



DIVISION OF
CORPORATION FINANCE

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

January 3, 2024

Ronald O. Mueller
Gibson, Dunn & Crutcher LLP

Re: Apple Inc. (the "Company")
Incoming letter dated October 23, 2023

Dear Ronald O. Mueller:

This letter is in response to your correspondence concerning the shareholder proposal (the "Proposal") submitted to the Company by the AFL-CIO Equity Index Funds for inclusion in the Company's proxy materials for its upcoming annual meeting of security holders.

The Proposal requests that the Company prepare a transparency report on the Company's use of artificial intelligence in its business operations and disclose any ethical guidelines that the Company has adopted regarding its use of artificial intelligence technology.

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

Copies of all of the correspondence on which this response is based will be made available on our website at <https://www.sec.gov/corpfin/2023-2024-shareholder-proposals-no-action>.

Sincerely,

Rule 14a-8 Review Team

cc: Maureen O'Brien
Segal Marco Advisors

October 23, 2023

VIA E-MAIL

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

Re: *Apple Inc.*
Shareholder Proposal of the AFL-CIO Equity Index Funds
Securities Exchange Act of 1934—Rule 14a-8

Ladies and Gentlemen:

This letter is to inform you that our client, Apple Inc. (the “Company”), intends to omit from its proxy statement and form of proxy for its 2024 Annual Meeting of Shareholders (collectively, the “2024 Proxy Materials”) a shareholder proposal (the “Proposal”) and statement in support thereof (the “Supporting Statement”) received from the AFL-CIO Equity Index Funds (the “Proponent”).

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

- filed this letter with the Securities and Exchange Commission (the “Commission”) no later than eighty (80) calendar days before the Company intends to file its definitive 2024 Proxy Materials with the Commission; and
- concurrently sent copies of this correspondence to the Proponent.

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

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THE PROPOSAL

The Proposal states:

RESOLVED: Shareholders request that Apple Inc. prepare a transparency report on the company's use of Artificial Intelligence ("AI") in its business operations and disclose any ethical guidelines that the company has adopted regarding the company's use of AI technology. This report shall be made publicly available to the company's shareholders on the company's website, be prepared at a reasonable cost, and omit any information that is proprietary, privileged, or violative of contractual obligations.

A copy of the Proposal and the Supporting Statement, as well as related correspondence with the Proponent, is attached hereto as Exhibit A.

BASIS FOR EXCLUSION

For the reasons discussed below, the Proposal properly may be excluded from the 2024 Proxy Materials pursuant to Rule 14a-8(i)(7) because the Proposal relates to the Company's ordinary business operations and the Proposal seeks to micromanage the Company.

ANALYSIS

I. The Proposal May Be Excluded Pursuant To Rule 14a-8(i)(7) Because It Involves Matters Related To The Company's Ordinary Business Operations.

For the Company, artificial intelligence ("AI") and machine learning are fundamental technologies that are integral to virtually every one of its products. For example, Siri®, which has been available for more than a decade, Personal Voice and Live Voicemail included in iOS 17, and life saving features like Fall Detection, Crash Detection, and ECG, would simply not be possible without the use of AI. The Company is committed to responsibly advancing its products that use these technologies, and its teams around the world push forward with their work to infuse Apple's deeply held values into everything it makes.

The Proposal addresses broadly and generally the use of AI in the Company's business operations. As a result, the report requested in the Proposal could encompass potentially every aspect of the Company's business operations, including whether and how it chooses to use AI/machine learning (if at all) in the course of routine business operations such as product development and research, supply chain management, and financial management and planning, as well as in managing efficient energy use throughout the Company's physical plants and buildings, monitoring cyber and physical security at the Company's facilities,

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coordinating employee benefit and human resource management programs, and conducting a wide range of other ordinary business operations. The Proposal's excludability under Rule 14a-8(i)(7) is supported by a long and well-established body of precedent permitting companies to exclude proposals that relate to ordinary business activities, including those addressing a company's business practices and operations, choice of technologies, conduct of ethical business practices, and management of the workforce. Additionally, because of the extensive information that the Proposal would have the Company report on, the Proposal is excludable under Rule 14a-8(i)(7) because it seeks to micromanage the Company.

A. Background On The Ordinary Business Standard.

Rule 14a-8(i)(7) permits a company to omit from its proxy materials a shareholder proposal that relates to the company's ordinary business operations. According to the Commission's release accompanying the 1998 amendments to Rule 14a-8, the term "ordinary business" "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 stated that the underlying policy of the ordinary business exclusion is "to confine the resolution of ordinary business problems to management and the board of directors, since it is impracticable for shareholders to decide how to solve such problems at an annual shareholders meeting," and identified two central considerations that underlie this policy. *Id.* The first of those considerations is that "[c]ertain tasks are so fundamental to management's ability to run a company on a day-to-day basis that they could not, as a practical matter, be subject to direct shareholder oversight." *Id.* The Commission stated that examples of tasks that implicate the ordinary business standard include "the management of the workforce, such as the hiring, promotion, and termination of employees, decisions on production quality and quantity, and the retention of suppliers." *Id.*

The second consideration relates to "the degree to which the proposal seeks to 'micro-manage' the company by probing too deeply into matters of a complex nature upon which shareholders, as a group, would not be in a position to make an informed judgment." *Id.*, citing Exchange Act Release No. 12999 (Nov. 22, 1976) (the "1976 Release").

When assessing proposals under Rule 14a-8(i)(7), the Staff considers the terms of the resolution and its supporting statement as a whole. *See* Staff Legal Bulletin No. 14C, part D.2 (June 28, 2005) ("In determining whether the focus of these proposals is a significant social policy issue, we consider both the proposal and the supporting statement as a whole.").

