



November 18, 2024

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

**RE: Shareholder Proposal of American Family Association at Apple Inc.  
under Securities Exchange Act of 1934—Rule 14a-8**

Ladies and Gentlemen:

I am writing on behalf of the American Family Association (“AFA”) to defend its shareholder proposal to Apple Inc. (“Apple” or the “Company”). Ronald O. Mueller wrote to you on behalf of Apple on October 21, 2024, to ask you to concur with Apple’s view that it can exclude AFA’s shareholder proposal from its 2024 Annual Meeting of Shareholders under 17 CFR § 240.14a-8 (“Rule 14a-8”). Apple has the burden of demonstrating it is entitled to exclude the Proposal. *See* Rule 14a-8(g). But it cannot bear this burden.

The Proposal asks Apple to provide a “transparency report” on Apple’s decision-making around using or not using software that identifies child sex abuse material (“CSAM”). Apple says the proposal is excludable under Rule 14a-8(i)(7) because it relates to ordinary business operations. But the Proposal focuses on finding and addressing child sex abuse online. Apple admits CSAM is a significant social policy issue and Staff consistently recognize similar issues as significant, which means the Proposal transcends the ordinary business operations of the Company. The fact that the Proposal focuses on a particular type of software does not, as Apple contends, change the focus to particular technology and products, as Staff has repeatedly recognized.

Apple also argues that it can exclude the Proposal under ordinary business operations for micromanaging the company. Apple says assessing “costs and benefits” “on a specific technology” does not allow for a complex risk-based analysis. But this ignores that the Proposal asks first and foremost for a “transparency report,” that many Staff decisions approve of materially identical qualifiers, and strains a plain reading of “costs and benefits,” which includes all kinds of unmonetized risks and benefits.

## The Proposal

The Proposal provides as follows:

**Resolved:** Shareholders request that Apple Inc. prepare a transparency report on the costs and benefits of the company’s decisions regarding its use of child sex abuse material (CSAM) identifying software. 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 proprietary information, litigation strategy and legal compliance information.

The Supporting Statement explains that Apple has received negative publicity on a number of issues related to child protection, particularly for removing NeuralHash, a program designed to scan for child sexual abuse material. This raised concerns from anti-trafficking groups who expressed concern that Apple was unwilling to prevent the distribution of illegal content. The National Center of Sexual Exploitation even put Apple on its “Dirty Dozen” list two years in a row.

These actions and press, the Statement notes, are in tension with Apple’s expressed commitment “that business can and should be a force for good.” Apple’s no-action response also clarifies that it is “intently focused on breaking the chain of coercion and influence that makes children susceptible to exploitation.” Apple Inc.’s No-Action Response (“NAR”) at 2. Thus, the Proposal notes that “[s]hareholders who care about both user privacy and child safety deserve further information on the way in which Apple arrived at its decision.”

## Discussion

### **A. The Proposal unambiguously focuses on a significant social policy issue that transcends the company’s ordinary business operations.**

To meet its burden of showing that it can exclude AFA’s Proposal for failing to focus on a significant social policy, Apple must show both that it does not focus on a significant social policy issue and that it relates to the “nitty-gritty” of the company’s day-to-day operations. It cannot show either. The Proposal falls in line with the Commission’s guidance and Staff’s consistent understanding that stakeholder safety and human rights issues, including data privacy and child safety, are significant policy issues. Apple contends that this does not apply when the proposal focuses on a particular aspect of a company’s business, like Apple’s CSAM software. But its scattershot citations pale compared to well-established decisions from Staff approving the above proposals in a variety of specific customer, workforce, and other stakeholder contexts.

**1. Proposals that focus on a significant social policy issue transcend a company's ordinary business operations.**

Under Rule 14a-8(i)(7), a shareholder proposal may be excluded from a company's proxy materials if the proposal "deals with a matter relating to the company's ordinary business operations." This includes "management of the workforce . . . decisions on production quality and quantity, and the retention of suppliers," which are "tasks. . . 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." Exchange Act Release No. 40018, 63 Fed. Reg. 29106, 29108 (May 21, 1998) (the "1998 Release"). And when assessing a proposal, the Commission looks at the underlying "subject matter" of the proposal, not whether it seeks transparency or prescribes a particular policy or board action to address that subject matter. Exchange Act Release No. 20091 (Aug. 16, 1983).

