



DIVISION OF
CORPORATION FINANCE

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

April 21, 2022

Jeffrey S. Spindler
Olshan Frome Wolosky LLP

Re: GameStop Corp. (the "Company")
Incoming letter dated March 30, 2022

Dear Mr. Spindler:

This letter is in response to your correspondence concerning the shareholder proposal (the "Proposal") submitted to the Company by Frank Sapienza for inclusion in the Company's proxy materials for its upcoming annual meeting of security holders.

There appears to be some basis for your view that the Company may exclude the Proposal under Rule 14a-8(e)(2) because the Company received it after the deadline for submitting proposals. Accordingly, we will not recommend enforcement action to the Commission if the Company omits the Proposal from its proxy materials in reliance on Rule 14a-8(e)(2).

Copies of all of the correspondence on which this response is based will be made available on our website at <https://www.sec.gov/corpfin/2021-2022-shareholder-proposals-no-action>.

Sincerely,

Rule 14a-8 Review Team

cc: Frank Sapienza

March 30, 2022

VIA E-MAIL

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

Re: *GameStop Corp.*
Stockholder Proposal of Frank Sapienza
Securities Exchange Act of 1934 (“Exchange Act”) — Rule 14a-8

Ladies and Gentlemen:

This letter is to inform you that our client, GameStop Corp. (the “Company”), intends to omit from its proxy statement and form of proxy for its 2022 Annual Meeting of Stockholders (collectively, the “2022 Proxy Materials”) a stockholder proposal (the “Proposal”) and statement in support thereof received from Frank Sapienza (the “Proponent”). A copy of the Proposal, together with the Proponent’s cover letter and proof of ownership, is attached to this letter as Exhibit A. Pursuant to Rule 14a-8(j), we have concurrently sent copies of this correspondence to the Proponent.

Rule 14a-8(k) and Staff Legal Bulletin No. 14D (Nov. 7, 2008) (“SLB 14D”) provide that stockholder proponents are required to send companies a copy of any correspondence that the proponents elect to submit to the Securities and Exchange Commission (the “Commission”) or the staff of the Division of Corporation Finance (the “Staff”). Accordingly, if the Proponent elects to submit additional correspondence to the Commission or the Staff with respect to the Proposal, a copy of that correspondence should be furnished concurrently to the undersigned on behalf of the Company pursuant to Rule 14a-8(k) and SLB 14D.

BASIS FOR EXCLUSION

We hereby respectfully request that the Staff concur in our view that the Proposal may be excluded from the 2022 Proxy Materials pursuant to Rule 14a-8(e)(2) because the Proposal was received by the Company at its principal executive offices after the deadline for submitting stockholder proposals for inclusion in the Company’s 2022 Proxy Materials. In addition, the Company requests the Staff waive the 80-day deadline in Rule 14a-8(j)(1) for good cause.

BACKGROUND

On April 22, 2021, the Company filed with the Commission, and commenced distribution of a proxy statement and form of proxy for its 2021 Annual Meeting of Stockholders (“2021 Proxy Statement”) to its stockholders. As required by Rule 14a-5(e), the Company’s 2021 Proxy Statement includes the deadline for receiving stockholder proposals submitted for inclusion in the Company’s proxy statement and form of proxy for the Company’s next annual meeting, calculated in the manner prescribed in Rule 14a-8(e). Under the caption “Proposals Pursuant to Rule 14a-8,” the 2021 Proxy Statement, on page 54 addresses the deadline for stockholder proposals submitted under Rule 14a-8, stating:

Proposals of stockholders pursuant to Rule 14a-8 of the Exchange Act intended to be presented for inclusion in our proxy materials for the annual meeting of stockholders to be held in 2022 must meet the requirements under Rule 14a-8 and be received by the Secretary, at GameStop Corp., 625 Westport Parkway, Grapevine, Texas 76051, no later than December 23, 2021.

This disclosure is followed by a description of the proxy access provisions of the Company’s Bylaws and the procedures for nominating director nominees and presenting other proposals at the Company’s 2022 Annual Meeting of Stockholders on pages 54 and 55. A copy of pages 54 and 55 of the Company’s 2021 Proxy Statement is attached to this letter as Exhibit B.

As described below, the Company calculated the December 23, 2021 deadline in the manner prescribed in Rule 14a-8(e) and Staff Legal Bulletin No. 14 (July 13, 2001) (“SLB 14”). In addition, the Company confirmed that it intends to hold its 2022 Annual Meeting of Stockholders within 30 days of the anniversary of its 2021 Annual Meeting of Stockholders.