A shareholder proposal being framed in the form of a request for a report does not change the nature of the proposal. The Commission has stated that a proposal requesting the

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dissemination of a report may be excludable under Rule 14a-8(i)(7) if the subject matter of the proposed report is within the ordinary business of the issuer. *See* Exchange Act Release No. 20091 (Aug. 16, 1983); *Johnson Controls, Inc.* (avail. Oct. 26, 1999) (“[w]here the subject matter of the additional disclosure sought in a particular proposal involves a matter of ordinary business . . . it may be excluded under [R]ule 14a-8(i)(7).”); *see also Ford Motor Co.* (avail. Mar. 2, 2004) (concurring with the exclusion of a proposal requesting that the company publish a report about global warming/cooling, where the report was required to include details of indirect environmental consequences of its primary automobile manufacturing business).

B. The Proposal Is Excludable Because It Relates To The Company’s Business Practices And Operations.

The Proposal requests that the Company report on the Company’s use of AI in its business operations and that such disclosure include any ethical guidelines that the Company has adopted regarding its use of AI. The Staff has long concurred that proposals asking generally for a review and report on how a company conducts its business operations are excludable pursuant to Rule 14a-8(i)(7). For example, in *Westinghouse Electric Corp.* (avail. Jan. 27, 1993), a proposal requested that the company’s board issue a report on the “operations” over a six year period of a subsidiary that had incurred significant losses, including policies, guidelines, and actual practices in effect at the subsidiary and addressing the conduct of its business. The Staff concurred with the exclusion of the proposal because it dealt with the ordinary business matter of “business practices and operations.” While it is rare for a proposal to address a company’s business operations as generally and broadly as the Proposal does, the Staff has continued to concur in exclusion of those that do. In *Amazon.com, Inc.* (avail. Mar. 16, 2018), the Staff concurred with the exclusion under Rule 14a-8(i)(7) of a proposal submitted by the Proponent requesting a report on the risks arising from the public debate over the company’s growth and societal impact and how the company is managing or mitigating those risks. In *CVS Corp.* (avail. Feb. 1, 2000), a shareholder proposal requested that the company prepare an annual strategic plan report describing its goals, strategies, policies, and programs. The Staff agreed that the proposal could be excluded, stating, “there appears to be some basis for your view that CVS may exclude the proposal under rule 14a-8(i)(7) as relating to its ordinary business operations (*i.e.*, business practices and policies).” The Staff also has concurred with the exclusion of shareholder proposals that relate generally to a company’s business operations but seek a more targeted review of those operations. For example, in *JPMorgan Chase & Co.* (avail. Mar. 23, 2023, *recon. denied* Apr. 3, 2023), the Staff concurred with the exclusion under Rule 14a-8(i)(7) of a proposal requesting a report on company business practices that prioritize non-pecuniary factors when it comes to establishing, rejecting, or failing to continue client relationships.

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C. *The Proposal Is Excludable Because It Relates To The Company's Choice Of Technologies.*

The Proposal at its core relates to whether and how the Company uses AI technology across its business operations. The Proposal does not define AI, but it does cite to a report of the White House Office of Science and Technology (the “AI Bill”). The AI Bill refers to AI as “automated systems” and intentionally adopts a broad definition of the term to include “any system, software, or process that uses computation as whole or part of a system to determine outcomes, make or aid decisions, inform policy implementation, collect data or observations, or otherwise interact with individuals and/or communities.”¹ While there are new developments occurring in the application of AI, the use of automated systems to improve processes and business operations within companies generally is not new.² And in fact, the Proposal does not request a report related to any specific novel technology, but rather a report on how the Company uses AI across its business operations, referencing well-established applications of software such as automation of systems. Therefore, a report on whether and how the Company uses AI in its business operations is the latest variation in a long line of excludable proposals addressing companies’ choice of technologies in managing their business operations.

The Staff has repeatedly concurred that “[p]roposals that concern a company’s choice of technologies for use in its operations are generally excludable under rule 14a-8(i)(7)” as related to ordinary business matters. *FirstEnergy Corp.* (avail. Mar. 8, 2013). *See also AT&T Inc.* (avail. Jan. 4, 2017) (concurring with exclusion under Rule 14a-8(i)(7) of a proposal requesting a report on the company’s progress toward providing Internet service and products for low-income customers); *PG&E Corp.* (avail. Mar. 10, 2014) (concurring with the exclusion under Rule 14a-8(i)(7) of a proposal advocating that the company make analog electrical meters available instead of “smart” meters); *AT&T Inc.* (avail. Feb. 13, 2012) (concurring with exclusion under Rule 14a-8(i)(7) of a proposal requesting a report on financial and reputational risks posed by continuing to use technology that inefficiently

¹ See “Definitions” at White House Office of Science and Technology Policy, “Blueprint for an AI Bill of Rights: Making Automated Systems Work for the American People” (Oct. 2022), available at: <https://www.whitehouse.gov/ostp/ai-bill-of-rights>.

² See, e.g., “Apple Computer names Larry Tesler vice president of advanced technology,” *Business Newswire* (Oct. 28, 1986); “Texas Instruments Signs VAR Agreement with Apple,” *PR Newswire* (Mar. 3, 1988). (“John Sculley, president and chief executive officer of Apple Computer, said, ‘TI’s Lisp co-processor extends the Macintosh II into new applications areas that are complementary to our other Macintosh marketing thrusts. This is an important catalyst that should generate greater use of AI technologies in solving difficult business problems.’”). *See also*, Peter Stone, et al., “Artificial Intelligence and Life in 2030,” *One Hundred Year Study on Artificial Intelligence: Report of the 2015-2016 Study Panel*, Stanford University, Stanford, CA (Sept. 2016), available at: https://ai100.stanford.edu/sites/g/files/sbiybj18871/files/media/file/ai100report10032016fnl_singles.pdf.

