



DIVISION OF CORPORATION FINANCE

UNITED STATES SECURITIES AND EXCHANGE COMMISSION WASHINGTON, D.C. 20549-0402



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NO ACT P.E 12-24-02 1-15062

February 18, 2003

Susan A. Waxenberg Assistant General Counsel and Assistant Secretary AOL Time Warner Inc. 75 Rockefeller Plaza, 25-18 New York, NY 10019

1934  
Asst \_\_\_\_\_  
Counsel \_\_\_\_\_  
Rule KR-8  
Publics 2/18/2003  
Availability \_\_\_\_\_

Re: AOL Time Warner Inc. Incoming letter dated December 24, 2002

Dear Ms. Waxenberg:

This is in response to your letter dated December 24, 2002 concerning a shareholder proposal submitted to AOL Time Warner by Chris Scumas. Our response is attached to the enclosed photocopy of your correspondence. By doing this, we avoid having to recite or summarize the facts set forth in the correspondence. Copies of all of the correspondence also will be provided to the proponent.

In connection with this matter, your attention is directed to the enclosure, which sets forth a brief discussion of the Division's informal procedures regarding shareholder proposals.

PROCESSED

MAR 04 2003

THOMSON FINANCIAL

Sincerely,

Martin P. Dunn

Martin P. Dunn Deputy Director

Enclosures

cc: Chris Scumas 3 Lockwood Lane Savannah, GA 31411

CRGA

AOL Time Warner

RECEIVED

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OFFICE OF CHIEF COUNSEL  
CORPORATION FINANCE

Susan A. Waxenberg  
Assistant General Counsel  
and Assistant Secretary

December 24, 2002

**VIA OVERNIGHT MAIL**

Securities and Exchange Commission  
Division of Corporation Finance  
Office of Chief Counsel  
450 Fifth Street, NW  
Washington, D.C. 20549

Re: AOL Time Warner Inc. - Proposal Submitted by Mr. Chris Scumas

Ladies and Gentlemen:

This letter respectfully requests that the staff of the Division of Corporation Finance (the "Staff") of the Securities and Exchange Commission (the "SEC") advise AOL Time Warner Inc. (the "Company") that it will not recommend any enforcement action to the SEC if the Company omits from its proxy statement and proxy to be filed and distributed in connection with its 2003 annual meeting of shareholders (the "Proxy Materials") the proposal (the "Proposal") it received from Mr. Chris Scumas ("Proponent") who purports to be a shareholder of the Company. The Company does not intend to include the Proposal in its Proxy Materials because: (1) the Proponent has failed to satisfy (a) the eligibility requirements of Rules 14a-8(b)(1) and (2) of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), and (b) the procedural requirements of Rules 14a-8(c) and (d); and (2) even if the Proponent were able to cure these deficiencies, pursuant to clauses (i)(7), (i)(3) and (i)(1) of Rule 14a-8, the Proposal deals with matters relating to the Company's ordinary business operations, is impermissibly vague and is not a proper subject for action by shareholders under the laws of the State of Delaware.

Pursuant to Rule 14a-8(j) of the Exchange Act, we are enclosing six copies of each of the following: (i) this letter, (ii) a letter dated October 7, 2002 from the Proponent to the Company containing the Proposal (Exhibit A), (iii) a letter to the Proponent dated October 18, 2002 from Susan A. Waxenberg, Assistant General Counsel and Assistant Secretary to the Company, sent pursuant to Rule 14a-8(f) (Exhibit B, the "Rule 14a-8(f) Letter") regarding the Proponent's failure to comply with certain provisions of Rules 14a-8(b), (c) and (d) and (iv) a confirmation that the Rule 14a-8(f) Letter was received by the Proponent (Exhibit C). By copy of this letter, the Company hereby notifies the Proponent as required by Rule 14a-8(j) of its intention to exclude the Proposal from its Proxy Materials.



