



DIVISION OF
CORPORATION FINANCE

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

November 19, 2018

Sam Whittington
Apple Inc.
sam_whittington@apple.com

Re: Apple Inc.
Incoming letter dated September 26, 2018

Dear Mr. Whittington:

This is in response to your correspondence dated September 26, 2018 and October 5, 2018 concerning the shareholder proposal (the "Proposal") submitted to Apple Inc. (the "Company") by Jing Zhao (the "Proponent") for inclusion in the Company's proxy materials for its upcoming annual meeting of security holders. We also have received correspondence from the Proponent dated October 1, 2018. 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,

M. Hughes Bates
Special Counsel

Enclosure

cc: Jing Zhao

November 19, 2018

Response of the Office of Chief Counsel
Division of Corporation Finance

Re: Apple Inc.
Incoming letter dated September 26, 2018

The Proposal recommends that the Company establish an international policy committee to oversee policies regarding matters specified in the Proposal.

There appears to be some basis for your view that the Company may exclude the Proposal under rule 14a-8(i)(10). Based on the information you have presented, it appears that the Company's policies, practices and procedures compare favorably with the guidelines of the Proposal and that the Company has, therefore, substantially implemented the Proposal. 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)(10). In reaching this position, we have not found it necessary to address the alternative basis for omission upon which the Company relies.

Sincerely,

Courtney Haseley
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.



October 5, 2018

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 Jing Zhao

Dear Ladies and Gentlemen:

I am writing on behalf of Apple Inc. to respond to Jing Zhao's letter to the staff dated October 1, 2018, objecting to the Company's intention to omit from its 2019 Proxy Materials his proposal requesting that the Company "establish an International Policy Committee of the Board of Directors to oversee Apple's policies including human rights, foreign governmental regulations and international regulations affecting Apple's international business, especially in China." As set forth in our letter to the staff dated September 26, 2018 (the "**Initial Letter**"), one of the bases on which the Company intends to exclude the Proposal is that the proposal is substantially similar to two prior proposals submitted to shareholders in the last five years, the more recent of which failed to receive the minimum level of approval specified in Rule 14a-8(i)(12). For ease of reference, capitalized terms used in this letter have the same meaning ascribed to them in the Initial Letter.

Mr. Zhao asserts that "[o]bviously, my 2019 proposal of international policy committee has substantially much bigger difference with the 2014 and 2018 human rights proposals than the difference between the 2014 and 2018 proposals." Mr. Zhao appears to base this assertion on the fact that the Proposal requests appointment of an "international policy committee," while the 2018 Proposal and 2014 Proposal requested appointment of a "Human Rights Committee" and a "Board Committee on Human Rights," respectively. However, the relevant inquiry for purposes of Rule 14a-8(i)(12) is whether the proposals relate to substantially the same subject matter. As discussed in the Initial Letter, the Proposal and Supporting Statement focus on the same substantive concerns as the Prior Proposals—the creation of a board committee to review the Company's human rights policies, especially in China. This is evident from the text of each proposal's resolution, as well as the supporting statements' references to the Company's human rights practices in China.

In addition, Mr. Zhao states that, "[s]ince Apple could not exclude the 2018 human rights proposal based on the 'substantially same subject matter' excuse with the 2014 human

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Cupertino, CA 95014

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rights proposal, there is no base to exclude my 2019 proposal with the same excuse." Mr. Zhao appears to be arguing that, because the Company did not seek to exclude the 2018 Proposal last year under Rule 14a-8(i)(12), the Company has effectively conceded that the Prior Proposals do not focus on substantially the same substantive concerns. However, the Company did not attempt to exclude the 2018 Proposal from its 2018 proxy materials under Rule 14a-8(i)(12) because the 2014 Proposal received more than 3% of the vote at the Company's 2014 annual meeting of shareholders and therefore was eligible for resubmission despite the fact that the two proposals were nearly identical.

For these reasons, and the reasons set forth in the Initial Letter, the Company believes it may omit the Proposal from its 2019 Proxy Materials. If the staff has any questions or needs additional information, please feel free to contact me at (408) 996-1010 or by e-mail at sam_whittington@apple.com.

Sincerely,

A handwritten signature in blue ink, appearing to read 'SSW', followed by a long horizontal flourish.

Sam Whittington
Assistant Secretary

cc: Jing Zhao
Alan L. Dye, Hogan Lovells US LLP

October 1, 2018

Via email shareholderproposals@sec.gov
U.S. Securities and Exchange Commission
Office of Chief Counsel
Division of Corporation Finance
100 F Street, NE
Washington, DC 20549-2736

Re: Shareholder Proposal for Inclusion in Apple Inc. 2019 Proxy Statement

Ladies and Gentlemen:

This is a short answer to Apple's September 26, 2018 letter to the SEC.

- I. My 2019 proposal does not relate to substantially the same subject matter as the two proposals that were included in Apple's proxy materials in 2014 and 2018. Obviously, my 2019 proposal of international policy committee has substantially much bigger difference with the 2014 and 2018 human rights proposals than the difference between the 2014 and 2018 proposals. Since Apple could not exclude the 2018 human rights proposal based on the "substantially same subject matter" excuse with the 2014 human rights proposal, there is no base to exclude my 2019 proposal with the same excuse.
- II. Apple has not substantially implemented my proposal, particularly under the current tense U.S.-China trade disputes.