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consumed electricity); *CSX Corp.* (avail. Jan. 24, 2011) (concurring with the exclusion of a proposal requesting that the company develop a kit to convert its fleet to fuel cell power, noting that “[p]roposals that concern a company’s choice of technologies for use in its operations are generally excludable under rule 14a-8(i)(7)”). As these precedents demonstrate, as new technologies have developed over time, whether it be the Internet, smart meters, or fuel cell power, the Staff has repeatedly concurred that whether or how to use such technology in a company’s operations is a core matter involving the company’s business and operations that management must have the flexibility to direct.

Choices on the use of technology throughout a company’s business operations cannot, in the words of the 1998 Release, “as a practical matter, be subject to direct shareholder oversight.” This is particularly the case when, as here, a proposal refers to a broad category of technology and its application across a company’s business operations. For example, as noted above, if the Company were to report on its use of AI across its business operations, it would need to address routine business operations, such as product development and research, supply chain management, contract management, financial management and planning, and monitoring and management of aspects of the Company’s physical plants and buildings.³ Whether and how to use AI in a company’s operations requires an understanding of that company’s complex and confidential business needs, including competitive considerations, budget considerations, quality considerations, available resources, and appropriateness of a given technology to the complexity of tasks, among many others. For shareholders to be able to understand and assess whether the Company is (or the extent to which it is not) using AI in its business operations, they would have to probe into exactly the type of day-to-day management functions that Rule 14a-8(i)(7) is intended to avoid. Thus, because the subject matter of the requested report addresses the Company’s choice of technologies, the Proposal is excludable under Rule 14a-8(i)(7).

D. Reporting on Ethical Guidelines Is An Ordinary Business Matter As It Relates To The Company’s General Adherence To Ethical Business Practices.

The Proposal also requests disclosure of any ethical guidelines related to the Company’s use of AI in its business operations. This element does not remove the Proposal from the realm of ordinary business matters, as the Staff consistently has concurred with the exclusion of shareholder proposals seeking a review and report on ethical standards applicable to a company’s general business operations. For example, in *PayPal Holdings, Inc.* (Apr. 7, 2022), the Staff concurred in the exclusion under Rule 14a-8(i)(7) of a proposal that requested that the company’s board of directors compare the company’s code of business conduct and ethics with the actual operations of the company, noting that “the [p]roposal

³ This list is provided as an example only and should not be read to indicate that the Company is using AI in any particular aspect of its business operations.

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relates to, and does not transcend, ordinary business matters.” Similarly, *Verizon Communications, Inc.* (avail. Jan. 10, 2011) involved a proposal requesting that the board form a Corporate Responsibility Committee charged with monitoring the company’s commitment to integrity, trustworthiness, and reliability and the extent to which it lived up to its Code of Business Conduct. The Staff concurred that the proposal could be excluded because “[p]roposals that concern general adherence to ethical business practices are generally excludable under [R]ule 14a-8(i)(7).” Similarly, in *The Walt Disney Co.* (avail. Dec. 12, 2011), the proposal asked the board to report on board compliance with Disney’s Code of Business Conduct and Ethics for directors. In its response concurring with Disney’s exclusion of the proposal, the Staff stated, “[p]roposals that concern general adherence to ethical business practices and policies are generally excludable under [R]ule 14a-8(i)(7).” See also *International Business Machines Corp.* (avail. Jan. 7, 2010, *recon. denied* Feb. 22, 2010) (proposal directing officers to restate and enforce certain standards of ethical behavior was excludable because it related to general adherence to ethical business practices). Here, since the Proposal asks the Company to report on ethical guidelines (in other words, its general adherence to ethical standards), which relate to the Company’s ordinary business practices, this aspect of the Proposal further supports exclusion under Rule 14a-8(i)(7).

E. References To Workforce Management Considerations In The Supporting Statements Relate To The Company’s Ordinary Business.

While the Proposal relates generally to the Company’s use of AI in its business operations, the Proposal’s Supporting Statement references a few concerns about potential applications of AI in human resources management. None of the workforce management concerns raised in the Supporting Statement are unique or endemic to the application of AI. Discrimination or bias against employees or a decision to automate jobs or replace workers are long-standing business issues that companies and workers have confronted and worked to address for decades, and may occur with or without the application of AI technologies. And indeed, the Company does already have robust policies and procedures in place to address these issues, regardless of whether they arise in the context of technology that incorporates AI or another technology that does not. For example, the Company has a Business Conduct Policy that sets forth the core principles of honesty, respect, confidentiality, and compliance that guide the Company’s business practices.⁴ In addition, in 2020, the Company’s Board of Directors adopted its human rights policy, Our Commitment to Human Rights, that governs how the Company treats everyone, including its customers, employees, business partners, and people at every level of its supply chain.⁵ The references in the Supporting Statement therefore

⁴ See apple.com/compliance/pdfs/Business-Conduct-Policy.pdf.

⁵ See investor.apple.com/Apple-Human-Rights-Policy.

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further demonstrate that the Proposal does not implicate issues that transcend the Company's ordinary business.

The Commission and Staff have long held that a shareholder proposal may be excluded under Rule 14a-8(i)(7) if, as with the references in the Supporting Statement, it relates generally to the company's management of its workforce. As noted above, the Commission specifically recognized in the 1998 Release that "management of the workforce" is "fundamental to management's ability to run a company on a day-to-day basis." Similarly, in *United Technologies Corp.* (avail. Feb. 19, 1993), the Staff provided the following examples of topics that involve a company's ordinary business and thus make a proposal excludable under Rule 14a-8(i)(7): "employee health benefits, general compensation issues not focused on senior executives, management of the workplace, employee supervision, labor-management relations, employee hiring and firing, conditions of the employment and employee training and motivation."