**I. The Proponent Has Not Complied with the Procedural Requirements of Rule 14a-8.**

**A. The Proponent has not demonstrated eligibility under Rule 14a-8(b).**

Rule 14a-8(b)(1) of the Exchange Act requires, among other things, that to be eligible to submit a proposal, the proponent “must have continuously held at least \$2,000 in market value, or 1%, of the company’s securities entitled to be voted on the proposal at the meeting for at least one year” prior to the date on which the proponent submitted the proposal. The Company has conferred with its Transfer Agent and Registrar and determined that the Proponent is not a registered owner of shares of the Company’s voting securities. Rule 14a-8(b)(2) requires that any proponent who is not a registered owner must (i) present evidence with respect to the proponent’s ownership of the required shares and (ii) submit a written statement of his intent to hold such shares through the date of the meeting of the shareholders.

The Proponent did not include the required proof of share ownership with his Proposal, nor did he include a statement of intent with respect to maintenance of ownership of the required Company shares. The Proponent did not respond to the Company’s Rule 14a-8(f) Letter requesting such information, as discussed more fully below. Therefore, the Proposal may be excluded from the Proxy Materials for failure to comply with the eligibility requirements of Rule 14a-8(b). See Sections C.1.c. and C.1.d. of Division of Corporation Finance: Staff Legal Bulletin No. 14--Shareholder Proposals (July 13, 2001) (“SLB No. 14”). See also *USEC Inc.* (July 19, 2002) (permitting exclusion where proponent did not provide proof of beneficial ownership of required shares); *Catalyst Semiconductor, Inc.* (June 14, 2002) (permitting exclusion because of proponent’s failure to provide within 14 days of the company’s request evidence of “minimum ownership requirement for the one-year period required by Rule 14a-8(b)"); *Avaya Inc.* (July 19, 2002) (permitting omission because proponent failed to provide statement of intent to hold stock through the date of the shareholder meeting within 14 days of receipt of Avaya’s request).

**B. The Proposal contains more than one proposal.**

The Proponent has also failed to satisfy the procedural requirements of Rule 14a-8. Rule 14a-8(c) allows a shareholder to submit only “one proposal to a company for a particular shareholders’ meeting.”

The Proposal in this case is actually composed of 18 *separate* actions to be taken by the Board of Directors. These 18 points touch upon such general categories as executive compensation, severance, stock options, compensation generally, stock repurchases, perks to “Corporate America,” insurance coverage, mandatory executive resignations and the use of “pension profits.” Within these diverse categories, the 18 proposed actions span such issues as (1) elimination of future stock options and rescission of all unexercised stock options, or, if this cannot be done, the expensing of all unexercised stock options (all these proposals are in Item 1 of the Proposal), (2) setting compensation for the Board of Directors (item 14 of the Proposal), (3) elimination of all hiring bonuses (item 6 of the Proposal), (4) resignation of the top five corporate executives upon certain events (items 17 and 18 of the Proposal), (5) eliminating the

use of “so called pension profits to bolster the bottom line” (item 16 of the Proposal) and (6) defining the scope of severance and retirement packages, including the granting of consultancy contracts (items 3, 5, 10 and 13 of the Proposal). Although the Proponent has given the Proposal the title “Annuling (sic) Corporate Perks and Restructuring Corporate Salaries,” it is clear from the range of subjects covered that the Proposal includes more than one proposal in contravention of Rule 14a-8(c). The Proponent did not respond to the Company’s Rule 14a-8(f) Letter requesting a revision to the Proposal, as discussed more fully below.

The Staff has consistently taken the position that substantially distinct proposals will not be considered a single proposal for purposes of Rule 14a-8(c). For example, in *Vicinity Corporation* (November 3, 2002), the proponent included eleven separate proposals, each containing “sub-proposals,” relating to two separate general concepts (the nominations of two persons to Vicinity’s board of directors and various amendments to Vicinity’s charter documents). Vicinity argued that at best the proposal could be viewed as two separate proposals, and at worst, eleven (or more). The Staff permitted exclusion of the proposal under Rule 14a-8(f) because it exceeded the one proposal limitation under Rule 14a-8(c). *See also Bob Evans Farms, Inc.* (May 31, 2001) (proposal relating to replacement of company’s current directors and engagement of investment banker to explore value enhancement alternatives contained more than one proposal); *Fotoball USA, Inc.* (April 3, 2001) (proposal relating to sale of the company, director independence and a shareholder advisory committee contained more than one proposal).

