

SEC Staff Permits Exclusion of GHG Emissions Proposal

January 11, 2017 | Client Update | 2-minute read

The SEC Staff determined that a shareholder proposal on greenhouses gases (GHGs) could be excluded from [Apple](#) and [Deere's](#) proxy statements as relating to ordinary business operations because the proposal seeks to micromanage the companies by probing too deeply into matters of a complex nature. Although routinely argued, the ability to exclude proposals based on micromanagement are uncommon. The SEC's 1998 release indicated that this consideration may be implicated where the proposal "involves intricate detail, or seeks to impose specific time-frames or methods for implementing complex policies."

The proposal asked the companies' boards to generate a plan to reach a net-zero GHG emission status by the year 2030 for all aspects of each business that are directly owned, including but not limited to manufacturing and distribution, research facilities, corporate offices and employee travel. The Apple proposal also included supplier relationships.

The proponent suggested in the supporting statement that net-zero GHG emissions could be achieved by reducing Scope 1 and 2 emissions and then offsetting the remaining emissions based on following "carbon accounting integrity principles." The proposal then goes on to explain that in order for an offset to "count" toward the achievement of net-zero GHG it must be "permanent and measurable" and also: (a) result in reducing emissions that are unlikely to have occurred in the ordinary course and represent carbon abatement that is "not double counted"; (b) be transparent; (c) deduct any material increases in emissions elsewhere caused by the reduction activities which nullify or reduce the abatement; (d) be independently audited and (e) be listed and tracked in a public registry.

Among other things, Deere argued that the proposal micromanaged by imposing a specific timeframe and arbitrary emission levels to implement complex policies that are contrary to a plan that the company already committed to, requiring changes to its business and operations. Apple made a similar argument, noting that its own management had determined the best course to achieve the most impact by advancing renewable energy projects and by avoiding or reducing emissions rather than offsetting one activity with another.

The proponent insisted that the proposals were broad-brush policies, and continued to ask both companies to undertake "negative carbon" activities where GHG elimination is not possible, such as planting trees or purchasing offsets for solar or renewable energy generated elsewhere.

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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