



DIVISION OF  
CORPORATION FINANCE

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

March 11, 2016

Douglas M. Lurio  
Lurio & Associates P.C.  
dlurio@luriolaw.com

Re: USA Technologies, Inc.  
Incoming letter dated February 22, 2016

Dear Mr. Lurio:

This is in response to your letter dated February 22, 2016 concerning the shareholder proposal submitted to USA Technologies by David C. Thomsen. Copies of all of the correspondence on which this response is based will be made available on our website at <http://www.sec.gov/divisions/corpfin/cf-noaction/14a-8.shtml>. For your reference, a brief discussion of the Division's informal procedures regarding shareholder proposals is also available at the same website address.

Sincerely,

Matt S. McNair  
Senior Special Counsel

Enclosure

cc: David C. Thomsen

\*\*\*FISMA & OMB Memorandum M-07-16\*\*\*

March 11, 2016

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

Re: USA Technologies, Inc.  
Incoming letter dated February 22, 2016

The proposal provides that the bylaws be amended to include rules of conduct at all meetings of shareholders.

There appears to be some basis for your view that USA Technologies may exclude the proposal under rule 14a-8(i)(7), as relating to USA Technologies' ordinary business operations. In this regard, we note that the proposal relates to the conduct of shareholder meetings. Accordingly, we will not recommend enforcement action to the Commission if USA Technologies omits the proposal from its proxy materials in reliance on rule 14a-8(i)(7).

Sincerely,

Evan S. Jacobson  
Special Counsel

**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 matter 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 shareholders 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.

**LURIO & ASSOCIATES P.C.**  
ATTORNEYS AT LAW

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& New Jersey Bars

February 22, 2016

**Via Electronic Delivery**

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

Re: *USA Technologies, Inc.*  
*Shareholder Proposal of David C. Thomsen*  
*Securities Exchange Act of 1934 - Rule 14a-8*

Ladies and Gentlemen:

This letter is to inform you that our client, USA Technologies, Inc., a Pennsylvania corporation (the “Company”), intends to omit from its proxy statement and form of proxy for its 2016 Annual Meeting of Shareholders (collectively, the “2016 Proxy Materials”) a shareholder proposal (the “Proposal”) received from David C. Thomsen (the “Proponent”).

In accordance with Section C of the Securities and Exchange Commission’s (the “Commission”) Staff Legal Bulletin No. 14D (Nov. 7, 2008) (“SLB 14D”), we are emailing this letter and its attachment to the staff of the Division of Corporation Finance (the “Staff”) via email at [shareholderproposals@sec.gov](mailto:shareholderproposals@sec.gov). In accordance with Rule 14a-8(j), we are simultaneously sending a copy of this letter and its attachment to the Proponent as notice of the Company’s intent to omit the Proposal from the 2016 Proxy Materials.

Rule 14a-8(k) and SLB 14D provide that shareholder proponents are required to send companies a copy of any correspondence that the proponents elect to submit to the Commission or the Staff. Accordingly, we are taking this opportunity to inform the Proponent that if the Proponent elects to submit additional correspondence to the Commission or the Staff with respect to this Proposal, a copy of that correspondence should be furnished concurrently to the undersigned on behalf of the Company.

## THE PROPOSAL

The Proposal seeks to amend the bylaws of the Company to “include rules of conduct at all meeting of shareholders”. The Proposal then sets forth detailed rules of conduct which include, among other things, that shareholders “may address the meeting about any of the formal questions on which they are entitled to vote”, each shareholder “is limited to no more than five questions or comments, no more than one of which may be on any single topic and each of which must be no more than two minutes in length”, and the chairperson will stop discussions that are “unduly prolonged (longer than two minutes)” or “derogatory references that are not in good taste”. A copy of the Proposal, as well as the cover letter thereto, is attached to this letter as Exhibit “A”. Additional correspondence between the Company and the Proponent is attached to this letter as Exhibit “B”.

## BASIS FOR EXCLUSION

We hereby respectfully request that the Staff concur in our view that the Proposal may properly be excluded from the 2016 Proxy Materials pursuant to Rule 14a-8(i)(7) because it deals with matters relating to the Company’s ordinary business operations, specifically the conduct of the Company’s shareholder meetings.

