



DIVISION OF  
CORPORATION FINANCE

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

March 9, 2023

Kristina V. Fink  
American Express Company

Re: American Express Company (the "Company")  
Incoming letter dated December 24, 2022

Dear Kristina V. Fink:

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

The Proposal requests the Company's board of directors conduct an evaluation and issue a report within the next year describing if and how the Company intends to reduce the risk associated with tracking, collecting, or sharing information regarding the processing of payments involving its cards and/or electronic payment system services for the sale and purchase of firearms.

There appears to be some basis for your view that the Company may exclude the Proposal under Rule 14a-8(i)(7). In our view, the Proposal relates to, and does not transcend, ordinary business matters. 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(i)(7).

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/2022-2023-shareholder-proposals-no-action>.

Sincerely,

Rule 14a-8 Review Team

cc: Sarah Rehberg  
National Center for Public Policy Research

December 24, 2022

**Via Electronic Mail to shareholderproposals@sec.gov**

U.S. Securities and Exchange Commission  
Division of Corporation Finance  
Office of Chief Counsel  
100 F Street, N.E.  
Washington D.C. 20549

**Re: Shareholder Proposal Submitted by the National Center for Public Policy Research**

Dear Sir or Madam:

In accordance with Rule 14a-8(j) under the Securities Exchange Act of 1934, as amended (the “Exchange Act”), American Express Company, a New York corporation (the “Company”), hereby gives notice of the Company’s intention to omit from its proxy statement for its 2023 annual meeting of shareholders (the “2023 Proxy Statement”) a shareholder proposal (the “Proposal”) submitted by the National Center for Public Policy Research (the “Proponent”) under cover of letter dated November 4, 2022. A copy of the Proposal, together with the supporting statement included in the Proposal (the “Supporting Statement”), is attached hereto as Exhibit A.

The Company requests confirmation that the staff of the Division of Corporation Finance (the “Staff”) of the Securities and Exchange Commission (the “Commission”) will not recommend any enforcement action if the Company omits the Proposal from the 2023 Proxy Statement pursuant to Rule 14a-8(i)(7) under the Exchange Act because the Proposal deals with matters relating to the Company’s ordinary business operations and seeks to micromanage the Company.

In accordance with Rule 14a-8(j), we are submitting this letter to the Commission no later than 80 calendar days before the Company expects to file its definitive 2023 Proxy Statement with the Commission. Pursuant to Staff Legal Bulletin No. 14D (CF), Shareholder Proposals (November 7, 2008), Question C, we have submitted this letter and its attachments to the Commission via email to shareholderproposals@sec.gov. In accordance with Rule 14a-8(j), a copy of this submission is being forwarded simultaneously to the Proponent. This letter constitutes the Company’s statement of the reasons it deems the omission of the Proposal from the 2023 Proxy Statement to be proper.

**THE PROPOSAL**

The proposed resolution included in the Proposal provides as follows:

**Resolved:** Shareholders request the Board of Directors conduct an evaluation and issue a report within the next year (at reasonable cost, excluding proprietary information) describing if and how the Company intends to reduce the risk associated with tracking, collecting, or sharing information regarding the processing of

payments involving its cards and/or electronic payment system services for the sale and purchase of firearms.

On November 15, 2022, within 14 days of the Company's receipt of the Proposal, the Company sent to the Proponent via email a notification of eligibility and procedural deficiencies with respect to the Proposal (the "First Deficiency Letter"). The Proponent provided additional documentation in response to the Deficiency Letter on November 17, 2022. The Company sent a second deficiency letter on November 23, 2022 (the "Second Deficiency Letter") and, together with the First Deficiency Letter, the "Deficiency Letters") and the Proponent provided additional documentation on that same day. Copies of the Deficiency Letters and all related correspondence are attached hereto as Exhibit B.

### **BASIS FOR EXCLUSION**

In accordance with Rule 14a-8, the Company hereby respectfully requests that the Staff concur with the Company's view that the Proposal may be excluded from the 2023 Proxy Statement pursuant to Rule 14a-8(i)(7) under the Exchange Act, because the Proposal deals with matters relating to the Company's ordinary business operations and seeks to micromanage the Company.

