



The Shareholder Commons
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November 17, 2020

Via e-mail: shareholderproposals@sec.gov

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

Re: Apple's Supplemental Request to Exclude Shareholder Proposal

Dear Sir or Madam:

The Shareholder Commons is a nonprofit organization focused on catalyzing collective action by asset owners and managers in order to protect beneficiaries from corporate behavior that endangers the value of diversified portfolios. We write regarding the request of Apple Inc., a California corporation (the "Company"), for no-action relief with respect to a proposal (the "Proposal") from the National Center for Public Policy Research (the "Proponent") regarding the Statement on the Purpose of a Corporation (the "Statement") announced by the Business Roundtable (the "BRT"). We write specifically in response to the Company letter of October 16 requesting the Staff confirm that it will not recommend enforcement action if the Company excludes the Proposal from its proxy statement (the "No-Action Request").

The Company recently signed the Statement, which reads, "we share a fundamental commitment to all of our stakeholders... We commit to deliver value to all of them, for the future success of our companies, our communities and our country."¹ The BRT press release (the "Press Release") announcing the statement made it clear that the Statement was intended to make stakeholders fundamental beneficiaries of the signers' obligations:

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

The Business Roundtable today announced the release of a new Statement on the Purpose of a Corporation signed by 181 CEOs who commit to lead their companies for the benefit of all stakeholders – customers, employees, suppliers, communities and shareholders.²

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

“Resolved: Shareholders request our Board prepare a report based on a review of the BRT Statement of the Purpose of a Corporation, signed by our Chief Executive Officer, and provide the board’s perspective regarding whether our Company’s governance and management systems should be altered to fully implement the Statement of Purpose.”

The Company’s Argument for Exclusion

The Company argues in the No-Action Request that the Proposal may be excluded under Rule 14a-8(i)(10) because the Proposal has been substantially implemented. In support of that argument, the Company lists a lengthy set of standards, codes, statements, website material and other documents that set forth concepts that are consistent with the consideration of, and delivery of value to, stakeholders of the Company.

The Company then argues that these statements as to values and principles are evidence of the commitment to stakeholders espoused in the Statement. The Company cites its Nominating and Corporate Governance Committee’s (the “Committee”) determination that:

[T]he Company’s governance and management systems do not need to be altered in order to fully implement the Statement of Purpose because the Company already operates in accordance with the principles set forth in the Statement of Purpose and provides adequate disclosure to shareholders and the public about this alignment.

The analysis by and determination of the Committee substantially implements the Proposal because . . . it addresses the underlying concerns and essential objective that Apple’s Board provide its perspective as to whether the Company’s governance and management systems should be altered to fully implement the Statement of Purpose. Furthermore, if the Proposal were to be voted upon by shareholders at the Annual Meeting and pass, there is nothing further that the Company or the Committee would do to implement the Proposal, as any subsequent report would contain substantially the same information as was already presented to the Committee and outlined in this letter.³

The No-Action Request Should Be Denied Because the Company’s Argument for Exclusion Does Not Even Attempt to Address the Underlying Conflicts in Governance Posed by the Statement

² <https://www.businessroundtable.org/business-roundtable-redefines-the-purpose-of-a-corporation-to-promote-an-economy-that-serves-all-americans> (emphasis added).

³ No-Action Request, p. 12.

This conclusion, however, is inadequate on its face. It confuses the manner in which the corporation *operates* with the rules by which it is *governed*: because the statements of principles are not binding, they simply do not address whether the Company has made the “fundamental commitment” contemplated by the Statement. Corporations are creatures of statute, and rules of governance spring from the statutes that authorize corporations and the legal documents filed to form them. Neither the No-Action Request nor the Committee’s conclusions address the underlying conflicts in governance posed by a “fundamental commitment” to all stakeholders while maintaining shareholder primacy and are thus inadequate and misleading.

The No-Action Request Should Be Denied Because the Company’s Argument for Exclusion Is Misleading in That It Contradicts the Law of California, Where the Company is Incorporated

The argument set forth in the No-Action Request and relied upon by the Committee is contrary to the law applicable to the Company. Section 309 of the California Corporations Code requires that the directors of the Company put shareholders before stakeholders, undermining the “fundamental commitment to stakeholders,” pledged in the Statement.⁴ As one law professor described California law, “[w]hile the rule grants fiduciaries discretion about how to serve their shareholder interests, it does not give discretion about whether to do so.”⁵

This law means that, rather than being “fundamental,” the policies and statements of the Company referenced in the No-Action Request and the Committee’s determination are *subordinate*—the board of directors or management can operate under such pro-stakeholder principles, *but only for so long as they serve shareholder interests*. As one commentator noted, this is why critics deride shareholder primacy: “it unjustifiably subordinates considerations both of (extra-corporate) societal actors and of (intra-corporate) stakeholder actors to those of shareholders.”⁶

The recently retired Chief Justice of Delaware has made this precisely point:

[A] clear-eyed look at the law of corporations in Delaware [which includes the same shareholder primacy law that applies in California] reveals that, within the limits of their discretion, directors must make stockholder welfare their sole end, and *that other interests may be taken into consideration only as a means of promoting stockholder welfare*.⁷

The No-Action Request and the Committee conclusions are misleading and inadequate because they completely fail to address this conflict in the Company’s governance, which is the specific subject of the Proposal. The rule of shareholder primacy, which requires corporate managers to prioritize financial return to shareholders, imposes a system of governance that is inconsistent with the Statement. As one prominent law firm reported to another Statement signatory, directors may

⁴ CALIFORNIA CORPORATIONS CODE § 309(a) (“A director shall perform the duties of a director . . . in good faith, in a manner such director believes to be in the best interests of the corporation and its shareholders.”).

⁵ Eric L. Talley, *Corporate Form and Social Entrepreneurship: A Status Report from California (and Beyond)*, p. 4 UC BERKELEY PUBLIC LAW RESEARCH PAPER NO. 2144567 (2012).

⁶ *Id.* at 2.

⁷ Leo E. Strine, Jr., *The Dangers of Denial: The Need for a Clear-Eyed Understanding of the Power and Accountability Structure Established by the Delaware General Corporation Law*, 50 WAKE FOREST L. REV. 761,768 (2015) (emphasis added).

consider stakeholder interests only if “any decisions made with respect to such stakeholders are in the best interests of the corporation and its stockholders.”⁸ While the corporation involved in that situation was incorporated in Delaware, rather than California, the law is the same.

The No-Action Request Should Be Denied Because the Company’s Argument for Exclusion Is Misleading in Failing to Address the Option to Change the Company’s Governance in Order to Accommodate the Statement

Addressing the inconsistency would be critical to any adequate and informative report on governance and the Statement not just because the contradiction puts the commitment at risk, but also because the Company has the option to eliminate this contradiction. As a California corporation, the Company could amend its articles of incorporation to become either a benefit corporation or a specific purpose corporation.⁹ Each of these forms is expressly designed to allow corporations to reject shareholder primacy and thus make binding commitments to stakeholders.¹⁰

The conclusions in the No-Action Request and Committee findings are misleading because they do not reflect opportunity to remedy the contradiction between the current governance and the Statement through conversion to a new corporate form.

Such an explanation is clearly encompassed by the Proposal:

Shareholders request our Board prepare a report based on a review of the BRT Statement of the Purpose of a Corporation, signed by our Chief Executive Officer, and provide the board’s perspective regarding whether our Company’s governance and management systems should be altered to fully implement the Statement of Purpose.

Yet the No-Action Request does not contain a single word about the ability to change corporate form, which is at the root of the relationship between the Statement and the Company’s corporate governance.¹¹

The No-Action Request Should Be Denied Because the Company’s Argument for Exclusion is Based on Mere Statements that do not Reflect the Company’s Behavior

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

⁹ CALIFORNIA CORPORATIONS CODE §§ 14600-14631 (benefit corporations) and §§ 14600-14631 (specific purpose corporations).

¹⁰ Supra, n. 5 at 3 (“These alternative forms are designed to provide a concrete means by which a corporation can bind itself to a broader set of purposes.”)

¹¹ Regarding a similar proposal last year at Citigroup, the proponent argued:

“While it may be easy enough for our CEO and others to sign on to the Statement, in the absence of actions like this proposal we believe this will serve as a meaningless gesture until it is enforceable through corporate governance documents or corporate law. The scenario suggested by the company: no enforcement, no legislation, no legal or judicial oversight. No state, municipal or federal law to enforce the new ‘purpose.’”

The Staff did not provide no-action relief in that instance. See <https://www.sec.gov/divisions/corpfin/cf-noaction/14a-8/2020/harringtoncitigroup022520-14a8.pdf>

Moreover, if the Company's existing governance structures were already designed to commit to all stakeholders, it stands to reason that the Company would be the subject of few controversies surrounding negative effects it imposes on stakeholders. That is not the case with the Company. The Proponent correctly raises the examples of human rights abuses against Uighur workers in the Company's supply chain and its "buy one every year" strategy for its devices that depletes the planet of vital resources and contributes to increasing global pollution that harms human health and the environment.

The Company has also been criticized recently for documented labor rights abuses at its suppliers' facilities in China.¹² The Company's Supplier Code of Conduct¹³—which it cites in its no action request as evidence of the adequacy of its governance structures—prohibits exactly the sort of harassment and abuse that human rights groups uncovered, and specifies a 60-hour maximum work week with at least one day off per week. Numerous complaints indicated violations of these requirements, highlighting the chasm between lofty statements and genuine implementation.

Moreover, the Company's new Human Rights Policy¹⁴—which it published in August 2020 after criticism over labor conditions at its suppliers' facilities in China—says that when national law conflicts with international values, "we respect national law while seeking to respect the principles of internationally recognized human rights." That is a fancy way of saying that a Chinese worker does not matter as much as an American worker.

Thus, the Company's conduct does not evidence that its current governance is adequate to the task prescribed by signing the Statement. The contrast between the Company's words and its deeds reflects the fact that the Company's only fundamental commitment is to shareholders, as discussed above. The failure to address this gap in its analysis is further evidence of the misleading nature of the analysis included in the No-Action Request.

Why Shareholders Should Not Be Denied a Right to Address This Question

The misleading nature of the statements made in the No-Action Request is not a mere technical point under Rule 14a-8. The mismatch between the Statement and the Company's governance matters deeply to the Company's shareholders. In a recent study, Schroders determined that publicly listed companies imposed social and environmental costs on the economy with a value of \$2.2 trillion annually—more than 2.5% of global GDP.¹⁵ These costs have many sources, including pollution, water withdrawal, climate change and employee stress. The study shows exactly the areas where corporations are likely to ignore stakeholder interests, to the detriment of the global economy.

