



DIVISION OF  
CORPORATION FINANCE

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

December 28, 2022

Jenna Cooper  
Latham & Watkins LLP

Re: Apple, Inc. (the "Company")  
Incoming letter dated December 23, 2022

Dear Jenna Cooper:

This letter is in regard to your correspondence concerning the shareholder proposal (the "Proposal") submitted to the Company by Jeff Perk and SumOfUs (the "Proponents") for inclusion in the Company's proxy materials for its upcoming annual meeting of security holders. Your letter indicates that the Proponents have withdrawn the Proposal and that the Company therefore withdraws its October 24, 2022 request for a no-action letter from the Division. Because the matter is now moot, we will have no further comment.

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

Sincerely,

Rule 14a-8 Review Team

cc: Sanford Lewis

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Madrid	Washington, D.C.

October 24, 2022

**VIA ELECTRONIC MAIL**

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

Re: **Apple Inc. Shareholder Proposal Submitted by SumOfUs and Jeff Perk**

To the addressee set forth above:

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

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

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

Pursuant to Rule 14a-8(j), we are submitting this letter on the Company’s behalf not less than 80 days before the Company intends to file its Proxy Materials and are sending a copy of this letter concurrently to the Proponents. The factual statements in this letter have been provided to us by the Company and Latham & Watkins LLP has not conducted any independent verification of such statements.

## **I. The Proposal.**

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

“RESOLVED: Shareholders request that, in light of human rights abuses in the region and the reputational and operational impacts posed to Apple, the Company publish within one year a phaseout transition plan, at reasonable expense and excluding proprietary information, to cease supply chain activities involving labor from the Uyghur region, including labor transfers of workers from the Uyghur region to other areas of China.

Supporting Statement:

The transition plan should, in the discretion of the board and management, include:

- A reasonable timeframe for completing phaseout of sourcing from Uyghur related labor, such as three years;
- A plan to cease all supply chain sources from the Uyghur region;
- A plan to cease all supply chain sources which receive labor transfers from the Uyghur region, including a sound strategy for assessing which suppliers are receiving such transfers;
- Any development of new supply chain sources in other regions, including US domestic sources, and discussion of any related challenges or opportunities;
- Discussion of necessary resource commitments including capital expenditures, technology transfers, and other supply chain development investments.”

## **II. The Company is Committed to High Standards of Conduct and Compliance Across its Global Supply Chain.**

The Company is committed to ensuring everyone in its supply chain is treated with dignity and respect. The Company's Supplier Code of Conduct and Supplier Responsibility Standards<sup>1</sup>, which apply globally and to all levels of the supply chain, outline the Company's requirements for its suppliers in the areas of management systems, health and safety, the environment, ethics, and labor and human rights. As described in the Company's Human Rights Policy, the Company is committed to respecting internationally recognized human rights in its business operations and works with its suppliers as it seeks “to ensure that every workplace provides a safe and respectful environment for everyone” across its supply chain. These protections apply across the supply chain, regardless of a person's job or location. Any violation of the Company's policies has immediate consequences, including possible business termination. The Company continuously conducts reviews across its supply chain to verify that suppliers can meet or exceed its strict standards and provides training and toolkits to help them better understand how to meet these standards if needed. Looking for the presence of forced labor is part of every assessment the Company conducts in 52 countries across its supply chain. In its fiscal year 2021, the Company conducted more than 1,100 assessments, and found no instances globally where anyone was forced to work in its supply chain.

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<sup>1</sup> See <https://www.apple.com/supplier-responsibility/pdf/Apple-Supplier-Code-of-Conduct-and-Supplier-Responsibility-Standards.pdf>

Moreover, the Company has publicly released reports that contain extensive information and disclosures about the extent to which its policies and procedures effectively protect workers in its supply chain. These disclosures currently include the following series of reports that provide detailed, relevant, and comprehensive information for stakeholders, all available publicly on [apple.com](https://www.apple.com):

- Our Commitment to Human Rights;<sup>2</sup>
- How We Work to Prevent Forced Labor in our Supply Chain;<sup>3</sup>
- Supplier Code of Conduct and Supplier Responsibility Standards;<sup>4</sup>
- 2022 Environmental, Social and Governance Report;<sup>5</sup>
- People and Environment in our Supply Chain. 2022 Annual Progress Report;<sup>6</sup>
- How We Work with Suppliers. Upholding Apple’s Values in our Supply Chain;<sup>7</sup>
- Supplier List for Fiscal Year 2021;<sup>8</sup>
- 2021 Statement on Efforts to Combat Modern Slavery in our Business and Supply Chains;<sup>9</sup> and
- Conflict Minerals Report 2021.<sup>10</sup>

These reports provide further color on the wide range of supply chain management practices conducted by the Company, as mandated by the Company’s policies and compliance with applicable laws.

The Uyghur Forced Labor Prevention Act (“*UFLPA*”) was passed by Congress in December 2021 and was signed into law by President Biden on December 23, 2021. *See* Uyghur Forced Labor Prevention Act (Pub. L. 117-78) and <https://www.cbp.gov/trade/forced-labor/UFLPA>. In accordance with the standards of the UFLPA and in preparation for its adoption, the Company conducted due diligence on its supply chain and found no evidence that any of its suppliers were located in the Xinjiang Uyghur Autonomous Region or that any workers transferred from the region were working on Apple production lines.

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<sup>2</sup> *See* [https://s2.q4cdn.com/470004039/files/doc\\_downloads/gov\\_docs/Apple-Human-Rights-Policy.pdf](https://s2.q4cdn.com/470004039/files/doc_downloads/gov_docs/Apple-Human-Rights-Policy.pdf)

<sup>3</sup> *See* <https://www.apple.com/supplier-responsibility/pdf/Apple-How-We-Work-to-Prevent-Forced-Labor.pdf>

<sup>4</sup> *See* <https://www.apple.com/supplier-responsibility/pdf/Apple-Supplier-Code-of-Conduct-and-Supplier-Responsibility-Standards.pdf>

<sup>5</sup> *See* [https://s2.q4cdn.com/470004039/files/doc\\_downloads/2022/08/2022\\_Apple\\_ESG\\_Report.pdf](https://s2.q4cdn.com/470004039/files/doc_downloads/2022/08/2022_Apple_ESG_Report.pdf)

<sup>6</sup> *See* [https://www.apple.com/supplier-responsibility/pdf/Apple\\_SR\\_2022\\_Progress\\_Report.pdf](https://www.apple.com/supplier-responsibility/pdf/Apple_SR_2022_Progress_Report.pdf)

<sup>7</sup> *See* <https://www.apple.com/supplier-responsibility/pdf/How-We-Work-With-Suppliers.pdf>

<sup>8</sup> *See* <https://www.apple.com/supplier-responsibility/pdf/Apple-FY21-Supplier-List.pdf>

<sup>9</sup> *See* <https://www.apple.com/supplier-responsibility/pdf/Apple-Combat-Human-Trafficking-and-Slavery-in-Supply-Chain-2021.pdf>

<sup>10</sup> *See* <https://www.apple.com/supplier-responsibility/pdf/Apple-Conflict-Minerals-Report.pdf>

### III. The Proposal May Be Excluded under Rule 14a-8(i)(7) Because It Relates to the Company's Ordinary Business Operations.

The Company requests that the Staff concur in its view that the Company may exclude the Proposal from the Proxy Materials pursuant to Rule 14a-8(i)(7), as it relates to the Company's ordinary operations and seeks to micromanage the Company's operations.

#### A. Background on the Ordinary Business Standard.

Rule 14a-8(i)(7) permits a company to exclude a shareholder proposal from its proxy materials if the proposal "deals with a matter relating to the company's ordinary business operations." According to the Commission's release accompanying the 1998 amendments to Rule 14a-8, the term "ordinary business" "refers to matters that are not necessarily 'ordinary' in the common meaning of the word," but instead the term "is rooted in the corporate law concept providing management with flexibility in directing certain core matters involving the company's business and operations." Exchange Act Release No. 40018 (May 21, 1998) (the "**1998 Release**").

In the 1998 Release, the Commission noted that the underlying policy of the ordinary business exclusion is "to confine the resolution of ordinary business problems to management and the board of directors, since it is impracticable for shareholders to decide how to solve such problems at an annual shareholders meeting." As set out in the 1998 Release, there are two "central considerations" underlying the ordinary business exclusion. As relevant here, one of those considerations is whether a "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.* The 1998 Release further states that "[t]his consideration may come into play in a number of circumstances, such as where the proposal involves intricate detail, *or seeks to impose specific ... methods for implementing complex policies*" (emphasis added).

In Staff Legal Bulletin No. 14L, Part B.2 (November 3, 2021) ("**SLB 14L**"), the Staff reaffirmed the standards set forth in the 1998 Release. In addition, SLB 14L clarified that in considering arguments for exclusion based on micromanagement, "the staff will take a measured approach to evaluating companies' micromanagement arguments – recognizing that proposals seeking detail or seeking to promote timeframes or methods do not per se constitute micromanagement. Instead, [the Commission] will focus on the level of granularity sought in the proposal and whether and to what extent it inappropriately limits discretion of the board or management." The Staff stated, "[t]his approach is consistent with the Commission's views on the ordinary business exclusion, which is designed to preserve management's discretion on ordinary business matters but not prevent shareholders from providing high-level direction on large strategic corporate matters." *Id.*

#### B. The Proposal May Be Excluded Because It Seeks to Micromanage the Company.

The Staff has consistently concurred with the exclusion of proposals based on micromanagement where the proposal attempts to substitute shareholder judgment for that of management with respect to complex day-to-day business operations and prescribe a particular policy or method for addressing a complex matter. In this respect, the Proposal is comparable to one considered in *Seagate Technology plc* (avail. Aug. 2, 2021) ("**Seagate**"), where the Staff concurred with exclusion of a proposal that requested that the company terminate its operations in the People's Republic of China and remove those operations to another country. The company had noted that the factors that influence decisions about where to maintain or expand operations—such as proximity to key customers or suppliers, availability of applicable expertise and labor force, legal and regulatory environment, costs and other financial and non-considerations—are

the same types of decisions identified by the Commission as fundamental to management's ability to run the company on a day-to-day basis. While the proposal's supporting statement in Seagate raised concerns about numerous potential risks that could arise from the company's operations, the company argued that the proposal's focus on decisions about where to maintain or expand operations raise myriad complex business issues that management must evaluate and consider "with a focus on the overall effects such actions will have on the Company's business, shareholders and reputation." Based on those arguments, the Staff concurred that the proposal was properly excludable as it sought to micromanage the Company's operations.

Similarly, in *SeaWorld Entertainment, Inc.* (avail. Apr. 20, 2021), the proposal requested that the company's board conduct a study to determine how soon SeaWorld could feasibly eliminate animal-based programs, excluding legitimate animal rescue work. Just as the Proposal requests a "transition plan," the proposal in *SeaWorld Entertainment* requested that the company prepare "a report" addressing numerous complex operational aspects of the company's business, affording the company's management no flexibility or discretion in determining how to address exiting from certain aspects of the company's operations. The Staff concurred that the proposal thereby sought to micromanage the company's operations, and concurred that the proposal was properly excludable under Rule 14a-8(i)(7). *See also SeaWorld Entertainment, Inc.* (avail. Mar. 30, 2017, *recon. denied* Apr. 17, 2017) (concurring with the exclusion under Rule 14a-8(i)(7) of a proposal requesting the replacement of live orca exhibits with virtual reality experiences as "seek[ing] to micromanage the company by probing too deeply into matters of a complex nature"); and *SeaWorld Entertainment, Inc.* (avail. Apr. 23, 2018) (concurring with exclusion of a proposal requesting that the company "ban all captive breeding in SeaWorld parks" in response to concerns relating to certain legal proceedings involving the company and operating performance, noting that the proposal sought "to impose specific methods for implementing complex policies"). In addition, in *Tesla, Inc.* (avail. May 6, 2022), the proposal requested "that the company adopt a policy of immediate (within five business days) liquidation of newly-acquired cryptocurrency assets, and fully divest from existing cryptocurrency assets (including mining hardware) within one year," on the basis that cryptocurrency assets had a large carbon footprint and other environmental concerns. The company argued, and the Staff concurred, that the proposal micromanaged the company by imposing "an inappropriate limitation on the discretion of the board of directors and management of the [c]ompany in managing the financial condition of the [c]ompany." *See also Deere & Co.* (avail. Jan. 3, 2022) (concurring with the exclusion of a proposal requesting that the company's board publish "the written and oral content of any employee-training materials offered to any subset of the company's employees" where the supporting statement focused on the company's diversity, equity, and inclusion efforts and the company argued that the proposal "intend[ed] for shareholders to step into the shoes of management and oversee the 'reputational, legal and financial' risks to the [c]ompany" and thus did not "afford[] management sufficient flexibility or discretion to address and implement its policy regarding the complex matter of diversity, equality, and inclusion"); and *The Coca-Cola Company* (avail. Feb. 16, 2022) (concurring with the exclusion of a proposal because it micromanaged the company by requiring the company to submit any proposed political statement to shareholders at the next shareholder meeting for approval prior to issuing the subject statement publicly).

In addition, a proposal that seeks to micromanage a company's business operations is excludable under Rule 14a-8(i)(7) regardless of whether or not the proposal may raise issues with a broad societal impact. *See Staff Legal Bulletin No. 14E*, at note 8 citing the 1998 Release (Oct. 27, 2009) ("a proposal [that raises a significant policy issue] could be excluded under Rule 14a-8(i)(7), however, if it 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. *See Exchange Act Release No. 40018.*"). For example, this year the Staff concurred in the exclusion of proposals addressing how the companies interacted with their shareholders regarding significant social policy issues because they sought to micromanage aspects of the companies' business. *See Verizon Communications, Inc.* (avail. Mar.

17, 2022) (proposal requesting company to publish annually the written and oral content of diversity, inclusion, equity or related employee-training materials probed too deeply into matters of a complex nature); *The Coca-Cola Company* (avail. Feb. 16, 2022) (concurring with the exclusion of a proposal because it micromanaged the company by requiring the company to submit any proposed political statement to shareholders at the next shareholder meeting for approval prior to issuing the subject statement publicly). *See also, SeaWorld Entertainment, Inc.* (avail. Apr. 20, 2021) (concurring with exclusion of a proposal seeking a report on specific changes to the company’s business to address animal welfare concerns).

The Company has a large and global supply chain. Operational decisions regarding supply chain matters are extremely complex and are not topics that lend themselves to direct shareholder input. When making such decisions, the Company must consider and weigh a number of factors, including, but not limited to, monitoring compliance with the Company’s Commitment to Human Rights and other Company policies, cost considerations, quality issues, legal and regulatory compliance issues, and numerous other matters, all of which are informed by extensive research and industry and operational expertise. Shareholders are simply not well-positioned to make such determinations. Nonetheless, the Proposal seeks for shareholders to make complicated decisions as to a series of operational supply chain matters that are already addressed by the Company’s policies and procedures and without the benefit of all of the training and information that is available to management. As noted above, looking for the presence of forced labor is part of every assessment the Company conducts in 52 countries across its supply chain. In its fiscal year 2021, the Company conducted more than 1,100 assessments, and found no instances globally where anyone was forced to work in its supply chain.

Moreover, the Proposal goes on to seek “intricate detail” and “to impose specific methods for implementing complex policies.” SLB 14L (citing 1998 Release). In this case, the Proposal seeks the publication of a “phaseout transition plan” within one year, and seeks extensive granular detail pertaining to the Company’s supply chain plans and operations, including information regarding the “development of new supply chain sources in other regions”, “capital expenditures”, and “technology transfers.”

As with each of the precedents cited above as well as SLB 14L (where the Staff notes that it will focus on “whether and to what extent. . . [a proposal] inappropriately limits discretion of the board or management”), the Proposal inappropriately limits discretion of the board and management by prescribing a narrow, intricately prescribed approach to a complex and multifaceted issue. Specifically, the Proposal would dictate that the Company make specific decisions as to supply chain matters and use a specific tactic – publishing a phaseout transition plan – encompassing numerous complex aspects of the Company’s supply chain management, including selection of the Company’s supply chain sources, its supplier monitoring process, development of alternative suppliers and resource commitments, and publication of granular detail about its strategy. As such, the Proposal implicates all of the same considerations as identified with respect to the *Seagate* proposal and in SLB 14L. As such, the Proposal is overly granular in its approach, inappropriately limiting the discretion of the Board and management to pursue business operations that are compliant with U.S. law and policy and that involve numerous complex and competing considerations. As a result, the Proposal may be excluded under Rule 14a-8(i)(7).

\* \* \* \*

#### **IV. Conclusion.**

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

**LATHAM & WATKINS** LLP

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

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

Sincerely,



Jenna Cooper  
of LATHAM & WATKINS LLP

Enclosures

cc: SumOfUs  
Jeff Perk  
Sam Whittington, Apple Inc.



**Exhibit A**

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

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

## Transition Plan to Address Abuse of Uyghurs

Whereas: The proponent believes that the reputation and supply chain disruption risks to the company and its shareholders associated with reliance upon supply chains in the Uyghur region of China are severe;

Whereas: Recent press and reports regarding the Uyghur region provide evidence of widespread human rights abuses against the Uyghur population and other Turkic Muslim populations;

Whereas: The US State Department, European, UK, and Canadian Parliaments identify the abuses against the Uyghurs as a genocide, making any association with such abuses a critical violation of Apple's human rights policy and a significant reputational and valuation risk;<sup>2</sup>

Whereas: The U.S. State Department's "Updated Xinjiang Supply Chain Business Advisory"<sup>3</sup> warns:  
Given the severity and extent of [regional] abuses, businesses and individuals that do not exit supply chains, ventures, and/or investments connected to Xinjiang could run a high risk of violating U.S. law;

Whereas: Investigations show transfers of forced labor from the region associated with operations on the most recently disclosed list of Apple suppliers<sup>4</sup> and investment by Apple in energy partnerships closely allied to Uyghur forced labor;<sup>5</sup>

Whereas: Numerous reputable third party supplier auditors have withdrawn from the Uyghur region due to the interference of the Chinese government with effective auditing, thereby limiting Apple's ability to use such consultants to adequately evaluate labor conditions;<sup>6</sup>

Whereas: Geopolitical instability in supply chains may merit greater reliance on US domestic and less volatile labor markets;

RESOLVED: Shareholders request that, in light of human rights abuses in the region and the reputational and operational impacts posed to Apple, the Company publish within one year a phaseout transition plan, at reasonable expense and excluding proprietary information, to cease supply chain activities involving labor from the Uyghur region, including labor transfers of workers from the Uyghur region to other areas of China.