### **ANALYSIS**

#### **A. Under Rule 14a-8(i)(7), the Proposal may be omitted because it deals with matters relating to the Company's ordinary business operations and seeks to micromanage the Company.**

##### *1) Rule 14a-8(i)(7) Background*

Pursuant to Rule 14a-8(i)(7), a shareholder proposal may be excluded if it "deals with a matter relating to the company's ordinary business operations." According to the Commission's prior guidance, the term "ordinary business" refers to matters that are not necessarily "ordinary" in the common meaning of the word, but instead the term "is rooted in the corporate law concept [of] providing management with flexibility in directing certain core matters involving the company's business and operations." See Exchange Act Release No. 34-40018 (May 21, 1998) (the "1998 Release").

In the 1998 Release, the Commission explained 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," and identified two central considerations that underlie this policy. The first is that "[c]ertain 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."

More recently, in *Staff Legal Bulletin No. 14L* (November 3, 2021) ("SLB No. 14L"), the Staff rescinded prior guidance that a company may exclude a shareholder proposal in respect

of its ordinary business operation if the proposal did not raise a policy issue that was significant to a particular company. In SLB 14L, the Staff realigned its approach for determining whether a proposal relates to ordinary business to provide an exception for proposals that raise significant social policy issues that transcend the ordinary business of the company. In explaining the change, the Staff noted, “[W]e have found that focusing on the significance of a policy issue to a particular company has drawn the Staff into factual considerations that do not advance the policy objectives behind the ordinary business exception,” which “did not yield consistent, predictable results.”

In addition, in SLB No. 14L, the Staff provided guidance on its position on micromanagement when evaluating requests to exclude a proposal on that basis under the ordinary business exception. The Staff stated that it will no longer view proposals that seek detail or seek to promote timeframes or methods as *per se* micromanagement. Instead, the Staff will focus on the level of detail and granularity sought in the proposal and may look to well-established frameworks or references in considering what level of detail may be too complex for shareholder input. The Staff also noted that it will look to the sophistication of investors generally, the availability of data and the robustness of public discussion in considering whether a proposal’s matter is too complex for shareholders, as a group, to make an informed judgment.

2) *The Proposal may be excluded because it relates to particular products and services offered by the Company.*

The Staff has repeatedly concurred that proposals related to a company’s decision to sell or distribute specific products or services are generally excludable under Rule 14a-8(i)(7), even if such products or services are deemed controversial. In *Wal-Mart Stores, Inc.* (Mar. 20, 2014), *aff’d* and cited in *Trinity Wall Street v. Wal-Mart Stores, Inc.* 792 F.3d 323 (3d Cir. 2015), the Staff permitted the exclusion of a proposal requesting board oversight to determine whether the company should sell certain products, namely guns equipped with high-capacity magazines, noting that “[p]roposals concerning the sale of particular products and services are generally excludable under [R]ule 14a-8(i)(7).” In *Kroger* (Apr. 7, 2016), the Staff provided the same rationale in permitting exclusion of a proposal requesting a board policy to ban the sale of semi-automatic firearms and accessories at all company owned and operated stores. See also *The Home Depot, Inc.* (Mar. 21, 2018) (proposal requesting the company stop selling glue traps because of their harm to mice and danger to other wildlife and human health); *Walgreens Boots Alliance, Inc.* (Nov. 7, 2016, recon. denied November 22, 2016) (proposal requesting that the board prepare a report assessing the financial risk of continued sales of tobacco products); *Amazon.com, Inc.* (Mar. 27, 2015) (proposal requesting the company disclose reputational and financial risk arising from the sale of products that implicated mistreatment of animals); *Rite Aid Corp.* (Mar. 24, 2015) (proposal requesting board oversight to determine whether the company should sell certain products that may endanger public safety); *Dillard’s, Inc.* (Feb. 27, 2012) (proposal requesting the board develop a plan to phase out the sale of fur from raccoon dogs).

Each of the proposals in *Wal-Mart* and *Kroger* requested that a general retailer adopt a policy related to its decision-making process with respect to the sale of particular kinds of guns. For such retail stores that sell hundreds of thousands of products throughout the United States, decisions relating to what products and services to offer for sale are matters central to their ordinary business operations. Similarly, the Proposal requests that the Company issue a report “describing if and how the

Company intends to reduce the risk associated with tracking, collecting, or sharing information regarding the processing of payments involving its cards and/or electronic payments system services for the sale and purchase of firearms.” The underlying subject matter of the Proposal is the Company’s operation of its payment processing services relating to the sale and purchase of particular items.