Should you have any questions, please contact me at

Respectfully,



Jing Zhao

Cc: Sam Whittington sam_whittington@apple.com, Joel Eisenberg joel_eisenberg@apple.com, Alan Dye alan.dye@hoganlovells.com, Weston Gaines weston.gaines@hoganlovells.com



Rule 14a-8(i)(12)
Rule 14a-8(i)(10)

September 26, 2018

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 Jing Zhao

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 Jing Zhao (the "**Proponent**") from the Company's proxy materials for its 2019 Annual Meeting of Shareholders (the "**2019 Proxy Materials**").

A copy of the Proposal and the Supporting Statement, together with other correspondence relating to the Proposal, is 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 the proponent submits 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
One Apple Park Way
Cupertino, CA 95014

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

The Company intends to file its definitive 2019 Proxy Materials with the Commission more than 80 days after the date of this letter.

THE PROPOSAL

On August 11, 2018, the Company received from the Proponent, as an attachment to an e-mail, a letter submitting the Proposal for inclusion in the Company's 2019 Proxy Materials. The Proposal reads as follows:

Resolved: shareholders recommend that Apple Inc. establish an International Policy Committee of the Board of Directors to oversee Apple's policies including human rights, foreign governmental regulations and international relations affecting Apple's international business, especially in China.

BASES FOR EXCLUSION OF THE PROPOSAL

- I. **Rule 14a-8(1)(12)(ii) — The Proposal Relates to Substantially the Same Subject Matter as Two Shareholder Proposals that were Included in the Company's Proxy Materials in the Last Five Years, and the Most Recently Submitted of Those Proposals Did Not Receive the Support Necessary for Resubmission**

A. Background

Rule 14a-8(i)(12)(ii) permits a company to omit a shareholder proposal from its proxy materials if it deals with "substantially the same subject matter as another proposal or proposals that has or have been previously included in the company's proxy materials within the preceding 5 calendar years" and the most recent proposal received "[l]ess than 6% of the vote on its last submission to shareholders if proposed twice within the preceding 5 calendar years."

The condition in Rule 14a-8(i)(12) that the prior shareholder proposals have dealt with "substantially the same subject matter" as the current proposal does not mean that the prior proposals and the current proposal must be exactly the same. At one time, the predecessor to Rule 14a-8(i)(12) provided that, to be excludable under the rule, the current proposal had to be "substantially the same proposal" as the prior proposals. In 1983, however, the Commission amended the rule to permit exclusion of a proposal that "deals with substantially the same subject matter." The Commission explained the reason and meaning of the revision in Exchange Act Release No. 20091 (August 16, 1983), stating:

The Commission believes that this change is necessary to signal a clean break from the strict interpretive position applied to the existing provision. The Commission is aware that the interpretation of the new provision will continue to involve difficult subjective

judgments, but anticipates that those judgments will be based upon a consideration of the substantive concerns raised by a proposal rather than the specific language or actions proposed to deal with those concerns.

When considering whether proposals deal with substantially the same subject matter, the staff has focused on the “substantive concerns” raised by the proposals rather than on the specific language of the proposals or corporate action proposed to be taken. Accordingly, the staff has concurred with the exclusion of a shareholder proposal under Rule 14a-8(i)(12) when the proposal addresses concerns that are similar to those underlying a prior proposal, even if the current proposal recommends a significantly different action than was recommended by the prior proposal. For example, in *Bristol-Myers Squibb* (February 6, 1996), the staff concurred that a proposal requesting that the company educate women on the possible abortifacient effects of certain of its products was excludable because it addressed the same substantive concern as a prior proposal that requested the company refrain from donating to abortion-supporting organizations. While the actions requested by the two proposals were significantly different (consumer education on specific company products in one case and ceasing support for particular charitable organizations, without a direct connection to company product offerings, in the other), both proposals sought, broadly but in significantly different ways, to influence the company’s participation in the national abortion debate. Similarly, in *The Coca-Cola Co.* (January 18, 2017), the staff concurred that a proposal requesting a report identifying the number of Israel/Palestine employees who were Arab and non-Arab, broken down by job category, addressed the same substantive concern as a prior proposal requesting that the company implement a set of “Holy Land” equal employment principles that went significantly beyond a report on worker demographics by addressing employment culture, training programs, hiring criteria, tax incentives, compliance monitoring and other principles. See also *General Electric Co.* (February 6, 2014) (concurring with exclusion of proposal seeking to amend nuclear energy policy to make specific safety improvements as dealing with the same substantive concern as an earlier proposal that sought the company’s phase out of all nuclear activities); *Barr Pharmaceuticals, Inc.* (September 25, 2006) (concurring with exclusion of a proposal requesting adoption of an animal welfare policy to reduce the number of research animals and implement acceptable standards of care because it was substantially similar to a prior proposal requesting that the company commit to non-animal testing methods and petition government agencies to accept the results of such tests); *Medtronic Inc.* (June 2, 2005) (concurring that a proposal requesting that the company list all of its political and charitable contributions on its website was excludable as it dealt with substantially the same subject matter as a prior proposal requesting that the company cease making charitable contributions); *Saks Inc.* (March 1, 2004) (concurring that a proposal requesting the company’s board of directors implement a code of conduct based on International Labor Organization standards as well as establish an independent monitoring process and annually report on adherence to such code was excludable as addressing substantially the same subject matter as a prior proposal requesting a report on the company’s vendor labor standards and compliance mechanism); and *Bristol-Myers Squibb Co.* (February 11, 2004) (concurring with exclusion of a proposal requesting the board of directors to review pricing and marketing policies and prepare a report on how the company would respond to pressure to increase access to prescription drugs as it dealt with substantially the same subject matter as a prior proposal requesting the creation and implementation of a policy of price restraint on pharmaceutical products).

