



October 21, 2016

**VIA E-MAIL ([shareholderproposals@sec.gov](mailto:shareholderproposals@sec.gov))**

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

**Re:** Apple Inc.  
Shareholder Proposal of Jing Zhao

Dear Ladies and Gentlemen:

I am writing on behalf of Apple Inc. to respond to the Proponent's letter to the staff dated October 13, 2016, in which the Proponent objects to the Company's intention to omit from its 2017 Proxy Materials his Proposal requesting that the Company retain additional compensation consultants. The bases on which the Company intends to omit the Proposal are set forth in my letter to the staff dated October 7, 2016. For ease of reference, capitalized terms used in this letter have the same meaning ascribed to them in my initial letter.

The Company's exclusion of the Proposal is consistent with the many no-action letters cited in my initial letter. The Proponent's letter fails to address any of those no-action letters and, as discussed below, fails to offer any persuasive reason why the Proposal is not excludable on all of the bases cited in my initial letter.

### **The Proposal Relates to a Hiring Decision and Therefore Involves an Ordinary Business Matter**

The Proponent asserts that the Proposal "is to reform the executive compensation policy" and "has nothing to do with the company's hiring decisions." This assertion ignores the incontrovertible fact that the action requested by the Proposal is that the Company "engage multiple outside independent experts or resources." The engagement of consultants necessarily involves hiring decisions, and hiring decisions clearly are matters of ordinary business. The Proposal's request that the consultants be engaged for the purpose of reforming the Company's executive compensation principles and practices does not somehow shift the focus of the Proposal from the retention of additional compensation consultants to a matter relating to executive compensation.

Curiously, the Proponent argues that, because the supporting statement gives the Board and Compensation Committee "flexibility to select multiple independent experts or sources," the Proposal does not focus on ordinary business matters. In fact, even if this statement were not contained in the supporting statement, the Proposal gives the Company the "flexibility" to select the consultants to be retained. Allowing the Company to decide for itself which new consultants to hire does not mean that the decisions the Proposal would have the Company make are not hiring decisions. Because the Proposal relates to hiring decisions, the Proposal is excludable under 14a-8(i)(7).

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### **The Proposal is Vague and Indefinite**

The Proponent acknowledges that the Proposal does not define certain words and phrases, such as “outside independent experts,” “resources,” and “general public,” which the Proponent dismisses as “commonly used English words.” Although the words may be commonly used, they do not have a commonly understood meaning when used in the context of the Proposal, where the words and phrases purport to establish separate and independent qualifications for compensation consultants or other consulted resources. Instead, as used in the Proposal, they are ambiguous, vague and indefinite.

The Proponent argues that the Proposal cannot be deemed vague and indefinite because two other companies have included in their proxy statements unrelated proposals that use one or more phrases similar to those used in the Proposal. The examples cited by the Proponent requested the creation of a human rights committee and indicated that the committee’s members should include, among others, “outside relevant human rights experts” or “respected outside human rights experts.” Neither of the proposals required that the experts appointed to the human rights committee be considered all of “outside,” “independent” and part of the “general public.” Nor did either of the proposals call on the company to also “engage . . . resources” to advise the committee. The proposals therefore presented far less ambiguity than the Proposal.

Separately, the Proponent contends that the Proposal cannot be vague or ambiguous because, by its terms, the Company “retains the flexibility to implement the [P]roposal.” Providing the Company with broad authority to implement the Proposal as the Company sees fit, based on the Company’s best guess as to what the Proposal requests, does not render the Proposal less vague and indefinite for the shareholders asked to vote on the Proposal. Nor would unlimited “flexibility” to implement the Proposal make it any easier for the Company to determine with any reasonable certainty what shareholders voting on the Proposal might expect the Company to do if the Proposal were approved. By the Proponent’s logic, no proposal would ever be considered vague and indefinite so long as the proponent included a sentence conferring upon the company the power, authority and flexibility to implement the proposal according to its own interpretation of the proposal. Inclusion of such a broad delegation of authority does not cure the underlying defect in a vague and indefinite proposal and should not be considered a savings clause for vague and indefinite proposals.

### **The Company Lacks the Power or Authority to Implement the Proposal**

The Proponent asserts that implementation of the Proposal would not violate Commission and NASDAQ rules because the Company “**can choose not** to violate Commission and NASDAQ rules.” The Proponent does not explain, however, how the Company could implement the policy without violating Commission and NASDAQ rules.

As explained in my initial letter, Commission and NASDAQ rules require that the Compensation Committee have sole discretion over whether to retain a compensation consultant and, if the committee decides to retain a consultant, who that consultant should be. The Proposal seeks to have shareholders determine whether the Compensation Committee should retain multiple consultants, and also seeks to dictate the eligibility requirements for the additional consultants. By usurping the Compensation Committee’s required authority, the Proposal, if approved and implemented, would force the Compensation Committee to hire additional consultants and risk noncompliance with Commission and NASDAQ rules. Choosing not to violate the rules, as the Proponent suggests as a means of implementing the Proposal, could be accomplished only by choosing *not* to implement the Proposal. Because implementation of the Proposal would cause the Company to violate Commission and NASDAQ rules, the Company lacks the power or authority to implement the Proposal, and the Proposal is excludable under Rule 14a-8(i)(6).

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

Sincerely,

A handwritten signature in black ink, consisting of several overlapping loops and a long horizontal stroke extending to the right.

Gene D. Levoff  
Associate General Counsel, Corporate Law

cc: Jing Zhao