Consistent with the 1998 Release and *United Technologies*, the Staff has recognized that a wide variety of proposals pertaining to the management of a company's workforce are excludable under Rule 14a-8(i)(7). For example, in *Apple Inc. (Rahardja and Mohr)* (avail. Jan. 3, 2023), the Staff concurred that proposals addressing return to office policies could be excluded as ordinary business. In *Intel Corp.* (avail. Mar. 18, 1999), the Staff concurred with the exclusion of a proposal seeking adoption of an "Employee Bill of Rights," which would have established various "protections" for the company's employees, including limited work-hour requirements, relaxed starting times, and a requirement that employees treat one another with dignity and respect. The Staff noted that the foregoing was excludable as "relating, in part, to Intel's ordinary business operations (i.e., management of the workforce)." See also *Amazon.com, Inc. (UAW Retiree Medical Benefits Trust)* (avail. Apr. 7, 2022) (concurring with the exclusion of a proposal requesting a report on risks and other considerations associated with staffing, because the proposal did not "transcend[] ordinary business matters."); *Yum! Brands, Inc.* (avail. Mar. 6, 2019) (concurring with the exclusion of a proposal relating to adopting a policy not to "engage in any Inequitable Employment Practice" because it related "generally to the [c]ompany's policies concerning its employees and does not focus on an issue that transcends ordinary business matters"); *Apple, Inc. (Zhao)* (avail. Nov. 16, 2015) (concurring with the exclusion of a proposal asking the company's compensation committee to adopt new compensation principles responsive to the U.S.'s "general economy, such as unemployment, working hour and wage inequality," as relating to "compensation that may be paid to employees generally"); and *Starwood Hotels & Resorts Worldwide, Inc.* (avail. Feb. 14, 2012) (concurring with the exclusion of a proposal requesting verification and documentation of U.S. citizenship for the company's U.S. workforce and requiring training for foreign workers in the U.S. to be minimized because it "relates to procedures for hiring and training employees" and "[p]roposals

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concerning a company's management of its workforce are generally excludable under [R]ule 14a-8(i)(7)").

The Supporting Statement itself tacitly acknowledges that companies are increasingly integrating AI technology into various aspects of workforce management. As reflected in the foregoing precedents, the Supporting Statement's references to various workforce management concerns do not cause the Proposal to transcend ordinary business matters and instead address the Company's general management of its workforce. Decisions involving the use of various technologies, applications, and services in workforce management (any of which may incorporate AI technology) are multifaceted, complex, and based on a range of considerations that are integral to managing the day-to-day operations of the Company. Accordingly, the Proposal is excludable under Rule 14a-8(i)(7) as relating to the management of the Company's workforce.

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

In the 1998 Release, the Commission reaffirmed the standards for when proposals are excludable under the "ordinary business" provision that the Commission had initially articulated in the 1976 Release. In the 1998 Release, the Commission also distinguished proposals pertaining to ordinary business matters that are excludable under Rule 14a-8(i)(7) from those that "focus on" significant social policy issues. The Commission stated, "proposals relating to [ordinary business] matters but focusing on sufficiently significant social policy issues (e.g., significant discrimination matters) generally would not be considered to be excludable, because the proposals would transcend the day-to-day business matters and raise policy issues so significant that it would be appropriate for a shareholder vote." 1998 Release.

In Staff Legal Bulletin No. 14L (Nov. 3, 2021) ("SLB 14L"), the Staff stated that it "will realign its approach for determining whether a proposal relates to 'ordinary business' with the standard the Commission initially articulated in [the 1976 Release], which provided an exception for certain proposals that raise significant social policy issues, and which the Commission subsequently reaffirmed in the 1998 Release." In addition, the Staff stated that in administering Rule 14a-8(i)(7), the Staff "will instead focus on the social policy significance of the issue that is the subject of the shareholder proposal" and "consider whether the proposal raises issues with a broad societal impact, such that they transcend the ordinary business of the company." *Id.* The Staff further noted that under this realigned approach, "proposals squarely raising human capital management issues with a broad societal impact" may not be subject to exclusion. *Id.*

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The Proposal relates to whether and how the Company uses AI in its business operations and therefore does not raise an issue with a “broad societal impact.” As noted above, none of the examples or concerns raised in the Proposal’s Supporting Statement are unique or endemic to the application of AI or to the Company’s business. The Supporting Statement itself does not demonstrate how some of the concerns it mentions would even arise in the context of the Company’s management of its business operations.

We recognize that certain aspects of AI or the application of certain novel types of AI in specific contexts can raise significant social policy issues with a broad societal impact, but that is not the case with respect to the Proposal’s broad request for disclosure of the Company’s use of AI across its business operations. Proposals with passing references touching upon topics that might raise significant social policy issues—but which do not focus on or have only tangential implications for such issues—are not transformed from an otherwise ordinary business proposal into one that transcends ordinary business, and as such, remain excludable under Rule 14a-8(i)(7). For example, in *Dominion Resources, Inc.* (avail. Feb. 3, 2011), a proposal requested that the company promote “stewardship of the environment” by initiating a program to provide financing to home and small business owners for installation of rooftop solar or renewable wind power generation. Even though the proposal touched upon environmental matters, the Staff concluded that the subject matter of the proposal actually related to “the products and services offered for sale by the company” and therefore determined that the proposal could be excluded under Rule 14a-8(i)(7).

The use of AI technology in ordinary business operations reflects further progress in the historical development of workplace technological trends that include the automation of manufacturing and the introduction of personal computers to automate certain office tasks. Indeed, one of the most fundamental aspects of any company’s ordinary business operations is the adaptation of new techniques and technologies to optimize operations, including potentially workforce management, increase productivity, and seek innovation across its operations. The use of AI technology, broadly defined, across the Company’s business operations does not present any significant policy issues distinct from these historical patterns. Such ordinary business matters are the crux of the Proposal’s focus. Thus, the Proposal does not raise a significant policy issue and may be excluded under Rule 14a-8(i)(7).