Notwithstanding the above, proposals that "focus[] on sufficiently significant social policy issues" are not excludable under Rule 14a-8(i)(7) even if they relate to ordinary business operations. 1998 Release at 29108. This is because they "transcend the day-to-day business matters and raise policy issues so significant that it would be appropriate for a shareholder vote." *Id.* Staff made this a major focus of Bulletin 14H to correct the misunderstanding that a proposal must both focus on a "significant social policy" and be "divorced from how a company approaches the nitty-gritty of its core business." Division of Corporate Finance, Staff Legal Bulletin No. 14H (Oct. 22, 2015) ("SLB 14H").

And when determining whether a proposal focuses on a matter of significant social policy, the Staff focus on the "presence of widespread public debate," Division of Corporation Finance, Staff Legal Bulletin No. 14A (July 12, 2002), and the "broad societal impact" of the issue raised by the proposal, Division of Corporation Finance, Staff Legal Bulletin No. 14L (Nov. 3, 2021) ("SLB 14L").

**2. The Proposal's focus, preventing child sexual exploitation, transcends Apple's ordinary business operations.**

The Proposal is not excludable for focusing on ordinary business operations because it fits well within the exception for significant social policy issues and is supported by a wide variety of SEC guidance and Staff no-action recommendations.

Apple "agrees that CSAM is a significant societal issue that needs to be addressed." NAR 8. And by any measure, it is. Addressing child sexual abuse is a part of international and national legal frameworks protecting human rights. CSAM, and software used to identify it, is an increasingly important subset of that problem. *See infra* Part. II.B.

Staff has also consistently recognized that a broad array of human rights, including child safety, are significant social policy issues. *See, e.g., Mondelez*

*International, Inc.* (Mar. 30, 2022) (report on company’s progress “to eradicate child labor in all forms from the Company’s cocoa supply chain by 2025”); *Apple Inc. (NLPC)* (Jan. 2, 2024) (“congruency of the Company’s privacy and human rights policy positions with its actions, especially in such places as war zones and under oppressive regimes”); *Meta Platforms, Inc.* (Mar. 30, 2022) (“report on actual and potential human rights impacts of Facebook’s targeted advertising policies and practices”).

Staff also recognize that the safety of various stakeholders is very often significant. *See, e.g., American Express Company* (Mar. 6, 2023) (report on “fulfilling information requests regarding its customers for the enforcement of state laws criminalizing abortion access”); *Verizon Communications Inc. (BellTel Retirees Inc.)* (Mar. 14, 2024) (report on public health and liability risks “related to lead-sheathed cables”); *Johnson & Johnson* (Mar. 3, 2022) (recommending that company “discontinue global sales of its talc-based Baby Powder” in light of public health risks to customers); *Caesars Entertainment, Inc.* (Apr. 19, 2024) (report on “adoption of a smokefree policy for Company properties”).

Apple, however, contends that the Proposal does not focus on CSAM, but on “the costs and benefits of the Company’s decision regarding a particular technology to address that issue.” NAR 8. But Staff regularly approve proposals dealing with particular technologies to address particular issues. Just last year, Staff approved under (i)(7) a proposal asking American Express to report on the risks of giving confidential customer information to government authorities seeking to enforce criminal laws. *American Express Company* (Mar. 3, 2023). That is the same issue as this Proposal.

Staff also regularly approve other proposals that focus on particular aspects of a company’s business. A survey of tech proposals focusing on particular types of software or programs that Staff approved on significant social policy grounds shows this. *Meta Platforms, Inc. (Cortese)* (Apr. 2, 2022) (“potential psychological and civil and human rights harms” from “the use and abuse” of company’s “metaverse project”); *Alphabet Inc. (Trillium)* (Apr. 15, 2022) (discriminatory impacts of Google’s “algorithmic systems” for targeted advertising). And Apple itself, along with Paramount and Disney, lost this same argument regarding the use of AI software in various business operations. *Apple Inc.* (Jan. 3, 2024); *The Walt Disney Company* (Jan. 3, 2024); *Paramount Global (NYCRS)* (Apr. 19, 2024).

