



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

DIVISION OF
CORPORATION FINANCE

December 21, 2017

Gene D. Levoff
Apple Inc.
glevoff@apple.com

Re: Apple Inc.
Incoming letter dated October 9, 2017

Dear Mr. Levoff:

This letter is in response to your correspondence dated October 9, 2017 and November 20, 2017 concerning the shareholder proposal (the "Proposal") submitted to Apple Inc. (the "Company") by Christine Jantz (the "Proponent") for inclusion in the Company's proxy materials for its upcoming annual meeting of security holders. We also have received correspondence on the Proponent's behalf dated October 31, 2017 and December 4, 2017. Copies of all of the correspondence on which this response is based will be made available on our website at <http://www.sec.gov/divisions/corpfin/cf-noaction/14a-8.shtml>. For your reference, a brief discussion of the Division's informal procedures regarding shareholder proposals is also available at the same website address.

Sincerely,

Matt S. McNair
Senior Special Counsel

Enclosure

cc: Sanford Lewis
sanfordlewis@strategiccounsel.net

December 21, 2017

Response of the Office of Chief Counsel
Division of Corporation Finance

Re: Apple Inc.
Incoming letter dated October 9, 2017

The Proposal requests that the board prepare a report that evaluates the potential for the Company to achieve, by a fixed date, “net-zero” emissions of greenhouse gases relative to operations directly owned by the Company and major suppliers.

Based on our review of your submission, including the description of how your board of directors has analyzed this matter, there appears to be some basis for your view that the Company may exclude the Proposal under rule 14a-8(i)(7), as relating to the Company’s ordinary business operations. In our view, the Proposal seeks to micromanage the company by probing too deeply into matters of a complex nature upon which shareholders, as a group, would not be in a position to make an informed judgment. Accordingly, we will not recommend enforcement action to the Commission if the Company omits the Proposal from its proxy materials in reliance on rule 14a-8(i)(7). In reaching this position, we have not found it necessary to address the alternative basis for omission upon which the Company relies.

Sincerely,

Evan S. Jacobson
Special Counsel

DIVISION OF CORPORATION FINANCE
INFORMAL PROCEDURES REGARDING SHAREHOLDER PROPOSALS

The Division of Corporation Finance believes that its responsibility with respect to matters arising under Rule 14a-8 [17 CFR 240.14a-8], as with other matters under the proxy rules, is to aid those who must comply with the rule by offering informal advice and suggestions and to determine, initially, whether or not it may be appropriate in a particular matter to recommend enforcement action to the Commission. In connection with a shareholder proposal under Rule 14a-8, the Division's staff considers the information furnished to it by the company in support of its intention to exclude the proposal from the company's proxy materials, as well as any information furnished by the proponent or the proponent's representative.

Although Rule 14a-8(k) does not require any communications from shareholders to the Commission's staff, the staff will always consider information concerning alleged violations of the statutes and rules administered by the Commission, including arguments as to whether or not activities proposed to be taken would violate the statute or rule involved. The receipt by the staff of such information, however, should not be construed as changing the staff's informal procedures and proxy review into a formal or adversarial procedure.

It is important to note that the staff's no-action responses to Rule 14a-8(j) submissions reflect only informal views. The determinations reached in these no-action letters do not and cannot adjudicate the merits of a company's position with respect to the proposal. Only a court such as a U.S. District Court can decide whether a company is obligated to include shareholder proposals in its proxy materials. Accordingly, a discretionary determination not to recommend or take Commission enforcement action does not preclude a proponent, or any shareholder of a company, from pursuing any rights he or she may have against the company in court, should the company's management omit the proposal from the company's proxy materials.

SANFORD J. LEWIS, ATTORNEY

December 4, 2017

Via electronic mail

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

Re: Shareholder Proposal to Apple Inc. Regarding Net Zero Greenhouse Gas Goals on
Behalf of Christine Jantz

Supplemental Reply, including response to the Apple Board of Directors

Ladies and Gentlemen:

Christine Jantz (the “Proponent”) is beneficial owner of common stock of Apple Inc. (the “Company”) and has submitted a shareholder proposal (the “Proposal”) to the Company. I have been asked by the Proponent to respond to the supplemental letter dated November 20, 2017 (“Company’s Supplemental Letter”) sent to the Securities and Exchange Commission by Gene D. Levoff on behalf of the Company. The Company sent its original no action request on October 9, and the Proponent responded on October 31.

The Company’s Supplemental Letter further discusses assertions that the Proposal may be excluded from the Company’s 2018 proxy statement, including statements that the Board of Directors has “concluded” that the Proposal’s subject matter is a matter of ordinary business for the Company and not an appropriate topic for a shareholder proposal.

This correspondence represents one of the first opportunities for an investor to respond in a no action reply to a Board of Directors opinion submitted pursuant to the new SEC Staff Legal Bulletin 14I issued on November 1, 2017. Because this presents a matter of first impression for the Staff and Commission, our letter will at times speak to fundamentals regarding the shareholder proposal process and the functioning of Rule 14a-8. It will also include a proponent’s perspective on the manner in which the SEC Staff can consider Board of Directors “opinions” on ordinary business while still fulfilling the Commission’s investor protection duties.

Our supplemental response today responds to the board’s “conclusion” and to additional arguments from the Company’s Supplemental Letter. A copy of this response letter is being emailed concurrently to Gene D. Levoff and the Apple Board of Directors.

UPDATED BACKGROUND

The relevance of this Proposal to investor concern and interest, and its importance to the global economy and environment, has grown since we submitted our initial reply on October 31. In early November, after our initial reply, the U.S. government issued the National Climate Assessment.¹ The significance of that assessment has been summarized in a number of articles.²

The World Resources Institute summarized the relevance of the Assessment in “Extreme Weather: What’s Climate Change Got to Do with It?” The article contextualizes recent extreme weather events³:

An unrelenting heat wave in California, reaching 106 degrees F in San Francisco, that left six dead, strained the state’s power grid and left thousands without electricity;

More than 40 million people affected by massive floods across India, Bangladesh and Nepal, with 1,300 killed and at least 1.5 million homes destroyed or damaged;

Hurricane Irma decimating the northern Caribbean, with at least 27 dead, flattening buildings, and leaving many without essential supplies, while in Florida, the hurricane killed at least four, wiped out power for 64 percent of the state and produced record storm surges;

Hurricane Harvey causing catastrophic flooding across Texas, with at least 70 deaths; Harvey and Irma combined caused an estimated \$150-200 billion in damage in the United States, and

More than 80 wildfires burning across almost 1.5 million acres in nine western U.S. states; this year, the U.S. Forest Service has already spent about \$1.75 billion on fire suppression and the Department of Interior has spent an additional \$400 million.

In light of these events, we must ask: What’s climate change got to do with it?

Here is some of what we know:

Heat waves: It is no surprise that warming in the atmosphere leads to heat waves, or periods of very hot weather lasting days to weeks. In recent years, the frequency of heat waves has been increasing in many parts of the world, and the risk associated with extreme heat increases with further warming.

Storms and flooding: We also know that warming leads to higher sea levels, which in turn increases the risk of storm surge, contributing to the damage brought by hurricanes. Climate change also warms oceans, adding energy that can fuel coastal storms. Compounding this, a warmer atmosphere can hold more moisture, so there can be more moisture for storm systems, resulting in heavier rainfall. The U.S. National Climate Assessment finds that there has been a substantial increase – in intensity, frequency, and duration as well as the number of strongest (Category 4 and 5) storms – in Atlantic Ocean hurricanes since the early 1980s, linked in part to higher sea surface temperatures. By late this century, models on average

¹ *Fourth National Climate Assessment, Volume I: US Government, November 2017*
<https://science2017.globalchange.gov>

² For instance see “Global Warming Really Did Make Hurricane Harvey More Likely,” *The Atlantic*, November 13, 2017. <https://www.theatlantic.com/science/archive/2017/11/global-warming-really-did-make-hurricane-harvey-more-likely/545765/> and

³ “Extreme Weather: What’s Climate Change Got to Do with It?” World Resources Institute, September 18, 2017. <http://www.wri.org/blog/2017/09/extreme-weather-whats-climate-change-got-to-do-it>

project a slight decrease in the number of tropical cyclones each year, but an increase in the number of the strongest (Category 4 and 5) hurricanes and greater rainfall rates in hurricanes (increases of about 20 percent averaged near the center of hurricanes).

Fires: We know that higher temperatures lead to increased rates of evaporation, leading to rapid drying of soils. This can not only contribute to drought conditions but can stoke forest fires. The U.S. National Climate Assessment finds that in the western forests, large and intense fires are projected to occur more frequently, with large and longer wildfires given higher temperatures and earlier spring snowmelt.

We need to face the realities of climate change today, not fall for the fantasy that we can just ignore them and they will go away.

Even before this new information has come to light, the impact on the economy and investors from climate change was already calculated to be quite costly. In 2016, Ernst & Young published *Climate Change: The Investment Perspective*, which discusses the many different ways that investments are effected by the changing climate⁴:

The potential financial consequences of climate risk are often debated in terms of “stranded assets.” The value of global financial assets at risk from climate change has been estimated at US\$2.5t by the London School of Economics,⁵ and US\$4.2t by the Economist.⁶ For comparison, the annual Gross Domestic Product (GDP) of Japan, the world’s third largest economy, is worth about US\$4.8t.

The staggering scale of these potential losses has done a lot to raise awareness of climate risks in investment circles. But “stranding” is only part of a complex range of climate risks — each of which creates its own opportunities. Climate risks can be summarized as:

- Physical: damage to land, buildings, stock or infrastructure owing to physical effects of climate-related factors, such as heat waves, drought, sea levels, ocean acidification, storms or flooding
- Secondary: knock-on effects of physical risks, such as falling crop yields, resource shortages, supply chain disruption, as well as migration, political instability or conflict
- Policy: financial impairment arising from local, national or international policy responses to climate change, such as carbon pricing or levies, emission caps or subsidy withdrawal
- Liability: financial liabilities, including insurance claims and legal damages, arising under the law of contract, tort or negligence because of other climate-related risks
- Transition: financial losses arising from disorderly or volatile adjustments to the value of listed and unlisted securities, assets and liabilities in response to other climate-related risks
- Reputational: risks affecting businesses engaging in, or connected with, activities that

⁴ *Climate Change: An Investment Perspective*: Ernst & Young LLP, 2016, pg 2.

⁵ Dietz, Bowen, Dixon & Gradwell, Climate value at risk of global financial assets, Nature Climate Change, April 2016

⁶ “The cost of inaction”, Economist Intelligence Unit, July 2015, (C) 2015 The Economist Intelligence Unit Limited

some stakeholders consider to be inconsistent with addressing climate change

This simplified list is only a starting point for assessing climate-related risks.

As complex as climate risks may be, they only represent half the story. Global GDP is expected to triple by 2060, driven largely by developing markets.⁷ Yet, today, 1.3 billion people in those markets still have no reliable access to electricity.⁸ Delivering the power that global development will require represents a vast investment opportunity.

Research suggests that the economic benefits of investment will outweigh the costs of inaction. Studies by both the London School of Economics and Economist (referenced earlier) expect total global output to be higher under a lower emissions scenario; Citigroup expects investment in climate change mitigation to generate attractive and growing yields;⁹ and Mercer believes a 2°C scenario will not harm diversified returns to 2050, and would be accretive thereafter.¹⁰

Of course, the precise balance of investment risks and opportunities will depend on future climate scenarios, and what investment decisions will be made — whether through conventional means, e.g., coal-fired power stations, which add to global warming and climate change, or through low carbon means to help mitigate the problem.

The Proponent believes, and the Proposal reflects the sense, that responding to the new clarity of this now ongoing global catastrophe, with its dire economic, social and environmental disruptions is a matter of *utmost urgency*. Many experts believe that attaining the 2° goal needed to head off the most severe climate scenarios is near impossible, especially with current levels of effort. Attaining the 2° goal is “*physically possible*” according to Michael MacCracken, chief scientist for climate change programs at the Climate Institute, but “[i]t would take a major change of society around the world to do it. It may not be likely in the political sense, but engineering-wise, if we chose to do it and invest in it, we could.” Michael Oppenheimer, a professor of geosciences and international affairs at Princeton University, concurs, noting that “[attaining the 2° goal] is going to be hard, and if we don’t move firmly on emissions reductions, it ain’t gonna happen.”¹¹

The approach of the proposal in context

The Company has announced that it intends to eliminate the carbon footprint of its manufacturing processes, but has not set a target date for doing so. The thrust of the proposal is requesting the company to set a target date for reaching a zero carbon footprint.

In its correspondence, the Company makes much of the “negative emissions” element of the proposal, as if it requires a technical digression from the existing efforts. However, the proposal is consistent with and encouraging of the Company’s current *technical* approaches to

⁷ “GDP long-term forecast (indicator). doi: 10.1787/d927bc18-en”, OECD, (Accessed on 19 July 2016)

⁸ “World Energy Investment Outlook”, International Energy Agency, June 2014, 2014 OECD/IEA

⁹ Channell, Curmi, Nguyen, Prior, Syme, Jansen, Rahbari, Morse, Kleinman, Kruger, “Energy Darwinism II”, Citi, August 2015, 2015 Citigroup, “World Energy Investment Outlook”, International Energy Agency, June 2014, 2014 OECD/IEA

¹⁰ “Investing in a time of climate change”, Mercer, April 2015 © 2015 Mercer LLC/International Finance Corporation/UK Department for International Development

¹¹ “Little Chance to Restrain Global Warming to 2 Degrees, Critic Argues”, Lisa Friedman, ClimateWire, May 7, 2015.

eliminating its carbon footprint and to consider other options to the extent that existing strategies are inadequate to the task. It principally asks the Company to explore the feasibility of establishing a target date for attaining of a net zero carbon footprint, treating it as a true "moonshot" – a time-limited stretch goal.¹² Setting deadlines to stretch to, in order to demonstrate commitment and encourage innovation, is a frequently deployed strategy in the tech sector. Publicizing such "moonshots" demonstrates determination and sends signals to the market and to supply chains.

In contrast, in its declarations that it seeks to reduce and eliminate its carbon footprint, Apple has not set a date, deadline or timeline other than "as soon as possible." **It could be accomplished in five years or in 50, we have no way of knowing.**

The Proposal also requests the Company to consider negative emissions strategies where necessary to fully attain the goal of zero carbon footprint on its chosen timeline. This flexible approach is consistent with scientific understanding regarding the scope and pace of reduction activities that will be necessary to achieve the 2° goal. An important 2015 study, published in *Nature Communications*, further explains that all pathways consistent with 2° goal modeling involve negative emissions to some extent. The authors warn that the amount of negative emissions required to stay below 2 degrees may even be underestimated.¹³

Because Apple is a pacesetter in the tech sector regarding responses to the global climate change challenge, the Proponent believes that the company's "as soon as possible" policy is not yet congruent with the urgency of global demands to curtail carbon emissions. That is why the Proposal encourages the Company to explore setting a specific date for reaching net zero GHG goals by all appropriate measures.

¹² More than 50 years ago, U.S. President John F. Kennedy captured the world's imagination when he said, "This nation should commit itself to achieving the goal, before the decade is out, of landing a man on the moon and returning him safely to the Earth."

¹³ T. Gasser, C. Guivarch, K. Tachiiri, C. D. Jones & P. Ciais, "Negative emissions physically needed to keep global warming below 2°C," *Nature Communications* 6, Article number: 7958 (2015). See also, "Two degree climate target not possible without 'negative emissions', scientists warn", Roz Pidcock, *Global Temperature*, 03.08.2015.

ANALYSIS

I. RESPONDING TO THE BOARD OF DIRECTORS OPINION REGARDING ORDINARY BUSINESS

A. Proponent's Analysis of the new Staff Legal Bulletin invitation for boards of directors to submit findings regarding Rule 14a-8(i)(7)

The Company Supplemental Letter, and other no action requests filed by Apple regarding proposals requesting a human rights committee, sustainability metrics, and report on freedom of expression, appear to be the first purported applications of the new Staff Legal Bulletin 14I, issued at the beginning of November 2017, which invited boards of directors to weigh in on whether a proposal addresses a significant policy issue. The Board of Directors of Apple submitted findings asserting that all four proposals address ordinary business and need not be included on the Company's proxy statement.

Since this is the first opportunity for investors to formally respond to issues raised by this aspect of the Bulletin, we will briefly review the Bulletin and its relationship to existing precedents and legal duties of the Commission and Staff.

The Bulletin states:

At issue in many Rule 14a-8(i)(7) no-action requests is whether a proposal that addresses ordinary business matters nonetheless focuses on a policy issue that is sufficiently significant. These determinations often raise difficult judgment calls that the Division believes are in the first instance matters that the board of directors is generally in a better position to determine. A board of directors, acting as steward with fiduciary duties to a company's shareholders, generally has significant duties of loyalty and care in overseeing management and the strategic direction of the company. A board acting in this capacity and with the knowledge of the company's business and the implications for a particular proposal on that company's business is well situated to analyze, determine and explain whether a particular issue is sufficiently significant because the matter transcends ordinary business and would be appropriate for a shareholder vote.

Accordingly, going forward, we would expect a company's no-action request to include a discussion that reflects the board's analysis of the particular policy issue raised and its significance. That explanation would be most helpful if it detailed the specific processes employed by the board to ensure that its conclusions are well-informed and well-reasoned. We believe that a well-developed discussion of the board's analysis of these matters will greatly assist the staff with its review of no-action requests under Rule 14a-8(i)(7).