American Express is a globally integrated payments company that offers its products and services worldwide. Processing payments is central to the Company’s business, with the Company offering credit card, charge card, banking and other payment and financing products as well as merchant acquisition and processing services. There are many different players and providers who may be involved in payment processing transactions, including financial institutions with whom the Company has a direct relationship; merchants with whom the Company does not have a direct relationship; network enablement providers; affiliate or reseller programs; technology partners involved in specific types of activities (e.g., digital wallets); and so forth. Each participant may also have various lines of business and operate across different geographies or show up in the Company’s network in multiple ways.

Given the Company’s complex payment processing business, decisions around categorizing the types of businesses where its cards and/or electronic payment system services may be used are fundamental to management’s ability to run the Company and involve foundational management questions. The Company uses the industry’s standard approach of categorizing merchants according to merchant category codes (“MCCs”), which are assigned to merchants based on their primary business and have been used by financial services companies for nearly two decades. There are hundreds of MCCs currently in effect that are assigned to millions of merchants where the Company’s products may be used for transactions. The creation of new MCCs is approved by a Geneva-based nonprofit known as the International Organization for Standardization (the “ISO”). The ISO approved the creation of a new MCC for gun and ammunition stores on September 9, 2022, and the Company publicly announced that it would adopt the new code on the same day. This is consistent with the Company’s historical approach, which has been to work with its third-party partners to implement new codes once approved and published. The Company views the MCC that was approved by the ISO in 2022 for gun and ammunition stores consistently with the hundreds of MCCs that existed prior to the ISO’s approval of this new code and has followed its usual business practices to make the code available to its third-party processors and partners. The Company has not changed its practices with respect to collecting consumer data, and does not believe it would be appropriate to do so. The Company does not and cannot use MCCs to track product-level purchases or individual consumers’ personal information, as MCCs only provide information with respect to merchants and do not provide Stock Keeping Unit level data that is associated with specific products. Management also regularly reports on topics including the strategy and performance of the Company’s merchant business as well as how payment risks are managed to the Board of Directors (“Board”) of the Company– and any relevant Board Committee. The Proposal relates to the Company’s decision-making with regards to processing payments relating to the purchase of items at particular types of merchants. This new MCC is in the process of being implemented and management’s assessment of this data and evaluation of associated risks will continue to develop. Accordingly, the implementation and management of a new MCC is the type of topic that the Staff has consistently found to be a matter of ordinary business that cannot, as a practical matter, be subject to shareholder oversight because these tasks are fundamental to management’s ability to run the Company on a day-to-day basis. As a result, the Company believes the Proposal may be properly omitted from the 2023 Proxy Statement pursuant to Rule 14a-8(i)(7).

The Commission has stated that a proposal requesting the publication of a report may be excludable under Rule 14a-8(i)(7) if the subject matter of the report is within the ordinary business of the company. *See* Exchange Act Release No. 20091 (Aug. 16, 1983). Staff Legal Bulletin No. 14H (Oct. 22, 2015), which was issued by the Staff to clarify its views on the scope and application of Rule 14a-8(i)(7) in light of *Wal-Mart*, re-affirms that the analysis of the ordinary business exception “should focus on the underlying subject matter of a proposal’s request for board or committee review regardless of how the proposal is framed.” Although the Proposal is phrased in terms of preparing a report, this framing does not change the underlying subject matter of the Proposal—the processing of payments relating to the purchase of products and services at particular types of merchants, a matter that is fundamental to the Company’s ordinary business operations.

3) *The Proposal may be excluded because it seeks to “micromanage” the Company.*

The Proposal may also be excluded under Rule 14a-8(i)(7) because it seeks to micromanage 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.” *See* 1998 Release. In SLB No. 14L, the Staff clarified that in evaluating companies’ micromanagement arguments, it will “focus on the level of granularity sought in the proposal and whether and to what extent it inappropriately limits discretion of the board or management.” The Staff further noted that this approach is “consistent with the Commission’s views on the ordinary business exclusion, which is designed to preserve management’s discretion on ordinary business matters but not prevent shareholders from providing *high-level direction on large strategic corporate matters*” (emphasis added).