Ironically, this common corporate practice of prioritizing the Company and the financial returns it provides to its shareholders first harms those very shareholders, the vast majority of whom are diversified.¹⁶ Such shareholders and beneficial owners suffer when companies follow the shareholder

¹² <https://www.voanews.com/economy-business/apple-announces-human-rights-policy-following-criticism>

¹³ <https://www.apple.com/supplier-responsibility/pdf/Apple-Supplier-Code-of-Conduct-January.pdf>

¹⁴ https://s2.q4cdn.com/470004039/files/doc_downloads/gov_docs/Apple-Human-Rights-Policy.pdf

¹⁵ <https://www.schroders.com/en/sysglobalassets/digital/insights/2019/pdfs/sustainability/sustainex/sustainex-short.pdf>

¹⁶ Indeed, as of the January 2020 proxy statement, the top two holders of Company shares were mutual fund companies Vanguard and BlackRock, whose clients are generally indexed or otherwise broadly diversified investors.

primacy model and impose costs on the economy that lower GDP, which reduces equity value.¹⁷ Thus, while the Company may increase its isolated return to shareholders under the rule of shareholder primacy by ignoring costs it externalizes, its diversified shareholders will ultimately pay these costs. They would likely benefit from corporate governance that enabled the Company to honor the commitments made in the Statement.

* * * *

The Proponent's objectives in filing this proposal are dramatically different from our own in supporting it. Nevertheless, we agree on the central point: that the Company's governance and management systems are clearly not designed to foster the commitment to stakeholders in the Statement the CEO signed. Shareholders are entitled to request a study of this issue to help decide whether to seek a change in corporate form in order to serve their interests better.

The Company and its Board have not substantially implemented the proposal, but have instead failed to explain the well-known, basic disparity between a fundamental commitment to stakeholders and governance rules that mandate shareholder primacy. Therefore, we urge the Staff to deny the Company's no action request.

Sincerely,

Frederick Alexander

Frederick Alexander
CEO, The Shareholder Commons

cc: Sam Whittington (by email)
Justin Danhoff (by email)

¹⁷ See, e.g., <https://www.advisorperspectives.com/dshort/updates/2020/11/05/market-cap-to-gdp-an-updated-look-at-the-buffett-valuation-indicator> (total market capitalization to GDP "is probably the best single measure of where valuations stand at any given moment") (quoting Warren Buffet).



November 13, 2020

Via email: shareholderproposals@sec.gov

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

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

Ladies and Gentlemen,

This correspondence is in response to the letter of Sam Whittington on behalf of Apple, Inc. (the “Company”) dated November 5, 2020, supplementing his October 16, 2020 letter requesting that your office (the “Commission” or “Staff”) take no action if the Company omits our Shareholder Proposal (the “Proposal”) from its 2021 proxy materials for its 2021 annual shareholder meeting.

Our Proposal asks the Board of Directors to prepare a report based on a review of the Business Roundtable (BRT) Statement of the Purpose of a Corporation to “provide the board’s perspective regarding whether our Company’s governance and management systems should be altered to fully implement the Statement of Purpose” (the “Statement”). That Statement was signed by Apple CEO Tim Cook. In our Proposal we made clear that we sought a report that considered and sought to reconcile current Company behaviors that diverged from the commitments made in the Statement. We also sought a report that established, if possible, methods and means to ensure that the Company’s adoption of the Statement did not, by making nominal commitments to sometimes orthogonally aligned stakeholders, in effect absolve the Company of accountability to any stakeholders, which would surely have violated the spirit and the letter of the Statement. We explained all of this in our reply of October 29, 2020 to the Company’s no-action request.

In its supplemental no-action request letter of November 5, the Company objected to our characterization of the Proposal. It argued that because the resolution of the Proposal, when

read alone and out of context, merely “asks a question that can be answered with a simple, ‘Yes’ or ‘No.’” And it averred that in answering the question “no,” it had fully complied with the Proposal.

We stand by the argument and interpretation put forth in our reply of October 29. We believe that the whole of the Proposal seeks the searching inquiry that we described. But should the Staff disagree, we hope that it will accompany its decision with specific guidance about when and to what extent context and meaning derived from the whole Proposal is relevant, and when it and other considerations are not relevant. Such a clear and generalized explanation will save time for the Staff, companies and proponents, and will guard against concerns about arbitrary and capricious application of indistinct rules and procedures.

For these reasons as well as those urged in our Reply Letter and its Attachment, we urge the Staff to find that our Proposal may not be omitted under Rule 14a-8(i)(10).

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

A copy of this correspondence has been timely provided to the Company. If I can provide additional materials to address any queries the Staff may have with respect to this letter, please do not hesitate to call me at 202-507-6398 or email me at sshepard@nationalcenter.org. If the Staff does not concur with our position, we would appreciate an opportunity to confer with the Staff concerning this matter prior to the determination of the Staff’s final position.

Sincerely,

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

Scott Shepard

cc: Sam Whittington, Apple Inc. (sam_whittington@apple.com)
Justin Danhof, National Center for Public Policy Research



November 5, 2020

VIA ELECTRONIC MAIL

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

Re: **Apple Inc. Shareholder Proposal from the National Center for
Public Policy Research**

Ladies and Gentlemen:

This letter supplements the October 16, 2020 letter (the “**Initial Letter**”) submitted pursuant to Rule 14a-8(j) under the Securities Exchange Act of 1934, as amended, by Apple Inc., a California corporation, advising the Staff that the Company intends to omit the Proposal and related Supporting Statement submitted by the Proponent for inclusion in the Company’s Proxy Materials and requesting confirmation from the Staff that no enforcement action will be recommended if the Company excludes the Proposal and Supporting statement from its Proxy Materials. Pursuant to Rule 14a-8(j), the Company is sending a copy of this letter concurrently to the Proponent. Other than as defined herein, all defined terms shall have such definitions as in the Initial Letter.

On October 29, 2020, the Proponent submitted a letter to the Staff (the “**NCPPR Letter**”) objecting to the Company’s intention to omit the Proposal from the Proxy Materials and making certain demonstrably erroneous assertions. The Company maintains that the Initial Letter adequately demonstrates that the Company has substantially implemented the Proposal. Nevertheless, the Company is submitting this letter to correct the erroneous assertions made in the NCPPR Letter.

The NCPPR Letter attempts to re-characterize the Proposal and add new requirements.

The NCPPR Letter attempts to re-characterize the Proposal as requesting “a searching analysis of whether and how the Company might more fully align itself with the Statement – and, uniquely, how it should respond if it cannot do so.” However, the Proposal’s plain language does not indicate a request for the Company or its Board to produce any specific action items by which

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the Company may “better” or “more” fully implement the Statement of Purpose, as stated in the NCPPR Letter. Nowhere in the Proposal does the Proponent make it “clear that [it] sought a report that considered and sought to reconcile current Company behaviors that diverged from the commitments made in the Statement,” nor does the Proposal state that it would require a report “that established . . . methods and means to ensure that the Company’s adoption of the Statement did not . . . in effect absolve the Company of accountability to any stakeholders . . .,” as asserted in the NCPPR Letter.

Rather, the Proposal asks a question that can be answered with a simple, “Yes” or “No.” Specifically, the Proposal asks, “whether our Company’s governance and management systems should be altered to fully implement the Statement of Purpose.” As noted in the Initial Letter, the Nominating and Corporate Governance Committee, on behalf of the Board, considered this question after reviewing the Proposal, as well as the Statement of Purpose and Apple’s governance and management systems described in the Initial Letter. Following this review, the Committee answered the question posed in the Proposal with a “No,” and determined that Apple’s governance and management systems *do not* need to be altered in order to fully implement the Statement of Purpose. As disclosed in the Initial Letter and its filings with the Commission, Apple leads with its values and already operates in accordance with the principles set forth in the Statement of Purpose and provides adequate disclosure to shareholders and the public about this alignment. Consequently, even if the Proposal were to pass, there is nothing additional that Apple’s Board would do in order to fully implement the Proposal.

The NCPPR Letter incorrectly characterizes the McKesson Corp no-action letter precedent.

The NCPPR Letter incorrectly attempts to tie the Proposal to the proposal and circumstances described in *McKesson Corp.* (avail. May 26, 2020). In *McKesson Corp.*, the proposal requested “a report discussing options as to how [the c]ompany’s governance and management systems can be altered to better align with the Statement of Purpose.” This language in the *McKesson Corp.* proposal requests specific action items and an analysis of that company’s governance and management systems. *No such request was included in the Proposal.* Unlike in *McKesson Corp.*, were the Proposal to pass, in order to implement the Proposal, it would not be necessary for Apple’s Board to suggest any improvements in order to better align with the Statement of Purpose, because nowhere does the Proposal make any such request.

Moreover, *McKesson Corp.*’s argument for substantial implementation was markedly different than Apple’s and, as a result, the Staff appropriately concluded that *McKesson Corp.* did not demonstrate substantial implementation, whereas such a result would not be appropriate here. In *McKesson Corp.*, despite the proposal’s specific request, the company did not outline any specific actions that it would take to “better align with the Statement of Purpose” and its Board acknowledged that there was a “delta between what the [p]roposal requests and what McKesson’s current policies provide.”

Here, in contrast, the Proposal requests a review of the Statement of Purpose and a determination by the Board as to whether Apple's governance and management systems should be altered to fully implement the Statement of Purpose. As described above and in the Initial Letter, Apple's Nominating and Corporate Governance Committee conducted that review and determined that no such changes were necessary in order to fully implement that Statement of Purpose.

In the NCPPR Letter, the Proponent is attempting to re-characterize the Proposal in order to better fit the *McKesson Corp.* precedent. However, the Proposal is as it was submitted: it does not require the "searching analysis" claimed, and thus the *McKesson Corp.* precedent is not applicable to the Company's no-action request.

Accordingly, for these reasons and the reasons set forth in the Initial Letter, the Company respectfully requests confirmation that the Staff will not recommend enforcement action to the Commission if the Company excludes the Proposal pursuant to Rule 14a-8(i)(10), as the Proposal has been substantially implemented.

* * * *

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

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

Sincerely,

A handwritten signature in black ink, appearing to read "SJV", followed by a horizontal line.

Sam Whittington
Assistant Secretary

Enclosures

cc: Justin Danhof, National Center for Public Policy Research
Ian Schuman, Latham & Watkins LLP



October 29, 2020

Via email: shareholderproposals@sec.gov

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

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

Ladies and Gentlemen,

This correspondence is in response to the letter of Sam Whittington on behalf of Apple Inc. (the “Company”) dated October 16, 2020, requesting that your office (the “Commission” or “Staff”) take no action if the Company omits our Shareholder Proposal (the “Proposal”) from its 2021 proxy materials for its 2021 annual shareholder meeting.