What’s more, many of the other examples above also focus on particular products, information, or workforce policies, like talc-based baby powder (*Johnson & Johnson*), having smoke-free premises (*Caesars*), or handing over sensitive customer information (*American Express*). Were the rule otherwise, shareholders would be stuck asking the company in generalities about how it is addressing human rights issues, discrimination, and other important social policy issues with no ability to target pertinent areas where those issues arise in the company’s business.

Apple also cites a handful of decisions dating back over a decade to assert that “Staff has consistently concurred in the exclusion of proposals that reference or arise in the context of a significant policy matter but that address or focus on ordinary business matters.” NAR 8. But these are inapposite because they dealt with, and were framed by proponents as, typical business decisions that have only secondary impacts on social policy issues. *Fox Corp.* (Sep. 19, 2024) (distinguishing news content from opinions); *Shake Shack* (Apr. 23, 2024) (reporting on potential misrepresentation about having “hormone-free” chicken products); *Coca Cola Co.* (Mar. 6, 2024) (seeking business metrics and profitability of adding “health & nutrition” products as part of its evolution towards a “total beverage company”); *FirstEnergy Corp.* (Mar. 8, 2013) (report assessing profitability of diversifying company’s energy resources).

Apple also relies on *Petsmart, Inc.* (Mar. 24, 2011), which asked the company to require its suppliers to certify that they had not violated certain laws preventing animal cruelty. But there, the Staff’s no-action recommendation acknowledged that “humane treatment of animals is a significant social policy issue” and took issue with the “broad” scope of the laws covered, which included “violations of administrative matters such as record keeping.” By contrast, AFA’s Proposal at Apple asks for no policy changes, only a transparency report.

Apple also takes issue with the “costs and benefits” language of the analysis. But as explained below, Sec. B.2 *infra*, the Proposal does not seek a financial analysis like those proposals on which Apple relies. *Amazon.com, Inc.* (Apr. 10, 2018) (seeking audits, quantities of food waste, and “estimated cost savings” from optimized food systems); *CVS Health Corp. (Parker)* (Mar. 8, 2016) (prescribing “quantitative targets . . . to increase renewable energy sourcing and/or production”); *FLIR Systems, Inc.* (Feb. 6, 2013) (seeking company’s “strategies for managing its energy expenses”). AFA’s Proposal instead seeks first and foremost a “transparency report” that evaluates qualitative, and perhaps quantitative, “costs and benefits” – terms that Staff regularly approve.

### **3. The Proposal does not relate to particular products or services.**

Apple also argues that the Proposal is excludable because it deals with ordinary business operations, particularly Apple’s “product development and particular service offerings deployed by the Company in its efforts to combat CSAM.” NAR 5. This is ultimately irrelevant because the Proposal focuses on a significant social policy issue. As Staff clarified in Bulletin 14H, “a proposal may transcend a company’s ordinary business operations even if the significant policy issue relates to the ‘nitty-gritty of its core business.’” SLB 14H.

For that reason, Apple is wrong in claiming that “proposals that concern a company’s choice of technologies for use in its operations are generally excludable.” NAR 6. That may be true for proposals not focusing on significant social policy issues, like the ones on which Apple relies. The proposals in *FirstEnergy Corp.* (Mar. 8, 2013);

*AT&T Inc.* (Jan. 4, 2017); *PG&E Corp.* (Mar. 10, 2014); *AT&T Inc.* (Feb. 13, 2012), and *CSX Corp.* (Jan. 24, 2011) for example, all focused on creating affordable and profitable products and services, not climate impacts, human rights, or other social policy issues.