### Supporting Statement:

The transition plan should, in the discretion of the board and management, include:

- A reasonable timeframe for completing phaseout of sourcing from Uyghur related labor, such as three years;
- A plan to cease all supply chain sources from the Uyghur region;

A plan to cease all supply chain sources which receive labor transfers from the Uyghur region , including a sound strategy for assessing which suppliers are receiving such transfers;  
Any development of new supply chain sources in other regions, including US domestic sources, and discussion of any related challenges or opportunities;  
Discussion of necessary resource commitments including capital expenditures, technology transfers, and other supply chain development investments.

<sup>1</sup><https://www.nytimes.com/2022/09/01/world/asia/china-xinjiang-uyghurs.html>

<sup>2</sup><https://www.cnn.com/2021/04/22/world/uk-china-uyghur-genocidnoe-motion-gbr-intl/index.html>

<https://www.business-humanrights.org/en/latest-news/european-parliament-adopts-resolution-calling-for-eu-import-ban-on-products-made-with-forced-labour/>

<https://www.rfi.fr/en/france/20220120-french-parliament-adopts-resolution-denouncing-china-s-uyghur-genocide>

<https://www.newsweek.com/united-nations-special-report-contemporary-slavery-china-xinjiang-uyghur-tibet-1734334>

<sup>3</sup> <https://www.state.gov/xinjiang-supply-chain-business-advisory/>

<sup>4</sup><https://www.businessinsider.com/apple-china-suppliers-uyghur-muslims-forced-labor-report-2021-5>  
<https://www.techtransparencyproject.org/articles/cfa-files-complaint-over-forced-labor-apples-supply-chain>

<sup>5</sup><https://www.techtransparencyproject.org/articles/apples-uyghur-dilemma-grows>

<https://www.bloomberg.com/news/articles/2022-03-28/solar-energy-boom-could-worsen-forced-labor-in-china-group-says>

<sup>6</sup><https://www.wsj.com/articles/auditors-say-they-no-longer-will-inspect-labor-conditions-at-xinjiang-factories-11600697706>

## Copy of Related Correspondence

**From:** "Christina O'Connell" [REDACTED]  
**Subject:** SumOfUs resolution filing for Apple 2023  
**Date:** September 8, 2022 at 9:40:43 AM PDT  
**To:** [shareholderproposal@apple.com](mailto:shareholderproposal@apple.com)

Dear Corporate Secretary,

Attached please find our resolution "Transition Plan to Address Abuse of Uyghurs" and filing form for the 2023 proxy. I am available to answer any questions or help if needed.

Please confirm receipt of our filing via email to me.

Thank you for your help,  
Christina

--

Christina Siun O'Connell  
Senior Manager, Shareholders & Investments  
[SumofUs](#)  
(pronouns: She/Hers/Her)

Based US Central - 6hrs GMT

Cell: [REDACTED]



8 September 2022

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

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

Re: Shareholder proposal for 2023 Annual Shareholder Meeting

Dear Corporate Secretary,

SumOfUs is submitting the attached proposal (the “Proposal”) pursuant to the Securities and Exchange Commission’s Rule 14a-8 to be included in the proxy statement of [company name] (the “Company”) for its 2023 annual meeting of shareholders. We are the lead filer for the Proposal and may be joined by other shareholders as co-filers.

We have continuously beneficially owned, for at least one year as of the date hereof, at least \$25,000 worth of the Company’s common stock. Verification of this ownership will be sent under separate cover. SumOfUs intends to continue to hold such shares through the date of the Company’s 2023 annual meeting of shareholders.

We are available to meet with the Company in person or via teleconference on October 4, 5, 6 or 7 or October 11, 12 13, or 14 during Apple’s standard business hours. Any co-filers have authorized SumOfUs to conduct the initial engagement meeting, but may participate subject to their availability.

I can be contacted on [REDACTED] or by email at [REDACTED] to schedule a meeting. Please feel free to contact me with any questions.

Sincerely,

  
boxSIGN 42V2K974-1XSZZ784

Christina O’Connell  
Senior Manager, Shareholders and Investments

[REDACTED]  
[REDACTED]

## Transition Plan to Address Abuse of Uyghurs

Whereas: The proponent believes that the reputation and supply chain disruption risks to the company and its shareholders associated with reliance upon supply chains in the Uyghur region of China are severe;

Whereas: Recent press and reports regarding the Uyghur region provide evidence of widespread human rights abuses against the Uyghur population and other Turkic Muslim populations;

Whereas: The US State Department, European, UK, and Canadian Parliaments identify the abuses against the Uyghurs as a genocide, making any association with such abuses a critical violation of Apple's human rights policy and a significant reputational and valuation risk;<sup>2</sup>

Whereas: The U.S. State Department's "Updated Xinjiang Supply Chain Business Advisory"<sup>3</sup> warns:  
Given the severity and extent of [regional] abuses, businesses and individuals that do not exit supply chains, ventures, and/or investments connected to Xinjiang could run a high risk of violating U.S. law;

Whereas: Investigations show transfers of forced labor from the region associated with operations on the most recently disclosed list of Apple suppliers<sup>4</sup> and investment by Apple in energy partnerships closely allied to Uyghur forced labor;<sup>5</sup>

Whereas: Numerous reputable third party supplier auditors have withdrawn from the Uyghur region due to the interference of the Chinese government with effective auditing, thereby limiting Apple's ability to use such consultants to adequately evaluate labor conditions;<sup>6</sup>

Whereas: Geopolitical instability in supply chains may merit greater reliance on US domestic and less volatile labor markets;

RESOLVED: Shareholders request that, in light of human rights abuses in the region and the reputational and operational impacts posed to Apple, the Company publish within one year a phaseout transition plan, at reasonable expense and excluding proprietary information, to cease supply chain activities involving labor from the Uyghur region, including labor transfers of workers from the Uyghur region to other areas of China.

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A plan to cease all supply chain sources which receive labor transfers from the Uyghur region , including a sound strategy for assessing which suppliers are receiving such transfers;  
Any development of new supply chain sources in other regions, including US domestic sources, and discussion of any related challenges or opportunities;  
Discussion of necessary resource commitments including capital expenditures, technology transfers, and other supply chain development investments.

<sup>1</sup><https://www.nytimes.com/2022/09/01/world/asia/china-xinjiang-uyghurs.html>

<sup>2</sup><https://www.cnn.com/2021/04/22/world/uk-china-uyghur-genocidnoe-motion-gbr-intl/index.html>

<https://www.business-humanrights.org/en/latest-news/european-parliament-adopts-resolution-calling-for-eu-import-ban-on-products-made-with-forced-labour/>

<https://www.rfi.fr/en/france/20220120-french-parliament-adopts-resolution-denouncing-china-s-uyghur-genocide>

<https://www.newsweek.com/united-nations-special-report-contemporary-slavery-china-xinjiang-uyghur-tibet-1734334>

<sup>3</sup> <https://www.state.gov/xinjiang-supply-chain-business-advisory/>

<sup>4</sup><https://www.businessinsider.com/apple-china-suppliers-uyghur-muslims-forced-labor-report-2021-5>  
<https://www.techtransparencyproject.org/articles/cfa-files-complaint-over-forced-labor-apples-supply-chain>

<sup>5</sup><https://www.techtransparencyproject.org/articles/apples-uyghur-dilemma-grows>

<https://www.bloomberg.com/news/articles/2022-03-28/solar-energy-boom-could-worsen-forced-labor-in-china-group-says>

<sup>6</sup><https://www.wsj.com/articles/auditors-say-they-no-longer-will-inspect-labor-conditions-at-xinjiang-factories-11600697706>

**From:** "Christina O'Connell" [REDACTED]  
**Subject:** Co-filer for SumOfUs shareholder resolutions Apple 2023  
**Date:** September 8, 2022 at 6:36:46 PM PDT  
**To:** [shareholderproposal@apple.com](mailto:shareholderproposal@apple.com)

Hello,

I am forwarding the co-filing form for Jeff Perk who is filing in support of our resolution "Transition Plan to Address Abuse of Uyghurs" also attached.

We would appreciate confirmation of receipt of this form and our earlier submission of the lead filing paperwork.

Thank you so much,  
Christina

--

Christina Siun O'Connell  
Senior Manager, Shareholders & Investments  
[SumofUs](#)  
(pronouns: She/Hers/Her)

Based US Central - 6hrs GMT

Cell: [REDACTED]

September 8, 2022

**Via email to [shareholderproposal@apple.com](mailto:shareholderproposal@apple.com)**

Apple Inc.  
One Apple Park Way,  
MS: 927-4GC,  
Cupertino, CA 95014 USAAttn: Corporate Secretary

Re: Shareholder proposal for 2023 Annual Shareholder Meeting

Dear Corporate Secretary

I am submitting the attached proposal (the "Proposal") pursuant to the Securities and Exchange Commission's Rule 14a-8 to be included in the proxy statement of [company name] (the "Company") for its 2023 annual meeting of shareholders. I am co-filing the Proposal with lead filer SumOfUs. In its submission letter, SumOfUs will provide dates and times of ability to meet. I designate the lead filer to meet initially with the Company but may join the meeting subject to my availability.

I have continuously beneficially owned, for at least 3 years as of the date hereof, at least \$2,000 worth of the Company's common stock. Verification of this ownership will be sent under separate cover. I intend to continue to hold such shares through the date of the Company's 2023 annual meeting of shareholders.

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

Sincerely,  
Jeff Perk  
boxSIGN Jeff Perk

## Transition Plan to Address Abuse of Uyghurs

Whereas: The proponent believes that the reputation and supply chain disruption risks to the company and its shareholders associated with reliance upon supply chains in the Uyghur region of China are severe;

Whereas: Recent press and reports regarding the Uyghur region provide evidence of widespread human rights abuses against the Uyghur population and other Turkic Muslim populations;

Whereas: The US State Department, European, UK, and Canadian Parliaments identify the abuses against the Uyghurs as a genocide, making any association with such abuses a critical violation of Apple's human rights policy and a significant reputational and valuation risk;<sup>2</sup>

Whereas: The U.S. State Department's "Updated Xinjiang Supply Chain Business Advisory"<sup>3</sup> warns:  
Given the severity and extent of [regional] abuses, businesses and individuals that do not exit supply chains, ventures, and/or investments connected to Xinjiang could run a high risk of violating U.S. law;

Whereas: Investigations show transfers of forced labor from the region associated with operations on the most recently disclosed list of Apple suppliers<sup>4</sup> and investment by Apple in energy partnerships closely allied to Uyghur forced labor;<sup>5</sup>

Whereas: Numerous reputable third party supplier auditors have withdrawn from the Uyghur region due to the interference of the Chinese government with effective auditing, thereby limiting Apple's ability to use such consultants to adequately evaluate labor conditions;<sup>6</sup>

Whereas: Geopolitical instability in supply chains may merit greater reliance on US domestic and less volatile labor markets;

RESOLVED: Shareholders request that, in light of human rights abuses in the region and the reputational and operational impacts posed to Apple, the Company publish within one year a phaseout transition plan, at reasonable expense and excluding proprietary information, to cease supply chain activities involving labor from the Uyghur region, including labor transfers of workers from the Uyghur region to other areas of China.

### Supporting Statement:

The transition plan should, in the discretion of the board and management, include:

- A reasonable timeframe for completing phaseout of sourcing from Uyghur related labor, such as three years;
- A plan to cease all supply chain sources from the Uyghur region;

A plan to cease all supply chain sources which receive labor transfers from the Uyghur region , including a sound strategy for assessing which suppliers are receiving such transfers;  
Any development of new supply chain sources in other regions, including US domestic sources, and discussion of any related challenges or opportunities;  
Discussion of necessary resource commitments including capital expenditures, technology transfers, and other supply chain development investments.

<sup>1</sup><https://www.nytimes.com/2022/09/01/world/asia/china-xinjiang-uyghurs.html>

<sup>2</sup><https://www.cnn.com/2021/04/22/world/uk-china-uyghur-genocidnoe-motion-gbr-intl/index.html>

<https://www.business-humanrights.org/en/latest-news/european-parliament-adopts-resolution-calling-for-eu-import-ban-on-products-made-with-forced-labour/>

<https://www.rfi.fr/en/france/20220120-french-parliament-adopts-resolution-denouncing-china-s-uyghur-genocide>

<https://www.newsweek.com/united-nations-special-report-contemporary-slavery-china-xinjiang-uyghur-tibet-1734334>

<sup>3</sup> <https://www.state.gov/xinjiang-supply-chain-business-advisory/>

<sup>4</sup><https://www.businessinsider.com/apple-china-suppliers-uyghur-muslims-forced-labor-report-2021-5>  
<https://www.techtransparencyproject.org/articles/cfa-files-complaint-over-forced-labor-apples-supply-chain>

<sup>5</sup><https://www.techtransparencyproject.org/articles/apples-uyghur-dilemma-grows>

<https://www.bloomberg.com/news/articles/2022-03-28/solar-energy-boom-could-worsen-forced-labor-in-china-group-says>

<sup>6</sup><https://www.wsj.com/articles/auditors-say-they-no-longer-will-inspect-labor-conditions-at-xinjiang-factories-11600697706>

**Sanford Lewis & Associates**

PO Box 231  
Amherst, MA 01004-0231  
413 549-7333  
sanfordlewis@strategiccounsel.net

November 21, 2022  
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  
Uyghur Labor on Behalf of SumofUs

Ladies and Gentlemen:

SumofUs (the “Proponent”) is the 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 24, 2022 ("Company Letter") sent to the Securities and Exchange Commission by Jenna Cooper of Latham & Watkins. In that letter, the Company contends that the Proposal may be excluded from the Company’s 2023 proxy statement. We have redacted personal information consistent with the Staff’s guidance. A copy of this letter is being emailed concurrently to Attorney Cooper.

**SUMMARY**

The Proposal requests that the Company, in light of human rights abuses in the Xinjiang Uyghur Autonomous Region (“XUAR”), and the related reputational and operational risks posed to Apple, publish a phaseout transition plan to cease supply chain activities involving labor from XUAR, including labor transfers of workers from the region to other areas of China.

The Company has extraordinary dependence on a supply chain in China, where potential forced labor exposures make the company vulnerable to supply chain disruption as problem facilities are identified. Such dependence presents distinct financial, legal and reputational risks to the Company.

Apple has filed a no action request asserting that this proposal micromanages by attempting to limit the discretion of board and management, prescribing a narrow, intricately prescribed approach to a complex and multifaceted issue. In response, we note that the proposal is not a granular request, but instead provides broad directional and strategic input on a consequential human rights challenge that clearly transcends ordinary business.

We first note in response that the Company did not claim that the proposal is substantially implemented, though it did claim that it currently has “conducted due diligence” and “found no evidence that any of its suppliers were located in [XUAR] or that any workers transferred from the region were working on Apple production lines.”

The reason the Company could not assert substantial implementation is that it knows that such due

diligence claims are necessarily contradicted by continued evidence of pervasive Uyghur labor in China's supply chains and Chinese government interference with efforts to detect it. As an example, the latest supplier list from the Company published in 2022 listed five suppliers for whom forced XUAR labor transfers were identified in a 2021 investigation. Therefore, the Proposal could not be asserted to be implemented.

In addition, despite the Company's assertion, the Proposal does not micromanage. Instead, it seeks to provide investors' strategic input on what is arguably the single largest human rights challenge facing the Company. The Proponent and other observers recognize that current Apple reliance on China for so much of its supply chain and profits has clearly led to substantial compromises in the Company's values. It is already well demonstrated that Apple has compromised on human rights protective values around data privacy and freedom of association and expression due to its transactions with the Chinese government. Moreover, Apple has repeatedly maintained that it is engaging in due diligence on these issues, after which various partners and suppliers have been identified as utilizing forced labor.

With evidence amassed regarding the human rights fallout from the relationship between Apple and China, the Proposal is intended to provide shareholders with a vehicle to express their view on the related investment and human rights risks, by urging the board and management to engage in a redirected business strategy that sets a timeline for fully exiting problematic supply chains.

The Proposal is not granular in nature – it does not demand action by a prescribed timeframe, but only the issuance of a transition plan, the details of which are at the board's discretion. While the Proposal suggests an approach to the phaseout plan, which is helpful to avoid Rule 14a-8(i)(3) vagueness concerns that might otherwise be raised for such a plan, it does not dictate the contents of the plan.

## **THE PROPOSAL**

### **Transition Plan to Address Abuse of Uyghurs**

Whereas: The proponent believes that the reputation and supply chain disruption risks to the company and its shareholders associated with reliance upon supply chains in the Uyghur region of China are severe;

Whereas: Recent press and reports regarding the Uyghur region provide evidence of widespread human rights abuses against the Uyghur population and other Turkic Muslim populations;

Whereas: The US State Department, European, UK, and Canadian Parliaments identify the abuses against the Uyghurs as a genocide, making any association with such abuses a critical violation of Apple's human rights policy and a significant reputational and valuation risk;<sup>2</sup>

Whereas: The U.S. State Department's "Updated Xinjiang Supply Chain Business Advisory"<sup>3</sup> warns:

Given the severity and extent of [regional] abuses, businesses and individuals that do not exit supply chains, ventures, and/or investments connected to Xinjiang could run a high risk of violating U.S. law;

Whereas: Investigations show transfers of forced labor from the region associated with operations on the most recently disclosed list of Apple suppliers<sup>4</sup> and investment by Apple in energy partnerships

closely allied to Uyghur forced labor;<sup>5</sup>

Whereas: Numerous reputable third party supplier auditors have withdrawn from the Uyghur region due to the interference of the Chinese government with effective auditing, thereby limiting Apple's ability to use such consultants to adequately evaluate labor conditions;<sup>6</sup>

Whereas: Geopolitical instability in supply chains may merit greater reliance on US domestic and less volatile labor markets;

**RESOLVED:** Shareholders request that, in light of human rights abuses in the region and the reputational and operational impacts posed to Apple, the Company publish within one year a phaseout transition plan, at reasonable expense and excluding proprietary information, to cease supply chain activities involving labor from the Uyghur region, including labor transfers of workers from the Uyghur region to other areas of China.

**Supporting Statement:**

The transition plan should, in the discretion of the board and management, include:

A reasonable timeframe for completing phaseout of sourcing from Uyghur related labor, such as three years;

A plan to cease all supply chain sources from the Uyghur region;

A plan to cease all supply chain sources which receive labor transfers from the Uyghur region, including a sound strategy for assessing which suppliers are receiving such transfers;

Any development of new supply chain sources in other regions, including US domestic sources, and discussion of any related challenges or opportunities;

Discussion of necessary resource commitments including capital expenditures, technology transfers, and other supply chain development investments.