The shareholder proposal process provides a legal right to investors to weigh in on issues of significant social policy matters. It is in that context that we consider the invitation to boards of directors to provide input on whether a proposal addresses a significant policy issue. The Bulletin's invitation to boards has the potential to make a board's oversight more visible and accountable — for boards of directors to consider the significance and relevance of proposals earlier in the process after receiving a proposal, and to encourage investors to communicate directly with the Board of Directors. In this response, we are copying the Board of Directors of Apple and bringing attention to our belief that they have misinterpreted the proposal, the Bulletin and the ordinary business rule.

However, if the Bulletin itself is misunderstood or abused by boards, it could undermine the integrity of the shareholder proposal process. For instance, the approach taken by the Board of Directors of Apple would effectively entitle nearly any company to exclude a shareholder

proposal, because they would merely need to assert that the board has already given its attention to issues like those in the proposal and that the company dedicates resources to attend to such issues. By their view, the fact that the company's policies are out of alignment with the proposal's policy and transparency requests would be irrelevant.

As stated in *Medical Committee for Human Rights v. Securities and Exchange Commission*, 432 F.2d 659 (D.C. Cir. 1970):

[T]he clear import of the language, legislative history, and record of administration of section 14(a) is that its overriding purpose is to assure to corporate shareholders the ability to exercise their right — some would say their duty — to control the important decisions which affect them in their capacity as stockholders and owners of the corporation. Thus, the Third Circuit has cogently summarized the philosophy of section 14(a) in the statement that "[a] corporation is run for the benefit of its stockholders and not for that of its managers." *SEC v. Transamerica Corp.*, 163 F.2d 511, 517 (3d Cir. 1947), cert. denied, 332 U.S. 847, 68 S. Ct. 351, 92 L. Ed. 418 (1948).

* * *

What *is* of immediate concern... is the question of whether the corporate proxy rules can be employed as a shield to isolate such managerial decisions from shareholder control.³² After all, it must be remembered that "[t]he control of great corporations by a very few persons was the abuse at which Congress struck in enacting Section 14(a)." *SEC v. Transamerica Corp.*, *supra*, 163 F.2d at 518.

In most instances, when a proposal is presented to a company and will appear on the proxy, a Board of Directors issues a statement in opposition. For example, Trillium Asset Management filed a proposal in 2007 encouraging the Company to become a leader in eliminating persistent and bioaccumulative toxic chemicals, and all types of brominated flame retardants (BFRs) and polyvinyl chloride (PVC) plastics, in all Apple products, including an expeditious timetable to end the use of all BFRs and PVC.¹⁴ The company's opposition statement asserted that the Company's existing processes of managing chemicals were adequate. However, in the years since the proposal was filed, the Company has moved forward to eliminate many of the chemicals targeted by the proposal.¹⁵

Similarly, shareholders As You Sow, New York City Comptroller, and Calvert Asset Management Inc. proposed that Apple issue a sustainability report in a 2010 proposal. Their proposal focused on greenhouse gas reporting, despite some good reporting on GHGs by Apple, because it was not providing information needed by investors:

Apple, however, lags behind global industry peers on sustainability reporting. It has released some product specific information on greenhouse gas emissions but its usefulness is limited as nearly all other companies use aggregate emission estimates. Apple has not made public greenhouse gas reduction commitments.

The Board of Directors opposed the proposal, claiming that the work the company was already doing on reporting sustainability in disparate locations and in its forms of GHG reporting was ample. The Board opposition statement to that proposal is strikingly similar to the current assertions of the Board regarding ordinary business:

¹⁴ Apple 2007 proxy statement. <http://investor.apple.com/secfiling.cfm?filingid=1104659-07-28382&cik=320193>

¹⁵ <https://qz.com/663763/six-of-the-worst-toxins-apple-says-it-has-phased-out-of-its-products/>

The Company recognizes its responsibility as a global citizen and has been working proactively for years to reduce the environmental impact of its corporate operations as well as the manufacturing and use of its products, which accounts for 95% of the greenhouse gas emissions associated with the Company. The Company also provides its customers and shareholders with an unmatched level of detail on its environmental performance, both at the product level and for the Company as a whole.

Yet, despite the Board's opposition to the Proposal, the Company's reporting has evolved considerably and very much in the direction of the 2010 proposal's requests, joining 2,700 other companies that were already issuing such reports.

From this history it is clear that whether and when a proposal appears on the proxy, the process is at its core a contest of views between the Board and its shareholders, and integrates an essential role for the owners of the company to help set direction on matters of significant social import.

Whether an issue presents a significant public controversy that transcends ordinary business, and therefore is appropriate for shareholders to vote on, is not the domain or expertise of the Board of Directors of the company. We already know from decades of experience with the shareholder proposal process that Boards oppose the proposals, and generally believe that the strategies, transparency and accountability they are deploying are adequate to the subject being addressed.

The shareholder proposal process is the opportunity for the owners to weigh in, especially where the Board of Directors may appear to be shortsighted, lacking transparency, or missing essential issues regarding the impact of corporate policies on society. The SEC is the protector of these investors' rights to participate, and must weigh the evidence and determine whether a subject matter is of significant social importance. If the issue raised, and especially transparency and accountability on the issue, is not substantially implemented, the Board of Directors is probably the least qualified entity to make a determination finding the issue is "ordinary" and therefore not subject to shareholder accountability.

Attending to "ordinary business" is the exclusive domain of the Board of Directors, but attending to significant policy issues suitable for shareholder deliberation is not. This was made clear in *Medical Committee for Human Rights v. SEC*, 432 F.2d 659 (D.C. Cir. 1985) in which the D.C. Circuit Court found that shareholder proposals are proper (not ordinary business) when they raise issues of corporate social responsibility or question the "political and moral predilections" of board or management. **The keystone of that decision, as noted above, is that board and management have no monopoly on expertise over investors when it comes to issues with broad and significant social consequence.** Investors are entitled to weigh in through the shareholder proposal process.

In addition to the many other grounds for potential exclusion of proposals under Rule 14a-8, the limitation on the ability of shareholders to weigh in on social and environmental issues is defined in part by the ordinary business rule, which prevents shareholders from delving too deeply into the everyday management of the company's business. In effect, this means that proposals must address widely debated policy issues that have a reasonable connection to the company's business.

The legal framework for Rule 14a-8(i)(7) developed by the Commission, Staff and the courts, including under the Staff Legal Bulletin 14I, comprises a four-part test:

Question 1. **Ordinary Business.** Is the subject matter one of “ordinary business”? That is, is it a topic that is integral to the day-to-day management and operations of the company?¹⁶

Question 2. **Significant Policy Issue.** If the answer to Question 1 is yes, is the subject matter nevertheless a significant policy issue – a subject of widespread public debate?

In those cases in which a proposal's underlying subject matter transcends the day-to-day business matters of the company and raises policy issues so significant that it would be appropriate for a shareholder vote, the proposal generally will not be excludable under Rule 14a-8(i)(7) as long as a sufficient nexus exists between the nature of the proposal and the company.¹⁷

On what topics does a proposal address a significant policy issue that transcends ordinary business? Staff decisions have made it clear that this inquiry concerns whether the proposal addresses an issue of widespread public debate. Examples recognized by the Commission and the Staff include such topics as environmental impact, human rights, climate change, discrimination, as well as virtually all issues of corporate governance.

Question 3. **Nexus.** If the answer to Question 2 is yes, the next question is: Is there a nexus of the subject matter to the Company - does the subject matter of widespread public debate relate significantly to the company's business or strategy? The invitation to the board of directors under the Bulletin is to demonstrate that the issue is insignificant for the company.¹⁸ Unfortunately, it is predictable that some Boards of Directors may “find” a subject matter insignificant merely because it is trying to find a grounds to exclude a proposal. Therefore, it is also necessary for the proponent to provide any evidence that contradicts the board's finding of insignificance. Ultimately, the determination of insignificance to a company is the obligation of the Staff, the Commission, or the courts. If there is a reasonable basis for concluding that a significant policy issue has a connection to a company, it transcends ordinary business at the company.

Question 4. **Micromanagement.** Finally, if all of the above are true, does the approach of the proposal micromanage? Even if the proposal's subject matter transcends ordinary business (number two) and has a connection to the company (number three), the proposal still may be excludable if the approach of the proposal micromanages the company's business.

¹⁶ Staff Legal Bulletin 14H published in 2015 described ordinary business in terms of the “nitty gritty” of corporate management: “a proposal may transcend a company's ordinary business operations even if the significant policy issue relates to the “nitty-gritty of its core business.” This makes the distinction between and ordinary business determination and a significant policy determination clear.

¹⁷ Staff Legal Bulletin No. 14E (October 27, 2009).

¹⁸ William Hinman, Director of the Corporation finance division, and Matt McNair, Senior Special Counsel have made this point (based on their personal interpretations of the Bulletin) in publicly reported comments. <https://www.briefinggovernance.com/2017/11/what-we-know-so-far-about-the-new-slb-on-shareholder-proposals/> https://www.thecorporatecounsel.net/Webcast/2017/11_14/transcript.htm

B. Applying the Analytical Framework to the Board's "findings" regarding the present Proposal

The Apple Board of Directors' "findings" involve a fundamental misinterpretation of the Staff Legal Bulletin. It appears that the Board of Directors focused its analysis principally on Question 1 – whether the Proposal's subject matter is ordinary business for the company. However, the Apple Board is unable to demonstrate that the subject matter does not address a significant policy issue (Question 2) nor that it lacks a connection to the Company's business (Question 3). Further, the proposal does not micromanage (Question 4).

In the present instance, the Proposal clearly addresses the significant policy issue of climate change, and has a clear connection to the Company's business activities given the magnitude of energy usage by the Company, greenhouse gases generated, the Company's expenditures and leadership on climate change. The Proposal does not micromanage the Company in prodding the company to explore elimination of the company's carbon footprint on a fixed timeframe.

The Board of Directors is in error in its interpretation that because the proposal addresses "ordinary business" it is excludable. It addresses a transcendent policy issue with a connection to the company and does not micromanage. It is not excludable.

i. The Apple Board finding is that the proposal addresses ordinary business

The Apple Board essentially concluded that because it has significant programs in place, and the board and management regularly discuss and address issues of environment and human rights, these have become matters of ordinary business. The Company's Supplemental Letter states:

The Board recognized that it had already considered the issues raised by the Proposal when setting the strategic direction of the Company and performing its duties as a Board. Moreover, the Board determined that the Company's ongoing practices and policies to minimize the businesses environmental impact, as well as the Company's ongoing disclosures related thereto, make these matters an integral part of the ordinary business operations of the Company, and the issues presented in the Proposal as a whole fit squarely within the Company's ordinary business mission to mitigate its environmental impacts with practices and policies that address energy sources, energy efficiency, resource conservation, and materials safety. The Board determined that the Company's strategy of reducing greenhouse gas emissions is a key component of the environmental strategy that is part of its ordinary business operations.

The Board determined that the Company's strategy of reducing greenhouse gas emissions is a key component of the environmental strategy that is part of its ordinary business operations. The Board also considered the Company's existing policies, practices, and disclosures and concluded that the Proposal, even if submitted to shareholders and approved, would not call for the Company to consider facts, issues or policies that the Company does not regularly consider in the course of its day-to-day operations, other than as described in the Initial Letter, and

therefore does not transcend the Company's ordinary business. ***The Board considered the fact that it, along with management, is regularly and actively involved in the consideration, oversight and re-assessment of the Company's environmental policies and practices.***

Based on the foregoing, the Board concluded that the Proposal does not transcend the Company's ordinary business or its day-to-day operations. Accordingly, while the Board is pleased that the Proponent's general interest in the Company's environmental strategy is fully aligned with that of the Company, the Board does not believe that the Proposal requires a vote of shareholders at the 2018 Annual Meeting of Shareholders.

This approach taken by the Board of Directors is legally inconsistent with the role and expertise of a board in the shareholder proposal process. If the Board has any role to play in determinations under Rule 14a-8(i)(7) it would be limited to finding that an issue is "insignificant" for the company. Moreover, we believe the Board has a fiduciary duty to encourage shareholder engagement on social and environmental issues through the shareholder proposal process, a duty contradicted by this reflexive attempt to find a means of excluding environmental and human rights proposals.

ii. Conducting a firm's ordinary business is not the same as "more or less substantially implementing"

Some of the Board's assertions regarding its integral environmental and human rights programs seems to convey something like a coarse version of substantial implementation -- that the Board considers similar policy issues and its day to day activities:

The Board also considered the Company's existing policies, practices, and disclosures and concluded that the Proposal, even if submitted to shareholders and approved, would not call for the Company to consider facts, issues or policies that the Company does not regularly consider in the course of its day-to-day operations, other than as described in the Initial Letter, and therefore does not transcend the Company's ordinary business. The Board considered the fact that it, along with management, is regularly and actively involved in the consideration, oversight and re-assessment of the Company's environmental policies and practices.

The Company's actions do not qualify as having fulfilled the essential purpose and guidelines of the Proposal to qualify for having substantially implemented the proposal pursuant to Rule 14a-8(i)(10), and thus the Board opinion here implies a much looser form of substantial implementation consideration -- one in which the fact the company Board considers similar issues should suffice to allow exclusion of a shareholder proposal. This would effectively negate Rule 14a-8(i)(10) as a functional rule, and it is logically and legally inconsistent to require a rigorous approach to substantial implementation in one section of the rules, and to allow an open ended exception to bar proposals for companies whose board has contemplated similar facts and issues generally.

iii. The Board of Directors is unable to find that the proposal subject matter is “insignificant” for the Company.

The Board of Directors did not, and could not, claim that the subject matter of the Proposal is insignificant. It is very significant indeed for Apple, both because of the Company's own greenhouse gas footprint and because the Company seeks to be a leader in regard to this issue.

For example, Apple has thrown its weight, together with other companies, behind the global climate agreements in both word and action. This was evident in 2014, when Apple signed a Climate Declaration with 140-plus leading California companies, reiterating calls for legislators to deliver ambitious action on climate change, supporting policies that would cut emissions and drive investment in clean tech, and highlighting its commitment to take action to address climate change and be a leader in building a low-carbon economy.¹⁹ Domestically, Apple's 2015 commitment to an \$850 million agreement to buy continuous power from a huge solar plant in California, under a 25-year contract -- the “largest-ever” such renewable energy investment at the time -- was lauded as a “visible and symbolic example of what's possible today for private sector companies to drive clean energy investments.”²⁰ And internationally, Apple has also taken major steps to “green” its supply chain, by working with its major suppliers to switch their operations to clean power sources, including by investing directly in renewable energy projects, installing 485 megawatts of solar and wind in six Chinese provinces, and planning to borrow \$1 billion to finance additional renewable energy and energy efficiency efforts.²¹

More recently, Apple joined the We Are Still In effort in 2017 that declares companies' and state and local governments' commitment to persisting in pursuing the goals of the global climate agreement.²²

Investors are being encouraged to invest in Apple as a safe bet on green energy. Articles urge, “Apple can inspire you to do better yourself and also make you feel good about investing,” because “They're all about the green,” “They have a hand in charity,” and “help employees have a hand in it, too.” “Is Apple More Responsible Than You? Why You Want to Invest.”²³ Apple is also starting to issue SRI bonds, or green bonds, a new occurrence for several major U.S. corporations (initially most green bond issuances came from government bodies), and was the largest U.S. corporate green bond issuer, with \$1.5 billion issued.²⁴

Visiting the Company website, we see that the company has gone out of its way to brand itself as an environmental leader – including on the issue of climate change and eliminating its carbon footprint:

¹⁹ Apple, eBay, GM, Intel Throw Weight Behind Climate Declaration,” BusinessGreen, Monday, March 3, 2014, greenbiz.com

²⁰ “Apple to Wal-Mart, Big Biz is Betting on Green Energy (Op-Ed)”, Lynn Scarlett, The Nature Conservancy, February 25, 2015.

²¹ “How Apple is moving its supply chain toward clean energy,” Heather Clancy, Thursday, June 29, 2017.

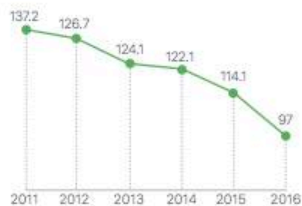
²² <https://www.wearestillin.com/we-are-still-declaration>.

²³ “Is Apple More Responsible Than You?: Why You Want to Invest,” Stash, November 17, 2016. <http://learn.stashinvest.com/apple-do-the-right-thing-corporate-responsibility-charity>

²⁴ “Green Bonds: A Surging Market for Socially Responsible Investing,” ThinkAdvisor, June 13, 2016. <http://www.thinkadvisor.com/2016/06/13/green-bonds-a-surging-market-for-socially-respons>



We mapped our carbon footprint, and we're working to eliminate it.



Carbon emissions per product (kg)

We've decreased carbon emissions per product every year since 2011.

When we measure our carbon footprint, we include hundreds of suppliers, millions of customers, and hundreds of millions of devices. And we're always looking for ways to make the biggest difference in five major areas: manufacturing, product use, facilities, transportation, and recycling.

To reduce our carbon footprint, we design each generation of our products to be as energy efficient as possible. We're sourcing lower-carbon materials to make our devices, we're partnering with suppliers to add clean energy to their facilities, and we produce and procure clean, renewable energy for 96 percent of the electricity used at our global facilities.

iv. The approach of the Board opinion would eliminate the role of the shareholder proposal process in collaborative corporate leadership.

Even companies that are recognized leaders benefit from and require continued engagement by shareholders. A company like Apple that builds a reputation as a “green” company, in part by the process of shareholder engagement that encourages the company to do so, also attracts investors who want to invest green. Company strategy is then inevitably subject to continued engagement and dialogue as shareholders monitor progress and file shareholder proposals as needed where they are not satisfied with the Company’s policies or transparency.

It is fair to say that on many of the big picture issues of environmental leadership, the success of Apple in this arena due to the collaborative efforts of its share owners, board, and management. To cite another example in addition to those cited above, in 2006, the Company received a proposal from Domini Social Investment seeking a vendor code of conduct for its supply chain, and in a process of negotiation in exchange for withdrawal of the proposal, Apple agreed to establish workforce protections for its supply chain.