RESPONSE TO APPLE’S CLAIMS

Our Proposal asks the Board of Directors to prepare a report based on a review of the Business Roundtable (BRT) Statement of the Purpose of a Corporation to “provide the board’s perspective regarding whether our Company’s governance and management systems should be altered to fully implement the Statement of Purpose” (the “Statement”).¹ That Statement was signed by

¹ See Business Roundtable, STATEMENT ON THE PURPOSE OF A CORPORATION (Aug. 19, 2019), *available at* <https://opportunity.businessroundtable.org/ourcommitment/> (last accessed Oct. 26, 2020). In relevant part, the Statement asserts that

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

Apple CEO Tim Cook. In our Proposal we made clear that we sought a report that considered and sought to reconcile current Company behaviors that diverged from the commitments made in the Statement. We also sought a report that established, if possible, methods and means to ensure that the Company's adoption of the Statement did not, by making nominal commitments to sometimes-orthogonally aligned stakeholders, in effect absolve the Company of accountability to any stakeholders, which would surely have violated the spirit and the letter of the Statement.

The Company seeks to exclude this proposal "pursuant to Rule 14a-8(i)(10) because the Company has already substantially implemented the Proposal and, were the Proposal to be voted upon by shareholders at the Annual Meeting and pass, there is nothing further that the Company would do to implement the Proposal."²

The Company's no-action request fails in the face of exactly applicable precedent to the contrary. In *McKesson Corp.* (avail. May 26, 2020), the Staff rejected a request by McKesson to permit omission of a proposal that is materially indistinguishable from Our Proposal. Though the Staff issued no explanation of its decision, the proceedings demonstrate that in that case McKesson showed that it had some policies and programs that were reasonably aligned with the Statement, but failed to conduct or publish the searching inquiry that the proponents sought, and failed even to investigate the specific instances of non-conformity raised by the proponents or attempt to account for the incongruity between lofty commitments and disparate realities. Circumstances in this proceeding are the same. And because the Company, like McKesson, failed to undertake the requisite, systemic inquiry, its lip-service assertions that it has reached the required conclusions are empty.

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

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

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

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

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

Id.

² Letter from Sam Whittington, Assistant Secretary, Apple, Inc. to Office of the Chief Counsel, Division of Corporation Finance, Securities and Exchange Commission 1 (Oct. 16, 2020) ("No-Action Request").

Under Rule 14a-8(g), the Company bears the burden of persuading the Staff that it may omit our Proposal. The Company has failed to meet that burden. The Commission has explicitly held that a proposal materially indistinguishable from ours may not be omitted for the very reasons raised by the Company here. The Company's only precedent to the contrary is inapposite because the no-action request in that proceeding went uncontested. Because the only complete, properly contested precedent in this instance establishes that a no-action determination would be inappropriate in this context, we urge the Commission to reject the Company's no-action request.

Analysis

Part I. Rule 14-8(i)(10).

Under Rule 14a-8(i)(10), a company may exclude a shareholder proposal if it can meaningfully demonstrate that "the company has already substantially implemented the proposal." Rule 14a-8(i)(10) exclusion is "designed to avoid the possibility of shareholders having to consider matters which already have been *favorably acted upon* by management." *See Exchange Act Release* No. 12598 (regarding predecessor to Rule 14a-8(i)(10)) (emphasis added). A company can be said to have "substantially implemented" a proposal when its "policies, practices and procedures compare favorably with the guidelines of the proposal." *See Texaco, Inc.* (avail. March 8, 1991).

As the proponents in *McKesson* rightly explained

[i]n order for a Company to meet its burden of proving substantial implementation pursuant to Rule 14a-8(i)(10), the actions in question must compare favorably with the guidelines and essential purpose of the Proposal. The Staff has noted that a determination that a company has substantially implemented a proposal depends upon whether a company's particular policies, practices, and procedures compare favorably with the guidelines of the proposal. *Texaco, Inc.* (Mar. 28, 1991). Substantial implementation under Rule 14a-8(i)(10) requires a company's actions to have satisfactorily addressed both the proposal's guidelines and its essential objective. *See, e.g., Exelon Corp.* (Feb. 26, 2010). Thus, when a company can demonstrate that it has already taken actions that meet most of the guidelines of a proposal and meet the proposal's essential purpose, the Staff has concurred that the proposal has been "substantially implemented." In the current instance, the Company has substantially fulfilled neither the guidelines nor the essential purpose of the Proposal, and therefore the Proposal cannot be excluded under Rule (i)(10).³

³ In the *McKesson* proceeding, *McKesson* additionally argued, also unsuccessfully, that the proposal could be omitted under Rule 14a-8(i)(7). Letter from Alan F. Denenberg to Office of the Chief Counsel, Division of Corporation Finance, Securities and Exchange Commission 1 (April 29, 2020) ("*McKesson* Supplemental No-Action Request"). *Blackrock, Inc.* likewise argued unsuccessfully for the omission of another proposal that is materially indistinguishable from our Proposal on Rule 14a-8(i)(7) grounds in *Blackrock, Inc.* (avail. Feb. 25, 2020). In the *Blackrock* proceeding, the shareholder resolution

Part II. The Proposal Is Materially Indistinguishable From the Proposal That the Staff Determined Could Not Be Omitted in the McKesson Proceeding.

The resolution of the shareholder proposal submitted in the *McKesson* proceeding requested that

our Board review the BRT Statement of the Purpose of a Corporation, signed by our Chairman and Chief Executive Officer, and prepare a report discussing options as to how our Company's governance and management systems can be altered to better align with the Statement of Purpose. The report may include the Board's perspective on benefits and drawbacks of the options considered, as well as the board's recommendations.

Our Proposal is materially indistinguishable from the proposal that the Staff allowed in *McKesson*. Per its resolution:

[s]hareholders request our Board prepare a report based on a review of the BRT Statement of the Purpose of a Corporation, signed by our Chief Executive Officer, and provide the board's perspective regarding whether our Company's governance and management systems should be altered to fully implement the Statement of Purpose.

Just as the Company does now, *McKesson* argued that it had already substantially implemented the proposal, per Rule 14a-8(i)(10). As the operative language of our Proposal is materially the same as that used by the proposal in *McKesson*, consistency dictates that the Staff reject Apple's no-action request on these grounds.⁴

Part III. As in McKesson, the Company Has Mischaracterized the Purpose of Our Proposal in Its Claim Already to Have Substantially Satisfied It.

In *McKesson*, the proponent's proposal, upon which, as just demonstrated, our Proposal is materially modeled, was mischaracterized by *McKesson* in its assertions that the proposal had

request[ed] our Board prepare a report based on a review of the [Business Roundtable] Statement of the Purpose of a Corporation, signed by our Chairman and Chief Executive Officer, and provide the board's perspective regarding how our Company's governance and management systems should be altered to fully implement the Statement of Purpose.

Letter from Sanford J. Lewis to Office of the Chief Counsel, Division of Corporation Finance, Securities and Exchange Commission (February 11, 2020), Exhibit 1 (Trio Foundation, *et al.*, THE PROPOSAL).

⁴ Letter from Sanford J. Lewis to Office of the Chief Counsel, Division of Corporation Finance, Securities and Exchange Commission 3 (February 11, 2020) ("*McKesson* No-Action Reply").

been substantially implemented. In that case, McKesson treated that proposal as seeking to determine whether the “[c]ompany has already fulfilled the essential objectives of the Proposal with its disclosures about its existing governance and management systems that demonstrate alignment with the BRT Statement.”⁵

The proponents in *McKesson* identified and objected to this mischaracterization. As they explained, McKesson

[m]ischaracterize[d] the purpose of the Proposal as asking the Company to address the impact of Company decisions on each of the five stakeholder populations, going to great lengths to demonstrate the actions it has already taken to take stakeholder interest into account. However, the purpose of the Proposal is not to merely ensure that [McKesson] has some programs or practices that consider or serve the five categories of stakeholders named in the Statement.⁶

The Company in this proceeding mischaracterized our Proposal in the same way, and to the same effect. It asserted that “[b]ecause Apple’s core values, practices, and policies and procedures already provide the framework for Apple to operate consistently with the Statement of Purpose, no amendments to Apple’s governing documents or changes to its management systems were or are necessary to fully implement the Statement of purpose.”⁷ The Company then spent significant effort to show that some of its programs and practices serve the five categories of stakeholders identified in the Statement.⁸

But the Company, like McKesson, failed properly to divine – or to admit – the true and clear purpose of the proposal. As in *McKesson*,⁹ what our Proposal seeks is a searching analysis of whether and how the Company might more fully align itself with the Statement – and, uniquely, how it should respond if it cannot do so. The Company has failed even to attempt that analysis.

⁵ Letter from Alan F. Denenberg to Office of the Chief Counsel, Division of Corporation Finance, Securities and Exchange Commission 3 (March 30, 2020).

⁶ *McKesson* No-Action Reply, *supra* note 4, at 2-3.

⁷ No-Action Request, *supra* note 2, at 2.

⁸ *See id.* at 4-12.

⁹ *See McKesson* No-Action Reply, *supra* note 4, at 3 (“the purpose of the [proposal at issue in *McKesson*] is to spur a review of the Company’s management and governance systems documents with an eye toward more fully implementing the Statement across all of its activities and programs.”).

Part IV. As in McKesson, the Company Has Fulfilled Neither the Guidelines nor the Essential Purpose of Our Proposal.

In *McKesson* and in the instant proceeding, each company responded to the proponents' requests by listing the ways in which its current policies assisted the stakeholder groups explicitly identified in the Statement. Both failed, however, to consider ways in which various company behaviors failed to comport with the Statement, or otherwise to explain whether or how the company's behavior could or should be altered to conform more fully with the Statement while fulfilling legal obligations, and what to do if those behaviors cannot be so altered and reconciled.

In *McKesson*, the failure to fulfill the guidelines and essential purpose arose from a failure to consider explicitly how to respond to demonstrated failures of *McKesson* to conform its behavior to the Statement's standards.¹⁰ The Company in this proceeding fails the same test in the same way. As we indicated in our Proposal, "The *Business Insider* has reported that Apple profits from questionable labor practices in China, specifically Uighur workers forcibly displaced by the Chinese Communist Party. According to a published report, this 'relocation programme is part of the Chinese government's broader persecution of the Uighur minority, which is predominantly Muslim.'" ¹¹ This instance demonstrates that despite the Company's recital of policies that favor employees, suppliers (including, presumably, the suppliers' employees) and communities, and some noble programs, the Company is still failing to make its lofty aspirations work on the ground for these stakeholders in the most stark of circumstances.

Similarly, with regard to environmental protection, we explained that "*Tech.co* has suggested that Apple's environmental posturing is little more than 'greenwashing' noting that '[w]hile Apple is verbally committed to solving the pollution problems caused by its devices, the culture of the company says otherwise. In a time when unused and un-recycled smartphones are literally depleting the planet of necessary resources, Apple continues to push its 'buy one every year' strategy.'" It thus appears that – at least by some reasonable interpretations – Apple has again failed in its commitments to communities and to the environment.