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

The 1998 Release states that micromanagement “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.” In SLB 14L, the Staff clarified that not all “proposals seeking detail or seeking to promote timeframes” constitute micromanagement, and that going forward the Staff “will focus on the level of granularity

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sought in the proposal and whether and to what extent it inappropriately limits discretion of the board or management.” To that end, the Staff stated that this “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.” SLB 14L (emphasis added).

In SLB 14L, the Staff also stated that in order to assess whether a proposal probes matters “too complex” for shareholders, as a group, to make an informed judgment, it 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 stated that it would also consider “references to well-established national or international frameworks when assessing proposals related to disclosure” as indicative of topics that shareholders are well-equipped to evaluate. *Id.*

In assessing whether a proposal seeks to micromanage a company’s ordinary business operations, the Staff evaluates not just the wording of the proposal but also the action called for by the proposal and the manner in which the action called for under a proposal would affect a company’s activities and management discretion. *See Deere & Co.* (avail. Jan. 3, 2022) and *The Coca-Cola Co.* (avail. Feb. 16, 2022), each of which involved a broadly phrased request but 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.”

The Staff consistently has concurred in the exclusion of shareholder proposals that seek extensive detail on a company’s operations as seeking to micromanage the company. *See Verizon Communications, Inc.* (avail. Mar. 17, 2022), *American Express Co.* (avail. Mar. 11, 2022), and *Deere & Co.* (avail. Jan. 3, 2022) (each requesting that the company publish all employee training materials). The Proposal here attempts to probe too deeply into the judgment of management by seeking information on all the ways in which the Company uses AI in its business operations. Decisions to use or not to use a particular technology or application across a company’s business operations and on how to communicate with investors regarding the conduct of a company’s business operations are a multi-faceted endeavor guided by numerous factors, including but not limited to legal and regulatory requirements, business and competitive considerations, and budgetary considerations, among others. All of these considerations are complicated and outside the ability of shareholders to assess in the absence of detailed working knowledge of the Company’s operations, and require management to have discretion to exercise its judgment in making determinations appropriate for the Company. In requesting that the Company report on the use of AI across all of the Company’s business operations, the Proposal is seeking precisely the level of

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granularity that the Staff highlighted in SLB 14L, and thus the Proposal may be excluded under Rule 14a-8(i)(7).

CONCLUSION

Based upon the foregoing analysis, the Company intends to exclude the Proposal from its 2024 Proxy Materials, and we respectfully request that the Staff concur that the Proposal may be excluded under Rule 14a-8.

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

Sincerely,



Ronald O. Mueller

Enclosure

cc: Maureen O'Brien, Segal Marco Advisors
Sarah Reed, Bank of New York Mellon
Sam Whittington, Apple Inc.

EXHIBIT A

September 12, 2023

Via UPS Air and E-Mail

Katherine Adams
Corporate Secretary
Apple Inc.
One Apple Park Way, MS: 927-4GC
Cupertino, CA 95014 USA
shareholderproposal@apple.com

Re: Shareholder proposal for 2024 Annual Shareholder Meeting

Dear Ms. Adams:

Segal Marco Advisors is filing a shareholder proposal on behalf of the AFL-CIO Equity Index Funds (the "Proponent"), a shareholder of Apple Inc. (the "Company"), for action at the next annual meeting of the Company. The Proponent submits the enclosed shareholder proposal for inclusion in the Company's 2024 proxy statement, for consideration by shareholders, in accordance with Rule 14a-8 of the General Rules and Regulations of the Securities Exchange Act of 1934.

The Proponent has continuously beneficially owned, for at least one year as of the date hereof, at least \$25,000 worth of the Company's common stock. The Proponent intends to continue to hold the requisite amount of securities through the date of the 2023 shareholders' meeting. A letter from the Proponent's trustee and custodian bank verifying the Proponent's share ownership is enclosed. A representative of the Proponent will attend the stockholders' meeting to move the resolution as required.

Segal Marco Advisors is available to meet with the Company via teleconference on September 22nd or 25th between 10am and 12pm PDT. We are also available to discuss this issue at a mutually agreeable day and time. We appreciate the opportunity to engage and seek to resolve the Proponent's concerns. I can be contacted at [REDACTED] to schedule a meeting and to address any questions. Please address any future correspondence regarding the proposal to me at this address.

Sincerely,



Maureen O'Brien
SVP of Corporate Governance, Engagement and Proxy Voting

RESOLVED: Shareholders request that Apple Inc. prepare a transparency report on the company's use of Artificial Intelligence ("AI") in its business operations and disclose any ethical guidelines that the company has adopted regarding the company's use of AI technology. This report shall be made publicly available to the company's shareholders on the company's website, be prepared at a reasonable cost, and omit any information that is proprietary, privileged, or violative of contractual obligations.

Supporting Statement

If adopted, this proposal asks our company to issue a transparency report on the company's use of AI technology and to disclose any ethical guidelines that the company has adopted regarding AI technology. We believe that adopting an ethical framework for the use of AI technology will strengthen our company's position as a responsible and sustainable leader in its industry. By addressing the ethical considerations of AI in a transparent manner, we can build trust among our company's stakeholders and contribute positively to society.

The adoption of AI technology into business raises a number of significant social policy issues. For example, the use of AI in human resources decisions may raise concerns about discrimination or bias against employees. The use of AI to automate jobs may result in mass layoffs and the closing of entire facilities. AI may be used in ways that violate the privacy of customers and members of the public. AI technology may be used to generate "deep fake" media content that may result in the dissemination of false information in political elections.

The White House Office of Science and Technology Policy has developed a set of ethical guidelines to help guide the design, use, and deployment of AI. These five principles for an AI Bill of Rights are 1) safe and effective systems, 2) algorithmic discrimination protections, 3) data privacy, 4) notice and explanation, and 5) human alternatives, consideration, and fallback. (White House Office of Science and Technology Policy, "Blueprint for an AI Bill of Rights: Making Automated Systems Work for the American People," October 2022, available at <https://www.whitehouse.gov/ostp/ai-bill-of-rights>).