<sup>1</sup> <https://www.nytimes.com/2022/09/01/world/asia/china-xinjiang-uyghurs.html>

<sup>2</sup> <https://www.cnn.com/2021/04/22/world/uk-china-uyghur-genocidnoe-motion-gbr-intl/index.html>  
<https://www.business-humanrights.org/en/latest-news/european-parliament-adopts-resolution-calling-for-eu-import-ban-on-products-made-with-forced-labour/>  
<https://www.rfi.fr/en/france/20220120-french-parliament-adopts-resolution-denouncing-china-s-uyghur-genocide> <https://www.newsweek.com/united-nations-special-report-contemporary-slavery-china-xinjiang-uyghur-tibet-1734334>

<sup>3</sup> <https://www.state.gov/xinjiang-supply-chain-business-advisory/>

<sup>4</sup> <https://www.businessinsider.com/apple-china-suppliers-uyghur-muslims-forced-labor-report-2021-5>  
<https://www.techtransparencyproject.org/articles/cfa-files-complaint-over-forced-labor-apples-supply-chain>

<sup>5</sup> <https://www.techtransparencyproject.org/articles/apples-uyghur-dilemma-grows>  
<https://www.bloomberg.com/news/articles/2022-03-28/solar-energy-boom-could-worsen-forced-labor-in-china-group-says>

<sup>6</sup> <https://www.wsj.com/articles/auditors-say-they-no-longer-will-inspect-labor-conditions-at-xinjiang-factories-11600697706>



## BACKGROUND

Apple products are fabricated from thousands of components sourced from suppliers worldwide.<sup>1</sup> The Company is primarily reliant on manufacturers based in China, where it is reported that more than 90% of Apple products are produced,<sup>2</sup> including roughly 98% of all iPhones.<sup>3</sup> Apple maintains such a China-dependent supply chain despite warnings from experts like the U.S. Department of State that state-sponsored forced labor stemming from XUAR may implicate companies doing business in China, thereby posing heightened material risks to the Company.<sup>4</sup>

Because an estimated 100,000 Uyghurs and other ethnic minorities in China may be working under forced labor conditions,<sup>5</sup> a company with as much supply-chain exposure in China as Apple necessarily is exposed to forced labor risks from its suppliers. Since the treatment of the ethnic minorities in the Xinjiang province has been referred to by the U.S. government as genocide, these human rights supply-chain risks should be of very high concern to a company such as Apple that seeks to maintain a “clean” image as well as the reputation and customer goodwill associated with that branding.

What is worse, because the Company currently has such a high supply-chain dependency in China, many observers believe that Apple is readily manipulated by and compliant to the wishes of the Chinese government, even when these actions compromise the Company’s values. To that end, a journalist with deep knowledge of Apple’s interactions in China noted in a recent article in the Financial Times that:<sup>6</sup>

“Apple certainly acquiesces to certain Beijing demands, but there’s just no question about this... I think the cost of doing business with China is having to compromise on certain values. There’s just really no argument about that.”

### **The Company’s due diligence within its compromised posture in China does not curtail human rights concerns**

The Company Letter takes the position that issues of forced labor in the supply chain are matters that

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<sup>1</sup> Supplier Responsibility, 2020 Progress Report, Apple (2020), [https://www.apple.com/supplier-responsibility/pdf/Apple\\_SR\\_2020\\_Progress\\_Report.pdf](https://www.apple.com/supplier-responsibility/pdf/Apple_SR_2020_Progress_Report.pdf).

<sup>2</sup> See Tripp Mickle, *Apple Could Be Short of iPhones Because of Factory Disruptions in China*, N.Y. Times (Nov. 6, 2022), <https://www.nytimes.com/2022/11/06/technology/apple-iphones-shortage.html>; Jacob Carpenter, *Apple wants to make more iPhones in India. Why it’s far easier said than done*, Fortune (Sept. 30, 2022), <https://fortune.com/2022/09/30/apple-china-iphone-india-vietnam-production-assembly/>.

<sup>3</sup> See Bryce Baschuk et al., *Apple’s Tech Supply Chain Shows Difficulty of Dumping China*, Bloomberg (Sept. 29, 2022), <https://www.bloomberg.com/news/articles/2022-09-30/apple-s-tech-supply-chain-shows-difficulty-of-dumping-china>.

<sup>4</sup> Xinjiang Supply Chain Business Advisory, U.S. Dept. of State (July 31, 2021), <https://www.state.gov/wp-content/uploads/2021/07/Xinjiang-Business-Advisory-13July2021-1.pdf>.

<sup>5</sup> *Against Their Will: The Situation in Xinjiang*, Bureau of International Labor Affairs, U.S. Dept. of Labor (last visited Nov. 8, 2022), <https://www.dol.gov/agencies/ilab/against-their-will-the-situation-in-xinjiang>.

<sup>6</sup> *Apple’s Bargain with Beijing*, Financial Times, November 14, 2022 <https://www.ft.com/content/688a3745-994b-4168-b6d3-cc735120d8b8>

are best and exclusively managed by the board and management because they are complex:

Operational decisions regarding supply chain matters are extremely complex and are not topics that lend themselves to direct shareholder input. When making such decisions, the Company must consider and weigh a number of factors, including, but not limited to, monitoring compliance with the Company's Commitment to Human Rights and other Company policies, cost considerations, quality issues, legal and regulatory compliance issues, and numerous other matters, all of which are informed by extensive research and industry and operational expertise. Shareholders are simply not well-positioned to make such determinations.

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As noted above, looking for the presence of forced labor is part of every assessment the Company conducts in 52 countries across its supply chain. In its fiscal year 2021, the Company conducted more than 1,100 assessments, and found no instances globally where anyone was forced to work in its supply chain.

In contrast to these assertions, there is abundant evidence for investors to conclude that the Company's due diligence may be inadequate to ensure effective management of the risks associated with Uyghur labor in the supply chain. We will discuss further in the passages that follow substantial concerns that undergird the need for the current proposal:

- “Due diligence” in China appears to be severely weakened by the authoritarian environment in which auditors are monitored and hampered by the Chinese government.
- Despite prior claims of due diligence by the Company, from 2019 through 2021<sup>7</sup> journalists investigating the Company found numerous instances of firms in the Apple supply chain that were alleged to utilize forced labor.
- The Chinese government has been exporting forced laborers from the Xinjiang region to other locations. **Even the Company's disclosure in the no action request does not assert that they currently have confidence that the supply chain outside of XUAR, beyond the Company's own production lines, does not have forced labor.**

As such, these issues represent a major strategic concern for the Company and its investors.

The Company has thus far sidestepped transparency with respect to human rights stemming from the Uyghur region. In particular, the Company has repeatedly brushed off forced labor allegations, claiming to find no forced labor stemming from the region. In doing so, the Company apparently relies heavily on supply chain audits, a process that has generally been flagged by multiple institutions like the U.S. Department of State as potentially inadequate or insufficient to conclusively deny the presence of forced

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<sup>7</sup> In their annual Supplier Responsibility Progress Reports that extend beyond 2018, the Company has continuously asserted that they conduct supply chain forced labor assessments and have implemented other due diligence standards to detect human rights abuses (see, e.g., 2019 Progress Report ([https://www.apple.com/supplier-responsibility/pdf/Apple\\_SR\\_2019\\_Progress\\_Report.pdf](https://www.apple.com/supplier-responsibility/pdf/Apple_SR_2019_Progress_Report.pdf)); 2020 Report ([https://www.apple.com/uk/supplier-responsibility/pdf/Apple\\_SR\\_2020\\_Progress\\_Report\\_EN.pdf](https://www.apple.com/uk/supplier-responsibility/pdf/Apple_SR_2020_Progress_Report_EN.pdf)); 2021 Report ([https://www.apple.com/supplier-responsibility/pdf/Apple\\_SR\\_2021\\_Progress\\_Report.pdf](https://www.apple.com/supplier-responsibility/pdf/Apple_SR_2021_Progress_Report.pdf))).

labor in a company's supply chain. Moreover, as detailed below, the Company has failed to directly rebut credible evidence of allegations implicating Apple's supply chain in the use of Uyghur forced laborers. In view of these issues, there is a strong basis for shareholders to consider whether the Company should adopt a phaseout transition plan to cease supply chain activities involving labor from the Uyghur region, including labor transfers of workers from the Uyghur region to other areas of China, as a method to mitigate reputational, legal and supply chain disruption risks to the Company. The Proposal, asking the Company to make a firm commitment to exit from segments of its supply chain with severe human rights exposures, is an opportunity for shareholders to encourage the board and management to make a fundamental strategic choice, and also to give the board and management additional backbone in ongoing interactions with the Chinese government.

As quoted above, an article in the Financial Times recently referred to the manner in which Apple must compromise its values in order to do business with China. Although the article highlighted issues of data privacy and censorship, other information coming from the region demonstrates the cause for concern about Apple leadership's cooperation with the Chinese government in order to sustain these operations in China.

As a result of these and other circumstances, it is reasonable for Apple investors to conclude that the current close relationship with China is fraught, even dysfunctional, and that the Company must make clearer commitments to ending the use of forced labor. The Proposal can support the Company in developing much firmer boundaries on this issue by establishing a phaseout plan. The Proponent believes that it is critical for shareholders to signal that the proposed change is needed to ensure the Company's long-term sustainability.

### **Uyghur Forced Labor Prevention Act**

The Company Letter asserts that as part of its due diligence efforts pursuant to the recently-enacted Uyghur Forced Labor Prevention Act ("UFLPA"), "no evidence that any of its suppliers were located in [XUAR] or that any workers transferred from the region were working on Apple production lines."

As background, UFLPA took effect on June 21, 2022.<sup>8</sup> It requires companies to avoid importing goods to the U.S. that were made with the forced labor of Uyghurs and other persons or groups in XUAR. The law empowers the U.S. Customs and Border Protection Agency to withhold release of items produced in whole or in part in the XUAR, or produced by companies included on a government-generated UFLPA entity list, creating a presumption that the goods were produced by use of forced labor. Thus, given the volume of its products produced in China, the Company faces significant risks as a result of continued business in the region.

Also, upstream supply chain tiers based *anywhere* in China may be exposed to forced labor exported from the region, and though these exposures may not be the primary concern of compliance monitoring under the UFLPA law, they remain a significant reputational and operational risk for the Company.

Most importantly, the Company's assessments have frequently been contradicted by investigations of independent journalists and research organizations identifying forced labor in the supply chain in prior years. In fact, DHS recognizes that audits, including third-party audits, are not alone sufficient to

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<sup>8</sup> *Uyghur Forced Labor Prevention Act*, U.S. Customs and Border Protection Agency (last modified Oct. 25, 2022), <https://www.cbp.gov/trade/forced-labor/UFLPA>.

demonstrate due diligence and may not be a credible source of information for indicators of forced labor.<sup>9</sup>

The Apple Supplier Code of Conduct declares that “[s]upplier[s] shall not traffic persons or use any form of slave, forced, bonded, indentured, or prison labor.”<sup>10</sup> The Company states in its 2022 Annual Progress Report, and similarly emphasizes in its no-action request, that, to prevent forced labor in its supply chain, it “hold[s] suppliers accountable” by “regularly conduct[ing] independent, third-party assessments, including surprise assessments, of [its] suppliers.”<sup>11</sup> In this regard, the Company stresses that, in fiscal year 2021, it did not find in its 1,182 assessments (worldwide) any instances where individuals were forced to work in its supply chain. Contrary to the recommendations from DHS, however, the Company does not publicly report any relevant and non-privileged details on these assessments, such as metrics used for evaluating the presence of forced labor, geographic areas covered by the assessments, the level of supply chain tiers inspected by auditors and whether the assessments acknowledge or evaluate the risk of forced labor in certain suppliers. As such, shareholders are unable to assess the strength of these forced labor inspections, especially in view of uncontradicted allegations that firms across the Company’s supply chain in previous years have engaged in forced labor linked to XUAR.

*Credible evidence of claims of XUAR forced labor in Apple’s multi-tiered supply chain contradict the Company’s assertion that it does not benefit from XUAR-based suppliers or workers.*

Aside from the issues concerning the Company’s supply chain auditing process, recent independent investigations have directly implicated Apple’s suppliers with forced labor in China, particularly those using slave labor of Uyghur and other Muslim ethnic minorities. During the Company’s fiscal year 2021, the co-chairs of the bipartisan and bicameral U.S. Congressional-Executive Commission on China stated that “[d]espite persistent assurances from Apple that their supply chains were free of forced labor,” they had “mounting evidence . . . that it is tainted.”<sup>12</sup> The Commission was responding to investigations conducted by the Tech Transparency Project (“TTP”), a nonprofit and nonpartisan technology watchdog, *The Information*, an American technology industry-focused publication, and the *New York Times*.

Apple reported that it did not find forced labor in its supply chain during fiscal years 2019 and 2020.<sup>13</sup> But investigators with *The Information*, in partnership with the Tech Transparency Project, had found that, at least from 2016 through 2021, “seven Apple suppliers had ties to suspected forced labor of

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<sup>9</sup> *Strategy to Prevent the Importation of Goods Mined, Produced, or Manufactured with Forced Labor in the People’s Republic of China*, Report to Congress, Dept. of Homeland Security at 44 (June 17, 2022), [https://www.dhs.gov/sites/default/files/2022-06/22\\_0617\\_fletf\\_uflpa-strategy.pdf](https://www.dhs.gov/sites/default/files/2022-06/22_0617_fletf_uflpa-strategy.pdf).

<sup>10</sup> *Apple Supplier Code of Conduct*, Apple (Jan. 2022), <https://www.apple.com/supplier-responsibility/pdf/Apple-Supplier-Code-of-Conduct-and-Supplier-Responsibility-Standards.pdf>.

<sup>11</sup> *2022 Annual Progress Report*, Apple at 45 (2022), [https://www.apple.com/supplier-responsibility/pdf/Apple\\_SR\\_2022\\_Progress\\_Report.pdf](https://www.apple.com/supplier-responsibility/pdf/Apple_SR_2022_Progress_Report.pdf).

<sup>12</sup> *Xinjiang: Chairs Issue Statement about Forced Labor in Apple’s Supply Chain*, U.S. Congressional-Executive Commission on China (June 8, 2021), <https://www.cecc.gov/media-center/press-releases/chairs-issue-statement-about-forced-labor-in-apple%E2%80%99s-supply-chain-in>.

<sup>13</sup> *See Supplier Responsibility 2020 Annual Report*, Apple (2020), [https://www.apple.com/uk/supplier-responsibility/pdf/Apple\\_SR\\_2020\\_Progress\\_Report\\_EN.pdf](https://www.apple.com/uk/supplier-responsibility/pdf/Apple_SR_2020_Progress_Report_EN.pdf); *Supplier Responsibility 2019 Annual Report*, Apple (2019), [https://www.apple.com/supplier-responsibility/pdf/Apple\\_SR\\_2019\\_Progress\\_Report.pdf](https://www.apple.com/supplier-responsibility/pdf/Apple_SR_2019_Progress_Report.pdf).

Uyghurs from the Xinjiang region.”<sup>14</sup> Five of these suppliers – Luxshare Precision Industry, Lens Tech, Shenzhen Deren Electronic Co., CN Innovations, and Suzhou Dongshan Precision Manufacturing Co. – were also listed in Apple’s latest supplier list for fiscal year 2021, which was published in October 2022. In addition, ensuing research by TTP further identified that Goldwind, a wind turbine manufacturer based in Xinjiang with which Apple initiated a partnership as part of its environmental efforts, was similarly implicated in XUAR forced labor. The investigation revealed “local government media posts indicating that one Goldwind factory in Toksun County, Xinjiang, was in advanced talks in 2016 to receive ‘labor export’ from Hotan Prefecture, another area of Xinjiang with a Uyghur-majority population over 500 miles away.”<sup>15</sup>

### Transfer of Uyghur Forced Labor

Uyghur forced labor abuses are not solely concentrated in XUAR. China has indeed been accused of transferring Uyghur Muslims out of XUAR to work in other parts of the Country, which complicates assessments by U.S. companies operating in China seeking to ensure that they are not benefiting, whether directly or indirectly, from forced labor. According to a report prepared by the Australian Strategic Policy Institute (“ASPI”), an estimated 32,000 people were transferred out of the region in 2019.<sup>16</sup> The ASPI report specifically details how, in 2017, the Chinese government transferred over 1,000 Uyghurs to work at a factory owned by O-Film, a company that manufactured “selfie cameras” for certain Apple iPhone models. The Associated Press (“AP”) thereafter reported on its own investigation of O-Film, which included interviews with residents near the factory who alleged that while the Uyghur workers were paid similarly to other workers, they were prohibited from leaving the facility more than twice per month, were forcefully transferred to the area by the government, and were forbidden from practicing their faith.<sup>17</sup> The AP confirmed that O-Film was a listed Apple supplier and that the investigated factory had the same address as one listed by Apple. In response, Apple failed to clarify these allegations but stated that “its code of conduct requires suppliers to ‘provide channels that encourage employees to voice concerns’” and that “it interviews the employees of suppliers during annual assessments in their local language without their managers present, and had done 44,000 interviews in 2018.” Such response mirrors the one set forth by the Company in the subject no-action request, heightening shareholder concerns that these blanket assertions are insufficient to quash claims of forced labor in Apple’s supply chain.

### Upstream Suppliers: Greater Exposure

Uyghur forced labor risks, however, extend beyond direct suppliers. A multi-tiered product manufacturing process generally consists of raw material extraction and supply (also known as “Tier 3”), which is then processed into other provisions and components (“Tier 2”) that are ultimately assembled into a finished product (“Tier 1”). It has been found that the risk of human rights violations increases further up the supply chain, with Tier 2 audits identifying 18% more issues than Tier 1, and Tier 3

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<sup>14</sup> *Apple’s Uyghur Dilemma Grows*, Tech Transparency Project (June 8, 2021), <https://www.techtransparencyproject.org/articles/apples-uyghur-dilemma-grows>; Wayne Ma, *Seven Suppliers Accused of Using Forced Labor from Xinjiang*, The Information (May 10, 2021), <https://www.theinformation.com/articles/seven-apple-suppliers-accused-of-using-forced-labor-from-xinjiang>.

<sup>15</sup> *Id.*

<sup>16</sup> See Vicky Xiuzhong Xu et al., *Uyghurs for sale*, Australian Strategic Policy Institute (Mar. 1, 2020), <https://www.aspi.org.au/report/uyghurs-sale>.

<sup>17</sup> Dake Kang & Yanan Wang, *Gadgets for tech giants made with coerced Uighur labor*, Associated Press (March 5, 2020), <https://apnews.com/article/ap-top-news-international-news-apple-inc-weekend-reads-china-clamps-down-3f9a92b8dfd3cae379b57622dd801dd5>.