In addition, our Proposal asked the Company to establish "clear mechanisms ... to implement the" Statement to ensure that the end result was not to leave the Company effectively "accountabl[e] to none" of its stakeholders, which would contravene both the Statement and the Company's legally binding fiduciary obligations to shareholders. In this regard it sought a materially indistinguishable showing from that sought in *McKesson*, i.e., "how the Company's governance documents will prioritize and reconcile the needs and support of different stakeholder groups henceforth across the Company's activities,"¹² and additionally, in our case,

¹⁰ See *McKesson* No-Action Reply, *supra* note 4, at 4.

¹¹ Free Enterprise Project, NATIONAL CENTER, REPORT ON COMPANY'S INVOLVEMENT WITH BUSINESS ROUNDTABLE "STATEMENT ON THE PURPOSE OF A CORPORATION" (attached).

¹² See *McKesson* No-Action Reply, *supra* note 5, at 5.

whether such reconciliation is even possible under a stakeholder model divorced from the underlying strictures of shareholder primacy.

In failing to grapple with these examples and other instances of divergence between commitment and real behavior, and in failing to conduct a systemic review of its policies and practices, the Company has failed to consider how far it diverges from the goals of the Statement, and whether or how it can bring itself into line with those goals.

The Company has also therefore failed to contemplate or respond to the possibility that, upon consideration of the results of the systemic review sought by our Proposal, the Company might conclude that a genuine – as opposed to its current notional and convenient – commitment to the Statement could not be achieved with fidelity to current corporate law, to the Company’s owners, or to other legal obligations faced by the Company and its leaders. This searching inquiry was contemplated by and included in the guidelines of our Proposal, but was ignored by the Company entirely.

Part V. The Company Alleges That the Board of Directors Has Completed the Requested Review, but Provides No Evidence That It Has Materially – Rather Than Purely Superficially – Done So.

The Company claims that it has demonstrated that it has substantially implemented our Proposal because the Board of Directors, by its Corporate Governance and Nominating Committee, has undertaken all of the review and analysis sought in our Proposal, so that “any subsequent report would contain substantially the same information as was already presented to the Committee and outlined in this letter.”¹³

This conclusion, though, once again mischaracterizes our Proposal. We did not merely ask the Board cursorily to raise before its Corporate Governance Committee, without conducting any further inquiry, the question of whether it still agreed with itself; we did not seek an empty and meaningless gesture. Instead, as was explained in Part IV above, we sought a report based on a searching consideration of the different ways in which the Company’s current activities fall below the commitments created by the Statement; one that determined whether (and if so, how) those sometimes orthogonal commitments could be reconciled; and finally what should be done if, upon significant study of the current contrasts between commitments and reality, it were to be determined that such reconciliation is impossible consistent with extant legal duties and obligations.

A blithe assertion, apparently based on no searching inquiry, that, in effect, “everything’s fine as it is; we needn’t change a thing,” hardly provides substantial implementation of our Proposal.

¹³ No-Action Request, *supra* note 2, at 12.

Part VI. The JP Morgan Chase & Co. Precedent Upon Which the Company Exclusively Materially Relies Is Inapposite Because the Proponent Made No Reply, and in Any Case Was Superseded by the Subsequent, and Fully Argued, McKesson Case.

The Company relies on *JP Morgan Chase & Co.* (avail. Feb. 5, 2020) as its only on-point precedent.¹⁴ But that reliance is misplaced. First, the *JP Morgan* proceeding is incomplete; the proponent of the proposal therein failed to respond to JP Morgan's no-action request. This failure of response is controlling in this instance, because it would have been in a response to JP Morgan's no-action request that the proponents there would have demonstrated JP Morgan's nominal actions to be empty, if they were. Here the demonstration has been made, rendering *JP Morgan* inapposite.

Moreover, the incomplete *JP Morgan* precedent was superseded later in the spring by the *McKesson* precedent. JP Morgan and McKesson provided essentially the same response to their proponents. In the later, contested proceeding, the Staff concluded that the response was insufficient to permit preclusion because of the demonstration made by the proponents. We have done the same here.

The *McKesson* precedent thus controls. And as we have demonstrated, it wholly resolves this case, in which our Proposal is materially indistinguishable from the proposal that was deemed non-omittable in *McKesson*, even while the Company's argument in favor of omission followed McKesson's response almost exactly, and our reply to that argument has likewise – with full fidelity and full relevance – followed that response.

Conclusion

For the above reasons, we urge the Staff to find that our Proposal may not be omitted under Rule 14a-8(i)(10).

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

¹⁴ See *id.* at 3, 12.

Office of the Chief Counsel
Division of Corporation Finance
October 29, 2020
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A copy of this correspondence has been timely provided to the Company. If I can provide additional materials to address any queries the Commission may have with respect to this letter, please do not hesitate to call me at (202) 507-6398 or email me at sshepard@nationalcenter.org.

Sincerely,

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

Scott Andrew Shepard

cc: Sam Whittington, Apple Inc. (sam_whittington@apple.com)
Justin Danhof, National Center for Public Policy Research

Attachment

Report on Company's Involvement with Business Roundtable "Statement on the Purpose of a Corporation"

Whereas, our Company's Chief Executive Officer (CEO) Tim Cook, in August 2019, signed a Business Roundtable (BRT) "Statement on the Purpose of a Corporation," (Statement) committing our Company to serve all stakeholders including employees, customers, supply chain, communities where we operate, and shareholders.¹⁵

Existing governance documents evolved in an environment of shareholder primacy, but the Statement articulates a new purpose, moves away from shareholder primacy, and includes commitment to all stakeholders. The Statement may or may not be beneficial to associate with our brand, however, the Statement, as company policy, may conflict with existing corporate law unless integrated into Company governance documents, including bylaws, Articles of Incorporation, and/or Committee Charters.

A stakeholder model would shift corporate focus from value creation to concerns generally referred to as Environmental, Social and Governance (ESG) issues. Apple CEO Cook speaks regularly of the company's commitment to environment and social causes.¹⁶ For example, Cook has received a sustainability award from the advocacy group Ceres based on Apple's environmental promises. Apple also recently launched a \$100 million "Racial Equity and Justice Initiative" to challenge what it claims are "systemic barriers to opportunity and dignity that exists for communities of color and particular for the black community."¹⁷

For consistency, the Company should not endorse positions with which it has not or cannot conform itself. The Company currently engages in various actions that seem to contradict the Statement. As an example related to social issues:

- The Business Insider has reported that Apple profits from questionable labor practices in China, specifically Uighur workers forcibly displaced by the Chinese Communist Party. According to published reporting, this "relocation programme is part of the Chinese government's broader persecution of the Uighur minority, which is predominantly Muslim."¹⁸

An example related to the environment:

- Among others, Tech.co has suggested that Apple's environmental posturing is little more than "greenwashing" noting that "[w]hile Apple is verbally committed to solving the pollution problems caused by its devices, the culture of the company says otherwise. In a

¹⁵ <https://opportunity.businessroundtable.org/ourcommitment/>

¹⁶ <https://www.cnn.com/2019/10/22/apple-ceo-tim-cook-accepts-ceres-conference-sustainability-award.html>

¹⁷ <https://www.theverge.com/2020/6/11/21287999/apple-racial-equity-justice-initiative-amount-cook-lisa-jackson>

¹⁸ <https://www.businessinsider.com/apple-forced-uighur-labor-iphone-factory-2020-3>

time when unused and un-recycled smartphones are literally depleting the planet of necessary resources, Apple continues to push its ‘buy one every year’ strategy.”¹⁹

Although the Statement of Purpose implies accountability to stakeholders, without clear mechanisms in place to implement the Purpose, this broadened standard could *reduce accountability to shareholders* and in effect, ensure accountability *to none*.

Resolved: Shareholders request our Board prepare a report based on a review of the BRT Statement of the Purpose of a Corporation, signed by our Chief Executive Officer, and provide the board’s perspective regarding whether our Company’s governance and management systems should be altered to fully implement the Statement of Purpose.

Supporting Statement

Given the Company’s inconsistent actions related to the Statement of Purpose, the Board might consider the option of rescinding the CEO’s signature and Company’s name from that document.

¹⁹ <https://tech.co/news/big-tech-climate-action-change-greenwashing-2020-02>



October 16, 2020

VIA ELECTRONIC MAIL

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

Re: **Apple Inc. Shareholder Proposal from the National Center for Public Policy Research**

Ladies and Gentlemen:

This letter is submitted pursuant to Rule 14a-8(j) under the Securities Exchange Act of 1934, as amended. Apple Inc., a California corporation ("**Apple**" or the "**Company**"), has received a shareholder proposal (the "**Proposal**") and related supporting statement (the "**Supporting Statement**") from the National Center for Public Policy Research (the "**Proponent**") for inclusion in the Company's proxy statement (the "**Proxy Materials**") for the Company's 2021 Annual Meeting of Shareholders (the "**Annual Meeting**"). A copy of the Proposal and the Supporting Statement, together with other correspondence relating to the Proposal, is attached hereto as [Exhibit A](#). The Company hereby advises the staff of the Division of Corporation Finance (the "**Staff**") that it intends to exclude the Proposal from its Proxy Materials. The Company respectfully requests confirmation that the Staff will not recommend enforcement action to the Securities and Exchange Commission (the "**Commission**") if the Company excludes the Proposal pursuant to Rule 14a-8(i)(10), as the Proposal has been substantially implemented.

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

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

I. The Shareholder Proposal.

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

"Resolved: Shareholders request our Board prepare a report based on a review of the BRT Statement of the Purpose of a Corporation, signed by our Chief Executive Officer, and provide the board's perspective regarding whether our Company's governance

and management systems should be altered to fully implement the Statement of Purpose.”

II. Background on the Statement of Purpose.

The Business Roundtable’s “Statement on the Purpose of a Corporation” (the “**Statement of Purpose**”, attached hereto as [Exhibit B](#)), originally signed in 2019 by 181 CEOs including Apple’s CEO, Tim Cook, reflects an acknowledgment that businesses in the United States play a vital role in the economy and that, while each individual company serves its own corporate purpose, the signatories share a fundamental commitment to deliver value to all of their stakeholders, including generating long-term value for shareholders.

The Statement of Purpose is aligned with Apple’s mission and values. It is not a reorientation of Apple’s corporate purpose. The document reflects a broad consensus among prominent business leaders and is aligned with the Company’s practices and policies in each of the five areas identified by the Statement of Purpose: (1) delivering value to customers; (2) investing in Apple’s employees; (3) dealing fairly and ethically with suppliers; (4) supporting communities in which Apple works; and (5) generating long-term value for shareholders. Because Apple’s core values, practices, and policies and procedures already provide the framework for Apple to operate consistently with the Statement of Purpose, no amendments to Apple’s governing documents or changes to its management systems were or are necessary to fully implement the Statement of Purpose.

III. Basis for Exclusion – The Proposal Has Been Substantially Implemented by the Company in Accordance with Rule 14a-8(i)(10).