To conclude that these and many other collaborations between the management, board and shareholders, **highly contingent on the availability of the shareholder proposal process**, are no longer needed in advancing the best that Apple and other companies have to offer would be a tragic mistake. It would undermine the rights of investors, relationships with investors whose capital is backing the company and with whom the company has collaborated for years, as well as undermining the prospects and reputation of the Company.

In some instances, companies engaging in “leading” disclosure sometimes fail to share information that investors seek to form a complete picture of investment value and risk. This was true, for instance, in the sustainability reporting proposal example cited above.²⁵

The Company Supplemental Letter concludes:

A wide range of environmental groups have praised Apple for its leadership in developing and implementing innovative solutions to minimize waste and actually reduce greenhouse gas emissions. Apple has set a goal to run 100% of its worldwide operations on renewable energy and lead the way towards reducing carbon emissions from manufacturing — and it will do all it can to reach that goal as quickly as possible.

While it is clear that the Company is a pacesetter on greenhouse gas reduction in the tech sector, that does not mean that the pace the company is setting, and the signals it is sending to its supply chain and its transparency on timelines for completion, suffices to meet the global urgency of greenhouse gas reduction. Continued leadership by the company may well prove dependent on the shareholder proposal process, challenging the company to move beyond a vague *commitment to eliminate its carbon footprint as soon as possible* and toward transparency on a process of setting a specific timeframe reflective of the urgency and feasibility of the task.

II. THE NEXUS OF THE SUBJECT MATTER OF THE PROPOSAL IS CLEAR CUT.

A. Climate change and reducing greenhouse gases are a universal concern for companies.

From an investor protection standpoint, climate change probably has a nexus to all companies and every sector. As a global economic and environmental crisis, investors have a right and need to ensure that all companies in their portfolio are doing their part to keep pace with the demands for greenhouse gas reduction consistent with averting the worst possible global

²⁵ To cite a notorious example, Aetna, a major corporation in the health services industry, was considered a leader in disclosing political contributions due to its adoption of disclosure policies advocated by shareholders. Though the company disclosed thousands of dollars of contributions made to various politicians, it had concealed much larger donations to PACs and Trade Associations; this lack of disclosure of the “full picture” came out when Aetna accidentally revealed that the company had donated \$4.05 million to the Chamber of Commerce - far more than the \$100,000 in political contributions it had reported - and \$3 million to the conservative American Action Network in 2011. Aetna came under fire for its “dark money” donations in national news (“dark money” groups are politically active nonprofits, “dark” in the sense that they are able to shield the identity of their donors from public records), which may have had reputational impacts. “Never Mind Super PACs: How Big Business Is Buying the Election”, Lee Fang, Twitter, August 29, 2012. This led to a proposal at Aetna in 2013 seeking enhanced Board of Directors oversight of the company's political contributions policy.

https://www.sec.gov/Archives/edgar/data/1122304/000130817913000167/laetna_def14a.htm

climate catastrophe. As documented in our prior letter, the Staff has never concluded, and would be in error to conclude, that only “energy production and consumption” companies have a nexus to proposals seeking reduction in greenhouse gases. In so doing, it seeks to establish a very narrow approach to nexus in which only companies whose core business is in energy, for instance, would be appropriate recipients of clean energy related proposals. This would be a *radical* narrowing of prior Staff determinations. Quite to the contrary, and consistent with investment community interest, proposals relating to greenhouse gas tracking and reduction as well as regulatory and physical risks associated with climate change tend to be among the key ESG performance indicators for most sectors. Many investment strategies integrate obligations to monitor portfolio issues related to GHG's -- including the level of total GHG emissions, risks to the company associated with GHG's including regulatory risk as well as physical risks to property, and description of corporate strategies to reduce GHG's.

The Company Supplemental Letter citations on nexus neglect numerous Staff decisions cited in our first letter that have found climate change to be a significant policy issue with nexus to a wide array of sectors. Moreover, the SEC's Climate Guidance (Release Nos. 339106; 34-61469; FR-82, 2010) made it clear that the costs associated with changing demands for carbon reduction are widely relevant to many companies and sectors.

B. Apple has a particularly strong nexus to the issue due to its large greenhouse gas footprint, as well as its commitment of brand and resources to finding solutions to greenhouse gas emissions.

Apple, in particular, with emissions of 29.5 million metric tons of greenhouse gases, is a very substantial contributor to the global climate crisis, and so eliminating those emissions on a time limited basis has a clear nexus to the company. As noted above, this connection is even stronger because the Company has placed itself out front on the issue with resources, brand, and reputation.

According to the Company Supplemental Letter, the Proposal has merely an “incidental nexus to the company” as a result of the Company's “voluntary efforts” (commitments of strategy, resources, brand, and reputation) rather than as a result of its core business. The question posed by the Proposal in relation to this leadership is not a trivial difference from company's current practice. It is precisely because the Company is a pacesetter, a self-described leader for the tech sector on global greenhouse gas reduction, that the Proponent believes it is essential for investors to consider the need for the carbon reduction efforts to include a target date.

The fact that the Company has positioned itself as a pacesetter for progress in this area does not lessen investor interest in discussing important policy issues related to climate change, it only heightens it. The Company's substantial commitments of resources, leadership and reputation cannot be ignored as demonstrating a strategic connection of the issue to the company.²⁶

²⁶ Yet, later in the Board opinion section, the Company Supplemental Letter seeks to establish that Apple's environmental efforts are “integral.”

III. THE PROPOSAL DOES NOT ENGAGE IN MICROMANAGEMENT.

A. The Proposal's request for a clearly scoped net zero GHG strategy and timeline is not micromanagement.

The Company claims that carrying out the Proposal's requested action would divert limited resources that are being deployed in existing efforts.

As we have explained previously, the Proposal's proposed actions are intended to be additive to the existing company efforts. It is not that the Company's existing actions are pointing in the wrong direction, but rather that they have failed to set an estimated time of arrival, which the proponent believes to be inconsistent with the tech sector's strategy for going something within a fixed timeframe when it is viewed as a critical issue. So, the company's failure to even attempt to set a timeline for getting to net zero is sending mixed signals to investors, supply chain participants, and policymakers – perhaps the Company views this as an important issue but time is NOT of the essence?

As we noted in our prior letter, the courts have considered the question of broad differences regarding the timing of a corporate response to a critical social issue, and concluded that when investors seek a timeframe that is very different from the company's, that is not micromanagement. In *Roosevelt v. E.I. DuPont de Nemours & Company*, 958 F.2d 416 (D.C. Cir. 1992), Judge Ruth Bader Ginsburg confirmed that :

“Timing questions no doubt reflect “significant policy” when large differences are at stake. That would be the case, for example, if Du Pont projected a phase-out period extending into the new century. On the other hand, were Roosevelt seeking to move up Du Pont's target date by barely a season, the matter would appear much more of an “ordinary” than an extraordinary business judgment.”

B. Requesting a feasibility study is not micromanagement.

The Company Supplemental Letter also reasserts its idea that the work in preparing a report assessing feasibility is virtually identical with preparing a detailed plan. To the contrary, a feasibility study is a necessary first step in identifying whether a project is viable whatsoever, and therefore whether the project can move forward to a stage in which the company would *then* develop a detailed plan. The initial expenditure of a feasibility study should be a financially efficient review that will aid management in understanding the general scope of a project and how it and the broader situational context may affect the company in the future, thereby offering the company a first phase opportunity to identify whether a full-scale plan would be possible and appropriate for the company.

According to Investopedia:

A feasibility study is an analysis of how successfully a project can be completed, accounting for factors that affect it such as economic, technological, legal and scheduling factors. Project managers use feasibility studies to determine potential positive and negative outcomes of a project before investing a considerable amount of time and money into it.

A feasibility study tests the viability of an idea, a project or even a new business. The goal of a feasibility study is to place emphasis on potential problems that could occur if a project is pursued and determine if, after all significant factors are considered, the project should be pursued. Feasibility studies also allow a business to address where and how it will operate, potential obstacles, competition and the funding needed to get the business up and running.²⁷

In the present instance, there are various possible approaches to a feasibility assessment. The Company might, for instance, develop a set of categories of its suppliers and evaluate a set of assumptions regarding energy consumption and GHG emissions associated with those categories, and model or test assumptions regarding a small portion of suppliers within those categories. In contrast to a “plan,” it does not entail studying or testing the approach for every supplier.

Such a feasibility process would also provide the opportunity to identify whether it is likely, given the range of operations in its supply chain, that the company can eliminate its carbon footprint with its existing strategies, or whether other strategies such as negative emissions strategies would also need to be deployed.

Another approach could be for the Board of Directors to substantially implement the Proposal itself – to provide transparency to investors on its own deliberations and assessments and to issue a report that explains how and why the board has concluded it is not feasible or appropriate to set a target date for eliminating the firm’s carbon footprint. Notably, the Board of Directors has not done so but instead merely stated that it has considered the facts and circumstances related to such a question.²⁸

C. Focus on supply-chain is not micromanagement.

The Company asserts that its circumstances are different than those of companies receiving other net zero GHG proposals where the Staff found nexus and no excludability – PayPal and TJX. In those instances, the proposals did not require a focus on suppliers. The present Proposal requires addressing greenhouse gas emissions of Apple’s supply chain. Many proposals addressing supply chain relations on significant policy issues have been found not excludable under Rule 14a-8(i)(7). Apple is already effectively operating at this scale including with regards to interacting with its suppliers on energy issues and the proposal does not attempt to micromanage those relationships. Moreover, numerous proposals at Apple and elsewhere focusing on a significant policy issue related to supply chain relations and management have demonstrated that a focus on the supply chain does not constitute micromanagement. See, for instance, *Fossil, Inc.* (March 5, 2012).

Asking the company to explore setting a timeframe for completion of its carbon footprint elimination project -- even in relation to its supply chain -- is not micromanagement. It is in fact the opposite – a question of policy or macro-management. Is the company is

²⁷ <https://www.investopedia.com/terms/f/feasibility-study.asp#ixzz506siPMTQ>

²⁸ See discussion above regarding the board and “substantial implementation.”

communicating and working with its supply chain in a manner that treats the urgency of greenhouse gas reduction as a moonshot with a specific timeline for completion? As a policy proposal that allows shareholders to debate a major point of contention between investors and the board, this is not micromanagement. It is precisely the type of shareholder proposal that transcends ordinary business because it seeks to bring investors into the debate regarding corporate vision and strategy associated with a significant societal debate.

CONCLUSION

Based on the foregoing and our prior correspondence, we believe it is very clear that neither Apple management nor its Board have provided any basis for the conclusion that the Proposal is excludable from the 2018 proxy statement pursuant to Rule 14a-8. As such, we respectfully request that the Staff inform the company that it is denying the no action letter request. If you have any questions, please contact me at 413 549-7333 or sanfordlewis@strategiccounsel.net.

Sincerely,

Sanford Lewis

cc:

Christine Jantz

Gene D. Levoff

Apple Board of Directors
Arthur D. Levinson, Ph. D
James A. Bell
Tim Cook, CEO
Albert Gore Jr.
Robert A. Iger
Andrea Jung
Ronald D. Sugar, Ph. D
Susan L. Wagner



Rule 14a-8(i)(7)
Rule 14a-8(i)(10)

November 20, 2017

VIA E-MAIL (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: Apple Inc.
Shareholder Proposal of Jantz Management LLC on behalf of Christine Jantz

Dear Ladies and Gentlemen:

I am writing on behalf of Apple Inc. to respond to Sanford Lewis's letter to the staff dated October 31, 2017 (the "**Response Letter**"), objecting to the Company's intention to omit from its 2018 Proxy Materials the Proposal, which requests that the Company "prepare a report to shareholders by December 31, 2018 that evaluates the potential for the Company to achieve, by a fixed date, "net-zero" emissions of greenhouse gases relative to operations directly owned by the Company and major suppliers." The bases on which the Company intends to omit the Proposal are set forth in my letter to the staff dated October 9, 2017 (the "**Initial Letter**").

I am also supplementing the Initial Letter to provide the staff with additional information based on the new guidance in Staff Legal Bulletin No. 14I (November 1, 2017) ("**SLB No. 14I**"). For ease of reference, capitalized terms used in this letter have the same meaning ascribed to them in the Initial Letter.

I. The Proposal's Incidental Nexus to the Company Arises from the Company's Voluntary Efforts

As noted in the Initial Letter, the Company designs, manufactures and markets mobile communication and media devices, personal computers and portable digital music players, and sells a variety of related software, services, accessories, networking solutions and third-party digital content and applications. Accordingly, energy production and consumption are not the core of the Company's business, as they are at companies engaged primarily in the energy business, and therefore staff letters concluding that climate change and greenhouse gas related proposals raise a significant policy issue for such a company are inapposite to the Company. See *DTE Energy Co.* (January 26, 2015); *Devon Energy Corp.* (March 19, 2014); and

Apple
1 Infinite Loop
Cupertino, CA 95014

T 408 996-1010
F 408 996-0275
www.apple.com

Exxon Mobil Corporation (March 23, 2007). Environmental considerations play an important role in the Company's ordinary business operations not because they are inherently related to its business or because of applicable environmental or industry regulations, but because of the Company's independent goal of minimizing the environmental impact of its business.

The Response Letter argues that the Company itself created a nexus between the Company and climate change by including on its website disclosure of the Company's voluntary efforts to reduce its carbon footprint and its aspirations to reduce the greenhouse gas emissions of its suppliers. The Proponent appears to argue that, by undertaking to make a significant commitment to the environment for the benefit of all people, reporting on the progress of its efforts and expressing a desire to achieve specific goals for reducing its and its suppliers' greenhouse gas emissions, the Company has created a nexus between its operations and an international effort to achieve the U.N. Climate Change Conference's goal of limiting climate change to an average global warming of 2 degrees Celsius above pre-industrial temperatures by 2050. A company's voluntary efforts on a societal issue do not, however, make the societal issue core to the company's business or otherwise create a nexus between the company and a proposal that seeks to address the same issue. Any other conclusion ignores the meaning of a company's "business" and would discourage companies from seeking solutions to societal problems that affect the world at large.

II. The Proposal Seeks to Micromanage the Company by Imposing Quantitative Goals

The Proponent argues that the Proposal is substantively different from the proposal it submitted last year, which the staff agreed was excludable under Rule 14a-8(i)(7), because the Proposal does not request that the Company generate a feasible plan for the Company and its major suppliers to achieve net-zero emissions by 2030, and instead asks the Company to assess the feasibility of implementing a plan for the Company and its major suppliers to achieve net-zero emissions by a date to be specified by the Company.¹ The Proponent acknowledges that "there might be a logical basis for saying that a look at feasibility is a necessary precondition for preparing a plan to achieve GHG reduction," but contends that, in fact, "[t]here is a significant difference between preparing a detailed plan, and making a preliminary assessment as to whether such a course of action is feasible." Aside from the fact that the Proposal requests a report on feasibility, not a "preliminary assessment," the fact remains that the Company cannot accurately assess the feasibility of achieving the specific quantitative goal of net zero greenhouse gas emissions without first developing a sufficiently detailed technological plan to allow for such a determination. Whether the Company is directly called upon to generate a feasible plan or "explor[e] a feasible strategy," the Company must develop a plan.

The Proposal does not any less micromanage the Company by having the Company, rather than the Proponent, fix the deadline for achieving the net-zero goal. The dictated goal of

¹ The proposal submitted to the Company by the Proponent last year read, "Resolved: Shareholders request that the Board of Directors generate a feasible plan for the Company to reach a net-zero GHG [defined as greenhouse gas] emission status by the year 2030 for all aspects of the business which are directly owned by the Company and major suppliers, including but not limited to manufacturing and distribution, research facilities, corporate offices, and employee travel, and to report the plan to shareholders at reasonable expense, excluding confidential information, by one year from the 2017 annual meeting."

net-zero with respect to the Company and its major suppliers is the crux of the Proposal. Calling on the Company to develop the plan, but offering flexibility on the date by which the goal must be achieved, does little to lessen the Proposal's specific directive. The actions and analysis required for the Company to develop that plan are substantially the same as those the Company and its major suppliers would have had to undertake in response to last year's proposal.

The Proposal requires the Company to undertake far more expensive and complex analyses than the net-zero greenhouse gas emissions proposals submitted to TJX, Inc. and PayPal Holdings, Inc. See *TJX, Inc.* (March 13, 2017) (disagreeing with exclusion of proposal seeking a report on the achievability of net-zero greenhouse emissions for company's operations); and *PayPal Holdings, Inc.* (March 13, 2017) (same). Unlike the Proposal, the proposals submitted to TJX and PayPal did not require the company to analyze and reform the greenhouse gas policies of its suppliers. The Company's reliance on hundreds of suppliers and manufacturing partners around the world significantly increases the complexity and level of micromanagement that would be involved in developing the plan required by the Proposal, which requires that emissions attributable to major suppliers also be considered in assessing the feasibility of achieving net-zero emissions. TJX, an operator of retail stores and websites, and PayPal, a payment processing company, are engaged in only a subset of the ongoing operations of the Company's varied businesses, which include, among others, operating retail stores and websites and payment processing. As a result, developing a plan to achieve net-zero greenhouse gas emissions for the Company, on a standalone basis, would be a much more significant undertaking than developing a plan for either of those companies. The Proposal goes far beyond what was proposed for TJX and PayPal, however, and asks for a plan that covers all of the Company's various businesses plus those of its major suppliers around the world. The additional complexity and micro-management imposed by the Proposal, relative to the proposals submitted to TJX and PayPal, Inc., is not lessened by directing the Company to set the plan's deadline.

