Chairman Gary Gensler
U.S. Securities and Exchange Commission
100 F Street N.E.
Washington, DC 20549-1090

Re: Request for Investigation of Apple Inc. for Possible Violations of Securities Laws

Dear Chairman Gensler,

The American Economic Liberties Project is writing to formally request that the Securities and Exchange Commission initiate an investigation into Apple Inc. to determine whether the company has violated the antifraud provisions of Section 17(a)(2) and (3) of the Securities Act of 1933, as well as certain reporting provisions of the federal securities laws. Our concern centers around Apple's non-disclosure of its longstanding contract with Google Inc., through which Google pays Apple large sums annually for Google to retain its status as the default search engine on Apple devices. This agreement has endured for 18 years and solidifies Google as the default search engine on Apple's hardware products. Crucially, the risk that Google could terminate the agreement for a number of reasons, now or at some point in the future, presents an ongoing and material risk to Apple's earnings.

An antitrust lawsuit filed by the Department of Justice in 2020 brought to light the existence of this contractual arrangement.[1] However, Apple has consistently omitted any mention of this critical contract from its reporting disclosures, and the precise payment sum has been shrouded in secrecy.

Just this week, Apple has filed a petition in the *United States of America v. Google* trial to keep certain documents and examination details sealed.[2] The company's argument for such confidentiality is as follows, "DOJ's insistence on questioning Mr. Cue about this information in open court represents a substantial risk of revealing non-public, market-moving
information pertaining to Apple, not a party to DOJ's suit, and affecting Apple's ongoing business relations and contract negotiations." If the information is market-moving, it fits the definition of a material risk.

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[1] Complaint, *U.S. and Plaintiff States v. Google LLC*, October 20, 2020. Page 16. https://www.justice.gov/opa/press-release/file/1328941/download.

[2] Non-Party Petitioner Apple Inc.'s Statement Regarding the Party's Examination of Eddy Cue, *United States of America v. Google LLC*, September 25, 2023. https://storage.courtlistener.com/recap/gov.uscourts.dcd.223205/gov.uscourts.dcd.223205.717.0_1.pdf.

Various estimates have emerged regarding the payments Apple receives from Google through this contract. Goldman Sachs, for instance, estimated these payments to total $120 billion, with figures escalating from over $7.5 billion in 2017 to $19 billion in 2022.[3] In contrast, other financial publications have proposed a 2017 payment closer to $3 billion.[4] These incongruent estimates underscore Apple's inadequate reporting regarding business agreements of interest to investors.

Over the years, Wall Street analysts have speculated about the existence and magnitude of this contract but have been hindered by the absence of comprehensive information. Analyst Toni Sacconaghi, representing equity research firm Sanford Bernstein, attested to this lack of information, stating, "We actually went back and looked at earnings calls in the past, and Apple never once mentioned this relationship... In the previous 10 years, Apple had actually never talked about this."[5]

As reported by the *Washington Post*, the approximately $19 billion derived from this contract constitutes 5 percent of Apple's revenue. More crucially, it represents a staggering 19% of the company's profits. Given the profound significance of this singular licensing agreement, we firmly believe that it constitutes a material risk factor that, in accordance with SEC rules, must be disclosed to Apple's shareholders and the investing public.[6] Furthermore, given that Apple stock has been a central driver of the performance of many investor's portfolios for the past decade – Apple's current market capitalization of almost $3 trillion is the largest in history – the failure to disclose this information is of central importance to fairness and transparency in securities markets generally.

The omission of this material information and the ensuing disparities in estimates across various financial outlets may have led investors to make decisions based on an incomplete or inaccurate understanding of Apple's financials and diversified revenue sources.

In light of the aforementioned concerns, we respectfully request that the SEC undertake a comprehensive investigation into these matters to determine if Apple has transgressed securities laws and regulations. If any violations are substantiated, we urge the SEC to take

[3] Matthew Ball, "Big Tech's Biggest Bets (Or What It Takes to Build a Billion-User Platform)," May 30, 2023. https://www.matthewball.vc/all/bigtechbiggestbets.
[4] "Why Google is willing to pay Apple $12 billion per year," Mac Daily News, October 24, 2018. https://macdailynews.com/2018/10/24/why-google-is-willing-to-pay-apple-12-billion-per-year/.
[5] Eva Dou and Trisha Thadani, "Google pays Apple billions a year to use its search engine. Now executives must testify," The Washington Post, September 21, 2023. https://www.washingtonpost.com/technology/2023/09/21/google-antitrust-trial-apple-iphone/.
[6] Final Rule: Modernization of Regulation S-K Items 101, 103, and 105 (2020). https://www.sec.gov/files/rules/final/2020/33-10825.pdf.

appropriate enforcement actions to safeguard the interests of investors and preserve the integrity of the securities markets.

Sincerely,

American Economic Liberties Project