A close look at Apple’s only recent example, *The Coca-Cola Co.* (Mar. 6, 2024), shows the same. There, the proposal targeted “healthy products” not to focus on public health risks, but on market pressures from competitors and industry benchmarks to prioritize health and nutrition to remain profitable. *Id.* at 12.<sup>1</sup> Compare this with *Pfizer Inc.* (Feb. 24, 2022), where Staff approved under (i)(7) a proposal asking for a report on “the public health costs created by the limited sharing of the Company’s COVID-19 vaccine technologies.”

Or compare Apple’s citations to proposals on customer safety from nanomaterials, BPA, and mercury, NAR 6–7, with the voluminous Staff-approved proposals above on safety and human rights, even regarding specific products or software like talc-based baby powder (*Johnson & Johnson*), virtual reality (*Meta*), AI (*Apple et al.*), and customer data privacy around enforcement of criminal law (*American Express*).

Further, the Proposal is not excludable even absent the significant social policy exemption. Client privacy is not “production quality and quantity,” for example. 1998 Release at 29108. Even Apple’s characterization of CSAM software as “product development and particular service offerings” overstates the case. CSAM software is a safety feature of its products that is not for sale and would operate substantially behind the scenes of customer interactions. And CSAM-identifying software, particularly software like NeuralHash, would likely protect not only child users and customers, but many other children whose abusers may use Apple to conduct or profit from their sexual abuse.

Apple also states that it has “already publicly addressed” “the societal implications of the Company’s choice of technology” on CSAM through an open letter. If Apple believed that, it would have argued that it already substantially implemented the proposal under Rule 14a-8(i)(10). But Apple did not because it understands that a short 2-page letter is no substitute for a thorough evaluation backed by data and expert analysis.

## **B. The Proposal does not micromanage Apple.**

Apple also argues that the Proposal report would micromanage it because it would “seek[] to replace management’s informed and reasoned judgments . . . with a narrowly focused” cost-benefit analysis. But all the Proposal seeks is a transparency

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<sup>1</sup> Page numbers of no-action decisions refer to the pdf page number in the no-action packet available on the SEC’s website, <https://www.sec.gov/rules-regulations/shareholder-proposals>.

report, with no particular disclosures or methodologies specified, and “costs and benefits” broadly construed and left to Apple to define.

This is typical of the proposals for transparency reports that Staff regularly approve. Apple’s no-action decisions all prescribe specific policies or actions or ask for voluminous amounts of raw personnel or financial data to second-guess management. By contrast, this transparency report would rely on Apple’s expertise to evaluate the salient factors through a business lens so that shareholders can assess Apple’s “impacts, progress towards goals, risks or other strategic matters appropriate for shareholder input.” SLB 14L.

### **1. Staff regularly agree that transparency reports do not micromanage a company.**

The Commission requires that shareholder proposals not “‘micromanage’ the company by probing too deeply into matters of a complex nature upon which shareholders, as a group, would not be in a position to make an informed judgment.” 1998 Release at 29108. This can happen “where the proposal involves intricate detail, or seeks to impose specific time-frames or methods for implementing complex policies.” *Id.* But “specific methods, timelines, or detail do not necessarily amount to micromanagement and are not dispositive of excludability.” SLB 14L. “[P]roposals may seek a reasonable level of detail without running afoul of these considerations.” 1998 Release at 29109.

Staff clarified in Bulletin 14L that it expects proposals to seek a level of detail that is “consistent with that needed to enable investors to assess an issuer’s impacts, progress towards goals, risks or other strategic matters appropriate for shareholder input.” SLB 14L. To that end, the Staff also considers the “sophistication of investors generally on the matter, the availability of data, and the robustness of public discussion and analysis on the topic,” including “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.*

This reading of the rule, the Bulletin notes, appropriately accounts for each company’s and proposal’s particular circumstances while ameliorating the “dilemma many proponents face”: crafting a proposal specific enough that the company has not substantially implemented it while being general enough to avoid micromanaging the company. *Id.*

For this reason, Staff regularly reject micromanagement challenges to proposals asking for a transparency report on particular products, safety features, policies, and other parts of a company’s business. This includes things like reports asking about smoke-free premises, *Boyd Gaming Corporation* (Mar. 18, 2024), *Caesars Entertainment, Inc.* (Apr. 19, 2024), reducing misinformation in targeted advertising, *Meta Platforms, Inc.* (Mar. 30, 2022), *Alphabet Inc.* (Apr. 12, 2022), the misuse of

products in war-torn conflict-affected areas, *Texas Instruments Incorporated* (Mar. 4, 2024), and underwriting clients who contribute to new fossil fuel supplies, *see, e.g., Citigroup Inc.* (Mar. 7, 2021).