The Proposal is again calling for the Company to "set[] a target date and explor[e] a feasible strategy to make it happen." While the Proponent characterizes the Proposal as "a broad brush policy proposal," in fact the Proposal seeks to micro-manage Apple by displacing management's choices regarding how best to mitigate the environmental impact of its business. Apple's environmental efforts seek to *reduce* its environmental impact. Rather than focusing on efforts that yield improvements in efficiency and reductions in the Company's environmental impact, the Proponent urges that those efforts be redirected in favor of purchasing carbon offsets and "tree planting," neither of which would reduce Apple's actual level of greenhouse gas emissions. The Proposal does not disagree with Apple's objective of minimizing the environmental impact of its business; instead, the Proposal, but not the Response Letter, disagrees with Apple's choices in seeking to achieve that objective. The Company's approach to greenhouse gas emissions has been applauded by numerous environmental groups, including Greenpeace, Ceres, Advanced Energy Economy, and the Climate Group's RE100 initiative² as representing concrete efforts to drive Apple's

² <http://www.greenpeace.org/usa/news/greenpeace-welcomes-apples-renewable-energy-commitment-to-manufacturing-partners-in-china/>

manufacturing base (including its suppliers) to a low-carbon future. The Company agrees with the Response Letter that “Plan A must be to reduce GHG emissions aggressively now.”

Although the Company has significant resources, both its financial resources and management’s time are necessarily limited. Company funds and management time spent pursuing the Proponent’s preferred approach represent funds and management time that are diverted from the Company’s pursuit of its chosen approach to greenhouse gas emissions. Diverting limited resources to pursue an alternative plan would only make the likelihood of success of “Plan A” more remote.

The specific and detailed choices a company makes to implement a significant policy, such as reducing the environmental impact of its business, are exactly the types of day-to-day operational decisions that the 1998 Release recognized as too impractical and complex to subject to direct shareholder oversight.

III. The Proposal Relates to Matters of the Company’s Ordinary Business

A. Background

As noted in the Initial Letter, Release No. 34-40018 (May 21, 1998) explains that a proposal that raises matters that are “so fundamental to management’s ability to run a company on a day-to-day basis that they could not, as a practical matter, be subject to direct shareholder oversight” may be excluded unless the proposal raises policy issues that are sufficiently significant to transcend day-to-day business matters. The applicability of the significant policy exception “depends, in part, on the connection between the significant policy issue and the company’s business operations.” On November 1, 2017, the Staff published SLB No. 14I, which announced new staff policy regarding the application of Rule 14a-8(i)(7). The staff stated in SLB No. 14I that whether a policy issue is of sufficient significance to a particular company to warrant exclusion of a proposal that touches upon that issue may involve a “difficult judgment call” which the company’s board of directors “is generally in a better position to determine,” at least in the first instance. A well-informed board, the staff said, exercising its fiduciary duty to oversee management and the strategic direction of the company, “is well situated to analyze, determine and explain whether a particular issue is sufficiently significant because the matter transcends ordinary business and would be appropriate for a shareholder vote.”

Where the board concludes that the proposal does not transcend the company’s ordinary business operations, the staff said, the company’s letter notifying the staff of the company’s intention to exclude the proposal should set forth the board’s analysis of “the particular policy issue raised and its significance” and describe the “processes employed by the board to ensure that its conclusions are well-informed and well-reasoned.” Consistent with the staff’s guidance, the discussion below reflects the analysis of the Company’s board of

directors (the "**Board**") as well as management's and includes a description of the Board's processes in conducting its analysis.

B. Application of the Exclusion

The Proposal requests that the Company develop a plan to and report on the achievability of net-zero greenhouse gas emissions by the Company and its major suppliers by a fixed deadline.

The Company is paving the way toward a more sustainable future. Environmental stewardship is of paramount importance to the Company, which is committed to using the same innovative approach to the environment as it does with its products. As detailed in the Initial Letter and in the Company's 2017 Environmental Responsibility Report, the Company has committed to a variety of environmental efforts to, among other things, reduce its carbon footprint, switch to greener materials to create safer products and manufacturing processes, and protect natural resources. Further, as detailed in the Company's 2017 Supplier Responsibility Progress Report, the Company works to drive improved standards throughout its supply chain. As part of this effort, the Company engages suppliers to reduce the environmental impact of their operations and is working with multiple major suppliers to help them transition to renewable energy use. To date, 14 major suppliers have committed to power their Apple production entirely with renewable energy by the end of 2019. Other partners across its supply chain are also installing or investing in sizable solar projects, running their factories on wind power, and purchasing clean energy from reputable utility programs.

The Company has a dedicated Vice President for Environment, Policy, and Social Initiatives, who reports directly to the CEO. The Vice President drives the Company's work to reduce its impact on climate change by using renewable energy sources and driving energy efficiency in its products and facilities. The Company focuses on conserving precious resources and recently announced a goal to use only renewable or recycled materials in its products. The Company is also committed to using safer materials in its products and processes. The Vice President of Environment, Policy and Social Initiatives also drives the Company's work to make high-quality education more available to young people of diverse economic backgrounds, and to make high-technology products more accessible to people with disabilities. The Vice President also leads the Company's advocacy for government policies that protect individual privacy and civil rights. Appointing senior management to lead these initiatives and report directly to the CEO demonstrates that the issues are key concerns of management and are deeply embedded in the Company's day-to-day operations.

The Board and management are committed to minimizing the environmental impact of the Company's business, as evidenced by the Company's deep and longstanding commitment to safeguarding the environment. The Company's policies, practices and deliberations regarding all aspects of the Company's business incorporate an in-depth review of the environmental impact of the Company's policies, practices and operations. Therefore, the Proposal's request that the Company develop and report on the achievability of a plan for the Company and its major suppliers to achieve net-zero greenhouse gas emissions is merely a variant of what the Company's management and the Board already do. Accordingly, the Board

has analyzed the Proposal, considered its impact on the business and operations of the Company, and determined that the issues presented by the Proposal do not transcend the Company's ordinary business operations and therefore do not warrant a shareholder vote at the 2018 Annual Meeting of Shareholders.

C. Board Process

The Board is regularly updated on the Company's business operations, including the Company's efforts to make substantial progress on its environmental and sustainability goals. In reviewing the Proposal, the Board participated in a discussion with the Company's Vice President of Environment, Policy and Social Initiatives and other members of senior management. The discussion included information prepared by management about the Proposal and its policy implications and a review of the Company's efforts with respect to climate change and greenhouse gas emissions reductions. The Board reviewed the Company's ongoing and planned environmental initiatives, including the Company's strategy to transition to powering its operations and those of its supply chain entirely with renewable energy. This included a review of written materials, including the Company's 2017 Environmental Responsibility Progress Report. It also included a discussion of the specific issues raised by the Proposal and whether it is advisable to develop a plan to and report on the achievability of net-zero greenhouse gas emissions by the Company and its major suppliers by a fixed deadline in light of the Company's well-documented commitment to environmental stewardship.

After participating in these discussions and reviewing the written materials, the Board came to a consensus that it had received sufficient information from management to make an informed decision about whether the Proposal raises a significant policy issue that transcends the Company's ordinary business. The Board recognized that it had already considered the issues raised by the Proposal when setting the strategic direction of the Company and performing its duties as a Board. Moreover, the Board determined that the Company's ongoing practices and policies to minimize the businesses environmental impact, as well as the Company's ongoing disclosures related thereto, make these matters an integral part of the ordinary business operations of the Company, and the issues presented in the Proposal as a whole fit squarely within the Company's ordinary business mission to mitigate its environmental impacts with practices and policies that address energy sources, energy efficiency, resource conservation, and materials safety. The Board determined that the Company's strategy of reducing greenhouse gas emissions is a key component of the environmental strategy that is part of its ordinary business operations. The Board also considered the Company's existing policies, practices, and disclosures and concluded that the Proposal, even if submitted to shareholders and approved, would not call for the Company to consider facts, issues or policies that the Company does not regularly consider in the course of its day-to-day operations, other than as described in the Initial Letter, and therefore does not transcend the Company's ordinary business. The Board considered the fact that it, along with management, is regularly and actively involved in the consideration, oversight and re-assessment of the Company's environmental policies and practices.

Based on the foregoing, the Board concluded that the Proposal does not transcend the Company's ordinary business or its day-to-day operations. Accordingly, while the Board is

pleased that the Proponent's general interest in the Company's environmental strategy is fully aligned with that of the Company, the Board does not believe that the Proposal requires a vote of shareholders at the 2018 Annual Meeting of Shareholders.

* * *

A wide range of environmental groups have praised Apple for its leadership in developing and implementing innovative solutions to minimize waste and actually reduce greenhouse gas emissions. Apple has set a goal to run 100% of its worldwide operations on renewable energy and lead the way towards reducing carbon emissions from manufacturing – and it will do all it can to reach that goal as quickly as possible.

If you have any questions or need additional information, please feel free to contact me at (408) 974-6931 or by e-mail at glevoff@apple.com.

Sincerely,



Gene D. Levoff
Associate General Counsel,
Corporate Law

cc: Jantz Management LLC
Alan L. Dye, Hogan Lovells US LLP

SANFORD J. LEWIS, ATTORNEY

October 31, 2017

Via electronic mail

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

Re: Shareholder Proposal to Apple Inc. Regarding Climate Change by Jantz Management LLC on behalf of Christine Jantz

Ladies and Gentlemen:

Christine Jantz (the "Proponent") is beneficial owner of common stock of Apple Inc. (the "Company") and has submitted a shareholder proposal (the "Proposal") to the Company. I have been asked by the Proponent to respond to the letter dated October 9, 2017 ("Company Letter") sent to the Securities and Exchange Commission by Gene D. Levoff, Associate General Counsel. In that letter, the Company contends that the Proposal may be excluded from the Company's 2018 proxy statement by virtue of Rule 14a-8(i)(7) and Rule 14a-8(i)(10).

I have reviewed the Proposal, as well as the Company Letter, and based upon the foregoing, as well as the relevant rules, it is my opinion that the Proposal must be included in the Company's 2018 proxy materials and that it is not excludable by virtue of those rules. A copy of this letter is being emailed concurrently to Gene D. Levoff.

SUMMARY

The Proposal asks the Board of Directors to prepare a report to shareholders to evaluate the potential for the Company to achieve net zero emissions of greenhouse gases by a fixed date. This request is grounded in the global scientific understanding that greenhouse gas (GHG) reduction requires a dramatic scaling up from current efforts. The Proposal requests that the Company evaluate a strategy to move beyond its current efforts and goals to determine whether it is possible to establish a timeframe for effectively eliminating GHG emissions all aspects of the business which are directly owned by the Company and major suppliers.

Company efforts on energy efficiency and renewable energy are laudable, and the Proposal asks the Company to take the next logical step, which the Proponent believes is to set a goal and timeframe to eliminate the Company's carbon footprint. This challenges the Company to exercise leadership in alignment with the global COP21 challenge, on a timeline consistent with global climate goals.

The Company asserts that the Proposal is excludable pursuant to Rule 14a-8(i)(7) as relating to ordinary business, but the Proposal is focused exclusively on the significant policy issue of climate change. The Company has made the issue of reducing climate change impacts a high-profile focus, establishing clear nexus. While the proponent's proposal submitted to the Company last year sought a plan to attain net zero GHG by 2030, and was found by the Staff to be excludable as micromanagement under Rule 14a-8(i)(7), the Proposal was revised prior to resubmitting for consistency with other proposals found by Staff to not micromanage: requesting a report assessing the feasibility of achieving net zero GHG by a fixed date. Thus, the Proposal addresses a significant policy issue with a nexus to the company and does not micromanage, and is therefore not excludable pursuant to Rule 14a-8(i)(7).

In addition, the Company asserts that it has already substantially implemented the Proposal, rendering it excludable under Rule 14a-8(i)(10). The essential purpose of the Proposal, entirely unfulfilled, is for the Company to report on the potential to achieve net zero emissions by a fixed date. While the Company's many activities and commitments are commendable, the Company has issued no publication that assesses a GHG reduction effort setting a fixed date for GHG reduction fully scaled to the entirety of Apple's GHG generation through its operations and those of its major suppliers. The Company's current efforts involve an effort to reduce its current carbon footprint for activities covered by the Proposal by approximately 20.8%.

THE PROPOSAL

The Proposal (included in its entirety as Appendix 1) states:

Resolved: Shareholders request that the Board of Directors to prepare a report to shareholders by December 31, 2019 that evaluates the potential for the Company to achieve, by a fixed date, "net-zero" emissions of greenhouse gases relative to operations directly owned by the Company and major suppliers. The report should be done at reasonable expense and may exclude confidential information.

BACKGROUND

Greenhouse gas emissions from human activities are the most significant driver of observed climate change since the mid-20th century. Not only is climate change happening, but year-by-year the weather is becoming more extreme. The pace at which climate change is happening is indicative of a global climate emergency. In 2015, 196 parties at the U.N. Climate Change Conference (COP21) agreed to limit climate change to an average global warming of 2 degrees Celsius above pre-industrial temperatures by 2050, with a further goal of limiting it to 1.5 degrees Celsius. Both of these ambitious goals are considered critical to heading off the most catastrophic effects of climate change and are inconsistent with projected growth in GHGs in the absence of effective intervention.

So far, most governments are far from adopting the regulatory actions at the pace needed to meet the 2050 goals. Following President Trump’s withdrawal from the Paris Agreement on June 1st of this year, the Secretary-General of the United Nations, António Guterres, expressed “confidence that cities, states and businesses within the United States — along with other countries — will continue to demonstrate vision and leadership by working for the low-carbon, resilient economic growth that will create quality jobs and markets for 21st century prosperity.”¹ This leaves it incumbent upon individuals and companies – investors, corporations, and civil society together – to do what they can to advance these goals. Given the role of technology in addressing the climate crisis, the Proponent believes that it may fall upon technology leaders like Apple to lead the way.

We appreciate Apple joining the “We Are Still In” initiative “pledg[ing] to support the Paris accord and ‘pursue ambitious climate goals,’ according to an open letter the campaign released.”² “We Are Still In is the broadest cross-section of the U.S. economy ever assembled in pursuit of climate action. Over 2,300 leaders strong and growing, We Are Still In shows the world that leaders from across America’s state houses, city halls, board rooms, and college campuses stand by the Paris Agreement and are committed to meeting its goals.”³

The 2050 COP21 goals are ambitious and will require the unleashing of extraordinary technological intelligence and leadership. To be a leader in helping the world meet those stringent goals of 2050 means that scaled action must be put into effect much earlier, creating models that can be replicated at needed scale worldwide. **Leadership** requires a focus on nearer term goals and timelines. For instance, Norway is aiming for net zero by 2030: “Norway’s parliament has agreed on a goal to cut the country’s net greenhouse gas emissions to zero by 2030, moving the target forward by 20 years, an official at the national assembly said on Tuesday.”⁴ And, Sweden has legally committed to reaching net-zero emissions by 2045.”⁵

Shareholders laud Apple for committing to “. . . power[ing] all its operations worldwide on 100 percent renewable energy,” and for joining the American Business Act on Climate Pledge. However, these goals do not include suppliers and manufacturing, nor has the Company set a timeframe for this goal.

77% of the Company’s 29.5 million metric tons of GHG emissions come from manufacturing including supply chain manufacturers. To secure the company’s leadership on climate issues, the Proposal calls for the Company to explore whether it can set a target date for achieving net-zero GHG emissions⁶ including from the major supply chain manufacturers.

¹ <https://www.nytimes.com/2017/06/01/world/europe/climate-paris-agreement-trump-china.html>

² <http://www.chicagotribune.com/news/nationworld/ct-paris-climate-agreement-tech-companies-20170605-story.html>

³ <https://www.wearestillin.com/us-action-climate-change-irreversible>

⁴ (<http://www.reuters.com/article/us-norway-climatechange-idUSKCN0YT1KM>)

⁵ <https://qz.com/1007833/swedens-climate-act-legally-commits-the-country-to-reach-net-zero-emissions-by-2045/>

⁶ https://images.apple.com/environment/pdf/Apple_Environmental_Responsibility_Report_2017.pdf

In sum, the approach taken by the Proposal is to encourage Apple to consider a next big step on leadership in this area -- net zero GHGs for its production chain -- securing its global profile and reputation as a sustainability leader.

ANALYSIS

I. The Proposal is not excludable under Rule 14a-8(i)(7) because it addresses a significant policy issue with a nexus to the Company and does not micromanage.

As the Company letter notes:

The Commission has stated that “proposals relating to [ordinary business] matters but focusing on sufficiently significant policy issues . . . generally would not be considered to be excludable.”⁷ Staff Legal Bulletin No. 14E (October 27, 2009) noted that, “On those cases in which a proposal's underlying subject matter transcends the day-to-day business matters of the company and raises policy issues so significant that it would be appropriate for a shareholder vote, the proposal generally will not be excludable under Rule 14-a8(i)(7) as long as a sufficient nexus exists between the nature of the proposal and the company.”

Staff Legal Bulletin 14H published in 2015 added that “a proposal may transcend a company’s ordinary business operations even if the significant policy issue relates to the “nitty-gritty of its core business.” Therefore, proposals that focus on a significant policy issue transcend a company’s ordinary business operations and are not excludable under Rule 14a-8(i)(7).”

Once a significant policy issue is identified and nexus is found, the only further ordinary business question is whether the Proposal micromanages the Company. In the present instance, the Proposal clearly addresses the significant policy issue of climate change, has a clear connection to the Company's business activities, and the Proposal does not micromanage the Company in asking the company to explore scaling up its GHG reduction to the full magnitude of the Company’s greenhouse gas generation.

