excluded because it sought to micromanage the company. There, the company argued that determining which attractions inspire guests, create enjoyable, memorable and educational experiences, drive increased attendance and revenue, and impact operating efficiency, and evaluating alternatives to such attractions, involved complex management decisions, and that by suggesting alternative programs the proponents sought to micromanage those decisions. *See also, MGE Energy, Inc.* (Mar. 13, 2019), concurring that a proposal requesting "a public report describing how [the company] can provide a secure, low cost energy future for its customers and shareholders by eliminating coal and moving to 100% renewable

energy" sought to micromanage ordinary business operations by, in the words of the Staff, "seeking to impose specific methods for implementing complex policies in place of the ongoing judgments of management as overseen by its board of directors."

More recently, in *Tesla, Inc. (Stephen)* (avail. Mar. 27, 2024), the Staff concurred with the exclusion under Rule 14a-8(i)(7) of a proposal requesting the company redesign its vehicle tires "to avoid pollution from harmful chemicals such as 6PPD-Q," noting that "[i]n our view, the [p]roposal seeks to micromanage the [c]ompany." There, the company argued that proposals "concern[ing] the design, product development or product offerings of a company" are excludable, "even when the design, development or product touches on a social issue." Similarly, in *The Home Depot, Inc. (Green Century Capital Management, Inc.)* (avail. Mar. 21, 2024), the Staff concurred with the exclusion of a proposal on the basis of micromanagement where the company argued that the proposal focused on decisions to sell a particular product containing particular materials, even though the proposal, as described by the company attempted to implicate significant social policy issues "[b]y referring to the climate, regulatory and legal and reputational risks."

Just as with the precedents cited above, the Proposal seeks to micromanage the Company by directing that the Company evaluate its technology decisions through a cost/benefit report on a specific technology. As noted earlier, the Company's decisions regarding whether to use a particular technology, such as NeuralHash, alone or as part of a broader system, and as opposed to other technology and approaches to try to combat CSAM that the Company has determined to use, involve complex factors such as users' data security and privacy, the reliability of various technologies, the potential for misuse or reconfiguration of technologies, and the potential impacts on customer relations and brand reputation. These evaluations, on which the Company consulted a wide range of experts, require judgments and considerations that draw on management's day-to-day business experience and assessment of numerous possible alternative technologies and numerous possible consequences and impacts, and do not involve data or standards that can be fully or appropriately evaluated through a cost/benefit analysis. Accordingly, it is unrealistic and inappropriate for shareholders to seek a cost/benefit report on just one technology that was evaluated as part of these determinations since, as stated in the 1998 Release, "it is impracticable for shareholders to decide how to solve such problems at an annual shareholders meeting."

Moreover, by mandating that the Company evaluate costs associated with only one of the technologies available to address an issue and compare those with expected benefits of only that technology, the Proposal impermissibly seeks to replace management's informed and reasoned judgments with respect to complex business decisions with a narrowly focused analysis that would require numerous estimates and assumptions regarding considerations that management has already carefully evaluated through extensive consultations with child safety advocates, human rights organizations, privacy and security technologists, and academics.

In this regard, the Proposal is similar to the proposal excluded in *Deere & Co.* (avail. Jan. 3, 2022). There the Staff concurred with the exclusion under the micromanagement prong of Rule 14a-8(i)(7) of a proposal requesting that the company's board publish "the written and oral content of any employee-training materials offered to any subset of the company's employees" where the supporting statement focused on the company's diversity, equity, and inclusion efforts. In its no-action request, the company argued that the proposal "intend[ed] for shareholders to step into the shoes of management and oversee the 'reputational, legal and financial' risks to the [c]ompany" and thus did not "afford[] management sufficient flexibility or discretion to address and implement its policy regarding the complex matter of diversity, equality, and inclusion." As in *Deere & Co.*, the Proposal intends for shareholders to step into the shoes of management and does not afford management sufficient flexibility or discretion to address the complex considerations that arise when assessing which technologies to deploy in its efforts to combat CSAM.

By requesting that the Company report on the costs and benefits with respect to all of the differing considerations that arise when assessing the use of CSAM identifying software, the Proposal also is comparable to the one considered in *Delta Air Lines*, where the company pointed out that the proposal would have required it to dig into granular detail to evaluate the costs of numerous routine management actions related to management of its workforce. Here, the Proposal would require the Company to assess the costs of potential consequences of adopting a particular technology and to weigh those against hypothetical benefits of a particular application of technology that the Company determined not to pursue. By asserting that "[s]hareholders . . . deserve further information on the way in which Apple arrived at this decision," but prescribing that the information be evaluated and presented in the form of a cost/benefit analysis, the Proposal inappropriately limits the discretion of management to evaluate complex considerations and to communicate its decisions related to the Company's choice of technologies. Furthermore, the complexity of the type of assessment the Proposal requests is simply not the type of "high-level direction on large strategic corporate matters" that Rule 14a-8(i)(7) was intended to allow. Instead, the considerations implicated by the Proposal are fundamental business matters for the Company's management and require an understanding of the numerous considerations and implications discussed above that could result from the deployment of the referenced scanning technology, such as the impacts of such technology on users' data security and privacy, the reliability of various technologies, the potential for misuse or reconfiguration of technologies, legal and compliance considerations, and the potential impacts of such programs on customer relations and brand reputation. Evaluating the choice of technologies deployed to try to combat CSAM is "fundamental to management's ability to run [the Company] on a day-to-day basis."