Conducting an evaluation of the risks associated with processing payments for the sale and purchase of firearms in the manner outlined in the Proposal and Supporting Statement would unnecessarily micromanage the Company. The Proposal attempts to direct the Company’s risk management strategy by providing that “included in [its] risk evaluation should be a consideration of whether the best choice is not to track these lawful and constitutionally protected purchases in any way,” effectively supplanting the Company’s judgment with the Proponent’s. The Proposal’s underlying intent is to oversee and override the management’s decision to use a separate merchant category for firearms retailers, which is squarely within management’s responsibility with respect to its payment systems and information. The Company is also currently in the process of working with its third-party partners to implement the MCC for gun and ammunition stores that was approved by the ISO in 2022, consistent with its standard practice. The implementation process is necessarily a granular and technical one that requires extensive consultation with the processors the Company works with on a regular basis. Disrupting the process while it is in its initial stages would be unduly disruptive to management’s standard procedures, and shareholders are not in a position to make an informed judgment on such a topic, particularly as it continues to develop. The Staff has permitted the exclusion of shareholder proposals that attempt to micromanage a company by substituting shareholder judgment for that of management with respect to complex day-to-day business operations that are beyond the expertise and experience of shareholders. *See, e.g., The Coca-Cola Company* (Feb. 16, 2022) (permitting exclusion of a proposal because it micromanaged the company by requiring it to submit any proposed political statement to the next shareholder meeting for approval).

In addition, the Proposal requests that the Company publicly disclose information about its data management and risk management strategies. The tracking, collecting and sharing of transaction data is a multi-faceted endeavor guided by numerous factors, including but not limited to legal and regulatory requirements and business considerations. All of these considerations are beyond the expertise and experience of shareholders, and they require management and the Board to have the discretion to exercise their independent judgment in making determinations appropriate for the Company and its customers. In requesting that the Company disclose the intricacies of its data management strategy as it relates specifically to payment information for purchases at gun and ammunition stores, the Proposal is seeking precisely the level of granularity that the Staff highlighted in SLB No. 14L, and thus may be excluded under Rule 14a-8(i)(7).

- 4) *The Proposal does not raise policy issues that transcend the Company's ordinary business matters.*

In the 1998 Release, the Commission stated that proposals relating to ordinary business matters but focusing on sufficiently significant policy issues generally would not be excludable, because the proposals would “transcend the day-to-day business matters and raise policy issues so significant that it would be appropriate for a shareholder vote.” This approach allows shareholders to have the “opportunity to express their views . . . [on] proposals that raise sufficiently significant social policy issues.” *See* the 1998 Release. The Staff reiterated this guidance in November 2021 and retracted prior guidance with respect to the “nexus requirement,” stating that the “[S]taff will no longer focus on determining the nexus between a policy issue and the company, but will instead focus on the social policy significance of the issue that is the subject of the shareholder proposal. In making this determination, the staff will consider whether the proposal raises issues with a broad societal impact, such that they transcend the ordinary business of the company.” Section B.2. of SLB No. 14L.

The Staff has made clear that the mere mention of an issue with a broad societal impact, or the mere fact that an ordinary business issue might tangentially impact society more broadly, is insufficient to transform a proposal that is otherwise about ordinary business issues into one that pertains to “high-level direction on large strategic corporate matters” that the Staff recently confirmed in SLB No. 14L as deserving shareholder oversight and vote. For example, in *Dominion Resources, Inc.* (avail. Feb. 3, 2011), a proposal requested that the company promote “stewardship of the environment” by initiating a program to provide financing to home and small business owners for installation of rooftop solar or renewable wind power generation. Even though the proposal touched upon environmental matters, the Staff concluded that the subject matter of the proposal actually related to “the products and services offered for sale by the company” and therefore determined that the proposal could be excluded under Rule 14a-8(i)(7). *Id. See also Wells Fargo & Co. (Harrington Investments, Inc.)* (avail. Feb. 27, 2019) (concurring with the exclusion of a proposal raising multiple issues that may arguably have been of significance to the company, but failed to focus on any of them, as the “Resolved” clause focused on customer service); *Amazon.com, Inc. (Domini Impact Equity Fund)* (avail. Mar. 28, 2019) (concurring with the exclusion of a proposal that might have touched on significant sustainability concerns, but was so broadly worded the Staff concurred that the proposal did not focus on any single issue that transcended the company's ordinary business); *Deere & Co.* (avail. Nov. 14, 2014 *recon. denied*

Jan. 5, 2016) (concurring with the exclusion of a proposal requesting the implementation and enforcement of a company-wide employee code of conduct that included an anti-discrimination policy where the proposal also related to the company’s “policies concerning its employees,” an ordinary business matter); *The TJX Companies, Inc.* (avail. Mar. 29, 2011) (concurring with the exclusion of a proposal requesting an annual assessment of the risks created by the actions the company takes to avoid or minimize U.S. federal, state and local taxes and a report to shareholders on the assessment as “relating to TJX’s ordinary business operations” because “the proposal relates to decisions concerning the company’s tax expenses and sources of financing”); *Apache Corp.* (avail. Mar. 5, 2008) (concurring with the exclusion of a proposal requesting the implementation of equal employment opportunity policies based on certain principles and noting that “some of the principles relate to Apache’s ordinary business operations”).