**C. The Proposal exceeds the 500-word limit of Rule 14a-8(d).**

Rule 14a-8(d) limits the length of permissible proposals to no more than 500 words. The Proposal exceeds the 500-word limit by more than 200 words. The Proponent did not respond to the Company’s Rule 14a-8(f) Letter requesting that he abbreviate the Proposal, as discussed more fully below. The Staff has confirmed that a proposal may be excluded based on its failure to comply with the 500-word limitation of Rule 14a-8(d). *See* Section C.2 of SLB No. 14; *See also, e.g., Honeywell International Inc.* (April 19, 2002) (permitting exclusion when proposal exceeded 500-word limitation and proponent failed to reduce the proposal to less than 500 words within 14 days of receipt of Honeywell’s request).

**D. The Proponent failed to respond to the 14a-8(f) Letter.**

In light of the deficiencies in the Proposal and in accordance with the provisions of Rule 14a-8(f), on October 18, 2002, the Company sent the Rule 14a-8(f) Letter (Exhibit B) to the Proponent by Federal Express notifying the Proponent that the Proposal did not comply with the provisions of Rule 14a-8(b), (c) and (d). Specifically, the Rule 14a-8(f) Letter requested that the Proponent provide the Company within 14 calendar days of Proponent’s receipt of the Rule 14a-8(f) Letter:

- (i) documentary proof of ownership of \$2,000 of Company shares as of October 7, 2002 and for the year prior to that;
- (ii) a written statement of the Proponent’s intent to continue ownership of the required shares; and

- (iii) a revised Proposal including only a single proposal and limited in length to no more than 500 words.

The Company obtained confirmation that the Rule 14a-8(f) Letter was received by the Proponent on October 19, 2002 (Exhibit C). As of the date hereof, more than 14 calendar days after the receipt of the Rule 14a-8(f) Letter by the Proponent, the Company has not received any response from the Proponent.

**E. The Company may exclude the Proposal pursuant to Rule 14a-8(f).**

Due to the Proponent's failure to rectify the deficiencies of the Proposal within 14 calendar days of his receipt of the Rule 14a-8(f) Letter, the Company believes that it may exclude the Proposal from its Proxy Materials. As described above, these deficiencies include (i) failure to comply with the eligibility requirements of Rule 14a-8(b) mandating submission with a proposal of proof of ownership and statement of intent to hold such shares through the date of the meeting, (ii) failure to comply with the single proposal requirement of Rule 14a-8(c) and (iii) failure to comply with the 500-word limitation of Rule 14a-8(d).

**II. The Proposal May Also Be Omitted Based on Its Content.**

**A. The Proposal relates to the Company's ordinary business operations and, therefore, may be omitted from the Company's Proxy Materials pursuant to Rule 14a-8(i)(7).**

Rule 14a-8(i)(7) permits exclusion of shareholder proposals dealing with matters relating to the conduct of a company's "ordinary business operations." The Staff has defined this exclusion to include proposals relating to "general compensation issues." In its recent Staff Legal Bulletin No. 14A, the Staff reiterated its historical position that a proposal involving "the management of the workforce, such as the hiring, promotion, and termination of employees" generally relates to ordinary business matters. Division of Corporation Finance: Staff Legal Bulletin No. 14A—Shareholder Proposals (July 12, 2002) ("SLB 14A"). The Staff has distinguished shareholder proposals relating to senior executive officer compensation issues, which are not excludable from proxy material under Rule 14a-8(i)(7), from proposals relating to a broader group of executives, officers and employees, which are excludable. See *Minnesota Mining and Manufacturing Company* (March 4, 1999) (proposal to limit the yearly percentage compensation increase of the "top 40 executives" excludable under Rule 14a-8(i)(7) as relating to ordinary business matters); *Xerox Corporation* (March 25, 1993) (referring to senior executive compensation as an includable matter). In addition, the Staff has stated that proposals addressing the compensation of officers and directors relates to general compensation issues and therefore is excludable. See *Lucent Technologies Inc.* (November 6, 2001) (permitting the exclusion of a proposal seeking to decrease the remuneration of all officers and directors).