## ANALYSIS

**The Proposal May Be Excluded Under Rule 14a-8(i)(7) Because The Proposal Deals With Matters Relating To The Company’s Ordinary Business Operations, specifically the conduct of the Company’s shareholder meetings.**

Rule 14a-8(i)(7) permits the Company to omit from its proxy materials a shareholder proposal that relates to the Company’s “ordinary business” operations. According to the Commission’s release accompanying the 1998 amendments to Rule 14a-8, the term “ordinary business” refers to “matters that are not necessarily ‘ordinary’ in the common meaning of the word.” Exchange Act Release No. 34-40018 (May 21, 1998) (the “1998 Release”). Instead, the 1998 Release provides that the term is “rooted in the corporate law concept providing management with flexibility in directing certain core matters involving the company’s business and operations.”

In the 1998 Release, the Commission stated that the underlying policy of the ordinary business exclusion is “to confine the resolution of ordinary business problems to management and the board of directors, since it is impracticable for shareholders to decide how to solve such problems at an annual shareholders meeting.” The Commission then identified two central considerations that underlie this policy:

“The first relates to the subject matter of the proposal. Certain tasks are so fundamental to management's ability to run a company on a day-to-day basis that they could not, as a practical matter, be subject to direct shareholder oversight. . . .

The second consideration relates to the degree to which the proposal seeks to "micro-manage" the company by probing too deeply into matters of a complex nature upon which shareholders, as a group, would not be in a position to make an informed judgment. This consideration may come into play in a number of circumstances, such as where the proposal involves intricate detail, or seeks to impose specific time-frames or methods for implementing complex policies.”

The Proposal consists of detailed rules of conduct for shareholder meetings of the Company. The promulgation of rules of conduct for shareholder meetings is a matter squarely within the scope of a company's ordinary business operations. In this regard, the Staff has routinely and consistently concurred that proposals attempting to influence the procedures by which a company conducts its shareholder meetings relate to the company's ordinary business operations and thus are excludable under Rule 14a-8(i)(7).

In Commonwealth Energy Corp. (avail. Nov. 15, 2002), a shareholder proposal requested that the bylaws be amended to “[c]onduct the annual and other meetings in accordance with Roberts Rules of Order.” Because the proposal addressed the procedures governing shareholder meetings, the Staff concurred that the company could “exclude the...proposal under rule 14a-8(i)(7) as relating to [the company's] ordinary business operations (i.e., shareholder relations and the conduct of annual meetings).”

In Citigroup Inc. (avail. Jan. 14, 2004), the shareholder proposal asked the board to “take such action as may be necessary to provide guidelines...as to speakers” at the company's annual shareholder meetings. According to the no-action letter request, the proposal prescribed specific, detailed procedures for conducting annual meetings, including how long each shareholder may speak, when such speaker may ask another question or make a follow-up comment, who is qualified to speak, which topics may not be discussed, and methods of ensuring enforcement of such guidelines. The Staff concurred that the company could “exclude the proposal under rule 14a-8(i)(7), as relating to [the company's] ordinary business operations (i.e., conduct of annual meetings).”

In Servotronics, Inc. (avail. Feb. 19, 2015), the proposal requested that the proxy materials include a “non-binding shareholder advisory vote that a question-and-answer period be included” during the annual shareholder meeting. The Staff concurred that the proposal could be excluded and stated that “[p]roposals concerning the conduct of shareholder meetings generally

are excludable under rule 14a-8(i)(7)". Similarly, in Exxon Mobil Corp. (avail. Mar. 2, 2005), the proposal requested that the company "amend its Corporate Governance guidelines to provide that a time be set aside on the agenda at each annual meeting for shareholders to ask questions, and receive replies directly from, the non-employee directors." The Staff concurred that the company could "exclude the proposal under rule 14a-8(i)(7), as relating to the company's ordinary business operations (i.e., conduct of annual meetings)."