“showing the highest number of critical issues.”<sup>18</sup> Because Apple’s supply chain vendors are globalized and largely outsourced to firms based in China, the complexity of these networks is heightened, thereby decreasing risk visibility and making forced labor detection more difficult.<sup>19</sup>

Independent evidence nonetheless shows that Apple’s Tier 2 vendors, and upstream extensions like suppliers engaged in the production of raw materials or other components of the final products, may use forced labor in or from XUAR. For instance, the ASPI report cites a 2018 speech by a Chinese government official announcing the transfer of workers from XUAR to a factory operated by Hubei Yihong Precision Manufacturing Co. Ltd., a subsidiary of Dongguan Yidong Electronic Co. Ltd claiming Apple as an end customer. The report further alleges that Hubei Yihong asserted in its website having also supplied GoerTek, a manufacturer of Apple’s AirPods. The ASPI report additionally points to a 2018 Xinjiang Economic News article on Uyghur students being transferred to a subsidiary of Highbroad Advanced Material, a manufacturer of electronic screen components that supplies BOE Technology Group, which is listed in the 2019 Apple Supplier List.<sup>20</sup> Although Apple has reported on its commitment to responsible source and general due diligence efforts concerning conflict minerals,<sup>21</sup> it has not made any disclosures or published risk assessments regarding other upstream supply chain actors that may be engaged in Uyghur forced labor. Indeed, the Company has not made any public disclosures as to whether its human rights auditing process considers upstream supply chain tiers aside from direct suppliers and manufactures. Overall, the Company’s failure to provide multi-tier audit transparency coupled with mounting evidence of XUAR forced labor suggest that shareholders’ request for a phaseout plan could mitigate concrete supply chain risks in the region.

The Company’s record of due diligence, in light of the above allegations, has not seemed rigorous enough to prevent problems, and given the current known impediments to effective evaluation of operations under the Chinese government, as discussed elsewhere in this letter, this should continue to be a concern for investors.

**Auditing processes are unreliable in China for detection of forced labor in supply chains.**

Although independent, third-party audits are the “key element” in Apple’s and other companies’ efforts seeking to ensure that supply chains are free from inputs sourced under unethical or illegal circumstances,<sup>22</sup> some companies and auditing firms have recently stopped conducting audits to detect forced labor in XUAR.<sup>23</sup> While Chinese government interference within XUAR catalyzed these

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<sup>18</sup> Carmel Giblin, *What is Happening Beyond the First Tier of Your Supply Chain?*, BSR (Nov. 15, 2013), <https://www.bsr.org/en/our-insights/blog-view/what-is-happening-beyond-the-first-tier-of-your-supply-chain>.

<sup>19</sup> See Zoë Fortune et al., *Piloting a method for the aggregation and visualisation of audit data to enhance forced labour risk identification*, *Journal of Modern Slavery*, Volume 6, Issue 1 (2021).

<sup>20</sup> See *Supplier List*, Apple Supplier Responsibility 2019 (2019), <https://www.apple.com/th/supplier-responsibility/pdf/Apple-Supplier-List.pdf>.

<sup>21</sup> Form SD, Apple Inc. (Feb. 9, 2022), <https://www.apple.com/supplier-responsibility/pdf/Apple-Conflict-Minerals-Report.pdf>.

<sup>22</sup> Cullen S. Hendrix, *Third-party auditing won’t solve US solar industry’s Xinjiang problem*, Peterson Institute for International Economics (June 25, 2021), <https://www.piie.com/blogs/realtime-economic-issues-watch/third-party-auditing-wont-solve-us-solar-industrys-xinjiang>.

<sup>23</sup> See Felix Thompson, *Warnings sounded over Xinjiang-made aluminium in global supply chains*, *Global Trade Review* (Apr. 13, 2022), <https://www.gtreview.com/news/americas/warnings-sounded-xinjiang-made-aluminium-global-supply-chains/>; South China Morning Post, *Xinjiang ‘forced labour’ law leaves Chinese companies in a bind, with doubts over supply chain audits*, *Yahoo Finance* (June 24, 2022), <https://finance.yahoo.com/news/xinjiang-forced-labour-law-leaves-093000800.html>; Eva Xiao, *Auditors to Stop Inspecting Factories in China’s Xinjiang*

withdrawals, the atmosphere for auditing supply chains outside of the XUAR region can also reasonably be expected to suffer from the same kinds of interference by the Chinese government.

Social compliance audits usually consist of periodic work site inspections that require checking documents produced by workplace managers, making direct observations of workplace conditions, and interviewing laborers. However, there are limitations in detecting forced labor issues stemming from XUAR given strict government controls, a lack of state and corporate transparency, the threat of detention of auditors and workers, and a general police-state atmosphere.<sup>24</sup> Indeed, in June 2021, a spokesperson for the U.S. Department of State stated that “[they] are deeply concerned by reports that supply-chain auditors have been detained, threatened, harassed and subjected to constant surveillance while conducting their vital work in China.”<sup>25</sup>

In September 2021, five large inspection companies and smaller specialized certification operations that had previously conducted audits in XUAR told *The Wall Street Journal* they would not provide labor audits or inspection services in the region because of “police-state” conditions.<sup>26</sup> In fact, the Chinese government shut down in August 2021 a China-based partner of U.S. nonprofit auditor Verite Inc., which Apple had previously hired to consult on labor issues at Chinese factories.<sup>27</sup> Because of the inability to carry out these third-party audits, in June 2022, the European Union Chamber of Commerce in China stated that some European companies had withdrawn from XUAR altogether, expecting that more would follow unless the audit issue was addressed.<sup>28</sup>

This level of intervention by the Chinese government is known to be commonplace. For example, *The Washington Post* has noted that “[d]iplomats and foreign journalists who have visited the region almost universally report being repeatedly detained by authorities and blocked from approaching areas where camps are located.”<sup>29</sup> As a result of these pressures from Chinese authorities, **the U.S. Department of State has warned that organizations undertaking supply chain audits may not be producing “credible reports.”**

These events stress the powerful limitations that human rights and labor auditors face in China, underscoring the reliability of any such assessments prepared for Apple with respect to Uyghur forced

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*Despite Forced-Labor Concerns*, The Wall Street Journal (Sept. 21, 2021), <https://www.wsj.com/articles/auditors-say-they-no-longer-will-inspect-labor-conditions-at-xinjiang-factories-11600697706>.

<sup>24</sup> Xinjiang Supply Chain Business Advisory, U.S. Dept. of State (July 31, 2021), <https://www.state.gov/wp-content/uploads/2021/07/Xinjiang-Business-Advisory-13July2021-1.pdf>.

<sup>25</sup> Bethany Allen-Ebrahimian, *State Dept. fears Chinese threats to labor auditors*, Axios (June 23, 2021), <https://www.axios.com/2021/06/24/state-dept-chinese-threats-labor>.

<sup>26</sup> Eva Xiao, *Auditors to Stop Inspecting Factories in China's Xinjiang Despite Forced-Labor Concerns*, The Wall Street Journal (Sept. 21, 2021), <https://www.wsj.com/articles/auditors-say-they-no-longer-will-inspect-labor-conditions-at-xinjiang-factories-11600697706>.

<sup>27</sup> See Lingling Wei et al., *China Closes U.S. Auditor as Tensions Mount Over Forced Labor Allegations*, The Wall Street Journal (Aug. 19, 2021), <https://www.wsj.com/articles/china-closes-u-s-auditor-as-tensions-mount-over-forced-labor-allegations-11629390253>.

<sup>28</sup> South China Morning Post, *Xinjiang 'forced labour' law leaves Chinese companies in a bind, with doubts over supply chain audits*, Yahoo Finance (June 24, 2022), <https://finance.yahoo.com/news/xinjiang-forced-labour-law-leaves-093000800.html>.

<sup>29</sup> Reed Albergotti, *Apple is lobbying against a bill aimed at stopping forced labor in China*, The Washington Post (Nov. 20, 2020), <https://www.washingtonpost.com/technology/2020/11/20/apple-uighur/>.

labor. Accordingly, the proponent believe there is reason to believe that Apple's due diligence as implemented by the private sector in the auditing process may be inadequate and insufficient to conclusively deny the presence of XUAR forced labor in its supply chain either within the region or in other areas where transfers of labor may be involved.

## ANALYSIS

### THE PROPOSAL DOES NOT MICROMANAGE THE COMPANY.

The Company asserts that the Proposal is excludable as attempting to micromanage the Company's operations:

...the Proposal inappropriately limits discretion of the board and management by prescribing a narrow, intricately prescribed approach to a complex and multifaceted issue. Specifically, the Proposal would dictate that the Company make specific decisions as to supply chain matters and use a specific tactic – publishing a phaseout transition plan – encompassing numerous complex aspects of the Company's supply chain management, including selection of the Company's supply chain sources, its supplier monitoring process, development of alternative suppliers and resource commitments, and publication of granular detail about its strategy... As such, the Proposal is overly granular in its approach, inappropriately limiting the discretion of the Board and management to pursue business operations that are compliant with U.S. law and policy and that involve numerous complex and competing considerations...

However, when examining the Proposal against the Commission and Staff's guidance on shareholder proposals, including ordinary business and micromanagement, it is evident that the proposal addresses a transcendent policy issue and does not micromanage or otherwise inappropriately address the Company's ordinary business.

#### **Ordinary Business and Micromanagement According to the Commission**

In 1998, the Commission issued a rulemaking release ("1998 Release") updating and interpreting the ordinary business rule, by both reiterating and clarifying past precedents. That release was the last time that the Commission discussed and explained at length the meaning of the ordinary business exclusion. The Commission summarized *two central considerations* in making ordinary business determinations – whether the proposal addresses a significant social policy issue, and whether it micromanages.

First, the Commission noted that certain tasks were generally considered so fundamental to management's ability to run a company on a day-to-day basis that they could not be subject to direct shareholder oversight (e.g., the hiring, promotion, and termination of employees, as well as decisions on retention of suppliers, and production quality and quantity). However, proposals related to such matters but *focused on sufficiently significant social policy issues* (i.e. significant discrimination matters) generally would not be excludable.

Second, proposals could be excluded to the extent they seek to "micromanage" a company by probing too deeply into matters of a complex nature upon which shareholders, as a group, would be unable to make an informed judgment.

Proposals that passed the first prong but for which the wording involved some degree of micromanagement could be subject to a case-by-case analysis of *whether the proposal probes too deeply*



for shareholder deliberation. The Staff's interpretation of micromanagement has evolved over the years, most recently articulated in the November 3, 2021 Staff Legal Bulletin 14 L. To assess micromanagement going forward, the bulletin notes that the Staff:

...will focus on the level of granularity sought in the proposal and whether and to what extent it inappropriately limits discretion of the board or management.

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Additionally, in order to assess whether a proposal probes matters "too complex" for shareholders, as a group, to make an informed judgment, we may consider the sophistication of investors generally on the matter, the availability of data, and the robustness of public discussion and analysis on the topic. The staff may also consider references to well-established national or international frameworks when assessing proposals related to disclosure, target setting, and timeframes as indicative of topics that shareholders are well-equipped to evaluate.

In this instance, the proposal addresses a significant policy issue, human rights, and it does not seek to micromanage within the meaning of the Staff and Commission interpretations.

Examining the current Proposal against the Commission's guidance:

- The Proposal addresses a significant policy issue for the Company;
- The Proposal addresses a large strategic direction issue which is comprehensible and appropriate for investor review;
- The Proposal does not impose granular details and methods;
- The Proposal is advisory and does not unduly constrain the discretion of the board or management;
- Therefore, the Proposal does not micromanage.

#### **The Proposal is directed toward a significant policy issue for the Company**

The Company does not dispute that the Proposal addresses the significant social policy of human rights. As such the Proposal involves a matter that "transcend[s] day-to-day business matters and raise[s] policy issues so significant that it would be appropriate for a shareholder vote." As stated in the Whereas section of the proposal, the human rights abuses against the Uyghur people have been classified as genocide by the US State Department, and by European, UK, and Canadian Parliaments.<sup>30</sup>

Staff precedent establishes that human rights are a significant social policy issue that overcomes ordinary business concerns. In *General Electric Company* (January 21, 2016), the Staff denied no-action relief for a proposal requesting, among other things, the company's "criteria for investing in, operating in and withdrawing from high-risk regions." The Staff found that the proposal could not be excluded under the ordinary business exception because "the proposal focuses on the significant policy issue of human

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<sup>30</sup> <https://www.cnn.com/2021/04/22/world/uk-china-uyghur-genocidnoe-motion-gbr-intl/index.html>

rights.” A nearly identical proposal was similarly denied no action relief in *Apple Inc.* (December 14, 2015) for the same reason. The Staff ruled that that proposal focused on the significant social policy issue of human rights as well.

This proposal is concerned with the “human rights abuses” of the Uyghur people which puts the proposal clearly and squarely in line with the precedents on other proposals focusing on the obviously significant social policy issue of human rights.

### **The Proposal is a broad strategic request by investors**

The Commission has made it clear that large, strategic requests – **directional suggestions that would involve a major change in an approach to a significant policy issue** – are appropriate for shareholder proposals.

There was some apprehension among the investor community in 1998 that the Commission might be developing a broad interpretation of micromanagement that would exclude many proposals with specific strategic requests. However, in the preamble to the 1998 Release, which is still the most recent and authoritative Commission-level statement regarding the application of micromanagement, the Commission made it clear that large strategic requests would still be appropriate:

“ . . . in the Proposing Release we explained that one of the considerations in making the ordinary business determination was the degree to which the proposal seeks to micromanage the company. We cited examples such as where the proposal seeks intricate detail, or seeks to impose specific timeframes or to impose specific methods for implementing complex policies. **Some commenters thought that the examples cited seemed to imply that all proposals seeking detail, or seeking to promote timeframes or methods, necessarily amount to ordinary business. . . We did not intend such an implication. Timing questions, for instance, could involve significant policy where large differences are at stake, and proposals may seek a reasonable level of detail without running afoul of these considerations.**” (Emphasis added.)

Thus, the Commission has articulated a principle of reasonableness and practicality for determining whether a proposal micromanages – **where large differences are at stake**. The question is not, “does the proposal suggest timelines or make specific recommendations,” but rather whether large differences are at stake rather than mere meddling with minutiae of a company’s business. This must be assessed on a case-by-case basis. In the present case, a large difference is at stake, as we have discussed in the background section of this letter.

### **Addressing impacts to society: core focus for strategic redirection**

The shareholder right to weigh in on a company’s impacts on society was judicially clarified in *Medical Committee for Human Rights v. SEC*, 432 F.2d 659 (D.C. Cir. 1985) in which the D.C. Circuit Court of Appeals 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.

In *Medical Committee*, the Viet Nam era proposal requested the Board of Directors adopt a resolution setting forth an amendment to the Composite Certificate of Incorporation of the Dow Chemical Company that napalm shall not be sold to any buyer unless that buyer gives reasonable assurance that the substance

will not be used on or against human beings.

In deciding *Medical Committee*, the court noted that it would be appropriate for shareholders to use the mechanism of shareholder democracy to pose “to their co-owners, in accord with applicable state law, the question of whether they wish to have their assets used in a manner which they believe to be more socially responsible.” The court further noted such a choice was not appropriately reserved to the board or management.

As stated in *Medical Committee*:

\* \* \*

We think that there is a clear and compelling distinction between management’s legitimate need for freedom to apply its expertise in matters of day-to-day business judgment, and management’s patently illegitimate claim of power to treat modern corporations with their vast resources as personal satrapies implementing personal political or moral predilections. It could scarcely be argued that management is more qualified or more entitled to make these kinds of decisions than the shareholders who are the true beneficial owners of the corporation; and it seems equally implausible that an application of the proxy rules which permitted such a result could be harmonized with the philosophy of corporate democracy which Congress embodied in section 14(a) of the Securities Exchange Act of 1934.

The same logic applies here. As such a major participant in the Chinese economy, Apple has a substantial exposure to, and influence on, the widespread use of forced labor among Uyghurs. It is quite evident to the proponent and other investors that the company has a dysfunctional relationship with the Chinese government in which it is compromising fundamental human rights and corporate values.

In the face of the current genocidal conditions surrounding Uyghur labor, the question of whether the Company maintains a hard line against forced labor in the supply chain by making a clear commitment to phaseout from affected regions is not a question reserved exclusively to management or boards. Furthermore, the court in *Medical Committee* supported utilizing shareholder democracy in a case involving relatively limited geographical reach – namely within Vietnam – whereas the Proposal here is focused on a genocide-implicated supply-chain condition in China.

In the decades that followed *Medical Committee*, numerous proposals on diverse subject matters have appropriately asked companies to change their business model in some way that reduced company impact associated with an important public policy issue, and were not excluded. The strategic choices regarding reducing large impacts of the company on society have been clearly established as appropriate within shareholder proposals.

### **Issues Comprehensible to Investors**

Under Staff Legal Bulletin 14L, the analysis of whether a proposal micromanages asks in part whether the proposal frames the investor deliberation in a manner consistent with market discussions, available guidelines and the state of familiarity/expertise on the issues in the investing marketplace.

In this instance, shareholders are well-positioned to comment on these issues. First, as stated in the Proposal, the human rights abuses against the Uyghur people are well documented in recent press reports

and the US State Department and the European, UK, and Canadian Parliaments have identified the abuse against the Uyghurs as genocide.

Second, also stated in the Proposal, publicly reported investigations show that despite repeated company claims of due diligence, there are apparent connections between Apple suppliers and forced labor. Shareholders are aware of the human rights abuses occurring against the Uyghur people and from media reports, of the dysfunctional, even submissive relationship that Apple is in with the Chinese government. Shareholders do not require specialized knowledge or expertise in order to form an opinion on these issues and to request that Apple ensure that it ceases supply chain activities involving labor from the Uyghur region.

The Company claims that the proposal addresses complex issues that only the board and management can weigh. While the Company must indeed grapple with decisions related to its product and business plans, the long-term strategic choices about continued reliance on problematic labor sources related to XUAR is a strategic choice on a significant social policy issue and one on which investors may well hold a different perspective from board and management due to the entrenched and dysfunctional relationship that appears to be occurring between the Company and the Chinese government.

The Company states that “The Staff has consistently concurred with the exclusion of proposals based on micromanagement where the proposal attempts to substitute shareholder judgment for that of management with respect to complex day-to-day business operations and prescribe a particular policy or method for addressing a complex matter.” The present proposal, however, is within the range of acceptable approaches, because it is only making a broad recommendation for a change in the company’s strategy that is clearly within the rights and interests of investors to opine upon.

#### **Regionally-based Phaseouts Supported by Staff Decisions**

There are numerous instances in which the Staff has denied no action relief for proposals requesting that companies withdraw from countries which were committing human rights violations such as South Africa. For example, in *Texaco, Incorporated* (March 15, 1985), the Staff denied no-action relief for ordinary business (at the time, Rule 14a–8(c)(7)), where, as the Staff stated, “the proposal relates to Company implementation of or increased activity on the four Tutu conditions, and a report to shareholders on the Company’s presence in South Africa; and Company withdrawal from South Africa.”