Consistent with the Staff's precedent, the Proposal may be excluded from the Proxy Materials because it targets broader compensation and employment policies and practices than those relating only to senior executive officers. See *Xerox Corp.* (March 31, 2000) (proposal

relating to target levels of employee compensation and benefits properly excluded as relating to the ordinary business operations of the corporation). The Proposal relates to an even broader category of employees. The Proposal's title – "Annuling (sic) Corporate Perks and Restructuring Corporate Salaries" on its face covers compensation of all of the Company's employees, not just its senior executive officers. In the vast majority of the Proposal's mandate, there is no specific focus on the senior executive officers of the Company. Instead, item 1 of the Proposal refers to "all stock options;" item 2 specifically addresses "employees below the executive level;" item 3 limits severance for "all employees;" item 5 addresses "all future golden parachutes;" item 6 requests the elimination of "all hiring bonuses;" items 7 and 8 would affect "any member of the corporation;" and item 9 refers to stock options generally without differentiation among employees. In the other items that specifically address "executives" generally or "Corporate America," the Proposal is also too broad. As noted above, the Staff determined in *Minnesota Mining and Manufacturing* (March 4, 1999) that a proposal to limit the yearly percentage compensation increase of the "top 40 executives" related to ordinary business matters and was properly excluded pursuant to Rule 14a-8(i)(7). The Company classifies many of its employees, and employees of its subsidiaries, in the "executive" ranks. Commensurate with their responsibilities, the compensation of these individuals may be covered by the Company's "executive compensation policies," but clearly they are not all considered senior executive officers. Similarly, the term "Corporate America," although not defined, clearly encompasses more than the senior executive officers. Although a few of the 18 items included in the Proposal relate to equity compensation plans, they do not seek shareholder approval of such plans and do not focus on material dilution and thus remain excludable pursuant to SLB No. 14A.

The vast majority of the 18 items listed in the Proposal clearly seek to affect the compensation, perquisites and severance arrangements of employees beyond those classified as senior executive officers and thus may be excluded pursuant to Rule 14a-8(i)(7), SLB No. 14A and recent precedent, as related to the Company's ordinary business operations.

**B. The Proposal may be omitted from the Proxy Materials under Rule 14a-8(i)(3) and Rule 14a-9 because it contains impermissibly vague statements.**

Rule 14a-8(i)(3) permits the omission of a proposal or any statement in support thereof if such proposal or statement is contrary to any proxy rule or regulation, including Rule 14a-9, which prohibits materially false or misleading statements in proxy soliciting material. The Company believes that the Proposal violates Rule 14a-9 in that it contains impermissibly vague statements and is, therefore, excludable under Rule 14a-8(i)(3).

The Staff has found that a proposal is misleading if the shareholders would not be able to determine with any reasonable certainty exactly what actions or measures would be taken in the event the proposal were adopted and, as a related matter, if the board of directors or management of a company would not have a clear idea as to what exactly it should do to effectuate the proposal. See *Philadelphia Electric Co.* (July 30, 1992) (proposal relating to the election of a committee of small shareholders to present plans "that will...equate with the gratuities bestowed on management, directors and other employees" properly excluded as vague and indefinite); *Comshare, Incorporated* (August 23, 2000) (shareholder proposal relating to the