On March 7, 2022, 74 days after the Company’s deadline for submitting stockholder proposals, the Company received the Proposal. The Proposal was sent via United States Postal Service Certified Mail and was addressed and delivered to the Company’s principal executive offices at 625 Westport Parkway, Grapevine, Texas 76051, on March 7, 2022. A copy of the envelope, with tracking number affixed, and tracking information showing the date of delivery is attached to this letter as Exhibit C.

ANALYSIS

I. The Proposal May Be Excluded From The Company’s 2022 Proxy Materials Pursuant To Rule 14a-8(e)(2) Because The Proposal Was Received By The Company At Its Principal Executive Offices After The Deadline For Submitting Stockholder Proposals For Inclusion In The Company’s 2022 Proxy Materials.

Under Rule 14a-8(f)(1) a company may exclude a stockholder proposal if the proponent fails to follow one of the eligibility or procedural requirements contained in Rule 14a-8. Ordinarily, a company may exclude a proposal on this basis only after it has timely notified the proponent of an eligibility or procedural problem and the proponent has timely failed to adequately correct the problem. However, per Rule 14a-8(f)(1), a company “need not provide [the proponent] such

notice of a deficiency if the deficiency cannot be remedied, *such as if [the proponent] fail[s] to submit a proposal by the company's properly determined deadline*" (emphasis added).

One of the eligibility or procedural requirements contained in Rule 14a-8 is timeliness, the requirement to submit a proposal by the applicable deadline. If a proponent is submitting a proposal "for the company's annual meeting, [the proponent] can in most cases find the deadline in [the prior] year's proxy statement." See Rule 14a-8(e)(1). Under Rule 14a-8(e)(2):

The deadline is calculated in the following manner if the proposal is submitted for a regularly scheduled annual meeting. The proposal must be received at the company's principal executive offices not less than 120 calendar days before the date of the company's proxy statement released to stockholders in connection with the previous year's annual meeting.¹

SLB 14, Section C.3.b indicates that, to calculate the deadline, a company should "[i] start with the release date disclosed in the previous year's proxy statement; [ii] increase the year by one; and [iii] count back 120 calendar days." Consistent with this guidance, to calculate the deadline for receiving stockholder proposals submitted for the Company's 2022 Annual Meeting of Stockholders, the Company (i) started with the release date of its 2021 Proxy Statement (i.e., April 22, 2021),² (ii) increased the year by one (i.e., April 22, 2022), and [iii] counted back 120 calendar days. As per SLB 14, Section C.3.b, "day one" for purposes of this calculation was April 21, 2022, resulting in a deadline for receiving stockholder proposals submitted for inclusion in the Company's 2022 Proxy Materials of December 23, 2021, as disclosed on page 54 of the Company's 2021 Proxy Statement. See Exhibit B. As noted above and in Exhibit C to this letter, the Company received the Proposal 74 days after this deadline, on March 7, 2022.

The Staff strictly construes the deadline for stockholder proposals under Rule 14a-8, permitting companies to exclude from proxy materials those proposals received at companies' principal executive offices after the deadline. See, e.g., *Walgreens Boots Alliance, Inc.* (avail. Oct. 12, 2021) (concurring with the exclusion of a proposal received two days after the submission deadline); *Hewlett Packard Enterprise Co.* (avail. Jan. 15, 2021) (concurring with the exclusion of a proposal received two days after the submission deadline); *General Dynamics Corp.* (avail. Jan. 8, 2021, *recon. denied* Mar. 17, 2021) (concurring with the exclusion of a proposal received four days after the submission deadline); *DTE Energy Co. (Moore)* (avail. Dec. 18, 2018)

¹ Also under Rule 14a-8(e)(2), "if the company did not hold an annual meeting the previous year, or if the date of this year's annual meeting has been changed by more than 30 days from the date of the previous year's meeting, then the deadline is a reasonable time before the company begins to print and send its proxy materials." This portion of Rule 14a-8(e)(2) is not applicable in the instant case since, as noted earlier, the Company has confirmed that it intends to hold its 2022 Annual Meeting of Stockholders within 30 days of the anniversary of its 2021 Annual Meeting of Stockholders.