A. The Proposal addresses a significant policy issue.

The Proposal is not excludable under Rule 14a-8(i)(7) because it directly focuses on a significant policy issue facing the Company: rapidly escalating global needs to eliminate greenhouse gas emissions in order to head off catastrophic climate change.

Prior Staff determinations have settled the question of whether matters pertaining to climate change and greenhouse gas emissions transcend ordinary business. See, e.g., *DTE Energy Company* (January 26, 2015), *J.B. Hunt Transport Services, Inc.* (January 12, 2015), *FirstEnergy Corp.* (March 4, 2015) (proposals not excludable as ordinary business because they focused on reducing greenhouse gas emissions GHG and did not seek to micromanage the company); *Dominion Resources* (February 27, 2014), *Devon Energy Corp.* (March 19, 2014), *PNC Financial Services Group, Inc.* (February 13,

⁷ 1998 Release.

2013), *Goldman Sachs Group, Inc.* (February 7, 2011) (proposals not excludable as ordinary business because they focused on significant policy issue of climate change); *NRG Inc.* (March 12, 2009) (proposal seeking carbon principles report not excludable as ordinary business); *Exxon Mobil Corp.* (March 23, 2007) (proposal asking board to adopt quantitative goals to reduce GHG emissions from the company's products and operations not excludable as ordinary business); *Exxon Mobil Corp.* (March 12, 2007) (proposal asking board to adopt policy significantly increasing renewable energy sourcing globally not excludable as ordinary business); *General Electric Co.* (January 31, 2007) (proposal asking board to prepare a global warming report not excludable as ordinary business).

B. The subject matter of the Proposal has a clear nexus to the Company.

The Company Letter asserts that there is a lack of nexus between the Company and the subject matter of the Proposal:

While the Proposal does invoke a significant policy issue, as was the case in *Apple 2016*, there is only an incidental nexus between the Proposal and the Company's business, which is not enough to overcome the significant level of micro-management of the Company's business the Proposal would entail.

However, the Staff decision in *Apple Inc.* (October 29, 2014) has already established that proposals focused on climate change and energy sources (renewable energy) have a nexus to the Company. In that instance, the proposal focused on the Company's increasing utilization of renewable energy sources and related risks.

As a leading technology company, the Proponent believes Apple should be a global role model and leader in illustrating how carbon reduction consistent with the demands posed by COP 21 can be accomplished. The Company is a large consumer of energy and therefore a large generator of GHG emissions. Its own publications on its website prominently document the magnitude of its GHG emissions and its challenges and efforts to attempt to address the issue. The Company's own website documents that climate change is a large policy problem that it must confront.

FROM APPLE WEBSITE:

Our comprehensive 2016 carbon footprint.

29,500,000

metric tons of greenhouse gas emissions



From Apple.com, accessed October 19, 2017. <https://www.apple.com/environment/>

The Apple website also expresses wishful thinking about progress in renewable energy in its supply chain. The site states " Can we get 100% of our supply chain to move to 100% renewable energy? We sure hope so."

**Can we get 100% of our
supply chain to move to
100% renewable energy?**

We sure hope so. As a start, we've committed to helping our suppliers bring 4 gigawatts of renewable power online by 2020.

In case you're wondering, that's 4 billion watts.

These materials taken from the Company's website document its prominent focus on its carbon footprint as well as its "hope" that its supply chain will eliminate its carbon footprint. Yet, notably lacking, from the Proponent's perspective, is a scaled up effort and ambition reduce those emissions to zero by any fixed date. What the Company communicates as a "hope" demonstrates the nexus of importance of the issue, but does not communicate the kind of commitment to accelerated pacing that would be on par with achieving net zero GHG on a timeframe that is in alignment with global needs as well as the Company's own technology leadership position.

C. The Proposal does not micromanage.

The Company asserts that the Proposal micromanages by seeking to impose a specific timeframe to implement complex policies to satisfy quantitative targets. The Company emphasizes the idea that its carbon footprint is complex, and that measuring and reducing that footprint requires inventive technical solutions which require the expertise of experts and management.

While the proposal submitted last year was found to be excludable under the micromanagement exclusion of Rule 14a-8(i)(7) in *Apple Inc.*, (December 5, 2016), the form of the current proposal was revised to avoid the micromanagement objection. In particular, instead of requesting a "feasible plan" to achieve net zero GHG by the specified date of 2030, the revised form of the Proposal simply requests that the company prepare a report assessing whether it is feasible to achieve net zero GHG by a fixed date of the company's choosing.

The 2016 proposal at Apple requested that the board generate a feasible plan for the company to reach a net-zero GHG emission status by the year 2030 for all aspects of the business which are directly owned by the company and major suppliers, including, but not limited to, manufacturing and distribution, research facilities, corporate offices and employee travel, and report the plan to shareholders. That proposal was found by the Staff to be excludable under Rule 14a-8(i)(7) as micromanagement. Subsequent to that Staff decision, however, proposals were filed at several companies scaling back the model of the proposal. These proposals were also challenged on the basis of micromanagement and found by the Staff **not to be excludable** on that basis. The non-excludable proposals had in common that instead of asking the company to prepare a plan to achieve net zero by a specific date, they focused on a report that only examined the feasibility of moving company policy in that direction. In *TJX, Inc.* (March 13, 2017), the proposal asked the company to evaluate the potential to achieve "by a fixed date" net zero greenhouse gases from parts of the business owned and operated by the company. In *PayPal Holdings, Inc.*, (March 23, 2017) the proposal asked the Board of Directors to prepare a report to shareholders that evaluates the feasibility of the Company achieving by 2030 "net-zero" emissions of greenhouse gases from parts of the business directly owned and operated by the company, including any executive and administrative offices, data centers, product development offices, fulfillment centers and customer service offices, as well as the feasibility of reducing other emissions associated with the Company's activities.

The Company Letter attempts to ignore these Staff determined distinctions and instead treated the Proposal as if the ask was materially unchanged. The letter notes:

The proposal the Proponent submitted last year asked the Company (1) to develop a plan to achieve the Proponent's arbitrary "net zero" goal (2) by a date specified by the Proponent and (3) prepare and publish a report detailing that plan. Similarly, the Proposal asks the Company (1) to evaluate the potential for achieving the Proponent's net-zero goal (2) by a date specified by the Company and (3) prepare and publish a report detailing the potential for achieving the net-zero goal. **Again, therefore, the Proponent seeks to have the Company develop a plan for achieving net-zero greenhouse gas emissions, which is a necessary precondition to evaluating the potential for implementing such a plan.** The Proposal also seeks, again, to require that the plan developed by management identify a date by which the goal might (or might not) realistically be achieved. [Emphasis added] Company Letter page 7.

While there might be a logical basis for saying that a look at feasibility is a necessary *precondition* for preparing a plan to achieve GHG reduction, these are very different tasks. Contrary to the Company's assertion, there is a significant difference between preparing a detailed plan, and making a preliminary assessment as to whether such a course of action is feasible. Last year's proposal presumed that the Company could issue a feasible plan to arrive at net zero by 2030. The current proposal does not.

Typical micromanagement issues are exemplified by *Marriott International Inc.* (March 17, 2010) wherein the proposal addressed minutia of operations – prescribing the flow limits on showerheads. In *Duke Energy Corporation* (February 16, 2001) the proposal attempted to set what were essentially regulatory limits on the company — 80% reduction in nitrogen oxide emissions from the company's coal-fired plant and limit of 0.15 lbs of nitrogen oxide per million British Thermal Units of heat input for each boiler – and was found excludable despite proposal's objective of addressing significant environmental policy issues.

By contrast, the lack of a specific timeline further distances the current proposal from those finding micromanagement. *E.I. DuPont de Nemours and Co.* (avail. March 8, 1991) in which the proposal sought to advance the Company's CFC phase-out deadline by one year. When that case was litigated, in *Roosevelt v. E.I. DuPont de Nemours & Company*, 958 F.2d 416 (D.C. Cir. 1992), the Appellate Court noted the difference between a micromanaging timeline and one that does not micromanage. Judge Ruth Bader Ginsburg, now a Supreme Court Justice, in the Circuit Court appeal, stated in the Roosevelt decision that:

“Timing questions no doubt reflect “significant policy” when large differences are at stake. That would be the case, for example, if Du Pont projected a phase-out period extending into the new century. On the other hand, were Roosevelt seeking to move up Du Pont’s target date by barely a season, the matter would appear much more of an “ordinary” than an extraordinary business judgment.” *Roosevelt v Dupont*, at 37.

In *Ford Motor Company* (March 2, 2004) the proposal outlined with extraordinary specificity the precise details sought in a scientific report regarding the existence of global warming or cooling. The proposal sought to prescribe the methods used for measuring and calculating climate change, even the means of measuring temperature increase, in a highly prescriptive way down to tiny increments and cost/benefits of climate change. Especially for a report that went beyond the company's core mission, asking for these tiny increments of detail rose to the level of micromanagement.

In contrast, the Staff has long agreed that proposals can and should contain reasonable levels of detail on relevant information that avoids micromanagement but also avoids vagueness. As one example, in *Exxon Mobil* (March 19, 2014) the Staff made it clear that it is not considered excludable micromanagement to request specifics in a report from a company, and to make technical aspects of such a report clear. The proposal in that instance sought a report to shareholders using quantitative indicators on the results of company policies and practices, above and beyond regulatory requirements, to minimize the adverse environmental and community impacts from the company's hydraulic fracturing operations associated with shale formations and that such report address, at a minimum, and on a regional basis or by each play in which the company operates:

- Percentage of wells using “green completions;”
- Methane leakage as a percentage of total production;
- Percentage of drilling residuals managed in closed-loop systems;
- Goals to eliminate the use of open pits for storage of drilling fluid and flowback water, with updates on progress;
- Goals and quantitative reporting on progress to reduce toxicity of drilling fluids;
- A system for managing naturally occurring radioactive materials;
- Numbers and categories of community complaints of alleged impacts, and their resolution;
- A systematic approach for reporting community concern statistics upward within the company.

In contrast, the present Proposal does not displace management decision-making, as it allows the Company to determine when, where, and how greenhouse gases will be eliminated; the current Proposal only seeks from the Company to explore whether it can set a goal that is consistent with the next frontier for the Company's carbon reduction measures in a world of ever-accelerating demands for greenhouse gas reduction.

The present Proposal most closely resembles the numerous proposals on climate change that have been found to **not be excludable** as related ordinary business or micromanaging, because they addressed key issues regarding strategic responses and goals on climate change. For instance, see *Chevron Inc.* (March 23, 2016), requesting that the company publish an annual assessment of long-term portfolio impacts of possible public climate change policies to the year 2035. *Dominion Resources Inc.* (February 11,

2014) requested the company adopt quantitative goals, taking into account International Panel on Climate Change guidance, for reducing total greenhouse gas emissions from the company's products and operations and report on its plans to achieve these goals. *Hess Inc.* (Feb. 29, 2016) requested that Hess prepare and publish a report disclosing the "financial risks to the Company of stranded assets related to climate change and associated demand reductions. The report should evaluate a range of stranded asset scenarios, such as scenarios in which 10, 20, 30, and 40 percent of the Company's oil reserves cannot be monetized" and "Provide a range of capital allocation strategies to address the growing potential of low-demand scenarios, including diversifying capital investment or returning capital to shareholders; Provide information on assumptions used in each scenario, including carbon price and crude oil price."

The Proposal does not necessitate intricate shareholder involvement in supplier relationships, but rather addresses supply chain accountability at a level consistent with prior non-excludable proposals.

The Company also argues that the Proposal micromanages because it directs attention to limiting impacts of the supply chain. However, a long series of Staff precedents have made it clear that a proposal addressing a significant policy issue focused on supply chain impacts, codes, or standards are not excludable as micromanagement. For example, in *Fossil, Inc.* (March 5, 2012) the Staff rejected an ordinary business exclusion on a proposal requesting that the company's board of directors issue a report describing the manufacturer's supply chain standards related to environmental impacts. In *Bob Evans Farms, Inc.* (June 6, 2011) the proposal encouraged the company's board to phase-in the use of cage-free eggs for its restaurants, so that they represent at least five percent of the company's total egg usage. The staff noted that the proposal focused on the significant policy issue of the humane treatment of animals and does not seek to micromanage the company to such a degree that exclusion of the proposal would be appropriate. Same result in *Wendy's Int'l., Inc.* (February 19, 2008) seeking report on the economic feasibility of purchasing, within 12 months, a certain percentage of eggs from free range hens. In *Wal-Mart Stores, Inc.* (March 29, 2011) the proposal requested that the company's board take the steps necessary to require that the company's suppliers publish annually an independently verifiable sustainability report, and the Staff rejected Rule 14a-8(i)(7) exclusion, noting the proposal focused on the significant policy issues of sustainability and human rights. In *Abercrombie & Fitch Co.* (April 12, 2010) the proposal requested that the company's board adopt and disclose a code of vendor conduct based on certain standards, establish an independent monitoring process, and prepare an annual report on adherence to the code. The Staff noted that the proposal focuses primarily on the significant policy issue of human rights and does not seek to micromanage the company to such a degree that exclusion of the proposal would be appropriate. In *McDonald's Corp.*, (March 22, 2007) the proposal urged the company's board to adopt, implement, and enforce a revised company-wide code of conduct inclusive of suppliers and sub-contractors based on the Int'l. Labor Organization's conventions, including four specific principles, and report on implementation and enforcement.

The current proposal is in line with these precedents. The Company exaggerates the level of shareholder or company involvement with supplier energy choices and sources that is necessitated by the Proposal to assess the feasibility of setting a zero GHG goal by a fixed date. In reality, all that is required from the management's standpoint is to know the level of emissions from the suppliers, projections by the suppliers of future energy reduction, and from that to identify target levels of GHG reductions needed either in the supply chain or via offsets elsewhere. Contrary to the Company Letter, in no way does the Proposal require a detailed report or Company intervention on supplier-level choices of processes, technologies, or materials.

Although it is possible that companies in its supply chain could accomplish GHG reduction as well as offsets as part of their contracting relationship with Apple, a less complex scenario would involve the Company creating or acquiring offsets elsewhere through tree planting and additional renewable energy projects. While the Company could choose to achieve GHG emissions reductions through detailed and complicated interactions with its suppliers, that would be the Company's choice, but is not contemplated or required by the Proposal.

The Proposal does not involve issues too complex for shareholders to understand and be able to weigh in on with advisory opinions. If Company management views the approach taken in the Proposal as inappropriate, the proper response under the circumstances is for the Company to describe its rationale in a statement in opposition in its proxy statement. Especially given the level of public and shareholder concern regarding climate change, it is certainly not beyond the capacity of shareholders to understand and weigh in reasonably on these issues.

Finally, it should be noted that the Proposal is unlike the proposal in *FirstEnergy Corp.* (March 8, 2013) which focused on increasing renewable energy resources but failed to focus on a significant policy issue.

The Proposal is consistent with and builds upon existing Company efforts. It is not in conflict with them.

The *Company Letter* notes that the management has determined that its resources will have the greatest effect on the environment by advancing projects that displace more polluting forms of energy with renewable sources and participating in renewable energy products that may not be developed without the Company's involvement. This translates to a principal focus on the Company's own operations rather than those of its suppliers.

Yet, the Company letter acknowledges that the *majority* of its carbon footprint comes from its supply chain rather than its own operations, and that it engages in some modest efforts to encourage suppliers to also address their carbon footprints:

“[W]hile also recognizing that the carbon footprint in the supply chain represents the majority of its comprehensive carbon footprint (77%), the Company is helping suppliers reduce their electricity consumption and switch to renewable energy.”

The Proposal's idea of setting a target date and a net zero goal literally picks up where those current activities leave off. The present Proposal essentially asks the company to assess the feasibility of doing more on a time-limited basis on the portion of greenhouse gas emissions that cannot be eliminated by implementing those renewable energy projects at its own facilities and considering the current trajectory of responsiveness by suppliers. As such, the Company need not alter existing decision-making, but the Proposal inquires as to whether the Company could scale up its efforts so that its GHG accomplishments account for and, by actions or accounting, eliminate the residual GHG emissions from manufacturing facilities that are not readily eliminated through its existing strategies.

The Company already generates the needed metrics. The Company has noted that it has, since fiscal year 2011, reduced the emissions from its facilities worldwide by over 1 million metric tons. In contrast, its reports indicate that, excluding product usage, the Company's carbon footprint is 29.5 million metric tons. The Proponent commends the Company for directly engaging with suppliers to assess their energy use with detailed energy audits; however this also demonstrates that the Company is already gathering the needed metrics that entail measurement of progress in the supply chain GHG reduction. The Proposal neither asks nor requires the Company to probe further into supply chain technologies or methodologies. Moreover, the data that the Company already gathers is sufficient to show a lack of substantial implementation – it shows that at least two thirds of the greenhouse gases currently generated by manufacturing of its products remain to be eliminated after current efforts that it has described.

Finally, it should be noted that the *entirety* of the Proposal addresses the significant policy issue of climate change and greenhouse gas reduction. Contrary to the Company's assertion that the environmental goals of the Proposal are secondary to the Proposal's effort to micromanage, the Proposal simply addresses a scaling up of the Company's responses to the level demanded by the current global climate emergency. The whereas clauses of the Proposal make it clear that the focus of the Proposal is on responsiveness to current climate related demands.

In sum, the Proposal does not micromanage and is not excludable as relating to the Company's ordinary business.

II. The Proposal is not Substantially Implemented.

In addition, the Company claims that it has substantially implemented the Proposal, that it has addressed each element of the Proposal as well as the essential objectives.

The Company has already substantially implemented the proposal because the Company's existing policies, practices and procedures “compare favorably with the guidelines” of the Proposal and achieve its essential objective. *Company Letter.*

The Company distorts the "essential objective of the proposal" – making it seem that the Proposal is simply about reducing and reporting on greenhouse gas emissions generated by the Company's operations. Instead, the Proposal is about scaling up the Company's efforts to where it would have a net zero GHG by a fixed date of the company's choosing. The Company's stated efforts and plans do not demonstrate that the Company has assessed setting a net zero GHG goal by a fixed date.