This makes sense. Transparency reports are not prescriptive requests for policy changes, unlike many proposal requests. And even those “do not per se constitute micromanagement.” SLB 14L.

Of course, some reports seek such an intricate level of detail that they run afoul of the rule. For example, *Deere and Co.* (Jan. 3, 2022), asked for “annual publication of the written and oral content of any employee-training materials.” And *Delta Air Lines, Inc.* (Apr. 24, 2024), sought disclosure of “expenditures,” personnel, Board oversight, and company policies related to union suppression. But these proposals sought voluminous disclosures, mostly of raw data and content, that evinced an intent to second-guess management instead of relying on its reasoned business evaluations.

Apple cites *The Home Depot, Inc. (Green Century)* (Mar. 21, 2024) and *Tesla, Inc. (Stephen)* (Mar. 27, 2024) to say that a proposal may not “focus[] on decisions to sell a particular product containing particular materials.” This paints with too broad a brush. In *Tesla*, the proposal was a direct request to redesign one of the company’s products and specified at least 5 goals the company should seek to achieve when redesigning the tires.

And in *Home Depot*, the proposal asked about a *permanent* commitment not to sell paint with titanium dioxide sourced from a particular geographic area. It was the permanent commitment and specificity of the source that were problematic, not the focus on a particular product feature. Otherwise, the Staff would not have in the same week rejected a micromanagement challenge to the slightly less restrictive proposal asking *Tesla* to adopt a “moratorium on sourcing minerals from deep sea mining.” *Tesla, Inc. (As You Sow)* (Mar. 27, 2024).

**2. The Proposal’s requested transparency report would not micromanage Apple because it seeks a reasonable level of detail on an issue readily understood by shareholders.**

The Proposal here seeks a reasonable level of detail for investors to evaluate Apple’s “impacts, progress towards goals, risks or other strategic matters appropriate for shareholder input” regarding child sex abuse. SLB 14L. All of the factors Staff consider when assessing the level of detail needed weigh in favor of the Proposal.

First, Staff has recognized that shareholders are sophisticated enough to provide input on a wide range of human rights issues in technology, including the ethical implications of artificial intelligence, *see, e.g., Apple Inc. (AFL-CIO)* (Jan. 3, 2024), the misuse of computer chips and semiconductors in high conflict countries, *Texas Instruments* (Mar. 4, 2024), and the discriminatory impacts of Google’s “algorithmic systems” for targeted advertising, *Alphabet (Trillium)* (Apr. 15, 2022).



Second, there is “robust[] public discussion and analysis on the topic,” including “references to well-established international and national frameworks” on preventing child sex abuse. SLB 14L. The UN has made it a consistent focus,<sup>2</sup> as has the United States, particularly regarding online child sexual abuse.<sup>3</sup> Last year, U.S. legislators even introduced the Stop CSAM Act to “combat the sexual exploitation of children by supporting victims and promoting accountability and transparency by the tech industry.” S.1199, 118<sup>th</sup> Cong. (2023–2024). The U.S. Senate Judiciary Committee also recently held a hearing on stopping CSAM.<sup>4</sup> Apple, for its part, rightly focuses on “breaking the chain of coercion and influence that makes children susceptible to exploitation.” NAR 2. And it “agrees that CSAM is a significant societal issue.” NAR 8.

Given the above, the Proposal does not “seek intricate detail” or “to impose specific time-frames or methods.” 1998 Release at 29108. Indeed, it does not ask Apple to implement, or not implement, any policies at all, much less specific methods or time-frames for said implementation. Nor does it request any particular details or disclosures. It only requests a general assessment of the costs and benefits, as Apple defines them.