The staff has also concurred that a shareholder proposal may still be excludable under Rule 14a-8(i)(12) even if it touches on different topics from a submission from a prior year so long as the earlier proposal deals with substantially the same subject matter. For example, in *Dow Chemical Co.* (March 5, 2009), the staff concurred that a proposal requesting a report on the general health and environmental effects of a particular product was excludable as raising the same substantive concerns as a prior proposal requesting a report on the extent to which any company product caused or exacerbated asthma. Even though the later proposal focused on environmental concerns in addition to health concerns, and focused on a single product rather than the full universe of company products, both proposals broadly addressed the human welfare consequences of company products. Similarly, in *Hormel Foods Corp.* (November 10, 2011), the staff concurred that a proposal asking the company to adopt a series of animal welfare improvements, including a ban on electric shock devices, installation of cameras in all animal areas, improved training for supervisors, a phase-out of gestation crates, and implementation of annual audits of these standards, was excludable under Rule 14a-8(i)(12) because it addressed the same substantive concern as a prior shareholder proposal that requested only a report on the company's use of gestation crates. See also *Ford Motor Co.* (February 28, 2007) (concurring with exclusion of proposal requesting that executive compensation be tied to efficiency improvements as addressing substantially the same concern as a prior proposal requesting that executive compensation be tied to a reduction in greenhouse gas emissions, even though the later proposal addressed dependence on foreign oil and the prior proposal focused on greenhouse gas and related concerns); and *Exxon Mobil Corp.* (March 23, 2012) (concurring with exclusion of proposal requesting a policy on the company's commitment to the human right to water as addressing the same substantive concern as a proposal that requested a report on, among other things, emissions and environmental impacts on "land, water and soil").

B. The Proposal Deals With Substantially the Same Subject Matter as Two Proposals that were Included in the Company's Proxy Materials Within the Preceding Five Calendar Years

The Company has, within the past five years, included in its proxy materials at least two shareholder proposals that raise the same substantive concerns and relate to "substantially the same subject matter" as the Proposal, namely the creation of a board committee to review the Company's human rights policies, especially in China. The proposals are as follows:

- The Company included in its 2018 proxy materials, filed with the SEC on December 27, 2017 (the "**2018 Proposal**," attached hereto as Exhibit B), a proposal submitted by the Proponent requesting that the Company's Board of Directors (the "**Board**") "establish a Human Rights Committee to review, assess, disclose, and make recommendations to enhance Apple's policy and practice on human rights."
- The Company included in its 2014 proxy materials, filed with the SEC on January 10, 2014 (the "**2014 Proposal**," attached hereto as Exhibit C, and, together with the 2018 Proposal, the "**Prior Proposals**"), a proposal submitted by John Harrington requesting that the Board amend the Company's bylaws to establish a new section as follows: "Section 4.2. Board Committee on Human Rights. There is established a Board

Committee on Human Rights, to review the implications of company policies, above and beyond matters of legal compliance, for the human rights of individuals in the US and worldwide, including assessing the impacts of company operations and supply chains on resources and public welfare in host communities.”

The Prior Proposals are virtually identical to one another and request the same action—the creation of a new Board committee tasked with reviewing the Company’s human rights policies. The Proposal requests the same. In addition, each of the proposals is particularly concerned with human rights as they relate to the Company’s operations in China. The Proposal clearly, therefore, addresses the same substantive concern as the Prior Proposals—an ongoing evaluation of the Company’s human rights practices and policies conducted at the level of the board of directors.

That the Proposal and the Prior Proposals share a singular focus is evident from the following:

- Each of the proposals specifically requests the creation of a Board committee to review the Company’s practices and policies relating to human rights. The 2014 Proposal requests creation of a “Board Committee on Human Rights,” the 2018 Proposal requests a “Human Rights Committee,” and the Proposal requests an “International Policy Committee.”
- Each of the Proposals has an overriding concern with the Company’s policies and practices concerning human rights. The 2014 Proposal states that its purpose is to “elevate board level oversight and governance regarding human rights issues raised by the Company’s activities and policies.” The 2018 Proposal directed that a Board committee specifically “review, assess, disclose, and make recommendations to enhance Apple’s policy and practice on human rights.” The Proposal requests the formation of a Board committee to “oversee Apple’s policies including human rights.”
- Each of the proposals is concerned with the Company’s human rights practices internationally, especially in China. Each proposal references specific allegations relating to the Company’s operations in China. The 2014 Proposal cites “controversies related to the Foxconn Technology Group, a supplier of many key items for Apple with facilities located in China and elsewhere.” The 2018 Proposal states that “[t]here have been too many negative reports on Apple’s human rights policy and practice, mostly related to Apple’s operation in China for many years,” and cites specific allegations of Company operations in China. The Proposal cites “negative worrying reports” including articles entitled “Apple Supplier Workers Describe Noxious Hazards at China Factory” and “Apple iCloud move in China raises human rights fears.”
- The Proponent submitted both the 2018 Proposal and the Proposal, and submitted yet another proposal to the Company in 2014 requesting the creation of a Board committee to oversee human rights, particularly in China (which the staff agreed was excludable under Rule 14a-8(i)(10), see *Apple Inc.* (December 11, 2014)). The Proponent therefore

has demonstrated a singular focus on this issue, with only slight differences in the wording of his various proposals.