Thus, we believe that the Proposal may be omitted pursuant to Rule 14a-8(i)(7) because it seeks to micromanage the Company by, in the words of the Commission's 1998 Release, "probing too deeply into matters of a complex nature upon which shareholders, as a group, would not be in a position to make an informed judgment."

CONCLUSION

The Proposal addresses the Company's choice of technology in efforts to combat CSAM and the costs/benefits of those decisions, inappropriately attempting to step into the shoes of management to assess how to solve issues regarding product and service offerings that Rule 14a-8(i)(7) reserves for management, and therefore relates to ordinary business. As demonstrated by the foregoing analysis and precedent, this is exactly the type of day-to-day business matter that Rule 14a-8(i)(7) is intended to avoid. Moreover, the Proposal may be omitted pursuant to Rule 14a-8(i)(7) because it seeks to micromanage the Company by probing too deeply into complex matters upon which shareholders as a group would not be in an appropriate position to assess. Accordingly, we respectfully request that the Staff concur that the Proposal may be excluded from the Company's 2025 Proxy Materials pursuant to Rule 14a-8(i)(7).

We would be happy to provide you with any additional information and answer any questions that you may have regarding this subject. Correspondence regarding this letter should be sent to shareholderproposals@gibsondunn.com. If we can be of any further assistance in this matter, please do not hesitate to call me at (202) 955-8671.

Sincerely,

Ronald O. Mueller

Enclosures

cc: Walter Billingsley, American Family Association
Susan Bowyer, Bowyer Research

EXHIBIT A

Bowyer Research

August 26, 2024

Secretary of the Corporation
One Apple Park Way, MS: 927-4GC
Cupertino, CA 95014

Re: Proposal: Report on Costs and Benefits of Child Sex Abuse Material-Identifying Software & User Privacy

Dear Secretary,

I hereby submit the enclosed shareholder proposal ("Proposal") for inclusion in the Apple Inc. (the "Company") 2025 proxy statement to be circulated to Company shareholders in conjunction with the Company's 2025 annual meeting of shareholders. The Proposal is submitted under Rule 14a-8 (Proposals of Security Holders) of the United States Securities and Exchange Commission's proxy regulations. The resolution at issue relates to the subject described below.

Proponent: American Family Association
Company: Apple Inc.
Subject: Report on Costs and Benefits of Child Sex Abuse Material-Identifying Software & User Privacy

I submit the Proposal on behalf of, and with the permission of, American Family Association ("AFA" or "Shareholder"), which has continuously held [redacted] shares of Apple, Inc. securities for more than 2 years and intends to continue holding the requisite amount of Company shares through the date of the Company's 2025 Annual Meeting of Shareholders. A letter from AFA authorizing us to submit this proposal on their behalf is enclosed.

A Proof of Ownership letter attesting to the Shareholder's ownership of the shares as of the date of this proposal's submission is included with this submission. Copies of correspondence or any request for a "no-action" letter may be sent to Jerry Bowyer, Bowyer Research, [redacted] or emailed to me at [redacted] copying [redacted]

Sincerely,

Jerry Bowyer
Bowyer Research

[redacted]

Report on Costs and Benefits of Child Sex Abuse Material-Identifying Software & User Privacy

Resolved: Shareholders request that Apple Inc. prepare a transparency report on the costs and benefits of the company's decisions regarding its use of child sex abuse material (CSAM) identifying software. This report shall be made publicly available to the company's shareholders on the company's website, be prepared at a reasonable cost, and omit proprietary information, litigation strategy and legal compliance information.

Whereas: In Apple's Human Rights Policy[1], the company asserts that "we believe in the power of technology to empower and connect people around the world—and that business can and should be a force for good." As shareholders of the largest and most innovative tech company in the world, we believe Apple is uniquely positioned to both defend user privacy and also prevent victimization of at-risk populations.

And yet, the balance of privacy and safety at Apple has tilted in a concerning direction. In early 2024, Apple was named[2] to the National Center on Sexual Exploitation's 'Dirty Dozen' list for the second year in a row, a record of the biggest companies engaged in facilitation and enabling sexual abuse and exploitation through their platforms. In a letter sent to Apple executives, NCOSE wrote that "an increasing number of stakeholders… are taking notice and growing frustrated about Apple's negligence around child protection." Such instances include Apple's decision to reverse the implementation of NeuralHash, a program designed to scan for child sexual abuse material while maintaining user privacy. The reversal drew outrage from child safety groups/anti-trafficking watchdogs, indicating to some that Apple's willingness to prevent distribution of illegal content came second to its desire to advance its commitments to users' online privacy. Shareholders who care about both user privacy and child safety deserve further information on the way in which Apple arrived at this decision.