Apple protests that this request would “impermissibly seek to replace management’s informed and reasoned judgments with respect to complex business decisions with a narrowly focused analysis that would require numerous estimates and assumptions” already evaluated by Apple. NAR 11.

Staff rejected the same argument from Apple last year on a proposal seeking a “transparency report on the company’s use of Artificial Intelligence (‘AI’) in its business operations.” *Apple, Inc. (AFL-CIO)* (Jan. 3, 2024). As the proponent there explained, a transparency report gives “the Board of Directors full discretion to determine what information should be made publicly available” and what, if any, targets, guidelines, or policies Apple may want to adopt.

Apple also takes issue with the request to assess “costs and benefits” as part of the transparency report. Apple says all of the “complex factors” and evaluations around its decisions to use a particular technology cannot “be fully or appropriately

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<sup>2</sup> See, e.g., UN Convention on the Rights of the Child, Part 1, Article 19 (“State Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.”); United Nations Victims’ Rights Statement, available at <https://www.un.org/en/victims-rights-first/victims-rights-statement>.

<sup>3</sup> See *Joint Statement from the United States and the United Kingdom on Combatting Child Sexual Abuse and Exploitation*, U.S. Department of Homeland Security (Sep. 27, 2023), <https://www.dhs.gov/news/2023/09/27/joint-statement-united-states-and-united-kingdom-combatting-child-sexual-abuse-and>.

<sup>4</sup> *Protecting Children Online*, U.S. Senate Committee on the Judiciary (Jan. 31, 2024), <https://www.judiciary.senate.gov/protecting-children-online>

evaluated through a cost/benefit analysis.” NAR 11. But this ignores the Staff’s well-reasoned decisions and elevates form over substance.

Staff has regularly rejected micromanagement arguments against proposals that use materially identical language. *Boyd Gaming Corporation* (Mar. 18, 2024) (“report on the potential cost savings through the adoption of a smokefree policy for Boyd Gaming properties”); *Caesar’s Entertainment, Inc.* (Apr. 19, 2024) (same); *American Express Company* (“public report detailing any known and potential risks and costs to the Company” of helping enforce “state laws criminalizing abortion access”); *Eli Lilly and Company* (Mar. 8, 2023) (report “detailing the known and reasonably foreseeable risks and costs to the Company” of changing company policy “in response to enacted or proposed state policies regulating abortion”).

These decisions demonstrate the Staff’s focus on the substance of a proposal. Asking for a transparency report evaluating “costs and benefits” does not, as Apple contends, limit its ability to consider “possible alternative technologies and numerous possible consequences and impacts” or various “data or standards.” NAR 11. Indeed, a thorough cost-benefit analysis would appropriately incorporate all of these various considerations and aspects of implementing CSAM-identifying software.

Nor do the qualifiers “costs and benefits” somehow transform a request for a transparency report into a financial audit. The Proponent did not ask, for example, for a report on “expenditures” and other disclosures made for union suppression, *Delta Air Lines, Inc.* (Apr. 24, 2024), or for the “undiscounted expected value” of certain financial obligations, *Phillips 66* (Mar. 20, 2023). See NAR 10, 12 (relying on same). Were the proponent seeking a financial analysis, it would have said something like “costs and revenue.”

The “costs and benefits” that Proponent seeks are not merely a quantitative assessment or set of raw files or data that shareholders would audit, but a comprehensive evaluation from management of the various high-level risks, benefits, and other salient factors on a significant social policy issue that Apple has expressly committed to uphold. This would include qualitative assessments and may include quantitative analysis under any reasonable interpretation. This is exactly the kind of “impacts, progress towards goals, risks or other strategic matters appropriate for shareholder input.” SLB 14L.

## **Conclusion**

For the foregoing reasons, we respectfully request that the Staff reject Apple's request for relief from AFA's Proposal. A copy of this correspondence has been timely provided to Apple. If we can provide additional materials to address any queries the Commission may have with respect to this letter, please do not hesitate to contact me.

Sincerely,

Michael Ross

Cc: Ronald O. Mueller