² As stated above, the Company's 2021 Proxy Statement was filed on April 22, 2021 and the Notice of the 2021 Annual Meeting of Stockholders included in the Company's 2021 Proxy Statement indicated that the Company "will send a full set of proxy materials or a Notice of Internet Availability of Proxy Materials (the "Notice of Internet Availability") on or about April 22, 2021, and provide access to our proxy materials over the Internet, beginning on April 22, 2021." See <https://www.sec.gov/Archives/edgar/data/1326380/000119312521126940/d122967ddef14a.htm>

(concurring with the exclusion of a proposal received two days after the submission deadline); *Verizon Communications, Inc.* (avail. Jan. 4, 2018) (concurring with the exclusion of a proposal received one day after the submission deadline); *Dean Foods Co.* (avail. Jan. 27, 2014) (concurring with the exclusion of a proposal received three days after the submission deadline); *PepsiCo, Inc.* (avail. Jan. 3, 2014) (same); *Tootsie Roll Industries, Inc.* (avail. Jan. 14, 2008) (proposal received two days after company’s deadline, even when deadline fell on a Saturday).

We note that although the Proposal was submitted after the deadline set forth in the Company’s 2022 proxy statement for Rule 14a-8 proposals, it was submitted prior to the deadline prescribed under the Company’s bylaws for non-Rule 14a-8 proposals. In this regard we are aware of *Smith & Wesson Holding Corp.* (avail. Aug. 7, 2014), in which the Staff did not concur with exclusion under Rule 14a-8(e)(2) of a proposal submitted after that company’s Rule 14a-8 deadline. However, the facts in the present situation are very different from those addressed in *Smith & Wesson*. In *Smith & Wesson*, one of the proponent’s “major” arguments was that the company did not clearly disclose the Rule 14a-8 deadline in its proxy statement.³ In contrast, here the Company’s 2022 proxy statement clearly states, “[p]roposals of stockholders pursuant to Rule 14a-8 of the Exchange Act intended to be presented for inclusion in our proxy materials for the annual meeting of stockholders to be held in 2022 must meet the requirements under Rule 14a-8 and be received by the Secretary, at GameStop Corp., 625 Westport Parkway, Grapevine, Texas 76051, no later than December 23, 2021.” Finally, the form in which the Proponent submitted the proposal suggests that the Proponent intended to submit the Proposal pursuant to the procedures for Rule 14a-8 proposals. The Proponent’s letter for the Proposal specifically states that it is a “Shareholder Proposal,” includes a “Supporting Statement” and the Proponent did not comply with the informational requirements applicable to stockholder proposals otherwise submitted pursuant to the Company’s bylaws.

Accordingly, the Proposal is properly excludable from the Company’s 2022 Proxy Materials because it was not received at the Company’s principal executive offices within the timeframe required under Rule 14a-8(e)(2).

II. Waiver Of The 80-Day Requirement in Rule 14a-8(j)(1) Is Appropriate.

The Company further requests that the Staff waive the 80-day filing requirement set forth in Rule 14a-8(j) for good cause. Rule 14a-8(j)(1) requires that, if a company “intends to exclude a proposal from its proxy materials, it must file its reasons with the Commission no later than 80 calendar days before it files its definitive proxy statement and form of proxy with the Commission.” However, Rule 14a-8(j)(1) allows the Staff to waive the deadline if a company can show “good cause.” The Company did not receive the Proposal until March 7, 2022, which is less than 80 days before the Company intends to file its 2022 Proxy Materials. Accordingly, we believe that the Company has “good cause” for its inability to meet the 80-day requirement, and we respectfully request that the Staff waive the 80-day requirement with respect to this letter.

³ The proponent’s response letter states, for example, that “there is no specific mention of Rule 14a-8” in Smith and Wesson’s proxy statement.

March 30, 2022

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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 2022 Proxy Materials. We would be happy to provide you with any additional information and answer any questions that you may have regarding this subject.

Correspondence regarding this letter should be sent to jspindler@olshanlaw.com. If we can be of any further assistance in this matter, please do not hesitate to call me at (212) 451-2307.

Sincerely,

/s/Jeffrey S. Spindler
Jeffrey S. Spindler

Enclosure

cc: Mark Robinson, General Counsel and Secretary, GameStop Corp.
Frank Sapienza

EXHIBIT A

Shareholder Proposal

Frank Sapienza [REDACTED], who directly owns 382 and beneficially owns 540 Class A shares of GameStop Corp. ("GME" or "Company"), submits the following proposal:

RESOLVED: The shareholders of GME, assembled at the annual meeting in person and by proxy, hereby request that the Board of Directors immediately engage the services of the Company's Transfer Agent, Computershare Limited ("Computershare") to enable both investment and Direct Registration of Class A shares in both Roth and Traditional Individual Retirement Accounts ("IRA") Shareholder Investment Programs at Computershare.