company not “discriminat[ing] among directors based upon when or how they were elected” and “try[ing] to avoid defining change of control based upon officers or directors as of some fixed date” properly excluded as vague and indefinite). As stated above, the Proposal includes 18 different mandates that range in focus. In many instances it is unclear what action by the Company would satisfy the Proponent’s intent. For example, it is unclear whether the focus of the Proposal is eliminating certain benefits generally and denying them to all employees or simply limiting the compensation and severance packages of some ill-defined group of “executives.” Similarly, in several items, the Proponent refers to eliminating benefits to “Corporate America.” The Proposal fails to define who or what “Corporate America” is. In item 4, the Proposal mandates that “any other perks” to Corporate America that have not been granted to all employees be eliminated. The “perks” that the Proponent finds objectionable are not defined, nor is any concession made for “perks” that might be essential, for example, to a particular employee’s health or safety on the job. Numerous other statements and phrases are similarly ambiguous: in item 2, the Proponent demands an undefined “merit system;” in items 7 and 8, the Proponent references without definition “any member of the corporation;” in item 9, it is unclear what the Proponent means by “reversal of the ‘strike prices’ of existing stock options;” item 12 addresses special insurance policies not “in compliance” with the “Corporate insurance policy;” item 16 uses the undefined term “pension profits;” and item 18 cites the colloquial “huge and burdensome” debt liability. Without more clarity, the shareholders will not know what they are voting for and the Board of Directors will not know how to implement the Proposal if shareholders approve it.

For these reasons, the Company believes that the Proposal may be omitted from the Proxy Materials because it is overly vague and thus false and misleading in violation of the proxy rules.

**C. The Proposal may be omitted from the Proxy Materials under Rule 14a-8(i)(1) because it is not a proper subject for action by shareholders.**

Rule 14a-8(i)(1) permits a company to exclude a shareholder proposal from its proxy materials “[i]f the proposal is not a proper subject for action by shareholders under the laws of the jurisdiction of the company’s organization.” The Note to this rule clarifies that “some proposals are not considered proper under state law if they would be binding on the company if approved by shareholders.” The Staff has frequently agreed that shareholder proposals that usurp the power of the board of directors of a company under applicable state law by mandating certain action may properly be omitted from the registrant’s proxy statement under Rule 14a-8(i)(1). See *The Boeing Company* (March 6, 2000) (proposal mandating that a specified category of litigation costs be paid out of a particular fund is not a proper subject for action by the company’s shareholders); *The Walt Disney Company* (November 18, 1999) (proposal mandating that at least two qualified individuals be submitted to the shareholders for each position on the board of directors is not a proper subject for action by the company’s shareholders).

The Company is a Delaware corporation. Section 141(a) of the Delaware General Corporation Law provides that the business and affairs of a Delaware corporation are to be managed by or under the direction of the board of directors unless the corporation’s certificate of incorporation provides otherwise. The Company’s certificate of incorporation makes no

provision to allow shareholders to manage any of the matters addressed by the Proposal. Although the Proponent's introductory statement containing his name and share ownership suggests that the resolution "requests" implementation by the Company's board of directors, no such language appears in the resolution or the supporting statement. Because the resolution itself would "mandate" the Company's board of directors to follow the procedure set forth in the Proposal, it constitutes an effort at the shareholder level to regulate directly and in a mandatory manner the way in which the Company conducts operations that under Delaware law are entrusted to its board of directors.

Based on the foregoing, the Company believes that the Proposal may be excluded from the Proxy Materials under Rule 14a-8(i)(1) on the basis that it is not a proper subject for action by shareholders under the Delaware law.

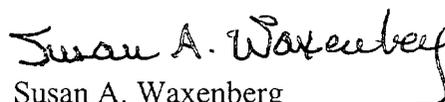
For the reasons set forth above, we respectfully submit that the exclusion of the entire Proposal from the Proxy Materials is proper under clauses (i)(7), (i)(3) and (i)(1) of Rule 14a-8.