We believe that the adoption of ethical guidelines for the use of AI can help improve our company's bottom line by avoiding costly labor disruptions. In 2023, writers and performers went on strike against the Alliance of Motion Picture and Television Producers in part over concerns that the use of AI technology to create media content will infringe on the intellectual property and publicity rights of writers and performers and potentially displace human creators. (Wall Street Journal, "Hollywood's Fight: How Much AI Is Too Much?," July 31, 2023, available at <https://www.wsj.com/articles/at-the-core-of-hollywoods-ai-fight-how-far-is-too-far-f57630df>).

In our view, AI systems should not be trained on copyrighted works, or the voices, likenesses and performances of professional performers, without transparency, consent and compensation to creators and rights holders. We also believe that AI should not be used to create literary material, to replace or supplant the creative work of professional writers.

For these reasons, we urge you to vote FOR this shareholder proposal.



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November 20, 2023

Via E-Mail to shareholderproposals@sec.gov

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

Re: Apple Inc.'s Request to Exclude a Shareholder Proposal Submitted
by the AFL-CIO Equity Index Funds

Dear Sir or Madam:

Pursuant to Rule 14a-8 under the Securities Exchange Act of 1934, the AFL-CIO Equity Index Funds (the "Proponent") submitted a shareholder proposal (the "Proposal") to Apple Inc. (the "Company") for a vote at the Company's 2024 annual meeting of shareholders. In a letter to the staff of the Division of Corporation Finance (the "Division Staff") dated October 23, 2023 (the "No Action Request"), the Company's representative from Gibson, Dunn & Crutcher LLP stated that the Company intends to omit the Proposal from its proxy materials to be distributed to shareholders. The resolved clause of the Proposal states:

RESOLVED: Shareholders request that Apple Inc. prepare a transparency report on the company's use of Artificial Intelligence ("AI") in its business operations and disclose any ethical guidelines that the company has adopted regarding the company's use of AI technology. This report shall be made publicly available to the company's shareholders on the company's website, be prepared at a reasonable cost, and omit any information that is proprietary, privileged, or violative of contractual obligations.

The No Action Request asks the Division Staff to concur that it will not recommend enforcement action if the Company excludes the Proposal in reliance on Rule 14a-8(i)(7), on the basis that the Proposal purportedly deals with matters related to the Company's ordinary business operations and seeks to micromanage the Company. For the reasons set forth below, the Proposal may not be excluded under Rule 14a-8(i)(7) because the Proposal addresses a social policy issue that transcends the Company's day-to-day business matters and does not otherwise micromanage the Company.

The No Action Request argues that the Proposal may be excluded under Rule 14a-8(i)(7) because it involves matters related to the Company's management of its workforce. As explained

below, this argument does not have merit because the Proposal addresses a significant social policy issue. Specifically, the Proposal addresses the ethical use of Artificial Intelligence (“AI”), a significant social policy issue that has generated significant controversy and substantial attention from the public, lawmakers, the media and business leaders. AI is a significant social policy issue because it has the potential to affect many aspects of human life, such as health, education, employment, security, privacy, and justice.

As the Division Staff stated in Exchange Act Release No. 34-40018 (May 21, 1998), the Division Staff’s definition of significant social policy issues adjusts over time to reflect changing societal views. In recent years, the social impact of AI technology has attained a level of notoriety to be recognized as a significant social policy issue. For example, the U.S. Congress held multiple hearings on AI in 2023 and the need for legislation to protect against AI harms.¹ The word “AI” was selected as the Collins Dictionary’s 2023 word of the year, and the Cambridge Dictionary selected the word “hallucinate” for 2023 with the addition of an alternative definition referring to when AI produces false information.²

Ethical concerns regarding the responsible use of AI also reached a crescendo in recent years. According to the AI, Algorithmic, and Automation Incidents and Controversies Repository (an open source database of AI related controversies) there have been nearly 1,200 incidents and controversies regarding the use of AI since 2009 including 192 separate incidents in 2023 alone.³ Various governmental, business, and nonprofit entities have published ethical guidelines for AI including the United Nations Educational, Scientific and Cultural Organization,⁴ the Organisation for Economic Co-operation and Development,⁵ the U.S. Department of Defense,⁶ the European Commission,⁷ the Business Roundtable,⁸ and the White House.⁹

In recognition of AI’s significant social policy concerns, other leading technology companies have taken steps to disclose their ethical guidelines for the use of AI. For example, Microsoft has published a Responsible AI Standard to ensure that AI systems are developed responsibly and in

¹ David Shepardson, “Congress to Hold New AI Hearings as it Works to Craft Safeguards,” Reuters, September 8, 2023, <https://www.reuters.com/technology/us-senate-panel-hold-ai-hearing-with-microsoft-nvidia-2023-09-08/>.

² Kiersten Hickman, “These Are the 2023 Words of the Year, According to Dictionaries,” Reader’s Digest, November 15, 2023, <https://www.rd.com/article/word-of-the-year/>.

³ AIAAIC Repository, accessed on November 17, 2023, <https://www.aiaaic.org/aiaaic-repository>.

⁴ UNESCO, “Recommendation on the Ethics of Artificial Intelligence,” 2022, <https://unesdoc.unesco.org/ark:/48223/pf0000381137>.

⁵ Organisation for Economic Co-operation and Development, “Recommendation of the Council on OECD Legal Instruments Artificial Intelligence,” 2019, <https://legalinstruments.oecd.org/en/instruments/OECD-LEGAL-0449>.

⁶ U.S. Department of Defense, “DOD Adopts Ethical Principles for Artificial Intelligence,” February 24, 2020, <https://www.defense.gov/News/Releases/Release/Article/2091996/dod-adopts-ethical-principles-for-artificial-intelligence/>.

