

Federal Court Enjoins Apple's Charter Proposal for Violating SEC 'Unbundling' Rules ? A Timely Reminder

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As widely reported, on February 22 in [*Greenlight Capital, L.P. v. Apple, Inc.*](#), a federal court in New York enjoined Apple shareholders from voting on a proposal that combined four charter amendments into a single proposal. The Court found a strong likelihood of success on the merits that Apple violated the SEC's so-called 'unbundling' rules, which require proxies to identify clearly and impartially 'each separate matter' and give shareholders the ability to vote for, against or abstain from 'each matter.'

The decision should come as no surprise since it is consistent with how practitioners and members of the SEC Staff have applied the unbundling rules in the past. When the SEC Staff have decided to review a proxy statement, they have frequently requested issuers to unbundle in the M&A and recapitalization contexts and proposals to amend a company's governing documents, including preferred stock rights. Admittedly, there are examples of proxy statements that are inconsistent with this articulated approach, in some cases most likely because the SEC Staff did not review the proxy.

Although the *Apple* decision should not change the norm, it highlights the risk that a 'bundled' proposal could be enjoined and is therefore a timely reminder of the need to think about the application of the unbundling rules with respect to all proxy statements. The risk of litigation, alone, may induce companies to act more conservatively by unbundling important management proposals.

If you have any questions regarding the matters covered in this publication, please reach out to any of the lawyers listed below or your usual Davis Polk contact.

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