The Company's letter significantly downgrades the essential objectives of the proposal in order to find substantial implementation:

The essential objectives of the Proposal are the development and evaluation of a plan to significantly reduce the effects of greenhouse gas emissions generated by the Company's business and its major suppliers within a reasonably short time frame. The Company has already substantially implemented the Proposal's essential objective, and, as demonstrated in the 2017 Environmental Responsibility Report, has committed to a variety of environmental efforts, including developing a closed-loop supply chain and carefully studying materials to remove potentially harmful substances from products, that go beyond reducing the effects of greenhouse gas emissions. Company Letter, page 13.

The Company's reported actions neither meet the essential purpose nor compare with the guidelines of the Proposal. In the simplest terms, the Company Letter could not demonstrate substantial implementation because the plans outlined by the Company will only reduce the Company's GHG emissions by a modest percentage; a significant gap from the Proposal's requested goal of net zero GHG emissions. The Company seeks to illustrate its point by referring to an energy savings program that avoided 150,000 metric tons of CO₂e. While admirable, avoiding 150,000 metric tons of CO₂e is a "drop in the bucket" of the Company's 29.5 million metric tons of CO₂e in its comprehensive carbon footprint for 2016. An approximate 0.5% savings of CO₂e does not reach the level of scale sought by this Proposal. The Company's more ambitious commitment to "bring 4 gigawatts of renewable power online by 2020" is expected to result in an average of 6 million⁸ metric tons carbon avoidance per year which equates to only a **20.3% reduction in the Company's carbon footprint**. Furthermore, the additional renewable energy projects noted in the Company's letter are admirable but are not quantified and will likely not achieve the Proposal's sought-after goal of net zero GHG emissions because there are numerous other suppliers which will be continuing to emit GHGs.

In order to satisfy the Proposal's request, the Company would simply need to quantify the fourteen manufacturers committed to renewable energy by the end of 2018, reduce the Company's overall expected carbon footprint by that quantified amount, and determine the feasibility of seeking net zero GHGs for the remaining emissions that will be produced annually. While receiving renewable energy commitments from fourteen manufacturers will aid in the Company's overall GHG emissions reduction, the Company has at least 200 suppliers.⁹ Each major supplier or manufacturer that has not committed to

⁸ The Proponent is basing this estimation on the calculations provided by the Company in its November 15, 2016 letter to the SEC.

⁹ <https://images.apple.com/supplier-responsibility/pdf/Apple-Supplier-List.pdf>

100% renewable energy will continue to emit substantial amounts of GHGs into the atmosphere, keeping the Company from reaching net zero GHG emissions.

Despite the claim in the Company's letter, it is not the Proposal's aim to simply "significantly reduce the effects of greenhouse gas emissions" by an indefinite amount or with an undefined timeframe. The Proposal specifically seeks the feasibility of achieving a set goal (net zero greenhouse gas emissions) by a set timeframe (determined by the company). The Company's letter states that the only "difference in approaches is only a matter of implementation," however the Company has set no goal or fixed timeframe that can be identified as any version of net zero GHG or carbon neutral. The Company *would* be accurate if the Proponent were seeking a less specific goal such as a general GHG reduction goal, however the level of specificity in the Proposal distinguishes the current Proposal from other GHG-related proposals. The current Proposal specifies a requested goal of net zero GHG emissions based upon current expert recommendations. Experts increasingly believe that in order to avoid the most dangerous effects of global warming, the world must achieve net zero greenhouse gas (GHG) emissions as quickly as possible.¹⁰ A 2015 *Nature Climate Change* article emphasized that because the deployment of negative-emissions technologies will likely be limited due to any combination of the environmental, economic or energy constraints examined in the study, "Plan A" must be to reduce GHG emissions aggressively now.¹¹ The Proposal illustrates the dire need for the Company to set a time-bound goal of net zero greenhouse gas emissions, and therefore the Proposal's aim is far more specific than the Company describes.

Given that 77% of the Company's greenhouse gas emissions result from the manufacturing supply chain, it is clear that despite how commendable the Company's current reductions may be, the lion's share of the Company's GHG emissions have not been ameliorated, nor has the Company set in place a clear time-limited and appropriately scaled goal to reduce GHG emissions in its manufacturing chain. In fact, the Company admits that "Greenhouse gas emissions from the Company's facilities are now only 1% of its comprehensive carbon footprint."

Existing efforts and disclosures do not compare favorably with the guidelines of the proposal

The Company letter asserts that its existing efforts and disclosures compare favorably with the guidelines of the Proposal. However, review of those activities show that they are not at all consistent with or comparable to the guidelines.

For example, the Company Letter page 13 and 14 notes that its "2017 Environmental Responsibility Report outlines some of the environmental efforts the Company has undertaken, which 'compare favorably with the guidelines' of the Proposal. Among these efforts is a goal to power all of Apple's facilities worldwide with 100% renewable energy." Similarly, the reporting notes that the Company encourages suppliers

¹⁰ <https://phys.org/news/2015-12-aggressive-action-greenhouse-gas-emissions.html>

¹¹ <https://phys.org/news/2015-12-aggressive-action-greenhouse-gas-emissions.html>

to take steps to reduce the environmental impact of their operations, and actively engages with them to find ways they can reduce their energy use and purchase renewable energy, while benefiting financially.

Saliently, this reporting by the Company does not demonstrate that the Company has assessed the feasibility of achieving net zero GHG for its operations and those of its major suppliers by a fixed date. The Company has at best expressed a "hope" that its supply chain will move to 100% renewable energy -- a far cry from setting a target date and exploring a feasible strategy to make it happen.

In sum, the Proposal's requests are specifically about identifying whether it is feasible for the Company to scale up its GHG reduction plans to achieve a net zero GHG goal by a certain date. The Company's response indicates various projects aimed at a general reduction of GHGs, however those projects (even taken in sum) do not achieve the requested goal of net zero, nor is there a time-bound goal set in place. Therefore the Proposal cannot be said to be substantially implemented for purposes of Rule 14a-8(i)(10).

CONCLUSION

The Company has not demonstrated that the Proposal is excludible pursuant to Rule 14a-8(i)(7) Rule 14a-8(i)(10). Therefore, we request the Staff to advise the Company that it denies the no action request and that the Proposal must appear on the 2018 proxy.

Sincerely,

A handwritten signature in black ink, appearing to read 'S. Lewis', written over the word 'Sanford Lewis'.

Sanford Lewis

cc: Gene Levoff
Christine Jantz

Net-Zero Greenhouse Gas Emissions

Whereas:

It is widely reported that greenhouse gases (GHGs) from human activities are the most significant driver of observed climate change since the mid-20th century;

In 2015, 196 parties at the U.N. Climate Change Conference agreed to limit climate change to an average global warming of 2 degrees Celsius above pre-industrial temperatures, with a goal of limiting it to 1.5 degrees Celsius;

Shareholders laud Apple for committing to “power[ing] all its operations worldwide on 100 percent renewable energy,” and for joining the American Business Act on Climate Pledge. However, these goals do not include suppliers and manufacturing;

Our company’s total carbon footprint is reported as 29.52 million metric tons CO₂e, with manufacturing accounting for 77% of those emissions. Apple publications imply that the company might *eventually* eliminate its carbon footprint, but there is no apparent timeframe or set of benchmarks for achieving such a goal;

Instead, the current focus is on the Company’s commitment to “bring 4 gigawatts of renewable power online by 2020.” This is expected to result in an average of 6 million metric tons carbon avoidance per year — 20% reduction in the manufacturing carbon footprint;

Similarly, the company reports that “seven major suppliers have pledged to power their Apple production entirely with renewable energy,” but the relative contribution of these supplier efforts toward the net zero goal is unquantified.

Resolved: Shareholders request that the Board of Directors to prepare a report to shareholders by December 31, 2019 that evaluates the potential for the Company to achieve, by a fixed date, “net-zero” emissions of greenhouse gases relative to operations directly owned by the Company and major suppliers. The report should be done at reasonable expense and may exclude confidential information.

Supporting Statement: While the scope of coverage would be in the management’s discretion, the proponent suggests that relevant operations could include executive and administrative offices, data centers, product development offices, fulfillment centers and customer service offices, suppliers, as well as transportation of goods and employees. “Net-zero greenhouse gas emissions status” can be defined as reduction of GHG

emissions attributed to company operations to a target annual level, and offsetting the remaining GHG emissions by negative emissions strategies that result in a documented reduction equal to or greater than the company's remaining GHG emissions during the same year. "Negative emissions solutions" are rigorously measured and tracked activities to displace polluting forms of energy production. Examples include tree-planting and technological solutions that draw carbon from the air. Such negative emissions solutions can be developed by a company or purchased as offsets. We recommend that the report consider the potential fixed dates of 2030, 2040, or 2050 for achieving net zero GHG.

ATTENTION FUND FIDUCIARIES: Mutual funds and institutions hold about 60% of Apple common stock. Leading investors include, among others, Vanguard, SPDR, iShares, Powershares, Fidelity, and T. Rowe Price. Your YES vote will promote Apple's reputation and sales.



Rule 14a-8(i)(7)
Rule 14a-8(i)(10)

October 9, 2017

VIA E-MAIL (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: Apple Inc.
Shareholder Proposal of Jantz Management LLC on behalf of Christine Jantz

Dear Ladies and Gentlemen:

Apple Inc., a California corporation (the “**Company**”), hereby requests confirmation that the staff of the Division of Corporation Finance of the U.S. Securities and Exchange Commission (the “**Commission**”) will not recommend enforcement action to the Commission if, in reliance on Rule 14a-8 under the Securities Exchange Act of 1934, as amended (the “**Exchange Act**”), the Company omits the enclosed shareholder proposal (the “**Proposal**”) and its accompanying supporting statement (the “**Supporting Statement**”) submitted by Jantz Management LLC on behalf of Christine Jantz (the “**Proponent**”) from the Company’s proxy materials for its 2018 Annual Meeting of Shareholders (the “**2018 Proxy Materials**”).

Copies of the Proposal and the Supporting Statement, together with other correspondence relating to the Proposal, are attached hereto as Exhibit A.

In accordance with Staff Legal Bulletin No. 14D (November 7, 2008) (“**SLB No. 14D**”), this submission is being delivered by e-mail to shareholderproposals@sec.gov. Pursuant to Rule 14a-8(j), a copy of this submission also is being sent to the Proponent. Rule 14a-8(k) and SLB No. 14D provide that a shareholder proponent is required to send the company a copy of any correspondence which the proponent elects to submit to the Commission or the staff. Accordingly, we hereby inform the Proponent that, if the Proponent elects to submit additional correspondence to the Commission or the staff relating to the Proposal, the Proponent should concurrently furnish a copy of that correspondence to the undersigned.

Pursuant to the guidance provided in Section F of Staff Legal Bulletin 14F (October 18, 2011), we ask that the staff provide its response to this request to the undersigned via e-mail at the address noted in the last paragraph of this letter.

Apple
1 Infinite Loop
Cupertino, CA 95014

T 408 996-1010
F 408 996-0275
www.apple.com

The Company intends to file its definitive 2018 Proxy Materials with the Commission more than 80 days after the date of this letter.

THE PROPOSAL

On August 4, 2017, the Company received from the Proponent, as an attachment to an e-mail, a letter submitting the Proposal for inclusion in the Company's 2018 Proxy Materials. The Proposal reads as follows:

Resolved: Shareholders request that the Board of Directors to [sic] prepare a report to shareholders by December 31, 2019 that evaluates the potential for the Company to achieve, by a fixed date, "net-zero" emissions of greenhouse gases relative to operations directly owned by the Company and major suppliers. The report should be done at reasonable expense and may exclude confidential information.

The Proposal is substantially the same as a proposal the Proponent submitted to the Company last year, which the staff concurred could be excluded from the Company's proxy materials for its 2017 Annual Meeting of Shareholders in reliance on Rule 14a-8(i)(7).

BASES FOR EXCLUSION OF THE PROPOSAL

As discussed more fully below, the Company believes that it may omit the Proposal and the Supporting Statement from its 2018 Proxy Materials in reliance on (i) Rule 14a-8(i)(7) because the Proposal relates to the Company's ordinary business operations by requiring the Company to develop complex processes, policies, and technologies for the purpose of assessing the extent to which they would allow the Company (together with its major suppliers) to satisfy specific quantitative targets, and (ii) Rule 14a-8(i)(10) because the Company has already substantially implemented the Proposal through its regular and detailed environmental reports, a significant portion of which are dedicated to reporting on the progress of the Company's efforts to reduce its carbon footprint, including engaging with manufacturing partners to join the Company in reducing the carbon footprint of its supply chain.

I. Rule 14a-8(i)(7) – The Proposal Concerns the Company's Ordinary Business Operations and the Staff Agreed in 2016

Rule 14a-8(i)(7) permits a company to omit from its proxy materials a shareholder proposal that relates to the company's "ordinary business operations." According to the Commission, the underlying policy of the ordinary business exclusion is "to confine the resolution of ordinary business problems to management and the board of directors, since it is impracticable for shareholders to decide how to solve such problems at an annual shareholder meeting." Exchange Act Release No. 40018, Amendments to Rules on Shareholder Proposals, Fed. Sec. L. Rep. (CCH) 11 86,018, at 80,539 (May 21, 1998) (the "**1998 Release**").

In the 1998 Release, the Commission described two “central considerations” for the ordinary business exclusion. The first is that certain tasks are “so fundamental to management’s ability to run a company on a day-to-day basis that they could not, as a practical matter, be subject to direct shareholder oversight.” The second consideration relates to “the degree to which the proposal seeks to ‘micro-manage the company by probing too deeply into matters of a complex nature upon which shareholders, as a group, would not be in a position to make an informed judgment.” *Id.* at 86,017-18 (footnote omitted).

The Commission stated in the 1998 Release that “proposals relating to [ordinary business] matters but focusing on sufficiently significant policy issues . . . generally would not be considered to be excludable.” The staff elaborated on this “significant policy” exception in Staff Legal Bulletin No. 14E (October 27, 2009), in which the staff noted that, “[i]n those cases in which a proposal’s underlying subject matter transcends the day-to-day business matters of the company and raises policy issues so significant that it would be appropriate for a shareholder vote, the proposal generally will not be excludable under Rule 14a-8(i)(7) *as long as a sufficient nexus exists between the nature of the proposal and the company.*” (emphasis added). The staff went on to state that, “[c]onversely, in those cases in which a proposal’s underlying subject matter involves an ordinary business matter to the company, the proposal generally will be excludable under Rule 14a-8(i)(7).”

The significant policy exception is further limited in that, even if a proposal involves a significant policy issue, the proposal may nevertheless be excluded under Rule 14a-8(i)(7) if it seeks to micro-manage the company by specifying in detail the manner in which the company should address the policy issue. See *Marriott International Inc.* (March 17, 2010) (proposal limiting showerhead flow to no more than 1.6 gallons per minute and requiring the installation of mechanical switches to control the level of water flow excludable for micro-managing despite recognition that global warming, which the proposal sought to address, is a significant policy issue); and *Duke Energy Corporation* (February 16, 2001) (proposal requesting 80% reduction in nitrogen oxide emissions from the company’s coal-fired plants and limit of 0.15 lbs of nitrogen oxide per million British Thermal Units of heat input for each boiler excludable despite proposal’s objective of addressing significant environmental policy issues). The staff has recognized that a shareholder’s casting of a proposal as a mere request for a report, rather than a request for a specific action, does not mean that the proposal does not seek to micro-manage the Company, even when the proposal addresses a significant policy issue. See *Ford Motor Company* (March 2, 2004) (proposal requesting the preparation and publication of scientific report regarding the existence of global warming or cooling excludable “as relating to ordinary business operations” despite recognition that global warming is a significant policy issue).

The Proponent submitted a proposal to the Company last year which was substantially similar to the Proposal, requesting that the Company “generate a feasible plan to reach net-zero GHG emissions status by the year 2030 . . . and to report the plan to shareholders.” See *Apple Inc.* (December 5, 2016) (“**Apple 2016**”). The staff agreed that the proposal sought to “micromanage the company by probing too deeply into matters of a complex nature upon which shareholders, as a group, would not be in a position to make an informed judgment.” The staff

reached the same conclusion, regarding the same proposal, in *Deere & Co.* (December 5, 2016) (“**Deere**”).

The proposal the Proponent submitted last year asked the Company (1) to develop a plan to achieve the Proponent’s arbitrary “net zero” goal (2) by a date specified by the Proponent and (3) prepare and publish a report detailing that plan. Similarly, the Proposal asks the Company (1) to evaluate the potential for achieving the Proponent’s net-zero goal (2) by a date specified by the Company and (3) prepare and publish a report detailing the potential for achieving the net-zero goal. Again, therefore, the Proponent seeks to have the Company develop a plan for achieving net-zero greenhouse gas emissions, which is a necessary pre-condition to evaluating the potential for implementing such a plan. The Proposal also seeks, again, to require that the plan developed by management identify a date by which the goal might (or might not) realistically be achieved. The Proposal therefore would require management to take a number of specific actions and make a number of calculations, including an evaluation and prioritization of competing business and strategic interests, in order to develop and then evaluate a plan for achieving the Proponent’s specific target of “net-zero” greenhouse gas emissions. In short, the undertaking the Proposal would require is not materially different from the undertaking the Proponent’s prior proposal would have required. And, again, implementation of the Proposal would involve replacing management’s judgments on complex operational and business decisions and strategies with those favored by the Proponent and would fundamentally interfere with management’s ability to operate the Company’s global business.