[1] https://s2.q4cdn.com/470004039/files/doc_downloads/gov_docs/Apple-Human-Rights-Policy.pdf
[2] https://endsexualexploitation.org/apple/

Outside of NeuralHash, Apple still fails[3] to block sexually explicit content from being viewed or sent by users under the age of twelve and does not default to censoring explicit content for teenage users on its messaging services. The App Store also recommends[4] content age-rated above an account user's entered age, a practice that exposes underage users to sexually explicit content. Apple's inaction has allowed children to be exposed to adult content and facilitated, wittingly or otherwise, illegal sexual exploitation of its youngest users. This inaction is impossible to reconcile with Apple's stated commitments to "treating everyone with dignity and respect" and its business model as a "force for good." If a company's corporate philosophy on human rights allows the sexualization of innocent children to fall through the cracks, such loopholes belie either a lack of meaningful commitment to defending those rights, or an inability to effectively protect them. As Apple shareholders, we know the company is capable of doing better—and creating a world where "think different" means being the industry gold standard when it comes to protecting the most innocent among us.

[3] https://www.wired.com/story/apple-csam-scanning-heat-initiative-letter/#:~:text=Today%2C%20in%20a%20rare%20move,collectively%20as%20Communication%20Safety%20features.

[4] https://protectchildren.ca/en/resources-research/app-age-ratings-report/

EXHIBIT B

Apple Response:

August 31, 2023

Ms. Sarah Gardner
CEO, Heat Initiative

Dear Ms. Gardner, Thank you for your recent letter inquiring about the ways Apple helps keep children safe. We're grateful for the tireless efforts of the child safety community and believe that there is much good that we can do by working together. Child sexual abuse material is abhorrent and we are committed to breaking the chain of coercion and influence that makes children susceptible to it. We're proud of the contributions we have made so far and intend to continue working collaboratively with child safety organizations, technologists, and governments on enduring solutions that help protect the most vulnerable members of our society.

Our goal has been and always will be to create technology that empowers and enriches people's lives, while helping them stay safe. With respect to helping kids stay safe, we have made meaningful contributions toward this goal by developing a number of innovative technologies. We have deepened our commitment to the Communication Safety feature that we first made available in December 2021. Communication Safety is designed to intervene and offer helpful resources to children when they receive or attempt to send messages that contain nudity. The goal is to disrupt grooming of children by making it harder for predators to normalize this behavior.

In our latest releases, we've expanded the feature to more easily and more broadly protect children. First, the feature is on by default for all child accounts. Second, it is expanded to also cover video content in addition to still images. And we have expanded these protections in more areas across the system including AirDrop, the Photo picker, FaceTime messages, and Contact Posters in the Phone app. In addition, a new Sensitive Content Warning feature helps all users avoid seeing unwanted nude images and videos when receiving them in Messages, an AirDrop, a FaceTime video message, and the Phone app when receiving a Contact Poster. To expand these protections beyond our built-in capabilities, we have also made them available to third parties. Developers of communication apps are actively incorporating this advanced technology into their products. These features all use privacy-preserving technology — all image and video processing occurs on device, meaning Apple does not get access to the content. We intend to continue investing in these kinds of innovative technologies because we believe it's the right thing to do.

As you note, we decided to not proceed with the proposal for a hybrid client-server approach to CSAM detection for iCloud Photos from a few years ago, for a number of good reasons. After having consulted extensively with child safety advocates, human rights organizations, privacy and security technologists, and academics, and having considered scanning technology from

virtually every angle, we concluded it was not practically possible to implement without ultimately imperiling the security and privacy of our users.

Scanning of personal data in the cloud is regularly used by companies to monetize the information of their users. While some companies have justified those practices, we've chosen a very different path — one that prioritizes the security and privacy of our users. Scanning every user's privately stored iCloud content would in our estimation pose serious unintended consequences for our users. Threats to user data are undeniably growing — globally the total number of data breaches more than tripled between 2013 and 2021, exposing 1.1 billion personal records in 2021 alone. As threats become increasingly sophisticated, we are committed to providing our users with the best data security in the world, and we constantly identify and mitigate emerging threats to users' personal data, on device and in the cloud. Scanning every user's privately stored iCloud data would create new threat vectors for data thieves to find and exploit.

It would also inject the potential for a slippery slope of unintended consequences. Scanning for one type of content, for instance, opens the door for bulk surveillance and could create a desire to search other encrypted messaging systems across content types (such as images, videos, text, or audio) and content categories. How can users be assured that a tool for one type of surveillance has not been reconfigured to surveil for other content such as political activity or religious persecution? Tools of mass surveillance have widespread negative implications for freedom of speech and, by extension, democracy as a whole. Also, designing this technology for one government could require applications for other countries across new data types.

Scanning systems are also not foolproof and there is documented evidence from other platforms that innocent parties have been swept into dystopian dragnets that have made them victims when they have done nothing more than share perfectly normal and appropriate pictures of their babies.

We firmly believe that there is much good that we can do when we work together and collaboratively. As we have done in the past, we would be happy to meet with you to continue our conversation about these important issues and how to balance the different equities we have outlined above. We remain interested, for instance, in working with the child safety community on efforts like finding ways we can help streamline user reports to law enforcement, growing the adoption of child safety tools, and developing new shared resources between companies to fight grooming and exploitation. We look forward to continuing the discussion.