⁷ European Commission, “Ethics Guidelines For Trustworthy AI - High-Level Expert Group on Artificial Intelligence,” 2019, <https://digital-strategy.ec.europa.eu/en/library/ethics-guidelines-trustworthy-ai>.

⁸ Business Roundtable, “Business Roundtable Roadmap for Responsible Artificial Intelligence,” January 2022, https://s3.amazonaws.com/brt.org/Business_Roundtable_Artificial_Intelligence_Roadmap_Jan2022_1.pdf.

⁹ White House Office of Science and Technology Policy, “Blueprint for an AI Bill of Rights: Making Automated Systems Work for the American People,” October 2022, <https://www.whitehouse.gov/wp-content/uploads/2022/10/Blueprint-for-an-AI-Bill-of-Rights.pdf>.

ways that warrant people's trust.¹⁰ Adobe,¹¹ Amazon,¹² Dell,¹³ Facebook/Meta¹⁴, Google/Alphabet,¹⁵ Hewlett Packard,¹⁶ and IBM¹⁷ have published similar ethical guidelines. A total of fifteen AI technology companies – but not the Company – have endorsed the White House's Voluntary AI Commitments to promote the safe, secure, and transparent development and use of AI technology.¹⁸ The Company has been silent on AI ethical concerns despite the importance of AI to “virtually every one of its products.”¹⁹

In recent years, the Division Staff have recognized that shareholder proposals regarding AI transcend ordinary business matters and therefore may not be excluded under Rule 14a-8(i)(7). For example, in *Amazon.com, Inc.* (March 28, 2019, *reconsideration denied* on April 3, 2019), the Division Staff declined to concur with the exclusion of two shareholder proposals on the company's AI facial recognition technology. Similarly, Division Staff declined to concur with the exclusion of a shareholder proposal in *Alphabet Inc.* (April 15, 2022) on the discriminatory effects of the company's algorithmic systems and in *Alphabet Inc.* (April 12, 2022) regarding the use of the company's AI technology for military and policing applications.

In addition to the fact the Division Staff have previously recognized AI as a significant social policy issue, the Proposal's supporting statement specifically identifies various AI ethical concerns that have a nexus to a variety of longstanding significant social policy issues. These include that the use of AI in: human resources decisions may raise concerns about discrimination or bias against employees; job automation may result in mass layoffs and the closing of entire facilities; and content generation that may violate the privacy of customers and members of the public and/or fuel “deep fake” media content that may result in the dissemination of false information in political elections.

The Division Staff have long recognized that shareholder proposals on employment discrimination are significant social policy issues since Exchange Act Release No. 34-40018 (May 21, 1998) reversed *Cracker Barrel Old Country Stores, Inc.* (October 13, 1992). For example, in *CBRE Group, Inc.* (March 6, 2019) the Division Staff did not concur with the

¹⁰ Microsoft, “Microsoft Responsible AI Standard, v2,” June 2022, <https://www.microsoft.com/en-us/ai/principles-and-approach/>.

¹¹ Adobe, “Adobe Unveils New AI Ethics Principles as Part of Commitment to Responsible Digital Citizenship,” February 17, 2021, <https://blog.adobe.com/en/publish/2021/02/17/adobe-unveils-new-ai-ethics-principles-commitment-responsible-digital-citizenship>.

¹² Amazon, “Our Commitment to the Responsible Use of AI,” July 21, 2023, <https://www.aboutamazon.com/news/company-news/amazon-responsible-ai>.

¹³ Dell, “Dell Technologies Principles for Ethical Artificial Intelligence,” 2022, <https://www.delltechnologies.com/asset/en-us/solutions/business-solutions/briefs-summaries/principles-for-ethical-ai.pdf>.

¹⁴ Meta, “Facebook's Five Pillars of Responsible AI,” June 22, 2021, <https://ai.meta.com/blog/facebook-five-pillars-of-responsible-ai/>.

¹⁵ Google, “2022 AI Principles Progress Update,” 2022, <https://ai.google/static/documents/ai-principles-2022-progress-update.pdf>.

¹⁶ Hewlett Packard Enterprise, “Innovation in the Ethics of AI at HPE,” April 27, 2021, <https://www.hpe.com/us/en/newsroom/blog-post/2021/04/innovation-in-the-ethics-of-ai-at-hpe.html>.

¹⁷ IBM, “IBM's Principles for Trust and Transparency,” 2018, https://www.ibm.com/policy/wp-content/uploads/2018/06/IBM_Principles_SHORT.V4.3.pdf.

¹⁸ The White House, “Biden-Harris Administration Secures Voluntary Commitments from Leading Artificial Intelligence Companies to Manage the Risks Posed by AI,” July 21, 2023, <https://www.whitehouse.gov/briefing-room/statements-releases/2023/07/21/fact-sheet-biden-harris-administration-secures-voluntary-commitments-from-leading-artificial-intelligence-companies-to-manage-the-risks-posed-by-ai/>; The White House, “Biden-Harris Administration Secures Voluntary Commitments from Eight Additional Artificial Intelligence Companies to Manage the Risks Posed by AI,” September 12, 2023, <https://www.whitehouse.gov/briefing-room/statements-releases/2023/09/12/fact-sheet-biden-harris-administration-secures-voluntary-commitments-from-eight-additional-artificial-intelligence-companies-to-manage-the-risks-posed-by-ai/>.