A. The Proposal Seeks to Micro-Manage the Company by Imposing Specific Time Frames to Implement Complex Policies to Satisfy Quantitative Targets

Apple has invested significant time and resources in determining the climate change strategy that it believes is best for the Company, its shareholders, and the planet. As new developments occur and new advances are discovered, the Company continues to evaluate and refine its climate change strategy.

The Company has also gone to great lengths to provide its shareholders and the general public with detailed information, available on the Company’s Environment website,¹ about its greenhouse gas emissions and energy use, including its approach towards climate change² and its efforts to increase its use of renewable resources, make its use of finite resources more efficient, and reduce toxins in its products. The Company also submits a shareholder-requested industry-recognized reporting tool to CDP Worldwide (“**CDP**”), the Carbon Disclosure Project climate change questionnaire, which details the Company’s greenhouse gas emissions. In each of 2014, 2015 and 2016, the CDP awarded Apple a top score of “A” for climate performance, and in 2014 and 2015, the CDP assigned Apple a score of 99% and 100%, respectively, for the comprehensiveness and level of detail of its disclosure (no disclosure rating has been published for 2016). The Company also publishes and makes available on its website a multitude of

¹ Available as of the date hereof at apple.com/environment/.

² Available on the Climate Change section of the Company’s Environment website at apple.com/environment/climate-change/.

reports, including an annual Environmental Responsibility Report, in which the Company provides detailed information on its renewable energy and sustainability efforts.³ The Company's 2017 Environmental Responsibility Report is prepared in accordance with the Standard Disclosures specified in the Global Reporting Initiative G4 Sustainability Reporting Guidelines, which are intended to produce reports that include reliable, relevant and standardized information.⁴

As the Company explains in the 2017 Environmental Responsibility Report, Apple's carbon footprint is complex. Measuring and reducing its footprint requires inventive solutions. The complexity of measuring just one aspect of Apple's carbon footprint, specifically the estimated greenhouse gas emissions over the life of a single product, is illustrated by this excerpt from the Company's Environment website:

1. To model the manufacturing phase, we use part-by-part measurements of the entire product along with data on part production. The measurements help us accurately determine the size and weight of the components and materials in the product, while data on manufacturing processes and yield loss during production allows us to account for the impact of manufacturing. The production of external accessories, such as keyboards and mice, and packaging is also included.

2. To model customer use, we measure the power consumed by a product while it is running in a simulated scenario. Daily usage patterns are specific to each product and are a mixture of actual and modeled customer use data. For the purposes of our assessment, years of use, which are based on first owners, are conservatively modeled to be four years for macOS and tvOS devices and three years for iOS and watchOS devices. Most Apple products last significantly longer, are kept current through regular software updates, and are passed along, resold, or returned to Apple by the first owner for others to use. More information on our product energy use is provided in our Product Environmental Reports.

3. To model transportation, we use data collected on shipments of single products and multipack units by land, sea, and air. We account for transporting materials between manufacturing sites; transporting products from manufacturing sites to regional distribution hubs; transporting products from regional distribution hubs to individual customers; and transporting products from final customers to recycling facilities.

³ Available as of the date hereof at apple.com/environment/reports/.

⁴ Available as of the date hereof at images.apple.com/environment/pdf/Apple_Environmental_Responsibility_Report_2017.pdf

4. To model recycling, we use material composition data on our products and cover the treatment steps carried out by the recycler to obtain metal, plastic, and glass material streams. Subsequent processing and remelting steps are not included, as these are considered stages of production and not end-of-life processing.

5. After we collect data about production, use, transport, and recycling, we combine it with detailed greenhouse gas emission data. This emission data is based on a combination of Apple-specific and industry-average datasets for material production, manufacturing processes, electricity generation, and transportation. Combining product-specific data with emission data in our life cycle assessment tool allows us to compile detailed results for greenhouse gas emissions as they relate to the product. The data and modeling approaches are checked for quality and accuracy by the Fraunhofer Institute in Germany.⁵

When the Company measures its comprehensive carbon footprint, it includes emissions from hundreds of suppliers, millions of customers, and hundreds of millions of devices. The effort involves a continuous search for ways to make the biggest difference in five major areas: manufacturing, product use, facilities, transportation, and recycling. In fact, 77% of Apple's carbon footprint falls in its supply chain, from emissions generated by manufacturing companies that Apple does not own or otherwise control. The operational choices necessary to address supply chain carbon emissions have huge impacts on the Company's business and products, and require balancing many complex and competing factors.

The Company is committed to reducing its impact on the world's resources and has already made significant progress in areas that it controls directly. The Company is currently powering 100% of its operations in 24 countries, including the United States, the United Kingdom, China, and Australia, with renewable energy, and 96% of the electricity used in the Company's worldwide operations in 2016 came from renewable sources. The Company's management has determined, with the benefit of careful analysis and insight from experts and detailed information about its business, that its limited resources will have the greatest effect on the environment by advancing projects that displace more polluting forms of energy with renewable sources and participating in renewable energy projects that may not be developed without the Company's involvement. To that end, while also recognizing that the carbon footprint in the supply chain represents the majority of its comprehensive carbon footprint (77%), the Company is helping suppliers reduce their electricity consumption and switch to renewable energy. The Company is also investing in renewable energy projects to address upstream emissions that are beyond its influence. These goals have been intentionally prioritized over the

⁵ Available as of the date hereof at <https://www.apple.com/environment/answers/>.

adoption of other practices that would allow the Company to claim that it has achieved a “net-zero” level of greenhouse gas emissions.

The Proposal, however, seeks to “micro-manage” the Company by substituting for management’s business plan a Proposal upon which the Company’s shareholders, as a group, would not be in a position to make an informed judgment. See the 1998 Release. The Proposal requires that the Company develop a plan that could achieve net-zero greenhouse gas emissions by a fixed date, which the Proponent suggests be 2030, 2040 or 2050, and then evaluate the potential for successfully implementing that plan. Shareholders would therefore be asked to vote upon a Proposal that would displace the Company’s judgments on business, product and operations strategy, and replace it with a hypothetical plan which the Company would then “evaluate” to determine whether it is achievable. Although the Proposal allows the Company to select the timetable for implementation of the plan, unlike last year’s proposal, this does nothing to eliminate or even reduce the amount of effort and detailed analysis the Proposal would require the Company to undertake and share in a public report.

“Evaluat[ing] the potential for the Company to achieve, by a fixed date, ‘net-zero’ emissions” would therefore require the same analysis and judgments the staff previously found “prob[ed] too deeply into matters of a complex nature upon which shareholders, as a group, would not be in a position to make an informed judgment.” Such an evaluation would necessarily require the Company to first develop one or more plans that could theoretically achieve the Proponent’s goal and then to select the most feasible plan and assess its achievability. Developing those plans and selecting the most feasible plan from among those plans would require the Company to evaluate and prioritize particular courses of actions and changes to its operations and business, and then to replace its own judgments about the best course of action with a course of action directed solely at meeting the specific emissions level selected by the Proponent by one of the arbitrary dates selected by the Proponent.

Moreover, the Proposal seeks to micro-manage not only the Company, but also the Company’s major suppliers, by requiring the Company to develop, evaluate and report on a plan that would substitute the Proponent’s judgment for the business judgments made by hundreds of suppliers around the world. The Proposal does so by requiring that the proposed net-zero plan also take into account the emissions of major suppliers and provide for net-zero emissions on an aggregate basis (that is, the emissions of the Company and all of its major suppliers, taken together, must net to zero). If a major supplier produces detailed information regarding its choices of processes, technologies and materials, and information regarding its aggregate greenhouse gas emissions, and is willing to provide such information to the Company, then, to be in a position to develop a feasible plan that could be evaluated for achievability, the Company would need to analyze (i) each major supplier’s business to determine what changes would need to be made to the supplier’s choices of processes, technologies and materials so that the supplier could contribute to aggregate net-zero emissions by one of the arbitrary dates selected by the Proponent, (ii) the impact such changes would have on each major supplier’s business to determine the feasibility of those changes, (iii) the impact such changes would have on the Company because additional costs borne by the supplier would likely be passed on to

the Company, (iv) permitted levels of emissions for each major supplier and (v) required levels of emission offsets for each major supplier.

For this reason, among others, the Proposal seeks to micro-manage the Company to a far greater extent than a similar proposal submitted to The TJX Companies (“**TJX**”). In *TJX Companies, Inc.* (February 6, 2017), the proposal called for the company to prepare a report evaluating the potential for the company to achieve “net-zero” greenhouse gas emissions “from parts of the business owned and operated by the Company.” TJX operates retail stores, most of which are leased, that offer apparel and home fashions manufactured by others. The proposal submitted to TJX did not seek to compel the company to investigate or change the processes or carbon footprint of its major suppliers. Moreover, TJX, unlike the Company, is not in the business of manufacturing the goods it sells. While the Company is in the retail business, it is also in the manufacturing business, which involves far more, and far more significant, environmental issues, processes and related choices arising as part of the ordinary operation of the Company’s business. Manufacturing processes are subject to complex environmental regulation that vary country-by-country. The Company has no control over these regulations that, in many cases, are still evolving and always changing.

In addition, the Company relies on hundreds of suppliers around the world. The Company launched its supplier clean energy program in October 2015 with the goal of reducing the carbon footprint of its manufacturing by helping its partners become more energy efficient and by transitioning its entire supply chain to 100% clean energy. To date, fourteen suppliers have committed to 100% clean energy for Apple production and Apple has installed 485 megawatts of wind and solar projects across six provinces of China to address upstream emissions that are beyond the influence of the Company’s direct suppliers.

Evaluating, and making decisions relating to, the Company’s choices regarding the processes, technologies and materials used by the Company and its major suppliers, combined with evaluating the impact of those choices on the pricing of the Company’s products and the terms of the Company’s relationships with its major suppliers, are the types of day-to-day business operation decisions that the 1998 Release indicated are too impractical and complex to subject to direct shareholder oversight. The staff has previously concurred that a proposal seeking a report relating to the company’s choice of processes and technologies used in the production of its products is excludable as relating to the company’s ordinary business operations. See *FirstEnergy Corp.* (March 8, 2013) (“**FirstEnergy 2013**”) (allowing exclusion of a proposal calling for a report on the effect of increasing the company’s use of renewable energy resources because it concerned the company’s “choice of technologies” for its operations). Developing and evaluating the achievability of the plan requested by the Proposal would touch upon every aspect of the Company’s facilities and operations, as well as those of its major suppliers, and therefore would necessarily impinge on management’s ability to run the Company and operate its business on a day-to-day basis.

The degree to which the Proposal seeks to micro-manage the Company’s greenhouse gas emissions program is demonstrated by the number of specific actions and calculations that implementation of the Proposal would entail, requiring compilation and analysis of numerous

data points and areas of operations. By setting a specific level of acceptable greenhouse gas emissions (net-zero) by a certain date, the Proposal differs significantly from proposals that seek to establish “goals” for achieving an environmental objective or a range of acceptable levels of compliance. A proposal that seeks to establish goals for, or ranges of, compliance allows the company flexibility to determine an achievable level of compliance and an acceptable timetable for implementation and therefore, unlike the Proposal, does not micro-manage the company for purposes of Rule 14a-8(i)(7). See, e.g., *FirstEnergy Corp.* (March 4, 2015) (declining to concur in exclusion of proposal that called for preparation of a plan to address carbon dioxide emissions but did not “mandate what quantitative goals should be adopted, or how the quantitative targets should be set”); *Exxon Mobil Corporation* (March 12, 2007) (declining to concur in exclusion of proposal requesting adoption of a policy (as opposed to a plan) to significantly increase renewable energy sourcing, with a “recommended goal” in the range of 15%-25% of all energy sourcing by 2015-2025). The Proposal, in contrast, sets a specific goal of net-zero emissions, and requires the establishment of a specific deadline, provides a specific and detailed framework for defining and measuring “net-zero greenhouse gas emissions status,”⁶ and requires the development and evaluation of a plan rather than a policy.

The Proposal also fundamentally interferes with management’s ability to run the Company and operate its business on a day-to-day basis by subjecting to direct shareholder oversight numerous aspects of the Company’s business which are simply too complex for shareholders to understand fully based on the limited information available to them. Setting particular greenhouse gas emissions targets involves complex operational decisions and involve the work of myriad professionals and experts across varied disciplines who carefully study, among other things, scientific advancements, new technologies, product markets, the Company’s operations and capital structure, capital expenditures, and regulatory requirements and compliance. Business judgments must then be made about the strategic allocation of resources among these different strategies.

With the benefit of study and analysis, the Company’s management has determined that its resources will have the greatest effect on the environment by advancing projects that displace more polluting forms of energy with renewable sources and participating in renewable energy projects that may not be developed without the Company’s involvement. The Company believes that climate change is best addressed by directly avoiding or reducing greenhouse gas emissions rather than attempting to offset increased emissions from one activity by reducing emissions resulting from another activity. These goals have been intentionally prioritized over the adoption of other practices that would allow the Company to claim that it has achieved a “net-zero” level of greenhouse gas emission, as would be required by the Proposal. The

⁶ The Supporting Statement provides that “Net-zero greenhouse gas emissions status” can be defined “as [*sic*] reduction of GHG emissions attributed to company operations to a target annual level, and offsetting the remaining GHG emissions by negative emissions strategies that result in a documented reduction equal to or greater than the company’s remaining emissions during the same year.” It defines “Negative emissions solutions” as “rigorously measured and tracked activities to displace polluting forms of energy production includ[ing] tree-planting and technological solutions that extract raw carbon from the air.”

Company's environmental efforts, which seek to reduce the Company's carbon footprint, have been applauded by numerous environmental groups, including Greenpeace, Ceres, Advanced Energy Economy, and the Climate Group's RE100 initiative⁷ as representing concrete efforts to drive the Company's manufacturing base (including its suppliers) to a low-carbon future. The Proponent does not disagree with the Company's objective, only with the choices the Company has made to achieve the objective.

The breadth and depth of the analyses and decisions relating to each of the Company's businesses and facilities (to say nothing of its major suppliers), and the decisions to prioritize certain types of environmental efforts over others, require complex and detailed decision-making that is beyond the ability of shareholders to determine by means of a shareholder proposal. The Proposal invokes the type of micro-management of complex issues involving the ordinary course of a company's business that the 1998 Release was meant to address. The Proposal supplants the Company's judgments on business and product strategy with an arbitrary level of acceptable emissions and its insistence on a deadline for achieving it. By subjecting to direct shareholder oversight the Company's (and its major suppliers') choices regarding processes, technologies and materials and the terms of the Company's relationships with its major suppliers, the Proposal fundamentally interferes with management's ability to run the Company and operate its business on a day-to-day basis. For those reasons, the Proposal is excludable pursuant to Rule 14a-8(i)(7).

B. The Proposal Focuses on Ordinary Business Matters Regardless of Whether it Touches Upon a Significant Policy Issue

While reduction of greenhouse gas emissions is a significant policy issue, the environmental goals of the Proposal are secondary to the Proposal's effort to micro-manage the Company's processes and operations to achieve specific objectives. The staff has consistently concurred that a proposal may be excluded when it addresses ordinary business matters, even if it touches upon a significant social policy issue. For instance, in *Apple 2016* and *Deere*, the staff concurred in the exclusion of proposals addressing greenhouse gas emissions because the proposals sought to interfere with the companies' ordinary business operations on a day-to-day basis. The staff's concurrence in those instances was consistent with prior staff decisions. Prior to those decisions, in *FirstEnergy 2013*, the staff concurred in the exclusion of a proposal that called for the company to generate a report explaining "actions the company is taking or could take to reduce risk throughout its energy portfolio by diversifying the company's energy resources to include increased energy efficiency and renewable energy resource." See also *Dominion Resources, Inc.* (February 3, 2011) (allowing exclusion of a proposal relating to use of alternative energy because the proposal related, in part, to the company's choice of technologies for use in its operations); *Papa John's International, Inc.* (February 13, 2015) (concurring that the company could exclude a proposal that touched upon a significant policy

⁷ Available as of the date hereof at <http://www.greenpeace.org/usa/news/greenpeace-welcomes-apples-renewable-energy-commitment-to-manufacturing-partners-in-china/>, <https://www.ceres.org/news-center/blog/major-companies-are-engines-climate-progress>, <http://www.computerworld.com/article/3122461/sustainable-it/apple-commits-to-run-off-100-renewable-energy.html>, and <http://there100.org/companies>, respectively.

issue (animal welfare) because it related to an ordinary business matter (choice of products offered for sale).

Moreover, the staff has indicated that, where a proposal relating to the company's ordinary business operations also raises a significant policy issue, the proposal will be excludable under Rule 14a-8(i)(7) unless "a sufficient nexus exists between the nature of the proposal and the company." Staff Legal Bulletin No. 14E (October 27, 2009). Where a company's primary business is the production of energy, the effect of energy on the environment clearly has a nexus to the company's day-to-day business. For those companies, a proposal relating to greenhouse gas emissions is likely to transcend the company's ordinary business. See *DTE Energy Co.* (January 26, 2015); *Devon Energy Corp.* (March 19, 2014); and *Exxon Mobil Corporation* (March 23, 2007).

The Company, in contrast, designs, manufactures and markets mobile communication and media devices, personal computers and portable digital music players, and sells a variety of related software, services, accessories, networking solutions and third-party digital content and applications. While these operations do incidentally consume energy and generate greenhouse gases, the levels are on an entirely different scale from those attributable to energy producers.

As the foregoing discussion demonstrates, the staff has consistently allowed exclusion of proposals that seek to regulate a company's day-to-day activities, regardless of the fact that those activities may implicate larger social policy issues. While the Proposal does invoke a significant policy issue, as was the case in *Apple 2016*, there is only an incidental nexus between the Proposal and the Company's business, which is not enough to overcome the significant level of micro-management of the Company's business the Proposal would entail. Accordingly, the Proposal is excludable under Rule 14a-8(i)(7).