The Company requests that the Staff concur in its view that the Company may exclude the Proposal from the Proxy Materials pursuant to Rule 14a-8(i)(10) because the Company has already substantially implemented the Proposal and, were the Proposal to be voted upon by shareholders at the Annual Meeting and pass, there is nothing further that the Company would do to implement the Proposal.

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

Rule 14a-8(i)(10) provides that a company may exclude a shareholder proposal from its proxy materials if the company has substantially implemented the proposal. In explaining the scope of a predecessor to Rule 14a-8(i)(10), the Commission stated that the exclusion is “designed to avoid the possibility of shareholders having to consider matters which already have been favorably acted upon by the management.” Exchange Act Release No. 12598 (July 7, 1976) (discussing the rationale for adopting the predecessor to Rule 14a-8(i)(10), which provided as a substantive basis for omitting a shareholder proposal that “the proposal has been rendered moot by the actions of the management”). At one time, the Staff interpreted the predecessor rule narrowly, considering a proposal to be excludable under this provision only if it had been “‘fully’ effected” by the company. See Exchange Act Release No. 19135 at § II.B.5. (Oct. 14, 1982). By 1982, however, the Commission recognized that the Staff’s narrow interpretation of the predecessor rule “may not serve the interests of the issuer’s security holders at large and may lead to an abuse of the security holder proposal process,” in particular by enabling proponents to argue “successfully on numerous occasions that a proposal may not be excluded as moot in cases where the company has taken most but not all of the actions requested by the proposal.” *Id.* Accordingly, the Commission proposed in 1982, and adopted in 1983, a revised interpretation

of the rule to permit the omission of proposals that had been “substantially implemented.” See Exchange Act Release No. 20091, at § II.E.6. (Aug. 16, 1983) (the “**1983 Release**”) (indicating that the Staff’s “previous formalistic application of” the predecessor rule “defeated its purpose” because the interpretation allowed proponents to obtain a shareholder vote on an existing company policy by changing only a few words of the policy). The Commission later codified this revised interpretation in Exchange Act Release No. 40018 at n.30 (May 21, 1998). Accordingly, the actions requested by a proposal need not be “fully effected” by the company to be excluded; rather, to be excluded, they need only to have been “substantially implemented” by the company. See the 1983 Release.

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

The Staff has previously taken the position that a shareholder proposal requesting that a company’s board of directors prepare a report pertaining to environmental, social, or governance (“**ESG**”) issues may be excluded when the company has provided information about the initiative in various public disclosures. See, e.g., *The Wendy’s Company* (avail. Apr. 10, 2019) (concurring with exclusion of a proposal requesting that the board of directors prepare a report on the company’s process for identifying and analyzing potential and actual human rights risks of operations and supply chain where the company already had a code of conduct for suppliers, a code of business conduct and ethics, and other policies and public disclosures concerning supply chain practices and other human rights issues that achieved the proposal’s essential objective); *McDonald’s Corporation* (avail. Feb. 28, 2014) (concurring with the exclusion of a proposal requesting that the board of directors review and prepare a report to shareholders articulating directors’ duties with respect to ESG issues where the charter for the board’s sustainability and corporate responsibility committee and a report undertaken by such committee described such duties); *The Dow Chemical Co.* (avail. Mar. 5, 2008) (concurring with exclusion of a proposal requesting that the board of directors prepare a report discussing how the company’s efforts to ameliorate climate change have affected the global climate where the company had already made statements about its efforts related to climate change in various corporate documents and disclosures); and *The Gap, Inc.* (avail. Mar. 16, 2001) (concurring that a proposal requesting that the board of directors prepare a report on child labor practices of company suppliers was substantially implemented when the company published information on its website with respect to the company’s vendor code and monitoring programs).

Notably, in *JPMorgan Chase & Co.* (avail. Feb. 5, 2020), the Staff determined that a proposal (the “**JPM Proposal**”) with a similar request as the Proposal was found to be substantially implemented under similar circumstances. The JPM Proposal requested that the company’s board provide oversight and guidance as to how the Statement of Purpose should

alter the company's governance practices and publish recommendations regarding implementation. The Staff concurred that the "board's actions compare favorably with the guidelines of the Proposal," and made particular note of the company's representation that the board's corporate governance and nominating committee had determined that no additional action or assessment was needed, as the company already operated in accordance with the Statement of Purpose.

B. The Company's Publicly Disclosed Governance and Management Systems Substantially Implement the Proposal, and the Nominating and Corporate Governance Committee has Determined no Alterations are Necessary to Fully Implement the Statement of Purpose

The Proposal requests a report to provide "the board's perspective regarding whether our Company's governance and management systems should be altered to fully implement the Statement of Purpose." As further described below, in considering the Proposal, the Nominating and Corporate Governance Committee (the "**Committee**") of Apple's Board of Directors (the "**Board**") reviewed the Statement of Purpose and the Company's governance and management systems, which are reflected in the Company's current practices and policies disclosed on the Company's website or in its filings with the Commission and which have been summarized in this letter. Following this review, the Committee determined that the Company's governance and management systems do not need to be altered in order to fully implement the Statement of Purpose because the Company already operates in accordance with the principles set forth in the Statement of Purpose and provides adequate disclosure to shareholders and the public about this alignment.

For many years, the Company has been firmly committed to its core values of accessibility, inclusion and diversity, education, privacy and security, protecting the environment, and supplier responsibility (the "**Values**"), and the actions it has taken to carry out those Values fully align with the items addressed in the Statement of Purpose. Through robust disclosure on the Company's website, in its filings with the Commission, and in its various governance policies and reports, the Company has been transparent about its Values and its governance and management systems to implement them, which reflect its commitment to all of its stakeholders. Thus, the Committee was able to determine that no alterations were necessary to the Company's governance and management systems in order to fully implement the Statement of Purpose.

1. The Company's Core Values Fully Align with the Statement of Purpose

The notion that a business should deliver value to all stakeholders, and not only its shareholders, lies at the heart of Apple's Values and is the overarching principle of the Statement of Purpose. Apple discloses its Values on its website and, since 2016, Apple has included these Values in its annual meeting proxy statements. The description of Apple's Values as disclosed in the Company's Proxy Statement for the 2020 Annual Meeting of Shareholders¹ (the "**2020 Proxy Statement**") is attached hereto as [Exhibit C](#).

On Apple's ESG website, the Company expresses its commitment to running its business in accordance with these Values, and thus with the interests of its various stakeholders, including customers, employees, suppliers, and communities, in mind. Apple states:

We believe business can and should be a force for good. Achieving that takes innovation, hard work, and a focus on serving others. It also means leading with our values in the technology we make, in the way we make it, and in how we treat people and the planet we share. Apple is dedicated to leaving the world better than we found it, and to creating powerful tools that empower others to do the same.

Therefore, Mr. Cook's signing of the Statement of Purpose did not represent a shift in strategy or require management to operate the business any differently than it had previously. Instead, the commitments in the Statement of Purpose to customers, employees, suppliers and communities, in addition to shareholders, mirror the commitments Apple had already made to these stakeholders through the Company's Values. Specifically:

- The Statement of Purpose commitment to *delivering value to customers* aligns with Apple's Values of accessibility and privacy. Apple believes accessibility is a fundamental human right and technology should be accessible to everyone. The Company builds powerful assistive features into the Company's products to give people with physical limitations greater control over their lives. Apple also believes privacy is a fundamental human right and every Apple product is designed from the ground up to protect privacy and security.
- The Statement of Purpose commitments to *investing in employees* and *supporting the communities in which the Company works* align with Apple's Values of education and inclusion & diversity. Apple has prioritized providing employees with education and training to improve skill-sets and create advancement opportunities, creating technology that can be deployed in classrooms around the world, and developing programs that teach the next generation fundamental skills in areas such as coding. Apple also strives to represent the customers and communities the Company serves — everywhere we operate around the world — because it makes us a better and more innovative company. Apple is committed to hiring and promoting inclusively, championing racial equity and equal pay, increasing diverse representation at all levels, and fostering an inclusive culture that gives every employee the opportunity to do the best work of their lives.
- The Statement of Purpose commitments to *dealing fairly and ethically with suppliers* and *supporting the communities in which the Company works* align with Apple's Value of supplier responsibility. Apple has required that the Company hold itself, as well as its suppliers, to the highest standards of ethical conduct in conducting business and has prioritized offering extensive education and training opportunities to supplier employees.
- The Statement of Purpose commitment to *supporting the communities in which the Company works* also aligns with Apple's Value of protecting the environment. Apple has prioritized the protection of local communities and the planet by donating to relief efforts for communities in need and by embracing sustainable business practices, including the use of recycled materials in product design and a pledge to achieve total carbon neutrality by 2030.
- The Statement of Purpose commitment to *generating long-term value for shareholders* aligns with all of Apple's Values. Apple believes that operating its business in accordance

with its Values and with the interests of all stakeholders in mind has generated, and will continue to generate, long-term value for shareholders. Apple has been transparent with shareholders about its efforts in this regard.

2. A Review of the Company's Publicly Disclosed Business Practices and Policies Demonstrates that it has Fully Implemented Each Element of the Statement of Purpose

As discussed below, the Company's website disclosures, filings with the Commission, and various governance policies and reports demonstrate Apple's commitment to its Values and each element of the Statement of Purpose.

Statement of Purpose	Apple's Key Responsive Disclosures
<p>"Delivering value to our customers. We will further the tradition of American companies leading the way in meeting or exceeding customer expectations."</p>	<p><i>Delivering value to customers and meeting or exceeding customer expectations</i></p> <p>See Press Release dated July 22, 2020², the 2019 10-K³ at page 2, and Q3 2020 Earnings Release.⁴ Apple consistently delivers value and exceeds customer expectations with its products and services. As Apple noted in a recent press release, "[s]ince its founding, Apple has been a pioneer in democratizing powerful technology through products and services designed for everyone." Despite the recent uncertainty surrounding the COVID-19 pandemic, the Company saw revenue growth in the third quarter of 2020 of 11%, which the Company attributed, in part, "to the important role [its] products play in [its] customers' lives and to Apple's relentless innovation." Although Apple competes in several highly competitive businesses, Apple believes customers select its products and services because they offer "superior innovation and integration of the entire solution, including hardware, software, and services."</p> <p>See Human Rights Policy⁵ at page 1. Apple has consistently expressed its commitment to meeting the needs and advocating for the protection of all customers. As noted in the Company's Human Rights Policy, which was approved by the Board in 2020, the Company "feel[s] a deep sense of responsibility for people that respects their human rights, empowers them with useful tools and information, and enhances their overall quality of life." This is reflected in many of the features of Apple's products, including:</p> <ul style="list-style-type: none"> • See Press Release, dated April 15, 2020.⁶ Apple strives to deliver quality products at affordable prices, including by introducing lower-priced versions of popular devices such as the iPhone SE. • See apple.com/accessibility/. Apple's products are designed to be accessible to everyone, including customers who are vision- or hearing-impaired and those with physical motor limitations. For example, Apple's VoiceOver function audibly describes what is happening on a device so a customer can navigate solely by sound