The fact that the Proposal also references “foreign governmental regulations and international relations” in addition to human rights does not change either the subject matter or the principal focus of the Proposal for purposes of Rule 14a-8(i)(12). As in *Dow Chemical Co.* (March 5, 2009), where the proposal at issue expanded the scope of earlier proposals but broadly addressed the same substantive concerns, the Proposal broadly addresses the same concern as the Prior Proposals—the human rights implications of the Company’s operations, particularly relating to its international operations in China. The principal thrust of the Proposal, and the subject matter of the Proposal, is the creation of a Board committee to review the Company’s policies on human rights, particularly relating to China, as was the case with the Prior Proposals. Accordingly, the proposals deal with substantially the same subject matter for purposes of Rule 14a-8(i)(12).

C. The 2018 Proposal Did Not Receive the Shareholder Support Necessary to Permit Resubmission

As reported in the Company’s Current Report on Form 8-K filed with the SEC on February 14, 2018, a copy of which is attached hereto as Exhibit D, the 2018 Proposal received 5.6% of the votes cast at the Company’s 2018 Annual Meeting of Shareholders (as calculated in accordance with *Staff Legal Bulletin No. 14*, Question F.4 (July 13, 2001)). For purposes of this calculation, the 2018 Proposal received 163,401,335 “for” votes and 2,775,484,108 “against” votes. Abstentions and broker non-votes were not included for purposes of this calculation. Therefore, the vote on the 2018 Proposal (which is the most recently submitted of the Prior Proposals) failed to meet the 6% threshold specified in Rule 14a-8(i)(12)(ii). In addition, the 2014 Proposal also received only 5.7% of the vote during the Company’s 2014 Annual Meeting of Shareholders, as reported in the Company’s Current Report on Form 8-K filed with the SEC on March 5, 2014.

Accordingly, the Company may exclude the Proposal from its 2019 Proxy Materials under Rule 14a-8(i)(12)(ii) because it deals with substantially the same subject matter as the 2018 Proposal and the 2014 Proposal, and the 2018 Proposal did not receive the necessary shareholder support to permit resubmission.

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 Board committees already oversee the matters discussed by the Proposal

The Proposal requests that the Company create a new Board committee to "oversee Apple's policies including human rights, foreign governmental regulations and international relations affecting Apple's international business." The Supporting Statement justifies the need for this new committee by claiming "Apple's current Audit and Finance Committee, Compensation Committee and Nominating and Corporate Governance Committee are not adequate to deal with very complicated challenges and high risks of Apple's international business." However, this statement is untrue, as the Company has existing robust systems and controls to oversee the matters listed in the Proposal, including Board oversight. The staff has previously reviewed the Company's policies and procedures as compared to those requested by a prior version of the Proposal and agreed that the Company has substantially implemented the policies underlying that proposal. See *Apple Inc.* (December 11, 2014) (requesting that the Company "establish a Public Policy Committee to assist the Board of Directors in overseeing the Company's policies and practice that relate to public issues including human rights....").

As described in the Company's proxy materials for its 2018 Annual Meeting of Shareholders, the Audit and Finance Committee has the primary responsibility for overseeing the Company's enterprise risk management. The Audit and Finance Committee is assisted in its risk oversight duties by key members of management, including the Company's Chief Financial Officer, General Counsel, and Vice President of Business Assurance (formerly titled Vice President of Internal Audit). Senior members of management responsible for risk management across a wide range of areas and functions report regularly to the Audit and Finance Committee, which itself reports regularly to the Board.

In accordance with this responsibility, the Audit and Finance Committee monitors the Company's significant business risks, including financial, operational, privacy, data security, business continuity, legal and regulatory, and reputational exposures, and reviews the steps management has taken to monitor and control these exposures. While the Audit and Finance Committee has primary responsibility for overseeing enterprise risk management, the other Board committees also consider risks within their areas of responsibility and apprise the Board of significant risks and management's response to those risks. Further, while the Board and its committees oversee risk management strategy, management is responsible for implementing and supervising day-to-day risk management processes.

In addition, the Company has robust policies and procedures for dealing with its international operations, which is one of the Proposal's areas of focus. In the Company's Annual Report on Form 10-K for the fiscal year ended September 30, 2017, the Company disclosed risk

factors relating to its international operations (i.e. "The Company's business is subject to the risks of international operations" and "The Company is subject to laws and regulations worldwide, changes to which could increase the Company's costs and individually or in the aggregate adversely affect the Company's business.") and disclosed within the risk factors that the Company has "implemented policies and procedures designed to ensure compliance with applicable laws and regulations."