Sincerely, Erik Neuenschwander Director, User Privacy and Child Safety

ALLIANCE DEFENDING FREEDOM

FOR FAITH. FOR JUSTICE.

November 18, 2024

Office of Chief Counsel
Division of Corporation Finance
U.S. Securities and Exchange Commission
100 F. Street, N.E.
Washington, DC 20549

RE: Shareholder Proposal of American Family Association at Apple Inc. under Securities Exchange Act of 1934—Rule 14a-8

Ladies and Gentlemen,

Enclosed please find six (6) copies of the following document:

- Letter dated November 18, 2024 on behalf of Proponent and in response to Apple, Inc's request to exclude the Shareholder Proposal

This letter has been mailed according to Rule 17 C.F.R. § 240. 14a-8(k). A copy of this letter has also been sent to opposing counsel via electronic mail and FedEx delivery.

Respectfully Submitted,

s/*Michael Ross*
Alliance Defending Freedom

Enclosure(s): 6 Letters in response to Apple Inc's request to exclude the Shareholder Proposal

ALLIANCE DEFENDING FREEDOM

FOR FAITH. FOR JUSTICE.

November 18, 2024

Office of Chief Counsel
Division of Corporation Finance
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549

RE: Shareholder Proposal of American Family Association at Apple Inc. under Securities Exchange Act of 1934—Rule 14a-8

Ladies and Gentlemen:

I am writing on behalf of the American Family Association ("AFA") to defend its shareholder proposal to Apple Inc. ("Apple" or the "Company"). Ronald O. Mueller wrote to you on behalf of Apple on October 21, 2024, to ask you to concur with Apple's view that it can exclude AFA's shareholder proposal from its 2024 Annual Meeting of Shareholders under 17 CFR § 240.14a-8 ("Rule 14a-8"). Apple has the burden of demonstrating it is entitled to exclude the Proposal. *See* Rule 14a-8(g). But it cannot bear this burden.

The Proposal asks Apple to provide a "transparency report" on Apple's decision-making around using or not using software that identifies child sex abuse material ("CSAM"). Apple says the proposal is excludable under Rule 14a-8(i)(7) because it relates to ordinary business operations. But the Proposal focuses on finding and addressing child sex abuse online. Apple admits CSAM is a significant social policy issue and Staff consistently recognize similar issues as significant, which means the Proposal transcends the ordinary business operations of the Company. The fact that the Proposal focuses on a particular type of software does not, as Apple contends, change the focus to particular technology and products, as Staff has repeatedly recognized.

Apple also argues that it can exclude the Proposal under ordinary business operations for micromanaging the company. Apple says assessing "costs and benefits" "on a specific technology" does not allow for a complex risk-based analysis. But this ignores that the Proposal asks first and foremost for a "transparency report," that many Staff decisions approve of materially identical qualifiers, and strains a plain reading of "costs and benefits," which includes all kinds of unmonetized risks and benefits.

The Proposal

The Proposal provides as follows:

> **Resolved:** Shareholders request that Apple Inc. prepare a transparency report on the costs and benefits of the company's decisions regarding its use of child sex abuse material (CSAM) identifying software. This report shall be made publicly available to the company's shareholders on the company's website, be prepared at a reasonable cost, and omit proprietary information, litigation strategy and legal compliance information.

The Supporting Statement explains that Apple has received negative publicity on a number of issues related to child protection, particularly for removing NeuralHash, a program designed to scan for child sexual abuse material. This raised concerns from anti-trafficking groups who expressed concern that Apple was unwilling to prevent the distribution of illegal content. The National Center of Sexual Exploitation even put Apple on its "Dirty Dozen" list two years in a row.

These actions and press, the Statement notes, are in tension with Apple's expressed commitment "that business can and should be a force for good." Apple's no-action response also clarifies that it is "intently focused on breaking the chain of coercion and influence that makes children susceptible to exploitation." Apple Inc.'s No-Action Response ("NAR") at 2. Thus, the Proposal notes that "[s]hareholders who care about both user privacy and child safety deserve further information on the way in which Apple arrived at its decision."

Discussion

A. The Proposal unambiguously focuses on a significant social policy issue that transcends the company's ordinary business operations.

To meet its burden of showing that it can exclude AFA's Proposal for failing to focus on a significant social policy, Apple must show both that it does not focus on a significant social policy issue and that it relates to the "nitty-gritty" of the company's day-to-day operations. It cannot show either. The Proposal falls in line with the Commission's guidance and Staff's consistent understanding that stakeholder safety and human rights issues, including data privacy and child safety, are significant policy issues. Apple contends that this does not apply when the proposal focuses on a particular aspect of a company's business, like Apple's CSAM software. But its scattershot citations pale compared to well-established decisions from Staff approving the above proposals in a variety of specific customer, workforce, and other stakeholder contexts.