Statement of Purpose	Apple's Key Responsive Disclosures
	<p>or display settings, allowing customers with color blindness or other vision challenges to better utilize the devices.</p> <ul style="list-style-type: none"> • See apple.com/privacy/, Privacy Policy⁷, Privacy Governance webpage⁸, and Transparency Report.⁹ Apple believes that "privacy is a fundamental human right" and prioritizes protecting customer privacy and giving customers control over their information. This Value is reflected in the Company's Privacy Policy, which governs how customer personal data is collected, used, disclosed, transferred, and stored. In addition, Apple's Privacy Governance website outlines Apple's approach to privacy governance and the measures the Company takes to enforce privacy safeguards for the protection of customers. As noted on the Privacy Governance website, Apple "design[s] [its] products and services according to the principle of privacy by default and collect[s] only the minimum amount of data necessary to provide [its] users with a product or service." In furtherance of Apple's commitment to privacy, Apple also publishes an annual Transparency Report that details government requests for customer data by category of request, date, and country/region.
<p>"Investing in our employees. This starts with compensating them fairly and providing important benefits. It also includes supporting them through training and education that help develop new skills for a rapidly changing world. We foster diversity and inclusion, dignity and respect."</p>	<p><i>Compensating employees fairly</i></p> <p>See apple.com/diversity/. Reflective of its Value of inclusion & diversity, Apple is a champion of equal pay around the globe and has achieved pay equity in every country where it operates. Apple's female employees globally earn the same as males performing similar work. Additionally, in the United States, our Black and Brown colleagues earn one dollar for every dollar earned by white employees performing similar work. Every year, Apple adjusts compensation levels to ensure it maintains pay equity. As part of Apple's commitment to achieving pay equity, Apple has stopped asking candidates about their salary history. Furthermore, substantially all of the Company's employees are eligible for awards of share-based compensation.</p> <p><i>Providing important benefits</i></p> <p>See Apple Jobs website.¹⁰ Apple provides comprehensive benefits for its employees. The Company offers a range of medical benefits to all employees for both physical and mental health, including multiple flexible medical plans, free confidential counseling, onsite wellness centers at major Apple campuses, and assistance with fitness-related expenses. Apple also provides paid time away to care for ill family members and free guidance to help find childcare, eldercare, and legal referrals.</p> <p><i>Supporting employees through training and education</i></p>

Statement of Purpose	Apple's Key Responsive Disclosures
	<p>See Apple Jobs website.¹⁰ Consistent with its Value of education, Apple provides extensive training and educational opportunities for its employees. For example, "Apple University creates classes, seminars, and beyond-the-classroom tools that help employees understand Apple's culture, organization, values, and role in the world. [Employees] can sharpen business and software skills through online classes and pick up some know-how from a variety of personal finance seminars." In addition, for more formal education related to advancing employees' careers at Apple, Apple will reimburse employees for certain educational expenses such as tuition. Apple also provides important training and educational opportunities to the employees of Apple's suppliers, as described in more detail below.</p> <p><i>Fostering diversity and inclusion, dignity and respect</i></p> <p>See apple.com/diversity/ and Business Conduct Policy¹¹ at page 5. Consistent with Apple's Value of inclusion & diversity, the Business Conduct Policy provides that the Company strives to provide "a creative, culturally diverse, and supportive work environment." Apple is devoted to an inclusive culture for all, including those who are historically underrepresented in the technology industry, U.S. veterans, and the LGBTQ+ community. Apple's commitment to increasing the diversity of its workforce is further reflected through partnerships with community colleges, Historically Black Colleges and Universities ("HBCUs"), minority-serving institutions, and others through programs like the Apple HBCU Scholars Program, a summer internship for students attending HBCUs. Further, as described in the Company's Business Conduct Policy, Apple "[does] not tolerate discrimination or harassment of employees or non-employees with whom [it has] a business, service, or professional relationship."</p>
<p>"Dealing fairly and ethically with our suppliers. We are dedicated to serving as good partners to the other companies, large and small, that help us meet our missions."</p>	<p><i>Dealing fairly and ethically with our suppliers</i></p> <p>See apple.com/supplier-responsibility and apple.com/job-creation/. Apple devotes substantial resources to its supplier relationships and has directly or indirectly supported over 450,000 jobs through its 9,000 U.S. suppliers. In addition, Apple has provided training on workplace rights to more than 19.4 million supplier employees and education and training on in-demand skills to more than four million supplier employees since 2008. Apple includes basic wellness training as part of supplier new employee orientation, with over 840,000 people participating in 2019 alone, and provides training in Swift, the Apple-designed coding language.</p> <p>See Supplier Code of Conduct¹² ("Supplier Code"), Supplier Responsibility Standards¹³ ("Supplier Standards"), and 2020 Supplier Responsibility Progress Report¹⁴ at page 4. In addition, Apple</p>

Statement of Purpose	Apple's Key Responsive Disclosures
	<p>deals fairly and ethically with its suppliers by clearly laying out its expectations for suppliers. Apple requires that its suppliers adhere to Supplier Standards that explicitly define the Company's expectations for compliance with the Supplier Code. Suppliers are assessed against the Supplier Code and Supplier Standards through rigorous Apple-managed assessments and other third-party audit programs. Each year, Apple publishes a Supplier Responsibility Progress Report, which discloses the average performance of Apple's suppliers in the areas of labor and human rights, health and safety, and the environment relative to the Supplier Code, as well as the percentage of Apple's suppliers that qualify as high-, medium-, or low-performing based on Apple's ranking system. The 2020 Supplier Responsibility Progress Report drew on interviews from more than 50,000 employees in Apple's supply chain and more than one thousand audits of supplier facilities across 49 countries, including surprise audits.</p> <p>See Human Rights Policy⁵ at page 3 and Business Conduct Policy¹¹ at page 3. Apple also deals fairly and ethically with its suppliers by seeking protections for their employees. Apple's Human Rights Policy notes the Company's commitment to "respecting internationally recognized human rights in [its] business operations" and resolves "to remedy adverse impacts, track and measure [its] progress, and report [its] findings." Apple requires its employees to be trained annually on labor and human rights standards as well as the Company's Business Conduct Policy, which requires that all employees conduct business "ethically, honestly, and in full compliance with applicable laws and regulations," and treat suppliers with respect and courtesy.</p>
<p>"Supporting the communities in which we work. We respect the people in our communities and protect the environment by embracing sustainable practices across our businesses."</p>	<p><i>Supporting the communities in which we work</i></p> <p>See apple.com/connectED/. Consistent with Apple's Value of education, the Company has focused on giving products, support, and opportunities to schools in communities that need them most. As disclosed in the Company's ConnectED website, since 2014, Apple has pledged \$100 million of teaching and learning solutions to 114 underserved schools across the United States through the ConnectED initiative, which includes donating an iPad to every student, a Mac and iPad to every teacher, and an Apple TV for every classroom. Apple also provides teachers with support to help them utilize this technology in their classrooms and assists schools with upgrading their wireless infrastructure.</p> <p>See apple.com/job-creation/. Apple also supports communities by serving as a major job creator. In the United States, Apple is responsible for creating 2,000,000 jobs across all 50 states. Apple publicly discloses on its Job Creation website, by state, the number of jobs created both at</p>

Statement of Purpose	Apple's Key Responsive Disclosures
	<p>Apple and through the App Store ecosystem, as well as the number of retail stores and suppliers.</p> <p>See Press Release dated May, 7, 2020¹⁵ and Press Release dated November 4, 2019.¹⁶ Apple also makes significant charitable contributions to organizations that support the communities in which it works. For example, in May 2020, Apple donated \$10 million to COPAN Diagnostics, a market leader in sample collection kits used for COVID-19 testing, to allow the company to accelerate production of its supply of sample collection kits for hospitals across the U.S. In connection with the donation, Apple's Chief Operating Officer stated, "[w]e feel a deep sense of responsibility to do everything we can to help medical workers, patients, and communities support the global response to COVID-19." In addition, in partnership with the state of California, Governor Gavin Newsom, and community-based organizations, Apple announced a comprehensive \$2.5 billion plan in November 2019 to help address the affordable housing crisis in California.</p> <p><i>Protecting the environment by embracing sustainable practices</i></p> <p>See apple.com/environment/ and 2020 Environmental Progress Report¹⁷ at pages 3 and 48-49. Apple's commitment to communities is also reflected in its various environmental initiatives and sustainable practices. As noted in its 2020 Environmental Progress Report, Apple recognizes a "responsibility to protect our shared planet" against the threats of climate change and environmental degradation and dedicates tremendous resources to these efforts. This has included, for example, recycling programs for Apple's devices so that the Company is able to reuse critical components and reduce dependence on mining new materials and a move away from plastic to fiber-based packaging. Apple has also announced a pledge to achieve total carbon neutrality by 2030 and a Zero Waste Program for suppliers, which provides suppliers with onsite support to eliminate waste going to landfills.</p> <p>See Environmental Health and Safety Policy Statement.¹⁸ Pursuant to its Environmental Health and Safety Policy Statement, Apple "communicate[s] environmental, health, and safety policies and programs to Apple employees and stakeholders" and "ensure[s] that all employees are aware of their role and responsibility to fulfill and sustain Apple's environmental, health, and safety management systems and policy." Certain employee benefits are also aimed at helping the environment and encouraging employees to use environmentally friendly modes of transportation to get to work, such as a transit subsidy of up to \$100 per month for US employees, bus commute programs, and electric vehicle charging stations.</p>

Statement of Purpose	Apple's Key Responsive Disclosures
<p>"Generating long-term value for shareholders, who provide the capital that allows companies to invest, grow and innovate. We are committed to transparency and effective engagement with shareholders."</p>	<p><i>Generating long-term value for shareholders</i></p> <p>See 2020 Proxy Statement¹ at pages 36-38. Apple has consistently delivered long-term value for our shareholders. As discussed on pages 36 to 38 of the 2020 Proxy Statement, from August 25, 2016 through August 24, 2019, Apple's Total Shareholder Return for the three-year performance period was 100.20%, which was at the 90th percentile of the companies that were included in the S&P 500 for the entire performance period. For the three-year performance period from the beginning of 2016 through the end of 2018, Apple's Total Shareholder Return during this period was 107.36%, which was at the 89th percentile of the companies that were included in the S&P 500 for the three-year performance period.</p> <p>See Stock Ownership Guidelines.¹⁹ The Company has also adopted robust Stock Ownership Guidelines for its directors and executive officers. The Stock Ownership Guidelines require that the CEO, other executive officers, and non-employee directors own shares of the Company's common stock having a fair market value of 10x the CEO's annual base salary, 3x the executive officer's annual base salary, and 5x the non-employee director's annual retainer, respectively. These guidelines serve to foster a long-term strategic mindset among Apple's senior management and Board members by aligning their incentives with Apple's shareholders.</p> <p><i>Commitment to transparency and effective engagement with shareholders</i></p> <p>See Business Conduct Policy¹¹, Human Rights Policy⁵, Transparency Report⁹, Supplier Code¹², Supplier Standards¹³, Environmental Health and Safety Policy Statement¹⁸, and ESG Index.²⁰ Apple is committed to transparency and effective engagement with shareholders. Through its Values and the various ESG-related policies and reports disclosed on Apple's website, Apple discloses its approach to ESG issues – and its progress against the goals it has established – far beyond the requirements imposed by the Commission. The Company also published this year for the first time, an ESG Index that maps the Company's existing disclosures to the Global Reporting Initiative, the Sustainable Accounting Standards Board, and the Task Force on Climate-Related Financial Disclosures voluntary disclosure frameworks, as relevant to the Company's business, to aid shareholders in locating information on the Company's efforts relating to these topics. The Company has a proactive engagement strategy where its representatives regularly engage in discussions with shareholders on a broad variety of topics including, among, others, ESG matters, privacy and data security, and human capital management. Additionally, the Company interacts and communicates with shareholders through quarterly earnings calls, investor conferences,</p>

Statement of Purpose	Apple's Key Responsive Disclosures
	annual shareholder meetings, press releases and filings with the Commission.