Supporting Statement

You are urged to vote "Yes" for this proposal for the following reasons;

I believe that the Company's potential for stable, long-term growth are being hampered by rampant short selling and may also be subject to illegal naked short selling. The Company acknowledges the investment risks due to short selling in its 10-Q filing on 08 DEC 2021. Inasmuch as the Company and its shareholders may be suffering financially deleterious effects of short selling and alleged naked short selling, I believe that one of the most effective methods to protect my investment in the Company is to utilize the Direct Registration System ("DRS") and hold my shares under my own name with Computershare. Currently, I can direct register my shares held in a standard brokerage account. Unfortunately, I cannot direct register my shares held in neither my Traditional IRA nor Roth IRA.

As a middle-class retail investor, I rely heavily on the tax advantages afforded by IRAs to build wealth and prepare for retirement. I am not alone in my cohort. According to research conducted by the Pew Research Center, a majority of American families have some level of investment in the stock market, most of which comes in the form of retirement accounts (Pew, 2020). Additionally, research conducted by the Investment Company Institute shows that assets in IRAs totaled \$13.2 trillion at the end of the third quarter of 2021 and that the share of assets held in IRAs compared to other retirement accounts has increased from 22% in 2000 to 35% in 2021 (ICI, 2021).

The Company has benefitted significantly from grassroots investment over the last year, raising over \$1 billion in capital through its 2021 share offerings. However, it continues to be subject to high levels of short selling and alleged naked short selling. By opening Roth and Traditional IRA Shareholder Investment Programs at Computershare, the Company will be enabling many of its loyal, middle class retail investors to better protect their respective investments, which in turn will better protect the respective investments in all Company shareholders.

EXHIBIT B

Certain Relationships and Related Transactions

The Board has adopted an Audit Committee Charter which requires the Audit Committee to review with management and the independent registered public accountants and approve all transactions and courses of dealing with parties related to us. This obligation of the Audit Committee is described earlier in this Proxy Statement in the “Election of Directors” section, which states that the Audit Committee is responsible for reviewing and approving related party transactions. Also, as described earlier in this Proxy Statement in the “Election of Directors” section, the Company has adopted a Code of Ethics for Senior Financial and Executive Officers and a Code of Standards, Ethics and Conduct applicable to the Company’s management-level employees. The codes require that all of our employees and directors avoid conflicts of interest, defined as situations where the person’s private interests interfere in any way, or even appear to interfere, with our interests as a whole. In addition, at least annually each director and executive officer completes a detailed questionnaire that inquires about any business relationship that may give rise to a conflict of interest and all transactions in which we are involved and in which the executive officer, a director or a related person has a direct or indirect material interest.

It is our policy that any potential conflict of interest transaction with an executive officer or director or any transaction that triggers disclosure under Item 404(a) of Regulation S-K as a result of these inquiries is required to be reviewed and approved or ratified by the Audit Committee. During fiscal 2020, there were no transactions requiring disclosure with, or with an immediate family member of, directors, NEOs or persons who were the beneficial owners of more than 5% of our outstanding shares during the fiscal year.

Other Matters

We do not intend to present any other business for action at the annual meeting and do not know of any other business intended to be presented by others. If any matters other than the matters described in the Notice of Annual Meeting of Stockholders and this Proxy Statement should be presented for stockholder action at the annual meeting, it is the intention of the persons designated in the proxy to vote thereon in accordance with their best judgment.

Financial and Other Information

We are furnishing our Annual Report for the fiscal year ended January 30, 2021, including consolidated financial statements, together with this Proxy Statement.

Cautionary Statement Regarding Forward Looking Statements

This Proxy Statement contains forward-looking statements within the meaning of the Private Securities Litigation Reform Act of 1995. Such statements may include, but are not limited to, statements related to risks associated with our compensation programs, our future performance, our plans, objectives, expectations and intentions, and other statements that are not historical facts. Such statements are based upon the current beliefs and expectations of our management and are subject to significant risks and uncertainties. Actual results may differ from those set forth in the forward-looking statements. We undertake no obligation to publicly update or revise any forward-looking statements except as required by law. Factors that may cause actual results to differ materially from those contemplated by the statements in this Proxy Statement can be found in our most recent Annual Report on Form 10-K for the fiscal year ended January 30, 2021 filed with the SEC on March 23, 2021.