1. Proposals that focus on a significant social policy issue transcend a company's ordinary business operations.

Under Rule 14a-8(i)(7), a shareholder proposal may be excluded from a company's proxy materials if the proposal "deals with a matter relating to the company's ordinary business operations." This includes "management of the workforce . . . decisions on production quality and quantity, and the retention of suppliers," which are "tasks. . . so fundamental to management's ability to run a company on a day-to-day basis that they could not, as a practical matter, be subject to direct shareholder oversight." Exchange Act Release No. 40018, 63 Fed. Reg. 29106, 29108 (May 21, 1998) (the "1998 Release"). And when assessing a proposal, the Commission looks at the underlying "subject matter" of the proposal, not whether it seeks transparency or prescribes a particular policy or board action to address that subject matter. Exchange Act Release No. 20091 (Aug. 16, 1983).

Notwithstanding the above, proposals that "focus[] on sufficiently significant social policy issues" are not excludable under Rule 14a-8(i)(7) even if they relate to ordinary business operations. 1998 Release at 29108. This is because they "transcend the day-to-day business matters and raise policy issues so significant that it would be appropriate for a shareholder vote." *Id.* Staff made this a major focus of Bulletin 14H to correct the misunderstanding that a proposal must both focus on a "significant social policy" and be "divorced from how a company approaches the nitty-gritty of its core business." Division of Corporate Finance, Staff Legal Bulletin No. 14H (Oct. 22, 2015) ("SLB 14H").

And when determining whether a proposal focuses on a matter of significant social policy, the Staff focus on the "presence of widespread public debate," Division of Corporation Finance, Staff Legal Bulletin No. 14A (July 12, 2002), and the "broad societal impact" of the issue raised by the proposal, Division of Corporation Finance, Staff Legal Bulletin No. 14L (Nov. 3, 2021) ("SLB 14L").

2. The Proposal's focus, preventing child sexual exploitation, transcends Apple's ordinary business operations.

The Proposal is not excludable for focusing on ordinary business operations because it fits well within the exception for significant social policy issues and is supported by a wide variety of SEC guidance and Staff no-action recommendations.

Apple "agrees that CSAM is a significant societal issue that needs to be addressed." NAR 8. And by any measure, it is. Addressing child sexual abuse is a part of international and national legal frameworks protecting human rights. CSAM, and software used to identify it, is an increasingly important subset of that problem. *See infra* Part. II.B.

Staff has also consistently recognized that a broad array of human rights, including child safety, are significant social policy issues. *See, e.g.*, *Mondelez*

International, Inc. (Mar. 30, 2022) (report on company's progress "to eradicate child labor in all forms from the Company's cocoa supply chain by 2025"); *Apple Inc. (NLPC)* (Jan. 2, 2024) ("congruency of the Company's privacy and human rights policy positions with its actions, especially in such places as war zones and under oppressive regimes"); *Meta Platforms, Inc.* (Mar. 30, 2022) ("report on actual and potential human rights impacts of Facebook's targeted advertising policies and practices").

Staff also recognize that the safety of various stakeholders is very often significant. *See, e.g.*, *American Express Company* (Mar. 6, 2023) (report on "fulfilling information requests regarding its customers for the enforcement of state laws criminalizing abortion access"); *Verizon Communications Inc. (BellTel Retirees Inc.)* (Mar. 14, 2024) (report on public health and liability risks "related to lead-sheathed cables"); *Johnson & Johnson* (Mar. 3, 2022) (recommending that company "discontinue global sales of its talc-based Baby Powder" in light of public health risks to customers); *Caesars Entertainment, Inc.* (Apr. 19, 2024) (report on "adoption of a smokefree policy for Company properties").

Apple, however, contends that the Proposal does not focus on CSAM, but on "the costs and benefits of the Company's decision regarding a particular technology to address that issue." NAR 8. But Staff regularly approve proposals dealing with particular technologies to address particular issues. Just last year, Staff approved under (i)(7) a proposal asking American Express to report on the risks of giving confidential customer information to government authorities seeking to enforce criminal laws. *American Express Company* (Mar. 3, 2023). That is the same issue as this Proposal.

Staff also regularly approve other proposals that focus on particular aspects of a company's business. A survey of tech proposals focusing on particular types of software or programs that Staff approved on significant social policy grounds shows this. *Meta Platforms, Inc. (Cortese)* (Apr. 2, 2022) ("potential psychological and civil and human rights harms" from "the use and abuse" of company's "metaverse project"); *Alphabet Inc. (Trillium)* (Apr. 15, 2022) (discriminatory impacts of Google's "algorithmic systems" for targeted advertising). And Apple itself, along with Paramount and Disney, lost this same argument regarding the use of AI software in various business operations. *Apple Inc.* (Jan. 3, 2024); *The Walt Disney Company* (Jan. 3, 2024); *Paramount Global (NYCRS)* (Apr. 19, 2024).

What's more, many of the other examples above also focus on particular products, information, or workforce policies, like talc-based baby powder (*Johnson & Johnson*), having smoke-free premises (*Caesars*), or handing over sensitive customer information (*American Express*). Were the rule otherwise, shareholders would be stuck asking the company in generalities about how it is addressing human rights issues, discrimination, and other important social policy issues with no ability to target pertinent areas where those issues arise in the company's business.