Similarly, Staff denied no action relief where the proposals related to the company’s choices regarding the location of its operations. For example, in *American Telephone and Telegraph Company* (January 16, 1991), the Staff denied no action relief for ordinary business where, as the Staff stated, “the proposal requests the Company to phase-out operations in Israel.” The Staff noted that “while the subject of the proposal relates to the Company’s operations, the significant issues by the proposal appear to involve matters of policy which are beyond the realm of the Company’s ordinary business decisions.”

Further, in *RE/MAX Holdings, Inc.* (March 14, 2016), the Staff denied no action relief under 14a–8(i)(7) for a proposal which requested “that the Board form an ad hoc committee to reassess and report to shareholders on criteria, above and beyond legal compliance, for the Company’s practice of advertising and leasing properties in the Israeli settlements and any other locations in which substantial evidence exists that business practices support activities which contravene principled US positions and commitments.” The Company attempted to argue that the proposal “relates to the Company’s choices regarding the location of its operations.” In its denial, the Staff stated “we note that the proposal appears

to focus on matters that the staff has previously decided are beyond the realm of ordinary business.”

Other apt comparisons can be made to the many recent decisions finding no micromanagement. For example, see *The Hartford Financial Services Group, Inc.* (March 28, 2022). The proposal requested that the board “adopt and disclose new policies to help ensure that its underwriting practices do not support new fossil fuel supplies, in alignment with the IEA’s Net Zero Emissions by 2050 Scenario.” The Company successfully argued that the proposal “provides significant discretion to board and management to define the scope, time frames and parameters of the policies.” The Staff agreed and found that the proposal did “not seek to micromanage the Company.” Similarly, proposals pursuing significant organizational restructuring are not excludable, such as in *Qumu Corporation* (April 5, 2022), where the Staff denied no-action relief and found no micromanagement for a proposal which requested that the board “take all requisite steps to engage an independent, recognized investment bank (not previously engaged by the Company or affiliated with any director) to direct a sale of the Company to an independent, strategic buyer.” The proponent successfully argued that the proposal “preserves management’s discretion, and offers high-level direction on a large, strategic corporate matter.”

#### **The Proposal does not delve into granular detail**

The current Proposal contains a reasonable level of detail necessary for conveying the concept of strategic redirection, while leaving the Board of Directors with very broad discretion as to when and how to accomplish this.

It is particularly important in light of the company’s diplomatic relationship with China to recognize the importance of this as an advisory proposal. There is perhaps no signal stronger than a vote of investors to phase out business in those regions to give the company significant leverage and backbone in its working relationship with China.

Notably, the current proposal does not set a timeframe for exiting the country, but leaves it to the board and management to address the request in what might well be a long term planning and transition process, spurred on by continued operational and reputational risks to the Company. For instance, there is nothing in the proposal that prevents the Board of Directors from setting long timelines, because it would be in the discretion of the board to identify a timeframe that is workable and sustainable for the company to alter its supply chain.

The proposal does not impose granular requirements for a transition plan. Instead, it urges the company to develop a broad strategy to phase out supply chain activities from the Uyghur region and related labor transfers. The details of such plan are in the discretion of board and management, including what the board and management views as a reasonable timeframe for phaseout of sourcing from Uyghur labor, ceasing supply chain sources from the region including labor transfers, development of new supply chain sources elsewhere including in the domestic US, and discussion of resource commitments to make this transition. These details are all discretionary.

A long line of Staff decisions has held that proposals are excludable on the basis of micromanagement where they seek prescriptive actions on day-to-day levels of minutiae, and stand in contrast to the current Proposal. For instance, in *Marriott International Inc.* (March 17, 2010) the proposal addressed minutiae 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 — an 80% reduction in nitrogen oxide emissions from the company’s coal-fired plant and a

limit of 0.15 lbs of nitrogen oxide per million British Thermal Units of heat input for each boiler. This proposal was found excludable despite its objective of addressing significant environmental policy issues. Similarly, a *highly detailed study* was sought on global warming or cooling in *Ford Motor Company*, (March 2, 2004). These are important examples of proposals that sought “excess” detail or granularity, in contrast to the current Proposal.

In contrast and as noted above, there are numerous instances in which proposals were not found to micromanage that asked a company to depart a region problematic for its human rights abuses. Those include *Texaco Inc.* (March 15, 1985), *RE/MAX Holdings Inc.* (March 14, 2016), and *American Telephone and Telegraph Company* (January 16, 1991).

The same logic of an overriding social policy causing a proposal to transcend ordinary business despite being directed to major issues on the conduct of a business include *Tyson Foods Inc.* (*reconsideration granted Dec. 15, 2009*) where the proposal was found not to interfere with ordinary business or micromanage in requesting that the board adopt a policy and practices for both Tyson's own hog production and (except when precluded by existing contracts) its contract suppliers of hogs.<sup>31</sup> This was a reasonable method for addressing the subject matter in Tyson Foods. It is notable that the request was quite a bit more granular than the current proposal in its request and still did not micromanage.

#### **Company cited precedents are not applicable to current Proposal**

The contrast with the Company’s cited precedents is informative. The Company argues that this proposal is similar to the proposals excluded under Rule 14a-8(i)(7) in *Seagate Technology* (August 2, 2021) and *SeaWorld Entertainment, Inc.* (avail. Apr. 20, 2021). Those proposals were excluded as micromanagement prior to Staff Legal Bulletin 14L, which clarified Staff decisionmaking regarding micromanagement to realign with the intent of the Commission under the 1998 Release. There is every reason to believe those no action requests on micromanagement would have been evaluated differently under the realigned Staff interpretation.

The Company also compares the proposal to a few recent decisions where the Staff granted no-action relief due to micromanagement (*Tesla, Inc.* (avail. May 6, 2022); *Deere & Co.* (avail. Jan. 3, 2022); *The Coca-Cola Company* (avail. Feb. 16, 2022)). In its argument, the Company concedes that the Staff found

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<sup>31</sup> The proposal required the company to:

(1) phase out routine use of animal feeds containing antibiotics that belong to the same classes of drugs administered to humans, except for cases where a treatable bacterial illness has been identified in a herd or group of animals; and

(2) implement animal raising practices that do not require routine administration of antibiotics to prevent and control disease, and where this is not feasible, use only antibiotics unrelated to those used in human medicine; and

(3) that the Board report to shareowners, at reasonable cost and omitting proprietary information, on the timetable and measures for implementing this policy and annually publish data on types and quantities of antibiotics in the feed given to livestock owned by or purchased by Tyson. (emphasis added)

that each of the proposals in those decisions inappropriately limited the discretion of the board. As demonstrated above, the present Proposal provides a broad strategic framework for the board – the opportunity for investors to weigh in on a critical vector of business strategy bearing on human rights and major risks for the company, and therefore does not inappropriately limit the discretion of the board.

**The absence of a claim of substantial implementation of the proposal is also informative to investors supporting the proposal.**

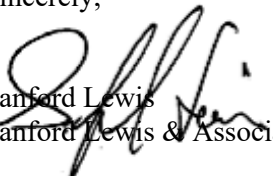
In closing, we note that the Company does not make a substantial implementation argument. Despite a dedicated section of the no-action relief request stating “The Company is Committed to High Standards of Conduct and Compliance Across its Global Supply Chain” and claims that the Company found “no instances globally where anyone was forced to work in its supply chain,” the Company does not allege that the Proposal request has been substantially implemented.

Clearly, the Company cannot make this argument despite these factual claims because it has not disclosed a commitment and timeline to halt the activities targeted by the Proposal. At present, Apple has not implemented the Proposal because there remains very significant concern regarding the extent of Apple’s relationship to the Uyghur region and forced Uyghur labor throughout its China supply chain. This concern necessitates a shareholder vote on the change of strategy suggested by the Proposal.

**CONCLUSION**

Based on the foregoing, we believe it is clear that the Company has provided no basis for the conclusion that the Proposal is excludable from the 2023 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](mailto:sanfordlewis@strategiccounsel.net).

Sincerely,



Sanford Lewis  
Sanford Lewis & Associates

Antonio Pontón-Núñez  
Brittany Blanchard Goad  
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December 13, 2022

**VIA ELECTRONIC MAIL**

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

Re: **Apple Inc. Supplemental Letter Regarding Shareholder Proposal Submitted by SumOfUs**

To the addressee set forth above:

On October 24, 2022, we submitted a letter (the “*No-Action Request*”) on behalf of Apple Inc., a California corporation (the “*Company*”), to inform the staff of the Division of Corporation Finance (the “*Staff*”) of the Securities and Exchange Commission (the “*Commission*”) that the Company intends to omit from its proxy statement and form of proxy for its 2023 Annual Meeting of Shareholders (collectively, the “*Proxy Materials*”) a shareholder proposal (the “*Proposal*”) and related supporting statement (the “*Supporting Statement*”) from SumOfUs (the “*Proponent*”). The No-Action Request sets forth the basis for our view that the Proposal may be excluded from the Proxy Materials pursuant to Rule 14a-8(i)(7), on the basis that the Proposal seeks to micromanage the Company’s ordinary business operations. This supplemental letter responds to a letter dated November 21, 2022 received from the Proponent’s representative, Sanford J. Lewis, in response to the No-Action Request (the “*Response Letter*”), a copy of which is attached hereto as Exhibit S-1. While the Company generally opts not to respond to shareholder proponents’ letters to the Staff submitted in response to the Company’s no-action requests, the Company believes the Response Letter incorrectly characterizes certain precedent no-action letters cited by the Proponent and respectfully submits this supplemental letter to clarify the nature of these precedents and explain why they are inapplicable to the No-Action Request.

This supplemental letter seeks to address only the assertions made by the proponent in the Response Letter with respect to micromanagement as a grounds for exclusion, and does not address the statements regarding no-action arguments the Company did not make in the No-Action Request. In addition, we do not believe that it is necessary for this supplemental letter to address the factual assertions in the Response Letter, other than to refer the Staff to its No-Action Request and the Company’s due diligence and reporting on these issues. The factual statements in this letter and the No-Action Request have been provided to us by the Company and Latham & Watkins LLP has not conducted any independent verification of such statements.



The Response Letter argues that the Proposal does not micromanage the Company based upon the following four assertions of the Proponent:

- The Proposal addresses a significant policy issue for the Company;
- The Proposal addresses a large strategic direction issue which is comprehensible and appropriate for investor review;
- The Proposal does not impose granular details and methods; and
- The Proposal is advisory and does not unduly constrain the discretion of the board or management.

For the reasons discussed below, the Response Letter and its four assertions do not reflect established Staff precedent and guidance, and as such, we reassert that the Proposal is properly excludable under Rule 14a-8(i)(7) on account of restricting management's discretion by imposing upon the Company a specific method for addressing a highly complex and multifaceted issue.

### **Significant Policy Precedent Is Inapposite**

The significant policy issue precedent cited in the Response Letter is not relevant. In *General Electric Company* (avail. January 21, 2016), the company did not assert micromanagement as a grounds for exclusion, since the proposal only requested that the company's board review and report on the company's guidelines for selecting countries/regions for its operations. In *Apple Inc.* (avail. December 14, 2015), the Company, as was common at the time, conflated the separate prongs of the ordinary business exclusion, but more importantly addressed the same proposal as in *General Electric Company*, which only sought a review and report of company guidelines, and did not seek to impose on management a specific method for addressing a complex issue.

Moreover, the Response Letter also cites *Medical Committee for Human Rights v SEC*, 432 F.2d 659 (D.C. Cir. 1970), vacated as moot 401 U.S. 973 (1971), as supporting the notion that shareholders should be afforded the opportunity to make decisions as to "the question of whether they wish to have their assets used in a manner which they believe to be more socially responsible." *Medical Committee*, however, was vacated by the U.S. Supreme Court in 1971.

It is well established that a proposal that seeks to micromanage a company's business operations is excludable under Rule 14a-8(i)(7) regardless of whether or not the proposal raises issues with a broad societal impact. See Staff Legal Bulletin No. 14E (Oct. 27, 2009), at note 8, citing Exchange Act Release No. 40018 (May 21, 1998) (the "**1998 Release**") for the standard that "a proposal [that raises a significant policy issue] could be excluded under Rule 14a-8(i)(7), however, if it 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. See Exchange Act Release No. 40018." For example, since the issuance of Staff Legal Bulletin 14L (Nov. 3, 2021) ("**SLB 14L**"), the Staff concurred in the exclusion of proposals addressing how companies interact with their shareholders on significant social policy issues because the proposals sought to micromanage how the companies addressed those policy issues. See *Verizon Communications, Inc.* (avail. March 17, 2022) (proposal requesting company to publish annually the written and oral content of diversity, inclusion, equity or related employee-training materials probed too deeply into matters of a complex nature); *The Coca-Cola Company* (avail. Feb. 16, 2022) (concurring with the exclusion of a proposal because it micromanaged the company by requiring the company to submit any proposed political statement to shareholders at the next shareholder meeting for approval prior to issuing the subject statement publicly). See also, *SeaWorld Entertainment, Inc.* (avail. April 20, 2021)

(concurring with exclusion of a proposal seeking a report on specific changes to the company's business to address animal welfare concerns).

### **The Proposal Dictates a Specific Method for Addressing a Strategic Issue**

The Proposal does not provide high level guidance to the Company on a significant strategic issue but instead dictates that the Company prepare “a phaseout transition plan ... to cease supply chain activities involving labor from the Uyghur region, including labor transfers of workers from the Uyghur region to other areas of China.”

Here, the Response Letter again cites inapplicable precedent. The *Texaco, Incorporated* (avail. March 15, 1985) and *American Telephone and Telegraph Company* (avail. January 16, 1991) letters, which pre-date the 1998 Release, as well as the *RE/MAX Holdings, Inc.* (avail. March 14, 2016) letter, do not argue micromanagement as a grounds for exclusion. The *Qumu Corporation* (avail. April 5, 2022) letter is not relevant because it does not involve a proposal addressing a company's business and operations, but instead requests action on a corporate governance matter, a context in which the Staff has infrequently applied the micromanagement standard. See *Johnson & Johnson* (avail. Jan. 29, 2020).

Importantly, the proposal in *The Hartford Financial Services Group, Inc.* (avail. March 28, 2022), as the Response Letter concedes, provided significant discretion to the board and management on developing policies to address long term net zero emissions concerns. Similarly, the proposals in *General Electric Company* (avail. January 21, 2016) and *Apple Inc.* (avail. December 14, 2015) only requested that the companies' boards review and report on the companies' guidelines for selecting countries/regions for its operations, and did not seek to impose on management a specific method for addressing a complex issue. In this respect, the Staff's guidance in SLB 14L is particularly relevant. In SLB 14L the Staff stated that one of the factors it will focus on in applying the micromanagement standard is “to what extent [a proposal] inappropriately limits discretion of the board or management.” SLB 14L cites the *ConocoPhillips Company* (avail. Mar. 19, 2021) letter as an example of its application of the micromanagement standard, noting that the proposal at issue did not micromanage the company because it requested that the company address a particular issue but “did not impose a specific method for doing so.” *Id.* SLB 14L makes clear that its analysis is applicable not just to proposals addressing climate change, but also can be applied to any subject matter. In particular, the Staff stated, “Going forward we would not concur in the exclusion of similar proposals that suggest targets or timelines so long as the proposals afford discretion to management as to how to achieve such goals.” (emphasis supplied).

The Proposal's Resolved clause mandates that the Company prepare “a phaseout transition plan ... to cease supply chain activities involving labor from the Uyghur region, including labor transfers of workers from the Uyghur region to other areas of China.” In contrast to the proposal in *ConocoPhillips Company* and similar proposals addressed in SLB 14L, the Proposal does not afford the Company any discretion in determining how to address the Company's and the Proposal's human rights policy goals. As discussed in the No-Action Letter, the Company has conducted due diligence on its supply chain and found no evidence that any of its suppliers were located in the Xinjiang Uyghur Autonomous Region or that any workers transferred from the region were working on Apple production lines. The Response Letter acknowledges that the Proposal does not leave the Company any discretion on how best to avoid human rights concerns in the Company's supply chain. At page 6, the Response Letter states that “[t]he Proposal [asks] the Company to make a firm commitment to exit from segments of its supply chain with severe human rights exposures,” and on page 16 the Response Letter characterizes the Proposal as calling for “a vote of investors to phase out business in those regions” identified in the Proposal.

By mandating a single method to address and avoid human rights concerns that the Proposal claims exist in the Company's supply chain despite evidence to the contrary, the Proposal improperly seeks to restrict management's discretion on how the Company achieves its goal of avoiding human rights issues in its supply chain. As the Response Letter concedes, the Company's supply chain operations are large, global and complex. As the Response Letter also concedes, the Company's actions to reinforce and maintain its human rights policies throughout its global supply chain extend far beyond its own operations and can implicate what the Response Letter refers to as "Tier 2" and "Tier 3" suppliers.

By mandating a singular approach to address a complex issue, the Proposal does not take into account the complex nature of the Company's supply chain and implicates considerations that are not easily accessible to or assessable by shareholders. Notably, the Proposal and Supporting Statement do not inform shareholders about these complex considerations and do not reference a well-established national or international framework, such as the UK Modern Slavery Act relating to forced labor in supply chains, the Sullivan Principles or the MacBride Principles. Further, the Proposal and Supporting Statement do not contain any reference to the recently enacted Uyghur Forced Labor Protection Act, which adopts a very different approach to addressing the concerns raised in the Proposal. As such, under the standards set forth in the 1998 Release and SLB 14L, the Proposal seeks to micromanage the Company, and therefore is properly excludable under Rule 14a-8(i)(7).

### **The Proposal's Granularity and Phrasing**

It is clear that the Proposal does not afford the Company any discretion on how to address the Company's and the Proposal's human rights policy goals. As discussed above, the Proposal "probes deeply into matters of a complex nature" by mandating a singular approach to managing a large and complex supply chain operation. Although the wording of the "Resolved" clause does not specifically request granular detail regarding the Company's operations, the action called for by the Proposal would encompass numerous complex aspects of the Company's supply chain management. Importantly, it is the manner in which a proposal affects a company's operations, and not the wording of the proposal, that impacts whether a proposal micromanages a company. This is demonstrated by the *Deere & Co.* (avail. Jan. 3, 2022) and *The Coca-Cola Company* (avail. Feb. 16, 2022) letters cited in the No-Action Request, each of which contained a broadly phrased request like the Proposal, but which would have required detailed and intrusive actions to implement. Moreover, "granularity" is only one factor evaluated by the Staff. As stated in SLB 14L, the Staff focuses "on the level of granularity sought in the proposal and whether and to what extent it inappropriately limits discretion of the board or management." (emphasis supplied).