\* \* \* \* \*

For the foregoing reasons, the Company respectfully requests that the Staff confirm that it would not recommend enforcement action if the Company omits the Proposal from its Proxy Materials. If you have any questions or if the Staff is unable to concur with our conclusions without additional information or discussions, we respectfully request the opportunity to confer with members of the Staff prior to the issuance of any written response to this letter. Please do not hesitate to call the undersigned at (212) 484-7350.

Please acknowledge receipt of this letter and its attachments by date-stamping the enclosed copy of the first page of this letter and returning it in the self-addressed stamped envelope provided for your convenience.

Very truly yours,



Susan A. Waxenberg  
Assistant General Counsel and  
Assistant Secretary

cc: Mr. Chris Scumas  
3 Lockwood Lane  
Savannah, GA 31411

*Chris Scumas*

3 Lockwood Lane  
Savannah, Ga. 31411  
Tel.No: (912) 598-0607  
Fax No: (912) 598-9616  
scumascumllh@aol.com

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October 7, 2002

*Corporate Secretary*  
AOL Time Warner, Inc.  
75 Rockefeller Plaza  
New York, N.Y. 10019

*Annuling Corporate Perks and  
Restructuring Corporate Salaries*

*To Whom It May Concern:*

*The following Proposal is to be included in the next Annual Shareholders meeting. As a shareholder of 400 shares of Corporate stock, I am hereby requesting that the Board of Directors take the following action to level the playing field as it affects Corporate Perks and Salaries.*

*For the past twenty years, many top ranking executives known as Corporate America have taken advantage of Shareholders by enriching themselves excessively with stock options, bonuses, exceedingly high salaries and increases, bloated pensions and retirement funds, golden parachutes and the like. They seem to have forgotten that they are nothing more than employees of a company established in a democratic nation and governed by democratic rules. Instead, they act as if they are the Lords of a Fiefdom where they can do as they damn well please. As such, they have gotten away with these excesses for reasons that have been clearly stated in the press, of which I am sure many of us have read.*

*These excesses have culminated in the recent scandals of accounting improprieties that were perpetrated by more than 20 corporations so far, and who knows how many more will be found guilty before it is all over. The reasons for these scandals have been articulated in the press and need no further explanation. These excesses and subsequent scandals have caused shareholders to lose confidence and respect for Corporate America to the point where the stock market has been adversely affected to a very serious degree.*

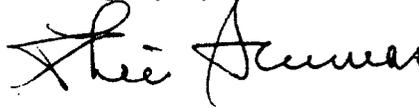
*While Congress is falling all over themselves to put forth all kinds of laws to prevent excesses and accounting improprieties in the future, what will arise out of all this activity will probably be watered down bills, if at all, without any teeth, not untypical of Congressional legislation, or legislation that has not been thought through very carefully. Therefore, to forestall any future scandals by Corporate America, and to restore a level playing field, BE IT RESOLVED that shareholders mandate that the Board of Directors take the following action:*

- 1. Eliminate all future stock options and rescind all stock options that have not been exercised. If the latter cannot be done legally, expense all those that have not been exercised. This also applies to the Board of Directors.*
- 2. Eliminate all bonuses and replace incentive awards with a merit system of not more than a twenty (20) percent increase for employees below the executive level, and a maximum increase of fifteen (15) percent for employees at the executive level.*
- 3. Limit severance payments to not more than two years salary for all employees.*
- 4. Eliminate any other perks to Corporate America that have not been granted to all employees.*
- 5. Eliminate all future golden parachutes and rescind all those that have been granted. If that cannot be done legally, then grant all employees the same privilege. There is nothing special about executives, they are simply employees like everyone else.*
- 6. Eliminate all hiring bonuses.*
- 7. Eliminate loans to any member of the corporation, and recall all those that have been granted.*
- 8. Eliminate the repurchase of stock from any member of the Corporation.*
- 9. Eliminate any reversal of the "strike prices" of existing stock options.*
- 10. Eliminate the granting of consultancy contracts to retiring executives. This is just another boondoggle.*
- 11. Eliminate any special retention payments to executives.*
- 12. Eliminate the purchase of any special insurance policies for Corporate America that are not in compliance with the Corporate insurance policy prevailing for all employees.*
- 13. Eliminate any special monetary or other financial grants to retiring executives.*
- 14. Limit the payment to Board of Directors to no more than \$50,000. per year, and provide reasonable payments to the Board for attending meetings.*
- 15. Due to the excess salaries granted to Corporate America, place a lid on executive salaries of more than one (1) million dollars until their*