Apple also cites a handful of decisions dating back over a decade to assert that "Staff has consistently concurred in the exclusion of proposals that reference or arise in the context of a significant policy matter but that address or focus on ordinary business matters." NAR 8. But these are inapposite because they dealt with, and were framed by proponents as, typical business decisions that have only secondary impacts on social policy issues. *Fox Corp.* (Sep. 19, 2024) (distinguishing news content from opinions); *Shake Shack* (Apr. 23, 2024) (reporting on potential misrepresentation about having "hormone-free" chicken products); *Coca Cola Co.* (Mar. 6, 2024) (seeking business metrics and profitability of adding "health & nutrition" products as part of its evolution towards a "total beverage company"); *FirstEnergy Corp.* (Mar. 8, 2013) (report assessing profitability of diversifying company's energy resources).

Apple also relies on *Petsmart, Inc.* (Mar. 24, 2011), which asked the company to require its suppliers to certify that they had not violated certain laws preventing animal cruelty. But there, the Staff's no-action recommendation acknowledged that "humane treatment of animals is a significant social policy issue" and took issue with the "broad" scope of the laws covered, which included "violations of administrative matters such as record keeping." By contrast, AFA's Proposal at Apple asks for no policy changes, only a transparency report.

Apple also takes issue with the "costs and benefits" language of the analysis. But as explained below, Sec. B.2 *infra*, the Proposal does not seek a financial analysis like those proposals on which Apple relies. *Amazon.com, Inc.* (Apr. 10, 2018) (seeking audits, quantities of food waste, and "estimated cost savings" from optimized food systems); *CVS Health Corp. (Parker)* (Mar. 8, 2016) (prescribing "quantitative targets . . . to increase renewable energy sourcing and/or production"); *FLIR Systems, Inc.* (Feb. 6, 2013) (seeking company's "strategies for managing its energy expenses"). AFA's Proposal instead seeks first and foremost a "transparency report" that evaluates qualitative, and perhaps quantitative, "costs and benefits" – terms that Staff regularly approve.

3. The Proposal does not relate to particular products or services.

Apple also argues that the Proposal is excludable because it deals with ordinary business operations, particularly Apple's "product development and particular service offerings deployed by the Company in its efforts to combat CSAM." NAR 5. This is ultimately irrelevant because the Proposal focuses on a significant social policy issue. As Staff clarified in Bulletin 14H, "a proposal may transcend a company's ordinary business operations even if the significant policy issue relates to the 'nitty-gritty of its core business.'" SLB 14H.

For that reason, Apple is wrong in claiming that "proposals that concern a company's choice of technologies for use in its operations are generally excludable." NAR 6. That may be true for proposals not focusing on significant social policy issues, like the ones on which Apple relies. The proposals in *FirstEnergy Corp.* (Mar. 8, 2013);

AT&T Inc. (Jan. 4, 2017); *PG&E Corp.* (Mar. 10, 2014); *AT&T Inc.* (Feb. 13, 2012), and *CSX Corp.* (Jan. 24, 2011) for example, all focused on creating affordable and profitable products and services, not climate impacts, human rights, or other social policy issues.

A close look at Apple's only recent example, *The Coca-Cola Co.* (Mar. 6, 2024), shows the same. There, the proposal targeted "healthy products" not to focus on public health risks, but on market pressures from competitors and industry benchmarks to prioritize health and nutrition to remain profitable. *Id.* at 12.[1] Compare this with *Pfizer Inc.* (Feb. 24, 2022), where Staff approved under (i)(7) a proposal asking for a report on "the public health costs created by the limited sharing of the Company's COVID-19 vaccine technologies."

Or compare Apple's citations to proposals on customer safety from nanomaterials, BPA, and mercury, NAR 6–7, with the voluminous Staff-approved proposals above on safety and human rights, even regarding specific products or software like talc-based baby powder (*Johnson & Johnson*), virtual reality (*Meta*), AI (*Apple et al.*), and customer data privacy around enforcement of criminal law (*American Express*).

Further, the Proposal is not excludable even absent the significant social policy exemption. Client privacy is not "production quality and quantity," for example. 1998 Release at 29108. Even Apple's characterization of CSAM software as "product development and particular service offerings" overstates the case. CSAM software is a safety feature of its products that is not for sale and would operate substantially behind the scenes of customer interactions. And CSAM-identifying software, particularly software like NeuralHash, would likely protect not only child users and customers, but many other children whose abusers may use Apple to conduct or profit from their sexual abuse.

Apple also states that it has "already publicly addressed" "the societal implications of the Company's choice of technology" on CSAM through an open letter. If Apple believed that, it would have argued that it already substantially implemented the proposal under Rule 14a-8(i)(10). But Apple did not because it understands that a short 2-page letter is no substitute for a thorough evaluation backed by data and expert analysis.

B. The Proposal does not micromanage Apple.

Apple also argues that the Proposal report would micromanage it because it would "seek[] to replace management's informed and reasoned judgments . . . with a narrowly focused" cost-benefit analysis. But all the Proposal seeks is a transparency

[1] Page numbers of no-action decisions refer to the pdf page number in the no-action packet available on the SEC's website, https://www.sec.gov/rules-regulations/shareholder-proposals.

report, with no particular disclosures or methodologies specified, and "costs and benefits" broadly construed and left to Apple to define.