The fact that the Proposal is phrased as a precatory request does not alter the prescriptive nature of the Proposal and does not distinguish it from countless other proposals that have been excluded on micromanagement grounds. In fact, the Response Letter does not cite any Rule 14a-8(i)(7) micromanagement precedent involving a proposal that is comparable to the Proposal in both the complexity of the issue addressed and the prescription of how the company must address the issue, and does not distinguish the Proposal from the standards set forth in SLB 14L.

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

Please contact the undersigned at (212) 906-1324 or by email at [jenna.cooper@lw.com](mailto:jenna.cooper@lw.com) to discuss any questions you may have regarding the matters raised in this letter or our No-Action Request.

LATHAM & WATKINS<sup>LLP</sup>

Sincerely,



Jenna Cooper

of LATHAM & WATKINS LLP

Enclosures

cc: Sanford Lewis, Esq.  
SumOfUs  
Sam Whittington, Apple Inc.

Exhibit S-1

Response Letter

**Sanford Lewis & Associates**

PO Box 231  
Amherst, MA 01004-0231  
413 549-7333  
sanfordlewis@strategiccounsel.net

November 21, 2022  
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  
Uyghur Labor on Behalf of SumofUs

Ladies and Gentlemen:

SumofUs (the “Proponent”) is the 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 24, 2022 ("Company Letter") sent to the Securities and Exchange Commission by Jenna Cooper of Latham & Watkins. In that letter, the Company contends that the Proposal may be excluded from the Company’s 2023 proxy statement. We have redacted personal information consistent with the Staff’s guidance. A copy of this letter is being emailed concurrently to Attorney Cooper.

**SUMMARY**

The Proposal requests that the Company, in light of human rights abuses in the Xinjiang Uyghur Autonomous Region (“XUAR”), and the related reputational and operational risks posed to Apple, publish a phaseout transition plan to cease supply chain activities involving labor from XUAR, including labor transfers of workers from the region to other areas of China.

The Company has extraordinary dependence on a supply chain in China, where potential forced labor exposures make the company vulnerable to supply chain disruption as problem facilities are identified. Such dependence presents distinct financial, legal and reputational risks to the Company.

Apple has filed a no action request asserting that this proposal micromanages by attempting to limit the discretion of board and management, prescribing a narrow, intricately prescribed approach to a complex and multifaceted issue. In response, we note that the proposal is not a granular request, but instead provides broad directional and strategic input on a consequential human rights challenge that clearly transcends ordinary business.

We first note in response that the Company did not claim that the proposal is substantially implemented, though it did claim that it currently has “conducted due diligence” and “found no evidence that any of its suppliers were located in [XUAR] or that any workers transferred from the region were working on Apple production lines.”

The reason the Company could not assert substantial implementation is that it knows that such due

diligence claims are necessarily contradicted by continued evidence of pervasive Uyghur labor in China's supply chains and Chinese government interference with efforts to detect it. As an example, the latest supplier list from the Company published in 2022 listed five suppliers for whom forced XUAR labor transfers were identified in a 2021 investigation. Therefore, the Proposal could not be asserted to be implemented.

In addition, despite the Company's assertion, the Proposal does not micromanage. Instead, it seeks to provide investors' strategic input on what is arguably the single largest human rights challenge facing the Company. The Proponent and other observers recognize that current Apple reliance on China for so much of its supply chain and profits has clearly led to substantial compromises in the Company's values. It is already well demonstrated that Apple has compromised on human rights protective values around data privacy and freedom of association and expression due to its transactions with the Chinese government. Moreover, Apple has repeatedly maintained that it is engaging in due diligence on these issues, after which various partners and suppliers have been identified as utilizing forced labor.

With evidence amassed regarding the human rights fallout from the relationship between Apple and China, the Proposal is intended to provide shareholders with a vehicle to express their view on the related investment and human rights risks, by urging the board and management to engage in a redirected business strategy that sets a timeline for fully exiting problematic supply chains.

The Proposal is not granular in nature – it does not demand action by a prescribed timeframe, but only the issuance of a transition plan, the details of which are at the board's discretion. While the Proposal suggests an approach to the phaseout plan, which is helpful to avoid Rule 14a-8(i)(3) vagueness concerns that might otherwise be raised for such a plan, it does not dictate the contents of the plan.

## **THE PROPOSAL**

### **Transition Plan to Address Abuse of Uyghurs**

Whereas: The proponent believes that the reputation and supply chain disruption risks to the company and its shareholders associated with reliance upon supply chains in the Uyghur region of China are severe;

Whereas: Recent press and reports regarding the Uyghur region provide evidence of widespread human rights abuses against the Uyghur population and other Turkic Muslim populations;

Whereas: The US State Department, European, UK, and Canadian Parliaments identify the abuses against the Uyghurs as a genocide, making any association with such abuses a critical violation of Apple's human rights policy and a significant reputational and valuation risk;<sup>2</sup>

Whereas: The U.S. State Department's "Updated Xinjiang Supply Chain Business Advisory"<sup>3</sup> warns:

Given the severity and extent of [regional] abuses, businesses and individuals that do not exit supply chains, ventures, and/or investments connected to Xinjiang could run a high risk of violating U.S. law;

Whereas: Investigations show transfers of forced labor from the region associated with operations on the most recently disclosed list of Apple suppliers<sup>4</sup> and investment by Apple in energy partnerships

closely allied to Uyghur forced labor;<sup>5</sup>

Whereas: Numerous reputable third party supplier auditors have withdrawn from the Uyghur region due to the interference of the Chinese government with effective auditing, thereby limiting Apple's ability to use such consultants to adequately evaluate labor conditions;<sup>6</sup>

Whereas: Geopolitical instability in supply chains may merit greater reliance on US domestic and less volatile labor markets;

**RESOLVED:** Shareholders request that, in light of human rights abuses in the region and the reputational and operational impacts posed to Apple, the Company publish within one year a phaseout transition plan, at reasonable expense and excluding proprietary information, to cease supply chain activities involving labor from the Uyghur region, including labor transfers of workers from the Uyghur region to other areas of China.

**Supporting Statement:**

The transition plan should, in the discretion of the board and management, include:

A reasonable timeframe for completing phaseout of sourcing from Uyghur related labor, such as three years;

A plan to cease all supply chain sources from the Uyghur region;

A plan to cease all supply chain sources which receive labor transfers from the Uyghur region, including a sound strategy for assessing which suppliers are receiving such transfers;

Any development of new supply chain sources in other regions, including US domestic sources, and discussion of any related challenges or opportunities;

Discussion of necessary resource commitments including capital expenditures, technology transfers, and other supply chain development investments.

<sup>1</sup> <https://www.nytimes.com/2022/09/01/world/asia/china-xinjiang-uyghurs.html>

<sup>2</sup> <https://www.cnn.com/2021/04/22/world/uk-china-uyghur-genocidnoe-motion-gbr-intl/index.html>  
<https://www.business-humanrights.org/en/latest-news/european-parliament-adopts-resolution-calling-for-eu-import-ban-on-products-made-with-forced-labour/>  
<https://www.rfi.fr/en/france/20220120-french-parliament-adopts-resolution-denouncing-china-s-uyghur-genocide> <https://www.newsweek.com/united-nations-special-report-contemporary-slavery-china-xinjiang-uyghur-tibet-1734334>

<sup>3</sup> <https://www.state.gov/xinjiang-supply-chain-business-advisory/>

<sup>4</sup> <https://www.businessinsider.com/apple-china-suppliers-uyghur-muslims-forced-labor-report-2021-5>  
<https://www.techtransparencyproject.org/articles/cfa-files-complaint-over-forced-labor-apples-supply-chain>

<sup>5</sup> <https://www.techtransparencyproject.org/articles/apples-uyghur-dilemma-grows>  
<https://www.bloomberg.com/news/articles/2022-03-28/solar-energy-boom-could-worsen-forced-labor-in-china-group-says>

<sup>6</sup> <https://www.wsj.com/articles/auditors-say-they-no-longer-will-inspect-labor-conditions-at-xinjiang-factories-11600697706>



## BACKGROUND

Apple products are fabricated from thousands of components sourced from suppliers worldwide.<sup>1</sup> The Company is primarily reliant on manufacturers based in China, where it is reported that more than 90% of Apple products are produced,<sup>2</sup> including roughly 98% of all iPhones.<sup>3</sup> Apple maintains such a China-dependent supply chain despite warnings from experts like the U.S. Department of State that state-sponsored forced labor stemming from XUAR may implicate companies doing business in China, thereby posing heightened material risks to the Company.<sup>4</sup>

Because an estimated 100,000 Uyghurs and other ethnic minorities in China may be working under forced labor conditions,<sup>5</sup> a company with as much supply-chain exposure in China as Apple necessarily is exposed to forced labor risks from its suppliers. Since the treatment of the ethnic minorities in the Xinjiang province has been referred to by the U.S. government as genocide, these human rights supply-chain risks should be of very high concern to a company such as Apple that seeks to maintain a “clean” image as well as the reputation and customer goodwill associated with that branding.

What is worse, because the Company currently has such a high supply-chain dependency in China, many observers believe that Apple is readily manipulated by and compliant to the wishes of the Chinese government, even when these actions compromise the Company’s values. To that end, a journalist with deep knowledge of Apple’s interactions in China noted in a recent article in the Financial Times that:<sup>6</sup>

“Apple certainly acquiesces to certain Beijing demands, but there’s just no question about this... I think the cost of doing business with China is having to compromise on certain values. There’s just really no argument about that.”

### **The Company’s due diligence within its compromised posture in China does not curtail human rights concerns**

The Company Letter takes the position that issues of forced labor in the supply chain are matters that

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<sup>1</sup> Supplier Responsibility, 2020 Progress Report, Apple (2020), [https://www.apple.com/supplier-responsibility/pdf/Apple\\_SR\\_2020\\_Progress\\_Report.pdf](https://www.apple.com/supplier-responsibility/pdf/Apple_SR_2020_Progress_Report.pdf).

<sup>2</sup> See Tripp Mickle, *Apple Could Be Short of iPhones Because of Factory Disruptions in China*, N.Y. Times (Nov. 6, 2022), <https://www.nytimes.com/2022/11/06/technology/apple-iphones-shortage.html>; Jacob Carpenter, *Apple wants to make more iPhones in India. Why it’s far easier said than done*, Fortune (Sept. 30, 2022), <https://fortune.com/2022/09/30/apple-china-iphone-india-vietnam-production-assembly/>.

<sup>3</sup> See Bryce Baschuk et al., *Apple’s Tech Supply Chain Shows Difficulty of Dumping China*, Bloomberg (Sept. 29, 2022), <https://www.bloomberg.com/news/articles/2022-09-30/apple-s-tech-supply-chain-shows-difficulty-of-dumping-china>.

<sup>4</sup> Xinjiang Supply Chain Business Advisory, U.S. Dept. of State (July 31, 2021), <https://www.state.gov/wp-content/uploads/2021/07/Xinjiang-Business-Advisory-13July2021-1.pdf>.

<sup>5</sup> *Against Their Will: The Situation in Xinjiang*, Bureau of International Labor Affairs, U.S. Dept. of Labor (last visited Nov. 8, 2022), <https://www.dol.gov/agencies/ilab/against-their-will-the-situation-in-xinjiang>.

<sup>6</sup> *Apple’s Bargain with Beijing*, Financial Times, November 14, 2022 <https://www.ft.com/content/688a3745-994b-4168-b6d3-cc735120d8b8>

are best and exclusively managed by the board and management because they are complex:

Operational decisions regarding supply chain matters are extremely complex and are not topics that lend themselves to direct shareholder input. When making such decisions, the Company must consider and weigh a number of factors, including, but not limited to, monitoring compliance with the Company's Commitment to Human Rights and other Company policies, cost considerations, quality issues, legal and regulatory compliance issues, and numerous other matters, all of which are informed by extensive research and industry and operational expertise. Shareholders are simply not well-positioned to make such determinations.

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As noted above, looking for the presence of forced labor is part of every assessment the Company conducts in 52 countries across its supply chain. In its fiscal year 2021, the Company conducted more than 1,100 assessments, and found no instances globally where anyone was forced to work in its supply chain.

In contrast to these assertions, there is abundant evidence for investors to conclude that the Company's due diligence may be inadequate to ensure effective management of the risks associated with Uyghur labor in the supply chain. We will discuss further in the passages that follow substantial concerns that undergird the need for the current proposal:

- “Due diligence” in China appears to be severely weakened by the authoritarian environment in which auditors are monitored and hampered by the Chinese government.
- Despite prior claims of due diligence by the Company, from 2019 through 2021<sup>7</sup> journalists investigating the Company found numerous instances of firms in the Apple supply chain that were alleged to utilize forced labor.
- The Chinese government has been exporting forced laborers from the Xinjiang region to other locations. **Even the Company's disclosure in the no action request does not assert that they currently have confidence that the supply chain outside of XUAR, beyond the Company's own production lines, does not have forced labor.**

As such, these issues represent a major strategic concern for the Company and its investors.

The Company has thus far sidestepped transparency with respect to human rights stemming from the Uyghur region. In particular, the Company has repeatedly brushed off forced labor allegations, claiming to find no forced labor stemming from the region. In doing so, the Company apparently relies heavily on supply chain audits, a process that has generally been flagged by multiple institutions like the U.S. Department of State as potentially inadequate or insufficient to conclusively deny the presence of forced

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<sup>7</sup> In their annual Supplier Responsibility Progress Reports that extend beyond 2018, the Company has continuously asserted that they conduct supply chain forced labor assessments and have implemented other due diligence standards to detect human rights abuses (see, e.g., 2019 Progress Report ([https://www.apple.com/supplier-responsibility/pdf/Apple\\_SR\\_2019\\_Progress\\_Report.pdf](https://www.apple.com/supplier-responsibility/pdf/Apple_SR_2019_Progress_Report.pdf)); 2020 Report ([https://www.apple.com/uk/supplier-responsibility/pdf/Apple\\_SR\\_2020\\_Progress\\_Report\\_EN.pdf](https://www.apple.com/uk/supplier-responsibility/pdf/Apple_SR_2020_Progress_Report_EN.pdf)); 2021 Report ([https://www.apple.com/supplier-responsibility/pdf/Apple\\_SR\\_2021\\_Progress\\_Report.pdf](https://www.apple.com/supplier-responsibility/pdf/Apple_SR_2021_Progress_Report.pdf))).

labor in a company's supply chain. Moreover, as detailed below, the Company has failed to directly rebut credible evidence of allegations implicating Apple's supply chain in the use of Uyghur forced laborers. In view of these issues, there is a strong basis for shareholders to consider whether the Company should adopt a phaseout transition plan to cease supply chain activities involving labor from the Uyghur region, including labor transfers of workers from the Uyghur region to other areas of China, as a method to mitigate reputational, legal and supply chain disruption risks to the Company. The Proposal, asking the Company to make a firm commitment to exit from segments of its supply chain with severe human rights exposures, is an opportunity for shareholders to encourage the board and management to make a fundamental strategic choice, and also to give the board and management additional backbone in ongoing interactions with the Chinese government.

As quoted above, an article in the Financial Times recently referred to the manner in which Apple must compromise its values in order to do business with China. Although the article highlighted issues of data privacy and censorship, other information coming from the region demonstrates the cause for concern about Apple leadership's cooperation with the Chinese government in order to sustain these operations in China.

As a result of these and other circumstances, it is reasonable for Apple investors to conclude that the current close relationship with China is fraught, even dysfunctional, and that the Company must make clearer commitments to ending the use of forced labor. The Proposal can support the Company in developing much firmer boundaries on this issue by establishing a phaseout plan. The Proponent believes that it is critical for shareholders to signal that the proposed change is needed to ensure the Company's long-term sustainability.

### **Uyghur Forced Labor Prevention Act**

The Company Letter asserts that as part of its due diligence efforts pursuant to the recently-enacted Uyghur Forced Labor Prevention Act ("UFLPA"), "no evidence that any of its suppliers were located in [XUAR] or that any workers transferred from the region were working on Apple production lines."

As background, UFLPA took effect on June 21, 2022.<sup>8</sup> It requires companies to avoid importing goods to the U.S. that were made with the forced labor of Uyghurs and other persons or groups in XUAR. The law empowers the U.S. Customs and Border Protection Agency to withhold release of items produced in whole or in part in the XUAR, or produced by companies included on a government-generated UFLPA entity list, creating a presumption that the goods were produced by use of forced labor. Thus, given the volume of its products produced in China, the Company faces significant risks as a result of continued business in the region.

Also, upstream supply chain tiers based *anywhere* in China may be exposed to forced labor exported from the region, and though these exposures may not be the primary concern of compliance monitoring under the UFLPA law, they remain a significant reputational and operational risk for the Company.

Most importantly, the Company's assessments have frequently been contradicted by investigations of independent journalists and research organizations identifying forced labor in the supply chain in prior years. In fact, DHS recognizes that audits, including third-party audits, are not alone sufficient to

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<sup>8</sup> *Uyghur Forced Labor Prevention Act*, U.S. Customs and Border Protection Agency (last modified Oct. 25, 2022), <https://www.cbp.gov/trade/forced-labor/UFLPA>.

demonstrate due diligence and may not be a credible source of information for indicators of forced labor.<sup>9</sup>

The Apple Supplier Code of Conduct declares that “[s]upplier[s] shall not traffic persons or use any form of slave, forced, bonded, indentured, or prison labor.”<sup>10</sup> The Company states in its 2022 Annual Progress Report, and similarly emphasizes in its no-action request, that, to prevent forced labor in its supply chain, it “hold[s] suppliers accountable” by “regularly conduct[ing] independent, third-party assessments, including surprise assessments, of [its] suppliers.”<sup>11</sup> In this regard, the Company stresses that, in fiscal year 2021, it did not find in its 1,182 assessments (worldwide) any instances where individuals were forced to work in its supply chain. Contrary to the recommendations from DHS, however, the Company does not publicly report any relevant and non-privileged details on these assessments, such as metrics used for evaluating the presence of forced labor, geographic areas covered by the assessments, the level of supply chain tiers inspected by auditors and whether the assessments acknowledge or evaluate the risk of forced labor in certain suppliers. As such, shareholders are unable to assess the strength of these forced labor inspections, especially in view of uncontradicted allegations that firms across the Company’s supply chain in previous years have engaged in forced labor linked to XUAR.