3. The Board's Nominating and Corporate Governance Committee Has Determined That the Company Already Operates in Accordance with the Principles Set Forth in the Statement of Purpose

In granting no-action relief in February 2020 to JPMorgan Chase & Co. under Rule 14a-8(i)(10) in connection with the JPM Proposal, the Staff stated that "... [I]t appears that the board's actions compare favorably with the guidelines of the Proposal and that the Company has, therefore, substantially implemented the Proposal," noting in particular the company's representation that "the Corporate Governance and Nominating Committee of the Board again reviewed the BRT Statement and determined that no additional action or assessment is required, as the Company already operates in accordance with the principles set forth in the BRT Statement with oversight and guidance by the Board of Directors, consistent with the Board's fiduciary duties." See *JPMorgan Chase & Co.* (avail. Feb. 2020).

Apple's Board has delegated to the Committee the responsibility of considering matters of corporate governance and recommending to the Board modifications to the Company's corporate governance policies as appropriate. Consistent with the Committee's charter and the fiduciary duties of its members, in October 2020, the Committee reviewed the Proposal, as well as the Statement of Purpose and the governance and management systems described in this letter. The Committee also considered, as suggested by the Proponent in the Supporting Statement to the Proposal, the option of rescinding the CEO's signature and the Company's name from the Statement of Purpose. Based on this review, the Committee determined that the Company's governance and management systems do not need to be altered in order to fully implement the Statement of Purpose because the Company already operates in accordance with the principles set forth in the Statement of Purpose and provides adequate disclosure to shareholders and the public about this alignment.

The analysis by and determination of the Committee substantially implements the Proposal because, as was the case in *JPMorgan Chase & Co.*, it addresses the underlying concerns and essential objective that Apple's Board provide its perspective as to whether the Company's governance and management systems should be altered to fully implement the Statement of Purpose. Furthermore, if the Proposal were to be voted upon by shareholders at the Annual Meeting and pass, there is nothing further that the Company or the Committee would do to implement the Proposal, as any subsequent report would contain substantially the same information as was already presented to the Committee and outlined in this letter.

In reaching its determination, the Committee considered, consistent with its fiduciary duties, the following documents and website disclosures as discussed above:

- Proposal
- Statement of Purpose
- Apple Values
- 2019 Form 10-K and 2020 Proxy Statement
- Press releases cited herein
- Business Conduct Policy
- Human Rights Policy
- Supplier Code
- Supplier Standards
- 2020 Supplier Responsibility Progress Report
- Environmental Health and Safety Policy Statement
- 2020 Environmental Progress Report
- Apple's Jobs website
- Apple's Job Creation website
- Stock Ownership Guidelines
- Transparency Report
- Privacy Policy
- Privacy Governance website

IV. Conclusion.

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

* * * *

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

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

Sincerely,



Sam Whittington
Assistant Secretary

Enclosures

cc: Justin Danhof, National Center for Public Policy Research
Ian Schuman, Latham & Watkins LLP

-
- ¹ See <https://www.sec.gov/Archives/edgar/data/320193/000119312520001450/d799303ddef14a.htm>
- ² See <https://www.apple.com/newsroom/2020/07/apple-creatives-and-disability-rights-activists-reflect-on-30-years-of-the-americans-with-disabilities-act/>
- ³ See <https://www.sec.gov/ix?doc=/Archives/edgar/data/320193/000032019319000119/a10-k20199282019.htm>
- ⁴ See <https://www.sec.gov/Archives/edgar/data/320193/000032019320000060/a8-kexhibit991q3202062.htm>
- ⁵ See https://s2.q4cdn.com/470004039/files/doc_downloads/gov_docs/2020/Apple-Human-Rights-Policy.pdf
- ⁶ See <https://www.apple.com/newsroom/2020/04/iphone-se-a-powerful-new-smartphone-in-a-popular-design/>
- ⁷ See <https://www.apple.com/legal/privacy/en-ww/>
- ⁸ See <https://www.apple.com/legal/privacy/en-ww/governance/>
- ⁹ See <https://www.apple.com/legal/transparency/>
- ¹⁰ See apple.com/jobs/us/benefits.html
- ¹¹ See https://s2.q4cdn.com/470004039/files/doc_downloads/Business-Conduct-Policy.pdf
- ¹² See <https://www.apple.com/supplier-responsibility/pdf/Apple-Supplier-Code-of-Conduct-January.pdf>
- ¹³ See <https://www.apple.com/supplier-responsibility/pdf/Apple-Supplier-Responsible-Standards.pdf>
- ¹⁴ See https://www.apple.com/supplier-responsibility/pdf/Apple_SR_2020_Progress_Report.pdf
- ¹⁵ See <https://www.apple.com/newsroom/2020/05/apple-awards-10-million-from-advanced-manufacturing-fund-to-copan-diagnostics/>
- ¹⁶ See <https://www.apple.com/newsroom/2019/11/apple-commits-two-point-five-billion-to-combat-housing-crisis-in-california/>
- ¹⁷ See https://www.apple.com/environment/pdf/Apple_Environmental_Progress_Report_2020.pdf
- ¹⁸ See https://www.apple.com/environment/pdf/Apple_EHS_Policy_Statement_2020.pdf
- ¹⁹ See [https://s2.q4cdn.com/470004039/files/doc_downloads/gov_docs/Stock-Ownership-Guidelines-\(Final-11.13.18\).pdf](https://s2.q4cdn.com/470004039/files/doc_downloads/gov_docs/Stock-Ownership-Guidelines-(Final-11.13.18).pdf)
- ²⁰ See <https://investor.apple.com/apple-esg/default.aspx>

Exhibit A

Copy of the Proposal and Supporting Statement and Related Correspondence

Report on Company's Involvement with Business Roundtable "Statement on the Purpose of a Corporation"

Whereas, our Company's Chief Executive Officer (CEO) Tim Cook, in August 2019, signed a Business Roundtable (BRT) "Statement on the Purpose of a Corporation," (Statement) committing our Company to serve all stakeholders including employees, customers, supply chain, communities where we operate, and shareholders.¹

Existing governance documents evolved in an environment of shareholder primacy, but the Statement articulates a new purpose, moves away from shareholder primacy, and includes commitment to all stakeholders. The Statement may or may not be beneficial to associate with our brand, however, the Statement, as company policy, may conflict with existing corporate law unless integrated into Company governance documents, including bylaws, Articles of Incorporation, and/or Committee Charters.

A stakeholder model would shift corporate focus from value creation to concerns generally referred to as Environmental, Social and Governance (ESG) issues. Apple CEO Cook speaks regularly of the company's commitment to environment and social causes.² For example, Cook has received a sustainability award from the advocacy group Ceres based on Apple's environmental promises. Apple also recently launched a \$100 million "Racial Equity and Justice Initiative" to challenge what it claims are "systemic barriers to opportunity and dignity that exists for communities of color and particular for the black community."³

For consistency, the Company should not endorse positions with which it has not or cannot conform itself. The Company currently engages in various actions that seem to contradict the Statement. As an example related to social issues:

- The Business Insider has reported that Apple profits from questionable labor practices in China, specifically Uighur workers forcibly displaced by the Chinese Communist Party. According to published reporting, this "relocation programme is part of the Chinese government's broader persecution of the Uighur minority, which is predominantly Muslim."⁴

An example related to the environment:

- Among others, Tech.co has suggested that Apple's environmental posturing is little more than "greenwashing" noting that "[w]hile Apple is verbally committed to solving the pollution problems caused by its devices, the culture of the company says otherwise. In a

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

² <https://www.cnbc.com/2019/10/22/apple-ceo-tim-cook-accepts-ceres-conference-sustainability-award.html>

³ <https://www.theverge.com/2020/6/11/21287999/apple-racial-equity-justice-initiative-amount-cook-lisa-jackson>

⁴ <https://www.businessinsider.com/apple-forced-uighur-labor-iphone-factory-2020-3>

time when unused and un-recycled smartphones are literally depleting the planet of necessary resources, Apple continues to push its 'buy one every year' strategy.”⁵

Although the Statement of Purpose implies accountability to stakeholders, without clear mechanisms in place to implement the Purpose, this broadened standard could *reduce accountability to shareholders* and in effect, ensure accountability *to none*.

Resolved: Shareholders request our Board prepare a report based on a review of the BRT Statement of the Purpose of a Corporation, signed by our Chief Executive Officer, and provide the board's perspective regarding whether our Company's governance and management systems should be altered to fully implement the Statement of Purpose.

Supporting Statement

Given the Company's inconsistent actions related to the Statement of Purpose, the Board might consider the option of rescinding the CEO's signature and Company's name from that document.

⁵ <https://tech.co/news/big-tech-climate-action-change-greenwashing-2020-02>

From: Justin Danhof <jdanhof@nationalcenter.org>
Subject: NCPPR 2021 Shareholder Proposal
Date: August 19, 2020 at 12:23:59 PM PDT
To: shareholderproposal@apple.com

Dear Sir or Madam,

Please see the attached shareholder proposal and accompanying cover letter. I will also send a paper copy via FedEx to the corporate secretary.

Best,
Justin Danhof



Via FedEx and Email (shareholderproposal@apple.com)

August 19, 2020

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

Dear Ms. Adams,

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

I submit the Proposal as General Counsel of the National Center for Public Policy Research, which has continuously owned Apple stock with a value exceeding \$2,000 for a year prior to and including the date of this Proposal and which intends to hold these shares through the date of the Company's 2021 annual meeting of shareholders. A Proof of Ownership letter is forthcoming and will be delivered to the Company.