This is typical of the proposals for transparency reports that Staff regularly approve. Apple's no-action decisions all prescribe specific policies or actions or ask for voluminous amounts of raw personnel or financial data to second-guess management. By contrast, this transparency report would rely on Apple's expertise to evaluate the salient factors through a business lens so that shareholders can assess Apple's "impacts, progress towards goals, risks or other strategic matters appropriate for shareholder input." SLB 14L.

1. Staff regularly agree that transparency reports do not micromanage a company.

The Commission requires that shareholder proposals not "'micromanage' the company by probing too deeply into matters of a complex nature upon which shareholders, as a group, would not be in a position to make an informed judgment." 1998 Release at 29108. This can happen "where the proposal involves intricate detail, or seeks to impose specific time-frames or methods for implementing complex policies." *Id.* But "specific methods, timelines, or detail do not necessarily amount to micromanagement and are not dispositive of excludability." SLB 14L. "[P]roposals may seek a reasonable level of detail without running afoul of these considerations." 1998 Release at 29109.

Staff clarified in Bulletin 14L that it expects proposals to seek a level of detail that is "consistent with that needed to enable investors to assess an issuer's impacts, progress towards goals, risks or other strategic matters appropriate for shareholder input." SLB 14L. To that end, the Staff also considers the "sophistication of investors generally on the matter, the availability of data, and the robustness of public discussion and analysis on the topic," including "references to well-established national or international frameworks when assessing proposals related to disclosure . . . as indicative of topics that shareholders are well-equipped to evaluate." *Id.*

This reading of the rule, the Bulletin notes, appropriately accounts for each company's and proposal's particular circumstances while ameliorating the "dilemma many proponents face": crafting a proposal specific enough that the company has not substantially implemented it while being general enough to avoid micromanaging the company. *Id.*

For this reason, Staff regularly reject micromanagement challenges to proposals asking for a transparency report on particular products, safety features, policies, and other parts of a company's business. This includes things like reports asking about smoke-free premises, *Boyd Gaming Corporation* (Mar. 18, 2024), *Caesars Entertainment, Inc.* (Apr. 19, 2024), reducing misinformation in targeted advertising, *Meta Platforms, Inc.* (Mar. 30, 2022), *Alphabet Inc.* (Apr. 12, 2022), the misuse of

products in war-torn conflict-affected areas, *Texas Instruments Incorporated* (Mar. 4, 2024), and underwriting clients who contribute to new fossil fuel supplies, *see, e.g.*, *Citigroup Inc.* (Mar. 7, 2021).

This makes sense. Transparency reports are not prescriptive requests for policy changes, unlike many proposal requests. And even those "do not per se constitute micromanagement." SLB 14L.

Of course, some reports seek such an intricate level of detail that they run afoul of the rule. For example, *Deere and Co.* (Jan. 3, 2022), asked for "annual publication of the written and oral content of any employee-training materials." And *Delta Air Lines, Inc.* (Apr. 24, 2024), sought disclosure of "expenditures," personnel, Board oversight, and company policies related to union suppression. But these proposals sought voluminous disclosures, mostly of raw data and content, that evinced an intent to second-guess management instead of relying on its reasoned business evaluations.

Apple cites *The Home Depot, Inc. (Green Century)* (Mar. 21, 2024) and *Tesla, Inc. (Stephen)* (Mar. 27, 2024) to say that a proposal may not "focus[] on decisions to sell a particular product containing particular materials." This paints with too broad a brush. In *Tesla*, the proposal was a direct request to redesign one of the company's products and specified at least 5 goals the company should seek to achieve when redesigning the tires.

And in *Home Depot*, the proposal asked about a *permanent* commitment not to sell paint with titanium dioxide sourced from a particular geographic area. It was the permanent commitment and specificity of the source that were problematic, not the focus on a particular product feature. Otherwise, the Staff would not have in the same week rejected a micromanagement challenge to the slightly less restrictive proposal asking *Tesla* to adopt a "moratorium on sourcing minerals from deep sea mining." *Tesla, Inc. (As You Sow)* (Mar. 27, 2024).

2. The Proposal's requested transparency report would not micromanage Apple because it seeks a reasonable level of detail on an issue readily understood by shareholders.

The Proposal here seeks a reasonable level of detail for investors to evaluate Apple's "impacts, progress towards goals, risks or other strategic matters appropriate for shareholder input" regarding child sex abuse. SLB 14L. All of the factors Staff consider when assessing the level of detail needed weigh in favor of the Proposal.

First, Staff has recognized that shareholders are sophisticated enough to provide input on a wide range of human rights issues in technology, including the ethical implications of artificial intelligence, *see, e.g.*, *Apple Inc. (AFL-CIO)* (Jan. 3, 2024), the misuse of computer chips and semiconductors in high conflict countries, *Texas Instruments* (Mar. 4, 2024), and the discriminatory impacts of Google's "algorithmic systems" for targeted advertising, *Alphabet (Trillium)* (Apr. 15, 2022).