¹⁹ No Action Request at p. 2. Notably, the Company does not claim that the Proposal has been substantially implemented and therefore subject to exclusion under Rule 14a-8(i)(10).

exclusion of a shareholder proposal that requested a report on the effects of the company's mandatory arbitration policies on claims of sexual harassment. In this case, the use of AI technology in human resource decisions can reflect and amplify human biases and prejudices, which can lead to unlawful discrimination against protected employee groups.²⁰

The Division Staff also have recognized that concerns about mass layoffs can be a significant social policy issue. For example, in *E.I. du Pont de Nemours and Company* (March 6, 2000), the Division Staff did not concur with the exclusion of a shareholder proposal on plant closures. Similarly, in *Sprint Corporation* (February 5, 2004), the Division Staff did not concur that a proposal on offshoring jobs overseas could be excluded. Goldman Sachs recently estimated that 300 million jobs globally could be subject to automation by AI.²¹ The Organisation for Economic Co-operation and Development has estimated that 27 percent of the workforce in developed countries is at risk of AI automation.²² The consulting firm McKinsey estimates that 30 percent of the hours worked in the U.S. economy could be automated by AI.²³

Privacy concerns have also been recognized by the Division Staff as a significant social policy issue. In *Alphabet Inc.* (April 15, 2022), the Division staff did not concur that a proposal requesting an annual report on managing risks associated with user data collection, privacy, and security could be excluded under Rule 14a-8(i)(7). AI is expected to accelerate the analysis of personal information in ways that can intrude on privacy interests.²⁴ Companies are expanding the responsibilities of their privacy teams to address these AI risks.²⁵ The use of AI to analyze personal health data raises particular privacy concerns.²⁶ For example, the overturning of *Roe v. Wade* has raised privacy concerns about the Company's menstrual cycle-tracking app.²⁷

The Division Staff have also recognized that the dissemination of false media information can be a significant social policy issue that transcends ordinary business. For example, in *Alphabet Inc.* (April 12, 2022) the Division Staff declined to concur with the exclusion of a proposal seeking a human rights report on the company's content management policies to address misinformation and disinformation across its platforms. According to Freedom House, AI has been used in at least 16 countries to generate disinformation and sow doubt, smear opponents, or influence

²⁰ Anya E.R. Prince and Daniel Schwarcz, "Proxy Discrimination in the Age of Artificial Intelligence and Big Data," 105 Iowa L. Rev. 1257, March 15, 2020, <https://ilr.law.uiowa.edu/print/volume-105-issue-3/proxy-discrimination-in-the-age-of-artificial-intelligence-and-big-data>.

²¹ Joseph Briggs and Devesh Kodnani, "The Potentially Large Effects of Artificial Intelligence on Economic Growth," Goldman Sachs, March 26, 2023, <https://www.gspublishing.com/content/research/en/reports/2023/03/27/d64e052b-0f6e-45d7-967b-d7be35fabd16.html>.

²² "27% of Jobs at High Risk From AI Revolution, Says OECD," Reuters, July 11, 2023, <https://www.reuters.com/technology/27-jobs-high-risk-ai-revolution-says-oecd-2023-07-11/>.

²³ Kweilin Ellingrud et. al., "Generative AI and the Future of Work in America," McKinsey Global Institute, July 26, 2023, <https://www.mckinsey.com/mgi/our-research/generative-ai-and-the-future-of-work-in-america>.

²⁴ Cameron F. Kerry, "Protecting Privacy in an AI-driven World," Brookings Institution, February 10, 2020, <https://www.brookings.edu/articles/protecting-privacy-in-an-ai-driven-world/>;

²⁵ Catherine Stupp, "AI Risks Force Corporate Privacy Officers to Expand Oversight," Wall Street Journal, November 16, 2023, <https://www.wsj.com/articles/ai-risks-force-corporate-privacy-officers-to-expand-oversight-1ee23fa>.

²⁶ "Regulatory considerations on artificial intelligence for health," World Health Organization, 2023, <https://iris.who.int/bitstream/handle/10665/373421/9789240078871-eng.pdf>.

²⁷ Erik Larson, "Apple Called Out by New Jersey AG Over Period-Tracking Apps," Bloomberg, March 10, 2023, <https://www.bloomberg.com/news/articles/2023-03-10/apple-called-out-by-new-jersey-ag-over-period-tracking-apps>.

public debate.²⁸ Here in the United States, AI-generated “deep fake” media content has been used in the Republican presidential primary election campaign.²⁹

Finally, the plain language of the Proposal does not micromanage Company by seeking to impose specific methods for implementing complex policies. The Proposal’s resolved clause simply requests that the Company publish a transparency report on its use of AI and disclose any ethical AI guidelines that the Company may have adopted. The Proposal intentionally does not seek to define the term AI or the scope of the requested report in order to give the Board of Directors full discretion to determine what information should be made publicly available. Nor does the Proposal request that the Board of Directors adopt any specific AI ethical guidelines, but rather simply requests disclosure of any ethical guidelines that the Company has adopted.

In conclusion, the Division Staff should not concur with the Company’s No Action Request that the Proposal may be excluded. The Proposal may not be excluded under Rule 14a-8(i)(7) because the Proposal addresses significant social policy issues that transcend the Company’s day-to-day business matters and does not otherwise seek to micromanage the Company. If you have any questions, please contact me at 312-612-8446 or mobrien@segalmarco.com.

Sincerely,



Maureen O'Brien
Senior Vice President, Corporate Governance,
Engagement and Proxy Voting

CC: Ronald Mueller at shareholderproposals@gibsondunn.com

²⁸ Allie Funk, Adrian Shahbaz, and Kian Vesteinsson, “The Repressive Power of Artificial Intelligence,” Freedom House, 2023, <https://freedomhouse.org/sites/default/files/2023-10/Freedom-on-the-net-2023-Digital-Booklet.pdf>.

²⁹ Shannon Bond, “DeSantis Campaign Shares Apparent AI-generated Fake Images of Trump and Fauci,” NPR, June 8, 2023, <https://www.npr.org/2023/06/08/1181097435/desantis-campaign-shares-apparent-ai-generated-fake-images-of-trump-and-fauci>; Alex Isenstadt, “DeSantis PAC Uses AI-Generated Trump Voice in Ad Attacking Ex-president,” Politico, July 17, 2023, <https://www.politico.com/news/2023/07/17/desantis-pac-ai-generated-trump-in-ad-00106695>.