The Company also has in place its Business Conduct Policy. The Business Conduct Policy applies to all employees, independent contractors, consultants, and others who do business with the Company. The Business Conduct Policy provides that "Apple conducts business ethically, honestly and in full compliance with all laws and regulations. This applies to every business decision in every area of the company worldwide." The Business Conduct Policy, the implementation of which is overseen by the Board, already addresses items listed in the Proposal, including "foreign governmental regulations and international relations affecting Apple's international business." In addition, the Company's Supplier Code of Conduct also addresses the items included in the Proposal, especially relating to human rights. The Supplier Code of Conduct "outlines Apple's expectations for Supplier conduct regarding labor and human rights, health and safety, environmental protection, ethics, and management practices."

Accordingly, and as reflected in the staff's no-action letter relating to the similar proposal submitted to the Company by the Proponent in 2014, the underlying concern and essential objective of the Proposal, which is to require the Board to oversee the Company's policies including human rights, foreign governmental regulations and international relations, has already been addressed by the Company. The Proposal is therefore excludable under Rule 14a-8(i)(10).

CONCLUSION

For the reasons discussed above, the Company believes that it may omit the Proposal from its 2019 Proxy Materials in reliance on Rules 14a-8(i)(12) and (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 excludes the Proposal from its 2019 Proxy Materials.

Office of Chief Counsel
Division of Corporation Finance
U.S. Securities and Exchange Commission
September 26, 2018
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If you have any questions or need additional information, please feel free to contact me at (408) 996-1010 or by e-mail at sam_whittington@apple.com.

Sincerely,

A handwritten signature in black ink, appearing to read 'SSW', followed by a long horizontal flourish.

Sam Whittington
Assistant Secretary

Attachments

cc: Jing Zhao
Alan L. Dye, Hogan Lovells US LLP

Exhibit A

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

August 11, 2017

Secretary

Apple Inc.

1 Infinite Loop, MS: 301-4GC

Cupertino, California 95014

(via post mail & email shareholderproposal@apple.com)

Re: Shareholder Proposal to 2019 Shareholders Meeting

Dear Secretary:

Enclosed please find my shareholder proposal for inclusion in our proxy materials for the 2019 annual meeting of shareholders and a letter of my shares ownership. I will continuously hold these shares until the 2019 annual meeting of shareholders.

Should you have any questions, please contact me at *** or

Yours truly,



Jing Zhao

Enclosure: Shareholder proposal

Shares ownership letter

Shareholder Proposal on International Policy Committee

Resolved: shareholders recommend that Apple Inc. establish an International Policy Committee of the Board of Directors to oversee Apple's policies including human rights, foreign governmental regulations and international relations affecting Apple's international business, especially in China.

Supporting Statement

Apple's current Audit and Finance Committee, Compensation Committee and Nominating and Corporate Governance Committee are not adequate to deal with very complicated challenges and high risks of Apple's international business.

Since a shareholder proposal must be submitted half year before the shareholders meeting, this statement can only mention very few negative worrying reports, from supply chain, human rights, taxes regulations to trade disputes issues: "Apple Supplier Workers Describe Noxious Hazards at China Factory" (Bloomberg.com, 1/16/2018), "Apple iCloud move in China raises human rights fears" (*USA TODAY*, 2/26/2018), "Apple still owes State €5bn in back taxes: Tech giant has so far paid €9bn under European Commission ruling" (*The Irish Times*, Aug 2, 2018).

The Chinese governmental mouthpiece *People's Daily* published "Strong sales of US brands including Apple give China bargaining chips in trade row" (August 7, 2018, <http://en.people.cn/n3/2018/0807/c90000-9488434.html>) directly threatening Apple's business in China: "Why has the California-based company enjoyed remarkable success in China, while some Chinese companies have experienced big losses amid a growing trade conflict Washington brought on. Apple ...sales to the greater China region gained 19 percent to \$9.6 billion. ...the company's better-than-expected quarterly result in China was a major reason for the surge in its shares. However, the eye-catching success achieved in the Chinese market may provoke nationalist sentiment if US President Donald Trump's recently adopted protectionist measures hit Chinese companies hard. China is by far the most important overseas market for the US-based Apple, leaving it exposed if Chinese people make it a target of anger and nationalist sentiment. ...if the US company wants to earn good money in China, it needs to share its development dividends with the Chinese people. ...China now serves as a key production and processing base for Apple. Many Chinese companies have been included in Apple's production chain to provide parts and components or assembly work. This has allowed Apple to benefit from China's ample supply of cheap labor. In the case of the iPhone, some statistics show Chinese processors only get 1.8 percent of the total profits created by the device. Apple ...enjoys most of the profits created from its Chinese business. It is impractical and unreasonable to kick the company out of China, but if Apple wants to continue raking in enormous profits from the Chinese markets amid trade tensions, the company needs to do more to share the economic cake with local Chinese people. ...The Chinese market is vital for many top US brands, giving Beijing more leeway to play hardball in the trade conflict. "



August 11, 2018

Jing Zhao

Re: Your account ending in ***

Dear Jing Zhao,

Thank you for allowing me to assist you today. As you requested, this letter serves to verify that you have continuously held at least 20 shares of Apple, Inc. (AAPL) from June 5, 2014 through the close of business on August 10, 2018 in your TD Ameritrade account ending in ***

If we can be of any further assistance, please let us know. Just log in to your account and go to the Message Center to write us. You can also call Client Services at 800-669-3900. We're available 24 hours a day, seven days a week.