Second, there is "robust[] public discussion and analysis on the topic," including "references to well-established international and national frameworks" on preventing child sex abuse. SLB 14L. The UN has made it a consistent focus,[2] as has the United States, particularly regarding online child sexual abuse.[3] Last year, U.S. legislators even introduced the Stop CSAM Act to "combat the sexual exploitation of children by supporting victims and promoting accountability and transparency by the tech industry." S.1199, 118th Cong. (2023–2024). The U.S. Senate Judiciary Committee also recently held a hearing on stopping CSAM.[4] Apple, for its part, rightly focuses on "breaking the chain of coercion and influence that makes children susceptible to exploitation." NAR 2. And it "agrees that CSAM is a significant societal issue." NAR 8.

Given the above, the Proposal does not "seek intricate detail" or "to impose specific time-frames or methods." 1998 Release at 29108. Indeed, it does not ask Apple to implement, or not implement, any policies at all, much less specific methods or time-frames for said implementation. Nor does it request any particular details or disclosures. It only requests a general assessment of the costs and benefits, as Apple defines them.

Apple protests that this request would "impermissibly seek to replace management's informed and reasoned judgments with respect to complex business decisions with a narrowly focused analysis that would require numerous estimates and assumptions" already evaluated by Apple. NAR 11.

Staff rejected the same argument from Apple last year on a proposal seeking a "transparency report on the company's use of Artificial Intelligence ('AI') in its business operations." *Apple, Inc. (AFL-CIO)* (Jan. 3, 2024). As the proponent there explained, a transparency report gives "the Board of Directors full discretion to determine what information should be made publicly available" and what, if any, targets, guidelines, or policies Apple may want to adopt.

Apple also takes issue with the request to assess "costs and benefits" as part of the transparency report. Apple says all of the "complex factors" and evaluations around its decisions to use a particular technology cannot "be fully or appropriately

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[2] *See, e.g.*, UN Convention on the Rights of the Child, Part 1, Article 19 ("State Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child."); United Nations Victims' Rights Statement, available at https://www.un.org/en/victims-rights-first/victims-rights-statement.

[3] *See Joint Statement from the United States and the United Kingdom on Combatting Child Sexual Abuse and Exploitation*, U.S. Department of Homeland Security (Sep. 27, 2023), https://www.dhs.gov/news/2023/09/27/joint-statement-united-states-and-united-kingdom-combatting-child-sexual-abuse-and.

[4] *Protecting Children Online*, U.S. Senate Committee on the Judiciary (Jan. 31, 2024), https://www.judiciary.senate.gov/protecting-children-online

evaluated through a cost/benefit analysis." NAR 11. But this ignores the Staff's well-reasoned decisions and elevates form over substance.

Staff has regularly rejected micromanagement arguments against proposals that use materially identical language. *Boyd Gaming Corporation* (Mar. 18, 2024) ("report on the potential cost savings through the adoption of a smokefree policy for Boyd Gaming properties"); *Caesar's Entertainment, Inc.* (Apr. 19, 2024) (same); *American Express Company* ("public report detailing any known and potential risks and costs to the Company" of helping enforce "state laws criminalizing abortion access"); *Eli Lilly and Company* (Mar. 8, 2023) (report "detailing the known and reasonably foreseeable risks and costs to the Company" of changing company policy "in response to enacted or proposed state policies regulating abortion").

These decisions demonstrate the Staff's focus on the substance of a proposal. Asking for a transparency report evaluating "costs and benefits" does not, as Apple contends, limit its ability to consider "possible alternative technologies and numerous possible consequences and impacts" or various "data or standards." NAR 11. Indeed, a thorough cost-benefit analysis would appropriately incorporate all of these various considerations and aspects of implementing CSAM-identifying software.

Nor do the qualifiers "costs and benefits" somehow transform a request for a transparency report into a financial audit. The Proponent did not ask, for example, for a report on "expenditures" and other disclosures made for union suppression, *Delta Air Lines, Inc.* (Apr. 24, 2024), or for the "undiscounted expected value" of certain financial obligations, *Phillips 66* (Mar. 20, 2023). *See* NAR 10, 12 (relying on same). Were the proponent seeking a financial analysis, it would have said something like "costs and revenue."

The "costs and benefits" that Proponent seeks are not merely a quantitative assessment or set of raw files or data that shareholders would audit, but a comprehensive evaluation from management of the various high-level risks, benefits, and other salient factors on a significant social policy issue that Apple has expressly committed to uphold. This would include qualitative assessments and may include quantitative analysis under any reasonable interpretation. This is exactly the kind of "impacts, progress towards goals, risks or other strategic matters appropriate for shareholder input." SLB 14L.

Conclusion

For the foregoing reasons, we respectfully request that the Staff reject Apple's request for relief from AFA's Proposal. A copy of this correspondence has been timely provided to Apple. If we can provide additional materials to address any queries the Commission may have with respect to this letter, please do not hesitate to contact me.

Sincerely,

Michael Ross

Cc: Ronald O. Mueller