*Credible evidence of claims of XUAR forced labor in Apple’s multi-tiered supply chain contradict the Company’s assertion that it does not benefit from XUAR-based suppliers or workers.*

Aside from the issues concerning the Company’s supply chain auditing process, recent independent investigations have directly implicated Apple’s suppliers with forced labor in China, particularly those using slave labor of Uyghur and other Muslim ethnic minorities. During the Company’s fiscal year 2021, the co-chairs of the bipartisan and bicameral U.S. Congressional-Executive Commission on China stated that “[d]espite persistent assurances from Apple that their supply chains were free of forced labor,” they had “mounting evidence . . . that it is tainted.”<sup>12</sup> The Commission was responding to investigations conducted by the Tech Transparency Project (“TTP”), a nonprofit and nonpartisan technology watchdog, *The Information*, an American technology industry-focused publication, and the *New York Times*.

Apple reported that it did not find forced labor in its supply chain during fiscal years 2019 and 2020.<sup>13</sup> But investigators with *The Information*, in partnership with the Tech Transparency Project, had found that, at least from 2016 through 2021, “seven Apple suppliers had ties to suspected forced labor of

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<sup>9</sup> *Strategy to Prevent the Importation of Goods Mined, Produced, or Manufactured with Forced Labor in the People’s Republic of China*, Report to Congress, Dept. of Homeland Security at 44 (June 17, 2022), [https://www.dhs.gov/sites/default/files/2022-06/22\\_0617\\_fletf\\_uflpa-strategy.pdf](https://www.dhs.gov/sites/default/files/2022-06/22_0617_fletf_uflpa-strategy.pdf).

<sup>10</sup> *Apple Supplier Code of Conduct*, Apple (Jan. 2022), <https://www.apple.com/supplier-responsibility/pdf/Apple-Supplier-Code-of-Conduct-and-Supplier-Responsibility-Standards.pdf>.

<sup>11</sup> *2022 Annual Progress Report*, Apple at 45 (2022), [https://www.apple.com/supplier-responsibility/pdf/Apple\\_SR\\_2022\\_Progress\\_Report.pdf](https://www.apple.com/supplier-responsibility/pdf/Apple_SR_2022_Progress_Report.pdf).

<sup>12</sup> *Xinjiang: Chairs Issue Statement about Forced Labor in Apple’s Supply Chain*, U.S. Congressional-Executive Commission on China (June 8, 2021), <https://www.cecc.gov/media-center/press-releases/chairs-issue-statement-about-forced-labor-in-apple%E2%80%99s-supply-chain-in>.

<sup>13</sup> *See Supplier Responsibility 2020 Annual Report*, Apple (2020), [https://www.apple.com/uk/supplier-responsibility/pdf/Apple\\_SR\\_2020\\_Progress\\_Report\\_EN.pdf](https://www.apple.com/uk/supplier-responsibility/pdf/Apple_SR_2020_Progress_Report_EN.pdf); *Supplier Responsibility 2019 Annual Report*, Apple (2019), [https://www.apple.com/supplier-responsibility/pdf/Apple\\_SR\\_2019\\_Progress\\_Report.pdf](https://www.apple.com/supplier-responsibility/pdf/Apple_SR_2019_Progress_Report.pdf).

Uyghurs from the Xinjiang region.”<sup>14</sup> Five of these suppliers – Luxshare Precision Industry, Lens Tech, Shenzhen Deren Electronic Co., CN Innovations, and Suzhou Dongshan Precision Manufacturing Co. – were also listed in Apple’s latest supplier list for fiscal year 2021, which was published in October 2022. In addition, ensuing research by TTP further identified that Goldwind, a wind turbine manufacturer based in Xinjiang with which Apple initiated a partnership as part of its environmental efforts, was similarly implicated in XUAR forced labor. The investigation revealed “local government media posts indicating that one Goldwind factory in Toksun County, Xinjiang, was in advanced talks in 2016 to receive ‘labor export’ from Hotan Prefecture, another area of Xinjiang with a Uyghur-majority population over 500 miles away.”<sup>15</sup>

### Transfer of Uyghur Forced Labor

Uyghur forced labor abuses are not solely concentrated in XUAR. China has indeed been accused of transferring Uyghur Muslims out of XUAR to work in other parts of the Country, which complicates assessments by U.S. companies operating in China seeking to ensure that they are not benefiting, whether directly or indirectly, from forced labor. According to a report prepared by the Australian Strategic Policy Institute (“ASPI”), an estimated 32,000 people were transferred out of the region in 2019.<sup>16</sup> The ASPI report specifically details how, in 2017, the Chinese government transferred over 1,000 Uyghurs to work at a factory owned by O-Film, a company that manufactured “selfie cameras” for certain Apple iPhone models. The Associated Press (“AP”) thereafter reported on its own investigation of O-Film, which included interviews with residents near the factory who alleged that while the Uyghur workers were paid similarly to other workers, they were prohibited from leaving the facility more than twice per month, were forcefully transferred to the area by the government, and were forbidden from practicing their faith.<sup>17</sup> The AP confirmed that O-Film was a listed Apple supplier and that the investigated factory had the same address as one listed by Apple. In response, Apple failed to clarify these allegations but stated that “its code of conduct requires suppliers to ‘provide channels that encourage employees to voice concerns’” and that “it interviews the employees of suppliers during annual assessments in their local language without their managers present, and had done 44,000 interviews in 2018.” Such response mirrors the one set forth by the Company in the subject no-action request, heightening shareholder concerns that these blanket assertions are insufficient to quash claims of forced labor in Apple’s supply chain.

### Upstream Suppliers: Greater Exposure

Uyghur forced labor risks, however, extend beyond direct suppliers. A multi-tiered product manufacturing process generally consists of raw material extraction and supply (also known as “Tier 3”), which is then processed into other provisions and components (“Tier 2”) that are ultimately assembled into a finished product (“Tier 1”). It has been found that the risk of human rights violations increases further up the supply chain, with Tier 2 audits identifying 18% more issues than Tier 1, and Tier 3

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<sup>14</sup> *Apple’s Uyghur Dilemma Grows*, Tech Transparency Project (June 8, 2021), <https://www.techtransparencyproject.org/articles/apples-uyghur-dilemma-grows>; Wayne Ma, *Seven Suppliers Accused of Using Forced Labor from Xinjiang*, The Information (May 10, 2021), <https://www.theinformation.com/articles/seven-apple-suppliers-accused-of-using-forced-labor-from-xinjiang>.

<sup>15</sup> *Id.*

<sup>16</sup> See Vicky Xiuzhong Xu et al., *Uyghurs for sale*, Australian Strategic Policy Institute (Mar. 1, 2020), <https://www.aspi.org.au/report/uyghurs-sale>.

<sup>17</sup> Dake Kang & Yanan Wang, *Gadgets for tech giants made with coerced Uighur labor*, Associated Press (March 5, 2020), <https://apnews.com/article/ap-top-news-international-news-apple-inc-weekend-reads-china-clamps-down-3f9a92b8dfd3cae379b57622dd801dd5>.

“showing the highest number of critical issues.”<sup>18</sup> Because Apple’s supply chain vendors are globalized and largely outsourced to firms based in China, the complexity of these networks is heightened, thereby decreasing risk visibility and making forced labor detection more difficult.<sup>19</sup>

Independent evidence nonetheless shows that Apple’s Tier 2 vendors, and upstream extensions like suppliers engaged in the production of raw materials or other components of the final products, may use forced labor in or from XUAR. For instance, the ASPI report cites a 2018 speech by a Chinese government official announcing the transfer of workers from XUAR to a factory operated by Hubei Yihong Precision Manufacturing Co. Ltd., a subsidiary of Dongguan Yidong Electronic Co. Ltd claiming Apple as an end customer. The report further alleges that Hubei Yihong asserted in its website having also supplied GoerTek, a manufacturer of Apple’s AirPods. The ASPI report additionally points to a 2018 Xinjiang Economic News article on Uyghur students being transferred to a subsidiary of Highbroad Advanced Material, a manufacturer of electronic screen components that supplies BOE Technology Group, which is listed in the 2019 Apple Supplier List.<sup>20</sup> Although Apple has reported on its commitment to responsible source and general due diligence efforts concerning conflict minerals,<sup>21</sup> it has not made any disclosures or published risk assessments regarding other upstream supply chain actors that may be engaged in Uyghur forced labor. Indeed, the Company has not made any public disclosures as to whether its human rights auditing process considers upstream supply chain tiers aside from direct suppliers and manufactures. Overall, the Company’s failure to provide multi-tier audit transparency coupled with mounting evidence of XUAR forced labor suggest that shareholders’ request for a phaseout plan could mitigate concrete supply chain risks in the region.

The Company’s record of due diligence, in light of the above allegations, has not seemed rigorous enough to prevent problems, and given the current known impediments to effective evaluation of operations under the Chinese government, as discussed elsewhere in this letter, this should continue to be a concern for investors.

**Auditing processes are unreliable in China for detection of forced labor in supply chains.**

Although independent, third-party audits are the “key element” in Apple’s and other companies’ efforts seeking to ensure that supply chains are free from inputs sourced under unethical or illegal circumstances,<sup>22</sup> some companies and auditing firms have recently stopped conducting audits to detect forced labor in XUAR.<sup>23</sup> While Chinese government interference within XUAR catalyzed these

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<sup>18</sup> Carmel Giblin, *What is Happening Beyond the First Tier of Your Supply Chain?*, BSR (Nov. 15, 2013), <https://www.bsr.org/en/our-insights/blog-view/what-is-happening-beyond-the-first-tier-of-your-supply-chain>.

<sup>19</sup> See Zoë Fortune et al., *Piloting a method for the aggregation and visualisation of audit data to enhance forced labour risk identification*, *Journal of Modern Slavery*, Volume 6, Issue 1 (2021).

<sup>20</sup> See *Supplier List*, Apple Supplier Responsibility 2019 (2019), <https://www.apple.com/th/supplier-responsibility/pdf/Apple-Supplier-List.pdf>.

<sup>21</sup> Form SD, Apple Inc. (Feb. 9, 2022), <https://www.apple.com/supplier-responsibility/pdf/Apple-Conflict-Minerals-Report.pdf>.

<sup>22</sup> Cullen S. Hendrix, *Third-party auditing won’t solve US solar industry’s Xinjiang problem*, Peterson Institute for International Economics (June 25, 2021), <https://www.piie.com/blogs/realtime-economic-issues-watch/third-party-auditing-wont-solve-us-solar-industrys-xinjiang>.

<sup>23</sup> See Felix Thompson, *Warnings sounded over Xinjiang-made aluminium in global supply chains*, *Global Trade Review* (Apr. 13, 2022), <https://www.gtreview.com/news/americas/warnings-sounded-xinjiang-made-aluminium-global-supply-chains/>; South China Morning Post, *Xinjiang ‘forced labour’ law leaves Chinese companies in a bind, with doubts over supply chain audits*, *Yahoo Finance* (June 24, 2022), <https://finance.yahoo.com/news/xinjiang-forced-labour-law-leaves-093000800.html>; Eva Xiao, *Auditors to Stop Inspecting Factories in China’s Xinjiang*

withdrawals, the atmosphere for auditing supply chains outside of the XUAR region can also reasonably be expected to suffer from the same kinds of interference by the Chinese government.

Social compliance audits usually consist of periodic work site inspections that require checking documents produced by workplace managers, making direct observations of workplace conditions, and interviewing laborers. However, there are limitations in detecting forced labor issues stemming from XUAR given strict government controls, a lack of state and corporate transparency, the threat of detention of auditors and workers, and a general police-state atmosphere.<sup>24</sup> Indeed, in June 2021, a spokesperson for the U.S. Department of State stated that “[they] are deeply concerned by reports that supply-chain auditors have been detained, threatened, harassed and subjected to constant surveillance while conducting their vital work in China.”<sup>25</sup>

In September 2021, five large inspection companies and smaller specialized certification operations that had previously conducted audits in XUAR told *The Wall Street Journal* they would not provide labor audits or inspection services in the region because of “police-state” conditions.<sup>26</sup> In fact, the Chinese government shut down in August 2021 a China-based partner of U.S. nonprofit auditor Verite Inc., which Apple had previously hired to consult on labor issues at Chinese factories.<sup>27</sup> Because of the inability to carry out these third-party audits, in June 2022, the European Union Chamber of Commerce in China stated that some European companies had withdrawn from XUAR altogether, expecting that more would follow unless the audit issue was addressed.<sup>28</sup>

This level of intervention by the Chinese government is known to be commonplace. For example, *The Washington Post* has noted that “[d]iplomats and foreign journalists who have visited the region almost universally report being repeatedly detained by authorities and blocked from approaching areas where camps are located.”<sup>29</sup> As a result of these pressures from Chinese authorities, **the U.S. Department of State has warned that organizations undertaking supply chain audits may not be producing “credible reports.”**

These events stress the powerful limitations that human rights and labor auditors face in China, underscoring the reliability of any such assessments prepared for Apple with respect to Uyghur forced

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*Despite Forced-Labor Concerns*, The Wall Street Journal (Sept. 21, 2021), <https://www.wsj.com/articles/auditors-say-they-no-longer-will-inspect-labor-conditions-at-xinjiang-factories-11600697706>.

<sup>24</sup> Xinjiang Supply Chain Business Advisory, U.S. Dept. of State (July 31, 2021), <https://www.state.gov/wp-content/uploads/2021/07/Xinjiang-Business-Advisory-13July2021-1.pdf>.

<sup>25</sup> Bethany Allen-Ebrahimian, *State Dept. fears Chinese threats to labor auditors*, Axios (June 23, 2021), <https://www.axios.com/2021/06/24/state-dept-chinese-threats-labor>.

<sup>26</sup> Eva Xiao, *Auditors to Stop Inspecting Factories in China's Xinjiang Despite Forced-Labor Concerns*, The Wall Street Journal (Sept. 21, 2021), <https://www.wsj.com/articles/auditors-say-they-no-longer-will-inspect-labor-conditions-at-xinjiang-factories-11600697706>.

<sup>27</sup> See Lingling Wei et al., *China Closes U.S. Auditor as Tensions Mount Over Forced Labor Allegations*, The Wall Street Journal (Aug. 19, 2021), <https://www.wsj.com/articles/china-closes-u-s-auditor-as-tensions-mount-over-forced-labor-allegations-11629390253>.

<sup>28</sup> South China Morning Post, *Xinjiang 'forced labour' law leaves Chinese companies in a bind, with doubts over supply chain audits*, Yahoo Finance (June 24, 2022), <https://finance.yahoo.com/news/xinjiang-forced-labour-law-leaves-093000800.html>.

<sup>29</sup> Reed Albergotti, *Apple is lobbying against a bill aimed at stopping forced labor in China*, The Washington Post (Nov. 20, 2020), <https://www.washingtonpost.com/technology/2020/11/20/apple-uighur/>.

labor. Accordingly, the proponent believe there is reason to believe that Apple's due diligence as implemented by the private sector in the auditing process may be inadequate and insufficient to conclusively deny the presence of XUAR forced labor in its supply chain either within the region or in other areas where transfers of labor may be involved.

## ANALYSIS

### THE PROPOSAL DOES NOT MICROMANAGE THE COMPANY.

The Company asserts that the Proposal is excludable as attempting to micromanage the Company's operations:

...the Proposal inappropriately limits discretion of the board and management by prescribing a narrow, intricately prescribed approach to a complex and multifaceted issue. Specifically, the Proposal would dictate that the Company make specific decisions as to supply chain matters and use a specific tactic – publishing a phaseout transition plan – encompassing numerous complex aspects of the Company's supply chain management, including selection of the Company's supply chain sources, its supplier monitoring process, development of alternative suppliers and resource commitments, and publication of granular detail about its strategy... As such, the Proposal is overly granular in its approach, inappropriately limiting the discretion of the Board and management to pursue business operations that are compliant with U.S. law and policy and that involve numerous complex and competing considerations...

However, when examining the Proposal against the Commission and Staff's guidance on shareholder proposals, including ordinary business and micromanagement, it is evident that the proposal addresses a transcendent policy issue and does not micromanage or otherwise inappropriately address the Company's ordinary business.

#### **Ordinary Business and Micromanagement According to the Commission**

In 1998, the Commission issued a rulemaking release ("1998 Release") updating and interpreting the ordinary business rule, by both reiterating and clarifying past precedents. That release was the last time that the Commission discussed and explained at length the meaning of the ordinary business exclusion. The Commission summarized *two central considerations* in making ordinary business determinations – whether the proposal addresses a significant social policy issue, and whether it micromanages.

First, the Commission noted that certain tasks were generally considered so fundamental to management's ability to run a company on a day-to-day basis that they could not be subject to direct shareholder oversight (e.g., the hiring, promotion, and termination of employees, as well as decisions on retention of suppliers, and production quality and quantity). However, proposals related to such matters but *focused on sufficiently significant social policy issues* (i.e. significant discrimination matters) generally would not be excludable.

Second, proposals could be excluded to the extent they seek to "micromanage" a company by probing too deeply into matters of a complex nature upon which shareholders, as a group, would be unable to make an informed judgment.

Proposals that passed the first prong but for which the wording involved some degree of micromanagement could be subject to a case-by-case analysis of *whether the proposal probes too deeply*



for shareholder deliberation. The Staff's interpretation of micromanagement has evolved over the years, most recently articulated in the November 3, 2021 Staff Legal Bulletin 14 L. To assess micromanagement going forward, the bulletin notes that the Staff:

...will focus on the level of granularity sought in the proposal and whether and to what extent it inappropriately limits discretion of the board or management.

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Additionally, in order to assess whether a proposal probes matters "too complex" for shareholders, as a group, to make an informed judgment, we may consider the sophistication of investors generally on the matter, the availability of data, and the robustness of public discussion and analysis on the topic. The staff may also consider references to well-established national or international frameworks when assessing proposals related to disclosure, target setting, and timeframes as indicative of topics that shareholders are well-equipped to evaluate.

In this instance, the proposal addresses a significant policy issue, human rights, and it does not seek to micromanage within the meaning of the Staff and Commission interpretations.

Examining the current Proposal against the Commission's guidance:

- The Proposal addresses a significant policy issue for the Company;
- The Proposal addresses a large strategic direction issue which is comprehensible and appropriate for investor review;
- The Proposal does not impose granular details and methods;
- The Proposal is advisory and does not unduly constrain the discretion of the board or management;
- Therefore, the Proposal does not micromanage.