Sincerely,

A handwritten signature in black ink that reads 'Matthew Henscheid'.

Matthew Henscheid
Resource Specialist
TD Ameritrade

This information is furnished as part of a general information service and TD Ameritrade shall not be liable for any damages arising out of any inaccuracy in the information. Because this information may differ from your TD Ameritrade monthly statement, you should rely only on the TD Ameritrade monthly statement as the official record of your TD Ameritrade account.

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

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August 23, 2018

Via FedEx and E-mail

Jing Zhao

Re: Notice of Deficiency under Rule 14a-8
Proposal for Apple Inc. 2019 Annual Meeting of Shareholders

Dear Mr. Zhao:

On behalf of Apple Inc. (the "**Company**"), I am writing to inform you that we are in receipt of your letter dated August 11, 2017, which includes a proposal for inclusion in the Company's proxy materials for the 2019 annual meeting of shareholders (the "**Proposal**"). The letter, together with a letter from TD Ameritrade dated August 11, 2018 (the "**TD Ameritrade Letter**") was delivered to us via mail and e-mail and was first received on August 11, 2018.

The purpose of this letter is to inform you that your submission does not comply with Rule 14a-8 under the Securities Exchange Act of 1934 and therefore is not eligible for inclusion in our proxy statement for our 2019 annual meeting of shareholders. SEC regulations require us to bring the following deficiency to your attention.

Failure to Establish Ownership for Requisite One-Year Period

As you know, Rule 14a-8(b) provides that, to be eligible to submit a shareholder proposal, a proponent must have continuously held a minimum of \$2,000 in market value, or 1% of the Company's securities entitled to be voted on the proposal for at least one year prior to the date the proposal is submitted. Your submission fails to establish that you have continuously held the minimum number or value of shares for the requisite period.

The TD Ameritrade Letter purports to establish your holdings of the Company's common stock as of August 10, 2018. As the SEC staff noted in Staff Legal Bulletin 14G, however, Rule 14a-8(b) requires that a proponent establish the requisite stock ownership for "the entire one-year period preceding and including the date the proposal was submitted." The date of your submission was not August 10, 2018, but instead was **August 11, 2018**. The TD

Apple
One Apple Park Way
Cupertino, CA 95014

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

Ameritrade Letter therefore does not establish your ownership of the Company's common stock as of the date of the submission of the Proposal. You therefore must provide us with proof that the shares on which you rely to establish your eligibility to submit the Proposal were owned on August 11, 2018, the date of submission of the Proposal, and have been continuously owned by you for the one-year period preceding the date of submission of the Proposal.

Our records do not list you as a record holder of our common stock. Because you are not a record holder of our common stock, you may substantiate your ownership in either of two ways:

1. You may provide a written statement from the record holder of the shares of our common stock beneficially owned by you, verifying that, on August 11, 2018, when you submitted the Proposal, you had continuously held, for at least one year, the requisite number or value of shares of our common stock; or
2. You may provide a copy of a filed Schedule 13D, Schedule 13G, Form 3, Form 4 or Form 5, or any amendment to any of those documents or updated forms, reflecting ownership of the requisite number or value of shares of our common stock as of or before the date on which the one-year eligibility period began, together with a written statement that you continuously held the shares for the one-year period as of the date of the statement.

As you know, the staff of the SEC's Division of Corporation Finance has provided guidance to assist companies and stockholders with complying with Rule 14a-8(b)'s eligibility criteria. This guidance, contained in Staff Legal Bulletin No. 14F (October 18, 2011) and Staff Legal Bulletin No. 14G (October 16, 2012), clarifies that proof of ownership for Rule 14a-8(b) purposes must be provided by the "record holder" of the securities, which is either the person or entity listed on the Company's stock records as the owner of the securities or a DTC participant (or an affiliate of a DTC participant). A proponent who is not a record owner must therefore obtain the required written statement from the DTC participant through which the proponent's securities are held. If a proponent is not certain whether its broker or bank is a DTC participant, the proponent may check DTC's participant list, which is currently available on the Internet at <http://www.dtcc.com/~media/Files/Downloads/client-center/DTC/alpha.pdf>. If the broker or bank that holds the proponent's securities is not on DTC's participant list, the proponent will need to obtain proof of ownership from the DTC participant through which its securities are held. If the DTC participant knows the holdings of the proponent's broker or bank, but does not know the proponent's holdings, the proponent may satisfy the proof of ownership requirement by obtaining and submitting two proof of ownership statements verifying that, at the time the proposal was submitted, the required number or value of securities had been continuously held by the proponent for at least one year preceding and including the date of submission of the proposal – with one statement from the proponent's broker or bank confirming the required ownership, and the other statement from the DTC participant confirming the broker or bank's ownership.

August 23, 2018

Page 3

For the Proposal to be eligible for inclusion in the Company's proxy materials for its 2019 annual meeting of shareholders, the information requested above must be furnished to us electronically or be postmarked no later than 14 calendar days from the date you receive this letter. If the information is not provided, the Company may exclude the Proposal from its proxy materials pursuant to Rule 14a-8(f). Please address any response to the Company's Secretary at Apple Inc., 1 Infinite Loop, MS: 301-4GC, Cupertino, California, 95014, or by e-mail to shareholderproposal@apple.com.