Copies of correspondence or a request for a "no-action" letter should be forwarded to Justin Danhof, Esq, General Counsel, National Center for Public Policy Research, 20 F Street, NW, Suite 700, Washington, DC 20001 and emailed to JDanhof@nationalcenter.org.

Sincerely,

A handwritten signature in black ink, appearing to read "Justin Danhof", written over a horizontal line.

Justin Danhof, Esq.

Enclosure: Shareholder Proposal

From: Miller, Brian (DC) <Brian.Miller@lw.com>
Sent: Wednesday, September 02, 2020 4:10 PM
To: JDanhof@nationalcenter.org
Subject: Apple - NCPPR 2021 Shareholder Proposal

Dear Mr. Danhof,

On behalf of Apple Inc., attached please find a letter related to the shareholder proposal you submitted to Apple on behalf of the National Center for Public Policy Research.

Please to not hesitate to contact me with any questions regarding the attached letter.

Best regards,

Brian

Brian D. Miller | LATHAM & WATKINS LLP
555 Eleventh Street, NW | Suite 1000 | Washington, D.C. 20004-1304
D: +1.202.637.2332 | M: +1.703.615.5039

FIRM / AFFILIATE OFFICES

Beijing	Moscow
Boston	Munich
Brussels	New York
Century City	Orange County
Chicago	Paris
Dubai	Riyadh
Düsseldorf	San Diego
Frankfurt	San Francisco
Hamburg	Seoul
Hong Kong	Shanghai
Houston	Silicon Valley
London	Singapore
Los Angeles	Tokyo
Madrid	Washington, D.C.
Milan	

September 2, 2020

BY FEDEX AND ELECTRONIC MAIL

National Center for Public Policy Research
Attn: Justin Danhof, Esq.
20 F Street, NW, Suite 700
Washington, DC 20001
JDanhof@nationalcenter.org

Re: Shareholder Proposal to Apple Inc.

Dear Mr. Danhof,

On August 19, 2020, Apple Inc. (the “Company”) received correspondence from you submitting a shareholder proposal (the “Proposal”) on behalf of the National Center for Public Policy Research (“NCPPR”) for inclusion in the Company’s proxy statement for its next annual meeting of shareholders. The correspondence indicates that you intended for the Proposal to meet the requirements of Rule 14a-8 of the Securities Exchange Act of 1934, as amended (“Rule 14a-8”), including the continuous ownership of the required share value for at least one year as of the date you submitted the Proposal, which was August 19, 2020, and continuous ownership through the date of the shareholder meeting. This notice is to inform you that we have not received verification of NCPPR’s share ownership, and thus you have not demonstrated that NCPPR is eligible to submit the Proposal under Rule 14a-8.

In order to establish NCPPR’s eligibility to submit the Proposal under Rule 14a-8, you are required to provide the Company with documentation regarding NCPPR’s ownership of Company securities, or you must direct NCPPR’s broker to send such documentation to the Company. The documentation must demonstrate that NCPPR has continuously held at least \$2,000 in market value, or 1%, of the Company’s securities entitled to be voted at the meeting for at least one year preceding and including the date you submitted the Proposal, which was August 19, 2020. Rule 14a-8(b) provides that you may prove NCPPR’s eligibility to the Company in two ways. You may either submit:

- a written statement from the “record” holder of NCPPR’s securities (usually a broker or bank) verifying that, at the time you submitted the Proposal, which was August 19, 2020, NCPPR continuously held the Company’s securities for at least one year; or

- a copy of a Schedule 13D, Schedule 13G, Form 3, Form 4, Form 5, or amendments to those documents or updated forms, reflecting NCPPR's ownership of the shares as of or before the date on which the one-year eligibility period begins.

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

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

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

If NCPPR's broker or bank is not on the DTC's participant list, you will need to obtain proof of ownership from the DTC participant through which NCPPR's securities are held. You should be able to find out who the DTC participant is by asking NCPPR's broker or bank. If the DTC participant knows of the holdings of NCPPR's broker or bank, but does not know NCPPR's holdings, you may satisfy the proof of ownership requirement by obtaining and submitting two proof of ownership statements verifying that, at the time the Proposal was submitted, the required amount of securities were continuously held by NCPPR for at least one year – with one statement from NCPPR's broker or bank confirming NCPPR's ownership, and the other statement from the DTC participant confirming the broker or bank's ownership. Please see the enclosed copy of SLB 14F for further information. For your information, we have attached a copy of Rule 14a-8 regarding shareholder proposals.

Please note that the documentation must establish NCPPR's ownership of the required share value for at least one year as of the date you submitted the Proposal. This period covers the entire one-year period preceding and including August 19, 2020, the date the Proposal was submitted.

In order for the Proposal to be properly submitted, you must provide the Company with verification of NCPPR's share ownership as described above. Such verification of share ownership must be postmarked or transmitted no later than 14 calendar days from the date you receive this notice.

LATHAM & WATKINS LLP

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

Sincerely,

A handwritten signature in black ink, reading "Brian D. Miller". The signature is written in a cursive, flowing style.

Brian D. Miller
of LATHAM & WATKINS LLP

Enclosures

cc: Sam Whittington – Apple Inc.
Jeff Schmidt – Apple Inc.

From: Justin Danhof <jdanhof@nationalcenter.org>

Sent: Wednesday, September 2, 2020 4:32 PM

To: Miller, Brian (DC) <Brian.Miller@lw.com>; shareholderproposal@apple.com

Subject: Re: Apple - NCPPr 2021 Shareholder Proposal

Hi Brian,

Good timing. As it happens I dropped off our ownership materials at FedEx this afternoon. They should be to Ms. Adams by Friday.

A copy is attached here.

Best,
Justin



Via FedEx and Email (shareholderproposal@apple.com)

September 2, 2020


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

Dear Ms. Adams,

Enclosed please find a Proof of Ownership letter from UBS Financial Services Inc. in connection with the shareholder proposal submitted under Rule 14(a)-8 (Proposals of Security Holders) of the United States Securities and Exchange Commission's proxy regulations by the National Center for Public Policy Research to Apple Inc. on August 19, 2020.

Copies of correspondence or a request for a "no-action" letter should be forwarded to Justin Danhof, Esq., General Counsel, National Center for Public Policy Research, 20 F Street, NW, Suite 700, Washington, DC 20001 and emailed to JDanhof@nationalcenter.org.

Sincerely,



Justin Danhof, Esq.



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

UBS Wealth Advice Center

www.ubs.com

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

September 2, 2020

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

Dear Ms. Adams,

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

The National Center for Public Policy Research has been a valued client of ours since October 2002 and as of the close of business on 08/19/2020, the National Center for Public Research held, and has held continuously for at least one year 21 shares of Apple Inc common stock. UBS continues to hold the said stock now reflected as 84 shares as of today.

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

Questions

If you have any questions about this information, please contact Lars Soderberg at (844) 964-0333.

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

Sincerely

Lars A Soderberg

Lars A. Soderberg
Financial Advisor
UBS Financial Services Inc.

Exhibit B

Business Roundtable's "Statement on the Purpose of a Corporation"

Statement on the Purpose of a Corporation

Americans deserve an economy that allows each person to succeed through hard work and creativity and to lead a life of meaning and dignity. We believe the free-market system is the best means of generating good jobs, a strong and sustainable economy, innovation, a healthy environment and economic opportunity for all.

Businesses play a vital role in the economy by creating jobs, fostering innovation and providing essential goods and services. Businesses make and sell consumer products; manufacture equipment and vehicles; support the national defense; grow and produce food; provide health care; generate and deliver energy; and offer financial, communications and other services that underpin economic growth.

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

- Delivering value to our customers. We will further the tradition of American companies leading the way in meeting or exceeding customer expectations.
- Investing in our employees. This starts with compensating them fairly and providing important benefits. It also includes supporting them through training and education that help develop new skills for a rapidly changing world. We foster diversity and inclusion, dignity and respect.
- Dealing fairly and ethically with our suppliers. We are dedicated to serving as good partners to the other companies, large and small, that help us meet our missions.
- Supporting the communities in which we work. We respect the people in our communities and protect the environment by embracing sustainable practices across our businesses.
- Generating long-term value for shareholders, who provide the capital that allows companies to invest, grow and innovate. We are committed to transparency and effective engagement with shareholders.

Each of our stakeholders is essential. We commit to deliver value to all of them, for the future success of our companies, our communities and our country.

Released: August 19, 2019

Signatures Updated: September 2019, December 2019, February 2020, April 2020, June 2020, August 2020 and September 2020.

Exhibit C

Apple Values
(as disclosed in Apple Inc. Proxy Statement for the
2020 Annual Meeting of Shareholders)

Apple Values

This section describes core values at Apple that guide our commitment to leave the world better than we found it and to create powerful tools for others to do the same.

**We believe that we lead
in innovation because
we lead with our values.**

Tim Cook
CEO

Accessibility

apple.com/accessibility

Apple believes accessibility is a fundamental human right and technology should be accessible to everyone.

Our products are powerful and affordable assistive devices, with built-in accessibility features such as VoiceOver, Switch Control, and support for Made for iPhone® hearing aids.

We introduced Voice Control, which allows people, particularly those with physical motor limitations, to fully control their iOS device or Mac® with their voice.

Inclusion & Diversity

apple.com/diversity

We strive to represent the customers and communities we serve—everywhere we operate around the world—because it makes us a better and more innovative company.

We are deeply committed to hiring and promoting inclusively, championing equal pay, increasing diverse representation at all levels, and fostering an inclusive culture that gives every employee the opportunity to do the best work of their lives.

Education

apple.com/education

Apple works alongside educators to unleash the creative potential in every student.

Our products and curriculum bring creative expression into the classroom, and our free Apple Teacher professional learning program helps educators integrate technology and creativity into every lesson.

We have reimagined Everyone Can Code and expanded Everyone Can Create resources to better prepare students for a rapidly changing world.

Privacy & Security

apple.com/privacy

Apple believes privacy is a fundamental human right. Every Apple product is designed from the ground up to protect privacy and security.

Great experiences do not have to come at the expense of privacy and security. Instead, they can support them.

To give more control over personal information, we provide a set of dedicated privacy management tools on each user's Data and Privacy page.

Environment

apple.com/environment

We prioritize the environment in everything we create, design, power, and manufacture.

All of Apple's global facilities are powered with 100% renewable electricity, and 44 suppliers have committed to 100% renewable electricity for Apple production.

We have continued to transition to recycled and renewable materials in new products, including our most recent iPhone® devices, which use 100% recycled rare earth elements in the Taptic Engine®—a first for a smartphone.

Supplier Responsibility

apple.com/supplier-responsibility

Apple cares deeply about the people who build our products and the planet we all share. We hold ourselves and our suppliers to the highest standards, and we share our work openly.

We are on track to provide health education to over one million people in the supply chain to give people the tools to take charge of their well-being. All of our final assembly facilities for iPhone®, iPad®, Mac®, Apple Watch®, AirPods®, and HomePod™ have achieved UL Zero Waste Certification.