II. Rule 14a-8(1)(10) – The Company Has Already Substantially Implemented the Proposal

A. Background

Rule 14a-8(i)(10) permits a company to exclude a shareholder proposal from its proxy materials if "the company has already substantially implemented the proposal." The Commission stated in 1976 that the predecessor to Rule 14a-8(i)(10) was "designed to avoid the possibility of shareholders having to consider matters which already have been favorably acted upon by the management." *SEC Release No. 34-12598* (July 7, 1976). Originally, the staff narrowly interpreted this predecessor rule and granted no-action relief only when proposals were "'fully' effected" by the company. *SEC Release No. 34-19135* (October 14, 1982). By 1983, however, the Commission recognized that the "previous formalistic application of [the rule] defeated its purpose" because proponents were successfully convincing the staff to deny no-action relief by submitting proposals that differed from existing company policy by only a few words. *SEC Release No. 34-20091* (August 16, 1983). Therefore, in 1983, the Commission adopted a revised interpretation to the rule to permit the omission of proposals that had been "substantially implemented" (*id.*) and subsequently codified this revised

interpretation. *SEC Release No. 34-40018* (May 21, 1998). The purpose of the exclusion under Rule 14a-8(i)(10) has been described as follows:

“A company may exclude a proposal if the company is already doing—or substantially doing—what the proposal seeks to achieve. In that case, there is no reason to confuse shareholders or waste corporate resources in having shareholders vote on a matter that is moot. In the [Commission’s] words, the exclusion ‘is designed to avoid the possibility of shareholders having to consider matters which have already been favorably acted upon by the management’”

William Morley, Editor, Shareholder Proposal Handbook; by Broc Romanek and Beth Young (Aspen Law & Business 2003 ed), Sec. 23.01(B) at p. 23-4.

When a company can demonstrate that it has taken actions to address each element of a shareholder proposal, the staff has concurred that the proposal has been “substantially implemented.” For example, in *The Dow Chemical Co.* (March 5, 2008), the staff concurred in the exclusion of a proposal that requested a “global warming report” that discussed how the company’s efforts to ameliorate climate change may have affected the global climate when the company had already made various statements about its efforts related to climate change, which were scattered throughout various corporate documents and disclosures. See also *International Business Machines Corp.* (January 4, 2010) (concurring in the exclusion of a proposal that requested periodic reports of the Company’s “Smarter Planet” initiative where the company had already reported on those initiatives using a variety of different media, including the company’s “Smarter Planet” web portal).

Additionally, a company need not implement a proposal in exactly the manner set forth by the proponent in order to exclude the proposal under Rule 14a-8(i)(10). *SEC Release No. 34-40018 and accompanying text* (May 21, 1998). Differences between a company’s actions and a shareholder proposal are permitted as long as the company’s actions satisfactorily address the proposal’s essential objectives. Even if a company’s actions do not go as far as those requested by the shareholder proposal, they nevertheless may be deemed to “compare favorably” with the requested actions. See, e.g., *NextEra Energy, Inc.* (February 10, 2017) (concurring in the exclusion of a proposal requesting a change to proxy access procedures where the company demonstrated its existing proxy access procedures already achieved the proposal’s essential purpose); *Walgreen Co.* (September 26, 2013) (concurring in the exclusion of a proposal requesting elimination of supermajority voting requirements in the company’s governing documents where the company had eliminated all but one of the supermajority voting requirements); *Exelon Corp.* (February 26, 2010) (concurring in the exclusion of a proposal that requested a report on different aspects of the company’s political contributions when the company had already adopted its own set of corporate political contribution guidelines and issued a political contributions report that, together, provided “an up-to-date view of the [c]ompany’s policies and procedures with regard to political contributions”).

B. The Company has already substantially implemented the Proposal because the Company's existing policies, practices and procedures "compare favorably with the guidelines" of the Proposal and achieve its essential objective

The Proposal would require the Company to develop, evaluate and present a report to shareholders regarding a plan to achieve "net-zero" emissions of greenhouse gases, taking into account the Company's operations and those of its major suppliers. The essential objectives of the Proposal are the development and evaluation of a plan to significantly reduce the effects of greenhouse gas emissions generated by the Company's business and its major suppliers within a reasonably short time frame. The Company has already substantially implemented the Proposal's essential objective, and, as demonstrated in the 2017 Environmental Responsibility Report, has committed to a variety of environmental efforts, including developing a closed-loop supply chain and carefully studying materials to remove potentially harmful substances from products, that go beyond reducing the effects of greenhouse gas emissions.

Apple takes the same innovative approach to the environment that it does to the development of its products. Apple is creating new renewable energy projects to reduce its carbon footprint, switching to greener materials to create safer products and manufacturing processes, and protecting natural resources such as working forests to ensure they are managed sustainably. Apple is even creating a more mindful way to recycle devices using robots.

As described above, the Company is committed to reducing its impact on the world's resources, has already made significant progress in areas that it controls directly, and seeks to influence its suppliers to do the same. For example, fourteen Apple suppliers have already committed to using 100% clean energy in production of Apple products by 2018. The Company already provides voluminous information and reports to shareholders and the public regarding its environmental efforts. These efforts are guided by the Company's decision to reduce waste and to actually reduce greenhouse gas emissions, rather than perform actions designed to achieve a level of net-zero greenhouse gas emissions. The essential objective of the Proposal is the same as the essential objective of the Company's current environmental program — to ameliorate the environmental impact of the Company's operations as much as possible as soon as possible. The difference in approaches is only a matter of implementation, with the Proposal seeking a specific level of "net" emissions and a deadline for achieving it.

Apple's 2017 Environmental Responsibility Report outlines some of the environmental efforts the Company has undertaken, which "compare favorably with the guidelines" of the Proposal. Among these efforts is a goal to power all of Apple's facilities worldwide with 100% renewable energy. Using energy produced from renewable sources greatly reduces the level of greenhouse gas emissions generated by the Company's facilities. Apple has made significant progress towards this goal: the Company produced and procured clean, renewable energy for 96% of the electricity used by its offices, retail stores, and data centers around the world in 2016 — including 100% of its data centers and in all its facilities in 24 countries, including the United States, the United Kingdom, China, and Australia. These efforts have lowered greenhouse gas emissions from the Company's facilities by 60% since 2011 — avoiding over

1.6 million metric tons of greenhouse gas emissions from entering the atmosphere. Greenhouse gas emissions from the Company's facilities are now only 1% of its comprehensive carbon footprint. The Company has also raised \$2.5 billion by issuing green bonds, the proceeds of which are dedicated to financing the Company's environmental projects and renewable energy initiatives around the world, including a reduction in the effects of greenhouse gas emissions generated by its business.

The 2017 Environmental Responsibility Report also describes how the Company has reduced greenhouse gas emissions associated with manufacturing. For example, the Company changed how it manufactures the aluminum enclosures of the iPhone by prioritizing aluminum that was smelted using hydroelectricity rather than fossil fuels, and reengineering its manufacturing process to reincorporate scrap aluminum. As a result, the greenhouse gas emissions associated with manufacturing the enclosure of the iPhone 7 are 17 percent lower than for the iPhone 6s, and 60 percent lower than for the iPhone 6. Applying the same approach to the 13-inch MacBook Pro with Touch Bar resulted in 48 percent less greenhouse gas emissions associated with the aluminum enclosure compared to that of the previous-generation MacBook Pro.

The Company also encourages suppliers to take steps to reduce the environmental impact of their operations, and actively engages with them to find ways they can reduce their energy use and purchase renewable energy, while benefiting financially. The electricity used by suppliers in Apple's supply chain to process raw materials, make parts, and assemble Apple products is the single biggest source emissions in the supply chain — over 60% of manufacturing emissions. As a result, in 2015, the Company created programs to help suppliers around the world reduce their energy use, power their facilities with clean energy, and build high-quality renewable energy projects. Since 2015, Apple has been engaging directly with suppliers to assess their energy use with detailed energy audits. By the end of 2016, the Company had conducted 34 energy audits at suppliers' facilities around the world, which identified over \$55 million in annual savings opportunities and led to efficiency improvements to avoid more than 150,000 metric tons of CO₂e. Apple continues to expand the program for even greater impact.

The Company's efforts go beyond energy efficiency to spur the development and procurement of renewable energy within the Company's supply chain. Apple is working with its suppliers to install more than 4 gigawatts of new clean energy worldwide, including 2 gigawatts in China by 2020, to reduce greenhouse gas emissions associated with manufacturing. These 4 gigawatts of clean energy projects will produce clean power equivalent to taking more than 1.5 million cars off the road every year for over 20 years. The Company has already installed 485 megawatts of wind and solar projects across six provinces in China that address upstream greenhouse gas emissions and serve as models for suppliers. Such efforts are all part of the clean energy program launched by the Company in 2015. As part of the clean energy program, the Company has also secured commitments from fourteen important suppliers to use 100% renewable energy for production of Apple products by 2018. The methods each of these suppliers will use to reach that goal will depend on the particular nature of the supplier's

business, but they all will contribute to reducing emissions associated with the Company's manufacturing.

The Company's annual Environmental Responsibility Reports, ten of which have been published, highlight the Company's environmental goals and the progress it has made toward achieving them. As requested by the Proposal, the reports set out the Company's ambitious environmental strategy and list specific goals, including powering all of the Company's facilities with 100% renewable energy, and report on the Company's progress toward those goals. The Company rigorously measures and tracks the performance of its environmental initiatives and engages independent third parties to review its reports. The 2017 Environmental Responsibility Report includes assurance statements from Bureau Veritas North America, Inc. and Fraunhofer IZM, both of which are objective third-party experts who reviewed various aspects of the underlying methodology and data.

The Company has already substantially implemented the Proposal's essential objectives by continuing to (i) develop and implement a comprehensive environmental strategy that will significantly reduce the effects of greenhouse gas emissions generated by the Company's operations and its major suppliers and (ii) provide voluminous information to its shareholders enabling them to measure the Company's progress. The Proponent does not disagree with the Company's objective of minimizing the environmental impact of the Company's business as much as possible as soon as possible. The only disagreement is how the Company can best achieve that objective. Rather than focusing on efforts that yield improvements in efficiency and reductions in the Company's environmental impact, which may in the future produce similar benefits for other businesses with fewer resources dedicated to environmental efforts, the Proposal urges that those efforts be redirected to address whether the Company may achieve a "net-zero" level of greenhouse gas emissions and do so by a specified date. While purchasing carbon offsets and planting trees would bring the Company closer to being able to claim it has achieved "net-zero" greenhouse gas emissions, the Company has chosen to reduce its environmental impact by actually reducing the level of greenhouse gas emissions related to its business.

As the Company's existing policies and practices "compare favorably with the guidelines" and have already substantially implemented the Proposal's "essential objective," the Proposal is excludable under Rule 14a-8(i)(10).

CONCLUSION

For the reasons discussed above, the Company believes that it may omit the Proposal and Supporting Statement from its 2018 Proxy Materials in reliance on Rule 14a-8(i)(7) and Rule 14a-8(i)(10).

We respectfully request that the staff concur with the Company's view and confirm that it will not recommend enforcement action to the Commission if the Company omits the Proposal and Supporting Statement from its 2018 Proxy Materials.

If you have any questions or need additional information, please feel free to contact me at (408) 974-6931 or by e-mail at glevoff@apple.com.

Sincerely,

A handwritten signature in blue ink, appearing to read "Gene D. Levoff".

Gene D. Levoff
Associate General Counsel, Corporate Law

Attachments

cc: Jantz Management LLC
Alan L. Dye, Hogan Lovells US LLP

Exhibit A

Copy of the Proposal and Supporting Statement and Related Correspondence

August 4, 2017

Bruce Sewell
Senior Vice President, General Counsel and Secretary
Apple, Inc.
1 Infinite Loop
MS: 301-4GC
Cupertino, CA 95014

Re: Shareholder Proposal for 2018 Annual Meeting

Dear Mr. Sewell:

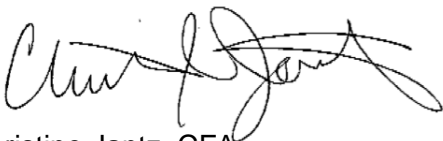
Jantz Management LLC is filing the enclosed shareholder proposal regarding Apple, Inc.'s greenhouse gas emissions program on behalf of me, as an individual shareholder. Jantz Management LLC is a Boston-based investment management firm providing discretionary investment services to separately managed accounts, pensions and profit sharing plans, trusts and estates, foundations and charities, and corporations and other business entities.

As an individual shareholder, I am a beneficial owner, as defined under Rule 13(d)-3 of the General Rules and Regulations under the Securities Act of 1934, having held more than \$2,000 worth of shares of Apple common stock held for more than one year. I will continue to hold the requisite number of shares through the date of the next stockholders' annual meeting. Proof of ownership will be provided within the next 15 business days. I will send a representative to introduce the proposal.

I believe that this proposal is in the best interest of our Company and its shareholders. I look forward to discussing the matter in greater detail.

I would appreciate confirmation of receipt of this proposal by mail or email (jantz@jantzmgmt.com).

Sincerely,



Christine Jantz, CFA
President
Jantz Management LLC

Enclosure: shareholder proposal

Net-Zero Greenhouse Gas Emissions

Whereas:

It is widely reported that greenhouse gases (GHGs) from human activities are the most significant driver of observed climate change since the mid-20th century;

In 2015, 196 parties at the U.N. Climate Change Conference agreed to limit climate change to an average global warming of 2 degrees Celsius above pre-industrial temperatures, with a goal of limiting it to 1.5 degrees Celsius;

Shareholders laud Apple for committing to “power[ing] all its operations worldwide on 100 percent renewable energy,” and for joining the American Business Act on Climate Pledge. However, these goals do not include suppliers and manufacturing;

Our company’s total carbon footprint is reported as 29.52 million metric tons CO₂e, with manufacturing accounting for 77% of those emissions. Apple publications imply that the company might *eventually* eliminate its carbon footprint, but there is no apparent timeframe or set of benchmarks for achieving such a goal;

Instead, the current focus is on the Company’s commitment to “bring 4 gigawatts of renewable power online by 2020.” This is expected to result in an average of 6 million metric tons carbon avoidance per year — 20% reduction in the manufacturing carbon footprint;

Similarly, the company reports that “seven major suppliers have pledged to power their Apple production entirely with renewable energy,” but the relative contribution of these supplier efforts toward the net zero goal is unquantified.

Resolved: Shareholders request that the Board of Directors to prepare a report to shareholders by December 31, 2019 that evaluates the potential for the Company to achieve, by a fixed date, “net-zero” emissions of greenhouse gases relative to operations directly owned by the Company and major suppliers. The report should be done at reasonable expense and may exclude confidential information.

Supporting Statement: While the scope of coverage would be in the management’s discretion, the proponent suggests that relevant operations could include executive and administrative offices, data centers, product development offices, fulfillment centers and customer service offices, suppliers, as well as transportation of goods and employees. “Net-zero greenhouse gas emissions status” can be defined as reduction of GHG emissions attributed to company operations to a target annual level, and offsetting the remaining GHG emissions by negative emissions strategies that result in a documented reduction equal to or greater than the company’s remaining GHG emissions during the same year. “Negative emissions solutions” are rigorously measured and tracked activities to displace polluting forms of energy production. Examples include tree-planting and technological solutions that draw carbon from the air. Such negative emissions solutions can be developed by a company or purchased as offsets. We recommend that the report consider the potential fixed dates of 2030, 2040, or 2050 for achieving net zero GHG.

ATTENTION FUND FIDUCIARIES: Mutual funds and institutions hold about 60% of Apple common stock. Leading investors include, among others, Vanguard, SPDR, iShares, Powershares, Fidelity, and T. Rowe Price. Your YES vote will promote Apple’s reputation and sales.

August 15, 2017

Bruce Sewell
Senior Vice President, General Counsel and Secretary
Apple, Inc.
1 Infinite Loop
MS: 301-4GC
Cupertino, CA 95014

Re: Shareholder Proposal for 2018 Annual Meeting

Dear Mr. Sewell:


This letter is regarding a shareholder proposal that Jantz Management LLC filed on my behalf, on August 4, 2017, regarding Apple's greenhouse gas emissions program. Enclosed, please find a letter from my brokerage, Foliofn (a DTC participant), verifying that I, Christine Jantz as an individual shareholder of Jantz Management LLC, have held the requisite amount of stock in Apple for more than one year prior to filing the shareholder proposal. As previously stated, I intend to continue to hold these shares through the next shareholder meeting.

Please note that I am submitting this proof of ownership on a timely basis consistent with Rule 14a-8. In the event that you find any defect in this documentation, I request that you notify me promptly of any concerns or deficiencies.

Should you need anything further, do not hesitate to contact me at jantz@jantzmgmt.com or at my mailing address, below.

Thank you in advance for your attention to this matter.

Sincerely,



Christine Jantz, CFA
President
Jantz Management LLC

Enclosure: proof of ownership

August 14, 2017

Bruce Sewell
Senior Vice President, General Counsel and Secretary
Apple, Inc.
1 Infinite Loop
MS: 301-4GC
Cupertino, CA 95014

Dear Mr. Sewell:

Folio Investments, Inc. ("Folio"), a FINRA registered broker dealer and DTC participant, acts as the custodian and the record holder of shares for Jantz Management LLC. Christine Jantz, an individual shareholder of Jantz Management LLC, currently holds shares of Apple, Inc. common stock, and has held shares valued in excess of \$2,000 continuously since August 4, 2016.

Sincerely,

A handwritten signature in black ink, appearing to read "Jason Strickland".

Jason Strickland
Director, Compliance & Risk Management