In accordance with SEC Staff Legal Bulletin Nos. 14 and 14B, a copy of Rule 14a-8, including Rule 14a-8(b), is enclosed for your reference. Also enclosed for your reference is a copy of Staff Legal Bulletin Nos. 14F and 14G.

Very truly yours,

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

Sam Whittington

Enclosures

August 28, 2018

Secretary

Apple Inc.

1 Infinite Loop, MS: 301-4GC

Cupertino, California 95014

(via post mail & email shareholderproposal@apple.com)

Re: Shareholder Proposal to 2019 Shareholders Meeting: 2

Dear Secretary:

I received a letter of August 23, 2018 from Mr. Sam Whittington on behalf of Apple Inc. claiming that my first shares letter of August 11, 2018 (2017 was a typo of 2018 in my letter) has deficiency.

My shares letter of August 11, 2018 has no deficiency because August 11, 2018 is a holiday (Saturday) so there was no trade to sell my shares. It is a regret that our company has always wasted resources to reject to communicate with concerned shareholders on important policy and governance issues.

Nonetheless, enclosed please find another letter of my shares ownership.

Should you have any questions, please contact me at

Yours truly,



Jing Zhao

Enclosure: new shares ownership letter

08/28/2018

Jing Zhao

Re: Your TD Ameritrade Account Ending in ***

Dear Jing Zhao,

Thank you for allowing me to assist you today. As you requested, this letter is to confirm that from 6/5/2014 to today, 8/28/2018, this account has and is holding 20 shares of Apple AAPL.

If we can be of any further assistance, please let us know. Just log in to your account and go to the Message Center to write us. You can also call Client Services at 800-669-3900. We're available 24 hours a day, seven days a week.

Sincerely,

A handwritten signature in black ink, appearing to read 'Michael Myers', written over a light blue horizontal line.

Michael Myers
Resource Specialist
TD Ameritrade

This information is furnished as part of a general information service and TD Ameritrade shall not be liable for any damages arising out of any inaccuracy in the information. Because this information may differ from your TD Ameritrade monthly statement, you should rely only on the TD Ameritrade monthly statement as the official record of your TD Ameritrade account.

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

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Exhibit B

Copy of the 2018 Proposal

Shareholder Proposal on Human Rights Committee

Resolved: shareholders recommend that Apple Inc. establish a Human Rights Committee to review, assess, disclose, and make recommendations to enhance Apple's policy and practice on human rights. The board of directors is recommended, in its discretion and consistent with applicable laws to: (1) adopt Apple Human Rights Principles, (2) designate the members of the committee, including outside independent human rights experts as advisors, (3) provide the committee with sufficient funds for operating expenses, (4) adopt a charter to specify the functions of the committee, (5) empower the committee to solicit public input and to issue periodic reports to shareholders and the public on the committee's activities, findings and recommendations, and (6) adopt any other measures.

Supporting Statement

There have been too many negative reports on Apple's human rights policy and practice, mostly related to Apple's operation in China for many years. For example, recently, the New York Times reported "Apple Removes Apps From China Store That Help Internet Users Evade Censorship" on July 29, 2017; the Wall Street Journal reported "Get Used to Apple Bowing Down to Chinese Censors" on August 7, 2017. Furthermore, Apple is building its first China-based data center, and "the new agreement goes one step further with a Chinese partner responsible for running its data center, managing the sales of its services in the country and handling legal requests for data from the government." (New York Times, July 12, 2017)

On human rights policy and practice, we have the best case (see my proposal to Google 2010 shareholders meeting) and the worst case (see my proposals to Yahoo 2011 and 2013 shareholders meetings, to Verizon 2017 shareholders meeting and to Yahoo/Altaba 2017 shareholders meeting <http://cpri.tripod.com/cpr2017/altaba-statement.pdf> on the abuses of the so-called "Yahoo Human Rights Fund" against human rights) here in Silicon Valley. Apple should not fail as Yahoo.

Exhibit C

Copy of the 2014 Proposal

PROPOSAL NO. 8
Shareholder Proposal Entitled Board Committee on Human Rights

The Company has been advised that Mr. John Harrington, 1001 2nd Street, Suite 325, Napa, CA 94559, who has indicated he is a beneficial owner of at least \$2,000 in market value of the Company's common stock, and Northstar Asset Management Inc., PO Box 301840, Boston, MA 02130, which has indicated it is a beneficial owner of at least \$2,000 in market value of the Company's common stock, intend to submit jointly the following proposal at the Annual Meeting:

“RESOLVED: To amend Article IV of the By-Laws, by inserting after Section 4.1, a new Section 4.2.

Section 4.2. Board Committee on Human Rights. There is established a Board Committee on Human Rights, to review the implications of company policies, above and beyond matters of legal compliance, for the human rights of individuals in the US and worldwide, including assessing the impacts of company operations and supply chains on resources and public welfare in host communities.