In AmSouth Bancorporation (avail. Jan. 15, 2002), the proposal requested that the chairman and chief executive officer open the floor to shareholders for questions and comments prior to adjournment of each annual meeting for thirty (30) minutes or until there are no more questions or comments, whichever occurs first. The Staff concurred in the exclusion of the proposal under Rule 14a-8(i)(7) because the proposal related to the company's "ordinary business operations (i.e., the specific amount of time allocated for shareholder discussions, during the course of an annual meeting, of board answers to shareholder questions posed at the meeting)."

See also, Bank of America Corp. (avail. Feb. 16, 2006) (concurring in the exclusion of a proposal requesting that all shareholders be entitled to speak at the company's annual shareholder meeting because the proposal related to the conduct of the meeting under Rule 14a-8(i)(7)); The Gillette Co. (avail. Feb. 2, 2001) (concurring in the exclusion of a proposal requesting that the board provide information to shareholders and "present measures for open discussion" at the company's annual shareholder meeting because the proposal related to "ordinary business operations (i.e., procedures for presenting and discussing issues with shareholders during the course of an annual meeting)"); Citigroup Inc. (avail. Feb. 7, 2013) (concurring in the exclusion of a proposal asking directors to "allocate a reasonable amount of time before and after the annual meeting for shareholder dialogue with our directors" by noting that "[p]roposals concerning the conduct of shareholder meetings generally are excludable under rule 14a-8(i)(7)"); PG&E Corp. (avail. Jan. 27, 2000) (concurring in the exclusion of a proposal requesting the adoption of a policy that would impose a maximum time limit for further shareholder discussion after the board answered a shareholder's question at the annual shareholder meeting because the proposal related to the company's ordinary business operations under Rule 14a-8(i)(7)); and Bank of America Corp. (avail. Dec. 22, 2009) (concurring in the exclusion of a proposal recommending that all shareholders "shall be entitled to attend and speak" at annual shareholder meetings because the proposal related to the company's ordinary business operations under Rule 14a-8(i)(7), and noting that "the proposal relates to eligibility to attend and speak at annual shareholder meetings").

Similar to the foregoing no-action letters, the Proposal seeks to address the means by which the Company conducts its shareholder meetings, and sets forth detailed rules of conduct for such meetings. The promulgation of rules of conduct for shareholder meetings are well

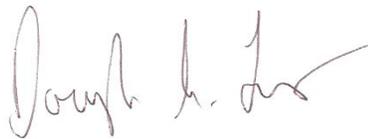
within the ordinary business operations of the Company, and clearly do not raise any significant policy concerns. Thus, the Proposal may be excluded pursuant to Rule 14a-8(i)(7).

### CONCLUSION

Based upon the foregoing analysis, we respectfully request that the Staff concur that it will take no action if the Company excludes the Proposal from its 2016 Proxy Materials.

Should the Staff have any questions or should any additional information be desired in support of the Company's position, please do not hesitate to contact either the undersigned or Shaila Prabhakar, Esquire, at (215) 665-9300. Correspondence regarding this letter should be sent to the undersigned at [dlurio@luriolaw.com](mailto:dlurio@luriolaw.com) or to Ms. Prabhakar at [sprabhakar@luriolaw.com](mailto:sprabhakar@luriolaw.com). Thank you for your attention to this matter.

Very truly yours,

A handwritten signature in black ink, appearing to read "Douglas M. Lurio". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Douglas M. Lurio

cc: J. Matthew Wolfe, Esquire, Attorney for Proponent (via electronic delivery)

**EXHIBIT A**

6 January 2015

Ms. Letitia McNeil  
Secretary of the Company  
USA Technologies, Inc.  
100 Deerfield Lane, Suite 140,  
Malvern, PA 19355-2100

Dear Ms. McNeil:

Please include the proposed shareholder resolution in the proxy materials for the 2016 Annual Meeting of shareholders of USA Technologies, Inc..

Currently I own 25,000 shares of common stock and 4,100 shares of preferred stock in my IRA with account ~~OMB Memorandum M-07-16~~ and I have held these shares (or more) for well over two years. Currently I own 1,475 shares of common stock in my cash with account ~~OMB Memorandum M-07-16~~ and I have held these shares (or more) for well over two years. Currently I jointly own with my wife 1300 shares of common stock with account ~~OMB Memorandum M-07-16~~ and we have held these shares for well over two years. My stockbroker can confirm these holdings and I have enclosed both statements and letters from the broker to demonstrate these numbers.