#### **The Proposal is directed toward a significant policy issue for the Company**

The Company does not dispute that the Proposal addresses the significant social policy of human rights. As such the Proposal involves a matter that "transcend[s] day-to-day business matters and raise[s] policy issues so significant that it would be appropriate for a shareholder vote." As stated in the Whereas section of the proposal, the human rights abuses against the Uyghur people have been classified as genocide by the US State Department, and by European, UK, and Canadian Parliaments.<sup>30</sup>

Staff precedent establishes that human rights are a significant social policy issue that overcomes ordinary business concerns. In *General Electric Company* (January 21, 2016), the Staff denied no-action relief for a proposal requesting, among other things, the company's "criteria for investing in, operating in and withdrawing from high-risk regions." The Staff found that the proposal could not be excluded under the ordinary business exception because "the proposal focuses on the significant policy issue of human

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<sup>30</sup> <https://www.cnn.com/2021/04/22/world/uk-china-uyghur-genocidnoe-motion-gbr-intl/index.html>

rights.” A nearly identical proposal was similarly denied no action relief in *Apple Inc.* (December 14, 2015) for the same reason. The Staff ruled that that proposal focused on the significant social policy issue of human rights as well.

This proposal is concerned with the “human rights abuses” of the Uyghur people which puts the proposal clearly and squarely in line with the precedents on other proposals focusing on the obviously significant social policy issue of human rights.

### **The Proposal is a broad strategic request by investors**

The Commission has made it clear that large, strategic requests – **directional suggestions that would involve a major change in an approach to a significant policy issue** – are appropriate for shareholder proposals.

There was some apprehension among the investor community in 1998 that the Commission might be developing a broad interpretation of micromanagement that would exclude many proposals with specific strategic requests. However, in the preamble to the 1998 Release, which is still the most recent and authoritative Commission-level statement regarding the application of micromanagement, the Commission made it clear that large strategic requests would still be appropriate:

“ . . . in the Proposing Release we explained that one of the considerations in making the ordinary business determination was the degree to which the proposal seeks to micromanage the company. We cited examples such as where the proposal seeks intricate detail, or seeks to impose specific timeframes or to impose specific methods for implementing complex policies. **Some commenters thought that the examples cited seemed to imply that all proposals seeking detail, or seeking to promote timeframes or methods, necessarily amount to ordinary business. . . We did not intend such an implication. Timing questions, for instance, could involve significant policy where large differences are at stake, and proposals may seek a reasonable level of detail without running afoul of these considerations.**” (Emphasis added.)

Thus, the Commission has articulated a principle of reasonableness and practicality for determining whether a proposal micromanages – **where large differences are at stake**. The question is not, “does the proposal suggest timelines or make specific recommendations,” but rather whether large differences are at stake rather than mere meddling with minutiae of a company’s business. This must be assessed on a case-by-case basis. In the present case, a large difference is at stake, as we have discussed in the background section of this letter.

### **Addressing impacts to society: core focus for strategic redirection**

The shareholder right to weigh in on a company’s impacts on society was judicially clarified in *Medical Committee for Human Rights v. SEC*, 432 F.2d 659 (D.C. Cir. 1985) in which the D.C. Circuit Court of Appeals 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.

In *Medical Committee*, the Viet Nam era proposal requested the Board of Directors adopt a resolution setting forth an amendment to the Composite Certificate of Incorporation of the Dow Chemical Company that napalm shall not be sold to any buyer unless that buyer gives reasonable assurance that the substance

will not be used on or against human beings.

In deciding *Medical Committee*, the court noted that it would be appropriate for shareholders to use the mechanism of shareholder democracy to pose “to their co-owners, in accord with applicable state law, the question of whether they wish to have their assets used in a manner which they believe to be more socially responsible.” The court further noted such a choice was not appropriately reserved to the board or management.

As stated in *Medical Committee*:

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We think that there is a clear and compelling distinction between management’s legitimate need for freedom to apply its expertise in matters of day-to-day business judgment, and management’s patently illegitimate claim of power to treat modern corporations with their vast resources as personal satrapies implementing personal political or moral predilections. It could scarcely be argued that management is more qualified or more entitled to make these kinds of decisions than the shareholders who are the true beneficial owners of the corporation; and it seems equally implausible that an application of the proxy rules which permitted such a result could be harmonized with the philosophy of corporate democracy which Congress embodied in section 14(a) of the Securities Exchange Act of 1934.

The same logic applies here. As such a major participant in the Chinese economy, Apple has a substantial exposure to, and influence on, the widespread use of forced labor among Uyghurs. It is quite evident to the proponent and other investors that the company has a dysfunctional relationship with the Chinese government in which it is compromising fundamental human rights and corporate values.

In the face of the current genocidal conditions surrounding Uyghur labor, the question of whether the Company maintains a hard line against forced labor in the supply chain by making a clear commitment to phaseout from affected regions is not a question reserved exclusively to management or boards. Furthermore, the court in *Medical Committee* supported utilizing shareholder democracy in a case involving relatively limited geographical reach – namely within Vietnam – whereas the Proposal here is focused on a genocide-implicated supply-chain condition in China.

In the decades that followed *Medical Committee*, numerous proposals on diverse subject matters have appropriately asked companies to change their business model in some way that reduced company impact associated with an important public policy issue, and were not excluded. The strategic choices regarding reducing large impacts of the company on society have been clearly established as appropriate within shareholder proposals.

### **Issues Comprehensible to Investors**

Under Staff Legal Bulletin 14L, the analysis of whether a proposal micromanages asks in part whether the proposal frames the investor deliberation in a manner consistent with market discussions, available guidelines and the state of familiarity/expertise on the issues in the investing marketplace.

In this instance, shareholders are well-positioned to comment on these issues. First, as stated in the Proposal, the human rights abuses against the Uyghur people are well documented in recent press reports

and the US State Department and the European, UK, and Canadian Parliaments have identified the abuse against the Uyghurs as genocide.

Second, also stated in the Proposal, publicly reported investigations show that despite repeated company claims of due diligence, there are apparent connections between Apple suppliers and forced labor. Shareholders are aware of the human rights abuses occurring against the Uyghur people and from media reports, of the dysfunctional, even submissive relationship that Apple is in with the Chinese government. Shareholders do not require specialized knowledge or expertise in order to form an opinion on these issues and to request that Apple ensure that it ceases supply chain activities involving labor from the Uyghur region.

The Company claims that the proposal addresses complex issues that only the board and management can weigh. While the Company must indeed grapple with decisions related to its product and business plans, the long-term strategic choices about continued reliance on problematic labor sources related to XUAR is a strategic choice on a significant social policy issue and one on which investors may well hold a different perspective from board and management due to the entrenched and dysfunctional relationship that appears to be occurring between the Company and the Chinese government.

The Company states that “The Staff has consistently concurred with the exclusion of proposals based on micromanagement where the proposal attempts to substitute shareholder judgment for that of management with respect to complex day-to-day business operations and prescribe a particular policy or method for addressing a complex matter.” The present proposal, however, is within the range of acceptable approaches, because it is only making a broad recommendation for a change in the company’s strategy that is clearly within the rights and interests of investors to opine upon.

### **Regionally-based Phaseouts Supported by Staff Decisions**

There are numerous instances in which the Staff has denied no action relief for proposals requesting that companies withdraw from countries which were committing human rights violations such as South Africa. For example, in *Texaco, Incorporated* (March 15, 1985), the Staff denied no-action relief for ordinary business (at the time, Rule 14a–8(c)(7)), where, as the Staff stated, “the proposal relates to Company implementation of or increased activity on the four Tutu conditions, and a report to shareholders on the Company’s presence in South Africa; and Company withdrawal from South Africa.”

Similarly, Staff denied no action relief where the proposals related to the company’s choices regarding the location of its operations. For example, in *American Telephone and Telegraph Company* (January 16, 1991), the Staff denied no action relief for ordinary business where, as the Staff stated, “the proposal requests the Company to phase-out operations in Israel.” The Staff noted that “while the subject of the proposal relates to the Company’s operations, the significant issues by the proposal appear to involve matters of policy which are beyond the realm of the Company’s ordinary business decisions.”

Further, in *RE/MAX Holdings, Inc.* (March 14, 2016), the Staff denied no action relief under 14a-8(i)(7) for a proposal which requested “that the Board form an ad hoc committee to reassess and report to shareholders on criteria, above and beyond legal compliance, for the Company’s practice of advertising and leasing properties in the Israeli settlements and any other locations in which substantial evidence exists that business practices support activities which contravene principled US positions and commitments.” The Company attempted to argue that the proposal “relates to the Company’s choices regarding the location of its operations.” In its denial, the Staff stated “we note that the proposal appears

to focus on matters that the staff has previously decided are beyond the realm of ordinary business.”

Other apt comparisons can be made to the many recent decisions finding no micromanagement. For example, see *The Hartford Financial Services Group, Inc.* (March 28, 2022). The proposal requested that the board “adopt and disclose new policies to help ensure that its underwriting practices do not support new fossil fuel supplies, in alignment with the IEA’s Net Zero Emissions by 2050 Scenario.” The Company successfully argued that the proposal “provides significant discretion to board and management to define the scope, time frames and parameters of the policies.” The Staff agreed and found that the proposal did “not seek to micromanage the Company.” Similarly, proposals pursuing significant organizational restructuring are not excludable, such as in *Qumu Corporation* (April 5, 2022), where the Staff denied no-action relief and found no micromanagement for a proposal which requested that the board “take all requisite steps to engage an independent, recognized investment bank (not previously engaged by the Company or affiliated with any director) to direct a sale of the Company to an independent, strategic buyer.” The proponent successfully argued that the proposal “preserves management’s discretion, and offers high-level direction on a large, strategic corporate matter.”

#### **The Proposal does not delve into granular detail**

The current Proposal contains a reasonable level of detail necessary for conveying the concept of strategic redirection, while leaving the Board of Directors with very broad discretion as to when and how to accomplish this.

It is particularly important in light of the company’s diplomatic relationship with China to recognize the importance of this as an advisory proposal. There is perhaps no signal stronger than a vote of investors to phase out business in those regions to give the company significant leverage and backbone in its working relationship with China.

Notably, the current proposal does not set a timeframe for exiting the country, but leaves it to the board and management to address the request in what might well be a long term planning and transition process, spurred on by continued operational and reputational risks to the Company. For instance, there is nothing in the proposal that prevents the Board of Directors from setting long timelines, because it would be in the discretion of the board to identify a timeframe that is workable and sustainable for the company to alter its supply chain.

The proposal does not impose granular requirements for a transition plan. Instead, it urges the company to develop a broad strategy to phase out supply chain activities from the Uyghur region and related labor transfers. The details of such plan are in the discretion of board and management, including what the board and management views as a reasonable timeframe for phaseout of sourcing from Uyghur labor, ceasing supply chain sources from the region including labor transfers, development of new supply chain sources elsewhere including in the domestic US, and discussion of resource commitments to make this transition. These details are all discretionary.

A long line of Staff decisions has held that proposals are excludable on the basis of micromanagement where they seek prescriptive actions on day-to-day levels of minutiae, and stand in contrast to the current Proposal. For instance, in *Marriott International Inc.* (March 17, 2010) the proposal addressed minutiae 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 — an 80% reduction in nitrogen oxide emissions from the company’s coal-fired plant and a

limit of 0.15 lbs of nitrogen oxide per million British Thermal Units of heat input for each boiler. This proposal was found excludable despite its objective of addressing significant environmental policy issues. Similarly, a *highly detailed study* was sought on global warming or cooling in *Ford Motor Company*, (March 2, 2004). These are important examples of proposals that sought “excess” detail or granularity, in contrast to the current Proposal.

In contrast and as noted above, there are numerous instances in which proposals were not found to micromanage that asked a company to depart a region problematic for its human rights abuses. Those include *Texaco Inc.* (March 15, 1985), *RE/MAX Holdings Inc.* (March 14, 2016), and *American Telephone and Telegraph Company* (January 16, 1991).

The same logic of an overriding social policy causing a proposal to transcend ordinary business despite being directed to major issues on the conduct of a business include *Tyson Foods Inc.* (*reconsideration granted Dec. 15, 2009*) where the proposal was found not to interfere with ordinary business or micromanage in requesting that the board adopt a policy and practices for both Tyson's own hog production and (except when precluded by existing contracts) its contract suppliers of hogs.<sup>31</sup> This was a reasonable method for addressing the subject matter in Tyson Foods. It is notable that the request was quite a bit more granular than the current proposal in its request and still did not micromanage.

#### **Company cited precedents are not applicable to current Proposal**

The contrast with the Company’s cited precedents is informative. The Company argues that this proposal is similar to the proposals excluded under Rule 14a-8(i)(7) in *Seagate Technology* (August 2, 2021) and *SeaWorld Entertainment, Inc.* (avail. Apr. 20, 2021). Those proposals were excluded as micromanagement prior to Staff Legal Bulletin 14L, which clarified Staff decisionmaking regarding micromanagement to realign with the intent of the Commission under the 1998 Release. There is every reason to believe those no action requests on micromanagement would have been evaluated differently under the realigned Staff interpretation.

The Company also compares the proposal to a few recent decisions where the Staff granted no-action relief due to micromanagement (*Tesla, Inc.* (avail. May 6, 2022); *Deere & Co.* (avail. Jan. 3, 2022); *The Coca-Cola Company* (avail. Feb. 16, 2022)). In its argument, the Company concedes that the Staff found

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<sup>31</sup> The proposal required the company to:

(1) phase out routine use of animal feeds containing antibiotics that belong to the same classes of drugs administered to humans, except for cases where a treatable bacterial illness has been identified in a herd or group of animals; and

(2) implement animal raising practices that do not require routine administration of antibiotics to prevent and control disease, and where this is not feasible, use only antibiotics unrelated to those used in human medicine; and

(3) that the Board report to shareowners, at reasonable cost and omitting proprietary information, on the timetable and measures for implementing this policy and annually publish data on types and quantities of antibiotics in the feed given to livestock owned by or purchased by Tyson. (emphasis added)

that each of the proposals in those decisions inappropriately limited the discretion of the board. As demonstrated above, the present Proposal provides a broad strategic framework for the board – the opportunity for investors to weigh in on a critical vector of business strategy bearing on human rights and major risks for the company, and therefore does not inappropriately limit the discretion of the board.

**The absence of a claim of substantial implementation of the proposal is also informative to investors supporting the proposal.**

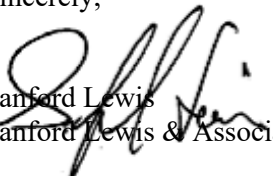
In closing, we note that the Company does not make a substantial implementation argument. Despite a dedicated section of the no-action relief request stating “The Company is Committed to High Standards of Conduct and Compliance Across its Global Supply Chain” and claims that the Company found “no instances globally where anyone was forced to work in its supply chain,” the Company does not allege that the Proposal request has been substantially implemented.

Clearly, the Company cannot make this argument despite these factual claims because it has not disclosed a commitment and timeline to halt the activities targeted by the Proposal. At present, Apple has not implemented the Proposal because there remains very significant concern regarding the extent of Apple’s relationship to the Uyghur region and forced Uyghur labor throughout its China supply chain. This concern necessitates a shareholder vote on the change of strategy suggested by the Proposal.

**CONCLUSION**

Based on the foregoing, we believe it is clear that the Company has provided no basis for the conclusion that the Proposal is excludable from the 2023 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](mailto:sanfordlewis@strategiccounsel.net).

Sincerely,



Sanford Lewis  
Sanford Lewis & Associates

Antonio Pontón-Núñez  
Brittany Blanchard Goad  
Kendall McPherson

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Los Angeles	Tokyo
Madrid	Washington, D.C.

December 23, 2022

**VIA ELECTRONIC MAIL**

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

Re: **Apple Inc. Shareholder Proposal Submitted by SumOfUs and Jeff Perk**

To the addressee set forth above:

On October 24, 2022, Apple Inc. (the “*Company*”) submitted a letter requesting that the staff of the Division of Corporation Finance (the “*Staff*”) concur that the Company could exclude a shareholder proposal (the “*Proposal*”) submitted by SumOfUs and Jeff Perk (the “*Proponents*”) from its proxy materials for its 2023 annual meeting of shareholders (the “*2023 Annual Meeting*”).

In email correspondence dated December 23, 2022, attached hereto as Exhibit A, Sanford Lewis, on behalf of the Proponents, informed the Staff of the Proponents’ decision to withdraw the Proposal. Based on the withdrawal of the Proposal, the Company hereby informs the Staff that the Company is withdrawing its no-action request of October 24, 2022 relating to the Proposal.

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

Sincerely,



Jenna Cooper  
of LATHAM & WATKINS LLP

Enclosures

cc: SumOfUs  
Jeff Perk  
Sam Whittington, Apple Inc.



**Exhibit A**

**Correspondence Withdrawing Proposal**

**From:** Sanford Lewis <sanfordlewis@strategiccounsel.net>  
**Date:** December 23, 2022 at 4:22:46 AM PST  
**To:** shareholderproposals@sec.gov  
**Cc:** Katerina Kousoula <kkousoula@apple.com>, Christina O'Connell <christina@sumofus.org>, Ashley orbach <aorbach@apple.com>, Danny Auron <danny@sumofus.org>, Lilly Icard <l\_icard@apple.com>, Sam Whittington <sam\_whittington@apple.com>, Vicky Wyatt <vicky@sumofus.org>  
**Subject: Apple: SumOfUs proposal withdrawn**

TO: SEC 14a-8 Team

On behalf of the proponent, SumOfUs, I am pleased to notify you that the Apple proposal submitted by SumOfUs regarding Uyghur labor in China has been withdrawn. A letter from the company formally withdrawing the no action request should follow shortly.

Sanford Lewis  
Sanford Lewis & Associates  
413-992-8297

**From:** Sanford Lewis <sanfordlewis@strategiccounsel.net>  
**Date:** December 23, 2022 at 11:01:15 AM PST  
**To:** shareholderproposals@sec.gov  
**Cc:** Katerina Kousoula <kkousoula@apple.com>, Christina O'Connell <christina@sumofus.org>, Ashley orbach <aorbach@apple.com>, Danny Auron <danny@sumofus.org>, Lilly Icard <l\_icard@apple.com>, Sam Whittington <sam\_whittington@apple.com>, Vicky Wyatt <vicky@sumofus.org>  
**Subject: Re: Apple: SumOfUs proposal withdrawn**

I am writing to further confirm that the co-filer, Jeff Perk, has also withdrawn the Apple proposal filed by SumOfUs.

Sanford Lewis

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Sanford Lewis  
413 549-7333 desk  
413 992-8297 mobile

Need to book an appointment? Please use this link to find a mutually convenient time:  
<https://calendly.com/sanfordlewis413>

On Fri, Dec 23, 2022 at 7:22 AM Sanford Lewis <[sanfordlewis@strategiccounsel.net](mailto:sanfordlewis@strategiccounsel.net)> wrote:  
TO: SEC 14a-8 Team

On behalf of the proponent, SumOfUs, I am pleased to notify you that the Apple proposal submitted by SumOfUs regarding Uyghur labor in China has been withdrawn. A letter from the company formally withdrawing the no action request should follow shortly.

Sanford Lewis  
Sanford Lewis & Associates  
413-992-8297