The Board of Directors is authorized, by resolution, in its discretion and consistent with these By-Laws, the Articles of Incorporation and applicable law to: (1) select the members of the Board Committee on Human Rights, (2) provide said committee with funds for operating expenses, (3) adopt a charter to govern said Committee's operations, (4) empower said Committee to solicit public input and to issue periodic reports to shareholders and the public, at reasonable expense and excluding confidential information, including but not limited to an annual report on the findings of the Board Committee, and (5) any other measures within the Board's discretion consistent with these By-Laws and applicable law. Nothing herein shall restrict the power of the Board of Directors to manage the business and affairs of the Company. The Board Committee on Human Rights shall not incur any costs to the Company except as authorized by the Board of Directors.

Supporting Statement

The proposed by-law would establish a separate Board Committee on Human Rights, which would elevate board level oversight and governance regarding human rights issues raised by the Company's activities and policies and provide a vehicle to fulfill the Board's fiduciary responsibilities for oversight of these issues.

In recent years the Company has become embroiled in public controversies regarding the human rights implications of its products and supply chains, including but not limited to controversies related to the Foxconn Technology Group, a supplier of many key items for Apple with facilities located in China and elsewhere. The proposed by-law would establish the vehicle of a Board Committee, but would leave the process of appointment and implementation of the Committee to the full Board of Directors.”

Exhibit D

Copy of the Company's Form 8-K filed with the SEC on February 14, 2018

**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION**
Washington, D.C. 20549

FORM 8-K

CURRENT REPORT

Pursuant to Section 13 OR 15(d) of The Securities Exchange Act of 1934

February 13, 2018

Date of Report (Date of earliest event reported)



Apple Inc.

(Exact name of Registrant as specified in its charter)

California
(State or other jurisdiction
of incorporation)

001-36743
(Commission
File Number)

94-2404110
(I.R.S. Employer
Identification No.)

1 Infinite Loop
Cupertino, California 95014
(Address of principal executive offices) (Zip Code)

(408) 996-1010
(Registrant's telephone number, including area code)

Not applicable
(Former name or former address, if changed since last report.)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the Registrant under any of the following provisions:

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
- Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
- Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
- Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 (§230.405 of this chapter) or Rule 12b-2 of the Securities Exchange Act of 1934 (§240.12b-2 of this chapter).

Emerging growth company

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act.

Item 5.07 Submission of Matters to a Vote of Security Holders.

The Annual Meeting of Shareholders of Apple Inc. was held on February 13, 2018. At the Annual Meeting, Apple's shareholders voted on the following six proposals and cast their votes as described below.

1. The individuals listed below were elected at the Annual Meeting to serve as directors of Apple until the next annual meeting of shareholders and until their successors are duly elected and qualified:

	<u>For</u>	<u>Against</u>	<u>Abstained</u>	<u>Broker Non-Vote</u>
James Bell	2,987,148,171	32,294,028	5,382,352	1,361,688,394
Tim Cook	3,010,021,984	11,377,103	3,425,464	1,361,688,394
Al Gore	2,911,462,591	107,192,677	6,169,283	1,361,688,394
Bob Iger	2,995,925,850	24,948,214	3,950,487	1,361,688,394
Andrea Jung	2,884,140,327	136,058,527	4,625,697	1,361,688,394
Art Levinson	2,941,579,110	78,353,450	4,891,991	1,361,688,394
Ron Sugar	2,981,747,223	37,432,625	5,644,703	1,361,688,394
Sue Wagner	3,007,708,653	12,465,761	4,650,137	1,361,688,394

2. A management proposal to ratify the appointment of Ernst & Young LLP as Apple's independent registered public accounting firm for 2018 was approved.

<u>For</u>	<u>Against</u>	<u>Abstained</u>
4,309,610,294	64,428,815	12,473,836

3. An advisory resolution to approve executive compensation was approved.

<u>For</u>	<u>Against</u>	<u>Abstained</u>	<u>Broker Non-Vote</u>
2,861,566,673	152,738,956	10,518,822	1,361,688,394

4. A management proposal to approve the amended and restated Apple Inc. Non-Employee Director Stock Plan was approved.

<u>For</u>	<u>Against</u>	<u>Abstained</u>	<u>Broker Non-Vote</u>
2,913,061,627	101,747,725	10,015,099	1,361,688,394

The amended and restated Apple Inc. Non-Employee Director Stock Plan is filed as Exhibit 10.1 hereto.

5. A shareholder proposal entitled "Shareholder Proxy Access Amendments" was not approved.

<u>For</u>	<u>Against</u>	<u>Abstained</u>	<u>Broker Non-Vote</u>
961,877,391	2,025,537,642	37,409,281	1,361,688,394

6. A shareholder proposal entitled "Human Rights Committee" was not approved.

<u>For</u>	<u>Against</u>	<u>Abstained</u>	<u>Broker Non-Vote</u>
163,401,335	2,775,484,108	85,938,871	1,361,688,394

Item 9.01 Financial Statements and Exhibits.

(d) Exhibits.

**Exhibit
Number**

Exhibit Description

10.1

[Apple Inc. Non-Employee Director Stock Plan, as amended and restated as of February 13, 2018.](#)

SIGNATURE

Pursuant to the requirements of the Securities Exchange Act of 1934, the Registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

Date: February 14, 2018

Apple Inc.

By: /s/ Katherine Adams

Katherine Adams
Senior Vice President,
General Counsel