Of course, the company can avoid the trouble and expense of voting on this resolution by adopting the same or similar policy, and my resolution would be moot.

Please contact me at ~~OMB Memorandum M-07-16~~ or email ~~OMB Memorandum M-07-16~~ if there is any difficulty placing this shareholder resolution on the proxy materials for the 2016 Annual Meeting of shareholders.

Yours truly,

  
David C. Thomsen

The Bylaws of USA Technologies, Inc. are hereby amended to include rules of conduct at all meetings of shareholders as follows:

1. All shareholders and proxy holders must register at the reception desk before entering the room for the meeting.
2. The taking of photographs and use of audio or video recording equipment is prohibited.
3. The meeting will follow the Agenda provided to all shareholders upon entering the meeting.
4. Only shareholders of record or their proxy holders may address the meeting. Shareholders of record or their proxy holders may address the meeting about any of the formal questions on which they are entitled to vote, and the chairperson shall recognize them for that purpose. Shareholders may support, oppose or comment on any question.
5. All questions and comments should be directed to the chairperson of the meeting. Shareholders may address the meeting only after they have been recognized.
6. If a shareholder or proxy holder wishes to address the meeting, they are requested to wait until they are provided with a microphone. Upon being recognized, the speaker is requested to state their name clearly, their status as a stockholder or a proxy holder and present their question or comment.
7. Each speaker is limited to a total of no more than five questions or comments, no more than one of which may be on any single topic and each of which must be no more than two minutes in length.
8. Shareholders are requested to permit each speaker the courtesy of concluding his or her remarks without interruption.
9. The views and comments of all stockholders are welcome. However, the purpose of the meeting will be observed and the chairperson will stop discussions that are:
  - \* irrelevant to the business of the company or the conduct of its operations;
  - \* related to pending or threatened litigation;
  - \* derogatory references that are not in good taste;
  - \* unduly prolonged (longer than two minutes);
  - \* substantially repetitious of statements made by other stockholders; or
  - \* discussions related to personal grievances.

*David C. Thonson*

## **EXHIBIT B**

**LURIO** & ASSOCIATES, P.C.  
ATTORNEYS AT LAW

Douglas M. Lurio \*  
Margaret Sherry Lurio \*\*  
Shaila Prabhakar \*\*  
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\*\*\* Member of Pennsylvania,  
New Jersey & New York Bars

January 21, 2016

**VIA EMAIL AND REGULAR MAIL**

Mr. David C. Thomsen

\*\*\*FISMA & OMB Memorandum M-07-16\*\*\*

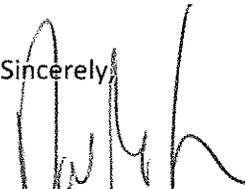
Re: USA Technologies, Inc. (the "Company")

Dear Mr. Thomsen:

This office represents the Company. The Company has received your letter requesting it to include your shareholder proposal in the proxy materials for the 2016 annual meeting of shareholders ("Annual Meeting"). Please note that you have failed to comply with the requirements set forth in Rule 14a-8(b)(2) promulgated under the Securities Exchange Act of 1934 (the "1934 Act"). In this regard, and pursuant to Rule 14a-8(f) promulgated under the 1934 Act, please provide a written statement, within 14 days of the date of this letter, stating that you intend to continue to hold the securities set forth in your broker's letters dated December 8, 2015 through the date of the Annual Meeting.

Please respond directly to the undersigned.

Sincerely,



Douglas M. Lurio

**Doug Lurio**

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**From:** \*\*\*FISMA & OMB Memorandum M-07-16\*\*\*  
**Sent:** Wednesday, February 03, 2016 3:15 PM  
**To:** dlurio@luriolaw.com  
**Subject:** USAT PROPOSAL

I hold 1,475 common shares of USAT in my cash account, 25,000 common shares of USAT in my IRA and 1,300 shares USAT in a joint account with my wife, intend to continue holding those shares until the annual meeting of USAT and beyond.

If you need this information in a signed email letter or by paper mail, please inform me promptly.

David C. Thomsen

\*\*\*FISMA & OMB Memorandum M-07-16\*\*\*