*pay reaches ten (10) times the average corporate wage. Thereafter, their wages can be increased in keeping with the merit increase system set forth above.*

- 16. Eliminate the use of so called pension profits to bolster the bottom line.*
- 17. Should there be any evidence of accounting impropriety or manipulation of accounts that places the Corporation under a cloud and causes the stock price to drop as a result therefrom, the top five Corporate executives whose names are included in the Annual Meeting and Proxy Statement, and the Chief Legal Counsel, if his or her name is not included therein, shall resign immediately with a loss of all pension and severance rights.*
- 18. If any CEO pursues a merger that places the Corporation under a huge and burdensome debt liability that does not result in an improvement of the price of Corporate stock within two years of the conclusion of the merger, shall immediately resign.*

*Respectfully submitted,*

A handwritten signature in cursive script, appearing to read "Shie J. J. J.", written in dark ink.

AOL Time Warner

Susan A. Waxenberg  
Assistant General Counsel  
and Assistant Secretary

VIA OVERNIGHT MAIL  
RECEIPT CONFIRMATION  
REQUESTED

October 18, 2002

Mr. Chris Scumas  
3 Lockwood Lane  
Savannah, GA 31411

Dear Mr. Scumas:

Your letter dated October 7, 2002 to the Corporate Secretary of AOL Time Warner Inc. ("AOLTW") has been forwarded to me. As you are aware, Rule 14a-8 promulgated under the Securities Exchange Act of 1934 governs the requirements for stockholders submitting proposals to a company for inclusion in the company's proxy material for its stockholders' meetings and the situations in which a company is not required to include any such proposal in such proxy material.

Pursuant to Rule 14a-8(b), to be eligible to have a proposal included in the proxy material of AOLTW, you are required to own, at the time of submitting the proposal, at least \$2,000 worth of securities entitled to be voted on the proposal at the meeting and to have held such securities continuously for at least a year. Although you state in your letter to AOLTW that you own 400 shares of AOLTW common stock, you have not provided us with documentary proof of this ownership. In addition, you have not provided the required written statement that you intend to continue ownership of the shares through the date of AOLTW's annual meeting of stockholders. Accordingly, as permitted by Rule 14a-8, AOLTW requests that you provide (1) documentary support of your status as a holder of AOLTW common stock, including the quantity of the securities owned as of October 7, 2002 and for the year prior to that and (2) a written statement that you intend to hold the stock for the required period.

In addition, under Rules 14a-8(a) and (c), a stockholder may submit no more than one proposal to a company for a particular stockholder's meeting and must limit the proposal and accompanying supporting statement to 500 words. By our count, your proposal and supporting statement exceeded the 500 word limit. In addition, your proposal lists 18 separate actions that the stockholders would mandate of the Board of Directors, raising such diverse matters as executive compensation levels, severance payments for all employees, Board compensation and the use of "pension profits." As such, we believe that you have submitted more than the permitted one

Mr. Chris Scumas  
October 18, 2002  
Page 2

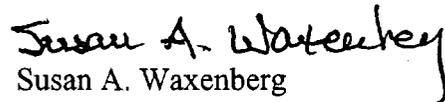
proposal. Accordingly, as permitted by Rule 14a-8, AOLTW requests that you revise your proposal to limit its length to 500 words, with the supporting statement, and to just one proposal.