Proposals Pursuant to Rule 14a-8

Proposals of stockholders pursuant to Rule 14a-8 of the Exchange Act intended to be presented for inclusion in our proxy materials for the annual meeting of stockholders to be held in 2022 must meet the requirements under Rule 14a-8 and be received by the Secretary, at GameStop Corp., 625 Westport Parkway, Grapevine, Texas 76051, no later than December 23, 2021. However, if the date of the 2022 annual meeting is more than 30 days before or after June 9, 2022, then the deadline for submitting any stockholder proposal for inclusion in the proxy materials relating to such annual meeting will be a reasonable time before we begin to print and mail such proxy materials.

Proxy Access Director Nominees

Under the proxy access provisions of our Bylaws, stockholders are entitled to nominate and include in our proxy materials Director nominees, provided that the eligibility and procedural requirements specified in our Bylaws, including advance notice requirements, are satisfied. The notice must be delivered to the Secretary at our principal executive offices, at 625 Westport Parkway, Grapevine, Texas 76051, not less than 120 days nor more than 150 days prior to the first anniversary of the date of our proxy statement in connection with the most recent annual meeting of stockholder. As a result, any notice given by a stockholder pursuant to the proxy access provisions of our Bylaws with respect to the 2022 annual meeting must be received no earlier than the close of business on

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November 23, 2021, and no later than the close of business on December 23, 2021. However, in the event that the date of the 2022 annual meeting is more than 30 days before June 9, 2022 or more than 60 days after June 9, 2022, then the notice, to be timely, must be delivered not earlier than the close of business on the 120th day prior to the date of the 2022 annual meeting and not later than the close of business on the later of (x) the 90th day prior to the date of the 2022 annual meeting or (y) the 10th day following the day of the first public announcement of the date of the 2022 annual meeting.

The complete requirements for submitting a nominee for inclusion in our proxy materials are set forth in our Bylaws, a copy of which can be obtained upon request directed to the Secretary at our principal executive offices at the address set forth above or on our website at <http://investor.gamestop.com>.

Other Proposals and Nominees

Any stockholder who wishes to propose any business to be considered by the stockholders at the 2022 Annual Meeting or who wants to nominate a person for election to the Board at that meeting, other than (i) a proposal for inclusion in the Proxy Statement pursuant to Rule 14a-8 or (ii) pursuant to the proxy access Bylaw provisions, in each case as described above, must provide a written notice that sets forth the specified information described in our Bylaws concerning the proposed business or nominee. To be timely, a stockholder's notice must be delivered to or mailed and received at our principal executive offices not less than 90 days nor more than 120 days prior to the first anniversary date of our immediately preceding annual meeting, which, with respect to the 2022 Annual Meeting, would be no earlier than the close of business on February 9, 2022 and no later than the close of business on March 11, 2022. However, in the event that the date of the 2022 Annual Meeting is more than 25 days before or after June 9, 2022, then the notice, to be timely, must be delivered not later than the close of business on the tenth day following the date on which the notice of the date of the meeting is mailed or publicly announced.

STOCKHOLDERS ARE URGED TO SUBMIT THEIR BLUE PROXY CARDS WITHOUT DELAY. A PROMPT RESPONSE WILL BE GREATLY APPRECIATED.

By Order of the Board of Directors



GEORGE E. SHERMAN
Chief Executive Officer

April 22, 2021

EXHIBIT C



NEV

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76051

U.S. POSTAGE
FCM LETTER
NEW ORLEANS
70115
MAR 03, 22
AMOUNT

\$4.3

R2305K141304

SECRETARY, GAMESTOP CORP
625 WESTPORT PARKWAY
GRAPEVINE TX, 76051

PLACE STICKER AT TOP OF ENVELOPE TO THE RIGHT
OF THE RETURN ADDRESS, FOLD AT DOTTED LINE

CERTIFIED MAIL



7020 1290 0000 4651 1561

76051-674025



[Track Another Package +](#)

Tracking Number: 70201290000046511561

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Your item was delivered to an individual at the address at 12:57 pm on March 7, 2022 in GRAPEVINE, TX 76051.

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Delivered, Left with Individual

March 7, 2022 at 12:57 pm
GRAPEVINE, TX 76051

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