Pursuant to Rule 14a-8(f)(1), you are required to provide this requested documentation and revisions and clarifications to the proposal within 14 days of your receipt of this request.

The proxy rules also provide certain substantive criteria pursuant to which a company is permitted to exclude from its proxy materials a stockholder's proposal. This letter addresses only the procedural requirements for submitting your proposal and does not address or waive any of our substantive concerns.

Please address any future correspondence to my attention.

Sincerely,

  
Susan A. Waxenberg



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**Tracking Number** 833445418460  
**Reference Number**  
**Ship Date** 10/18/2002  
**Delivered To** Recipient  
**Delivery Location** SAVANNAH GA  
**Delivery Date/Time** 10/19/2002 12:22  
**Signed For By** C.SCUMAS  
**Service Type** Priority Letter

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Scan Activity	Date/Time	Comments
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Left FedEx Sort FacilityMEMPHIS TN	10/19/2002 04:53	
Left FedEx Sort FacilityMEMPHIS TN	10/19/2002 01:44	
Arrived at Sort FacilityMEMPHIS TN	10/19/2002 01:22	
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Arrived at Sort FacilityNEWARK NJ	10/18/2002 22:00	
Left FedEx Origin LocationNEW YORK NY	10/18/2002 21:48	
Picked up by FedExNEW YORK NY	10/18/2002 18:39	
Picked up by FedExNEW YORK NY	10/18/2002 18:39	

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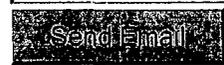
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**DIVISION OF CORPORATION FINANCE  
INFORMAL PROCEDURES REGARDING SHAREHOLDER PROPOSALS**

The Division of Corporation Finance believes that its responsibility with respect to matters arising under Rule 14a-8 [17 CFR 240.14a-8], as with other matters under the proxy rules, is to aid those who must comply with the rule by offering informal advice and suggestions and to determine, initially, whether or not it may be appropriate in a particular matter to recommend enforcement action to the Commission. In connection with a shareholder proposal under Rule 14a-8, the Division's staff considers the information furnished to it by the Company in support of its intention to exclude the proposals from the Company's proxy materials, as well as any information furnished by the proponent or the proponent's representative.

Although Rule 14a-8(k) does not require any communications from shareholders to the Commission's staff, the staff will always consider information concerning alleged violations of the statutes administered by the Commission, including argument as to whether or not activities proposed to be taken would be violative of the statute or rule involved. The receipt by the staff of such information, however, should not be construed as changing the staff's informal procedures and proxy review into a formal or adversary procedure.

It is important to note that the staff's and Commission's no-action responses to Rule 14a-8(j) submissions reflect only informal views. The determinations reached in these no-action letters do not and cannot adjudicate the merits of a company's position with respect to the proposal. Only a court such as a U.S. District Court can decide whether a company is obligated to include shareholder proposals in its proxy materials. Accordingly a discretionary determination not to recommend or take Commission enforcement action, does not preclude a proponent, or any shareholder of a company, from pursuing any rights he or she may have against the company in court, should the management omit the proposal from the company's proxy material.

February 18, 2003

**Response of the Office of Chief Counsel  
Division of Corporation Finance**

Re: AOL Time Warner Inc.  
Incoming letter dated December 24, 2002

The proposal relates to “annulling corporate perks and restructuring corporate salaries.”

There appears to be some basis for your view that AOL Time Warner may exclude the proposal under rule 14a-8(f). We note in particular that the proposal appears to exceed the 500-word limitation imposed by 14a-8(d) and your representation that the proponent failed to reduce the proposal to less than 500 words within 14 days of receipt of AOL Time Warner’s request. Accordingly, we will not recommend enforcement action to the Commission if AOL Time Warner omits the proposal from its proxy materials in reliance on rules 14a-8(d) and 14a-8(f). In reaching this position, we have not found it necessary to address the alternative bases for omission upon which AOL Time Warner relies.

Sincerely,



Katherine W. Hsu  
Attorney-Advisor