The Staff has reaffirmed its position that proposals that reference or touch on topics that might raise significant social policy issues—but that do not focus on or have only tangential implications for such issues—are not transformed from an otherwise ordinary business proposal into one that transcends ordinary business after the publication of SLB No. 14L with its decisions in *Deere & Company* (Jan. 3, 2022) and *American Express Company* (Mar. 11, 2022), in both of which the Staff agreed that proposals seeking the publication of the company’s employee training materials did not transcend ordinary business matters despite their concern with anti-racism and racial equity issues. Here, although the Proposal touches on issues related to firearms and mass shootings, its main request focuses primarily on the ordinary business matter of the Company’s particular products and services. Accordingly, the Proposal is excludable under Rule 14a-8(i)(7).

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## CONCLUSION

For the foregoing reasons, the Company respectfully requests that the Staff confirm that it will not recommend enforcement action if the Company omits the Proposal from its 2023 Proxy Statement.

If you have any questions or require any additional information, please do not hesitate to contact Kristina V. Fink at (212) 640-2000 or [corporatesecretaryoffice@aexp.com](mailto:corporatesecretaryoffice@aexp.com). If the Staff is unable to agree with our conclusions without additional information or discussions, we respectfully request the opportunity to confer with members of the Staff prior to issuance of any written response to this letter.

Sincerely,

*Kristina V. Fink*

Kristina V. Fink  
Corporate Secretary and Chief Governance Officer

Enclosure

cc: Scott Shepard, via email at [REDACTED]  
Sarah Rehberg, via email at [REDACTED]  
Francesca L. Odell, Cleary Gottlieb Steen & Hamilton LLP  
Lillian Tsu, Cleary Gottlieb Steen & Hamilton LLP

**Exhibit A**

The Proposal

See attached.



November 4, 2022

**Via FedEx to**

Kristina V. Fink  
Corporate Secretary and Chief Governance Officer  
American Express Company  
200 Vesey Street  
New York, NY 10285

Dear Ms. Fink,

I hereby submit the enclosed shareholder proposal ("Proposal") for inclusion in the American Express (the "Company") proxy statement to be circulated to Company shareholders in conjunction with the next annual meeting of shareholders. The Proposal is submitted under Rule 14(a)-8 (Proposals of Security Holders) of the United States Securities and Exchange Commission's proxy regulations.

I submit the Proposal as the Coordinator of the Free Enterprise Project of the National Center for Public Policy Research, which has continuously owned Company stock with a value exceeding \$2,000 for at least 3 years prior to and including the date of this Proposal and which intends to hold these shares through the date of the Company's 2023 annual meeting of shareholders. Proof of ownership documents are enclosed.

Pursuant to interpretations of Rule 14(a)-8 by the Securities & Exchange Commission staff, I initially propose as a time for a telephone conference to discuss this proposal November 29 from 2-5 p.m. eastern or November 30, 2022 from 2-5 p.m. eastern. If that proves inconvenient, I hope you will suggest some other times to talk. Please feel free to contact me at

[REDACTED] so that we can determine the mode and method of that discussion.

Copies of correspondence or a request for a "no-action" letter should be sent to me at the

Sincerely,

A handwritten signature in cursive script, appearing to read "Sarah Rehberg".

Sarah Rehberg

cc: Scott Shepard, FEP Director

Enclosures: Shareholder Proposal  
Proof of Ownership Letter

## Firearms Risk Proposal

**Resolved:** Shareholders request the Board of Directors conduct an evaluation and issue a report within the next year (at reasonable cost, excluding proprietary information) describing if and how the Company intends to reduce the risk associated with tracking, collecting, or sharing information regarding the processing of payments involving its cards and/or electronic payment system services for the sale and purchase of firearms.

**Supporting Statement:** In an effort to appease anti-Second Amendment advocates, the Company recently announced it would begin tracking firearms purchases through the use of merchant category codes.<sup>1</sup> To do so, the Company will separately categorize sales at firearms stores, which were previously labeled as “general merchandise” sales.<sup>2</sup>

Broadly categorizing sales at firearms stores, however, unduly targets those who seek to obtain firearms in a lawful manner and does nothing to address violence by those who obtain firearms through illicit means. Indeed, a University of Pittsburgh study found that lawful gun owners commit less than a fifth of all gun crimes.<sup>3</sup>

Tracking firearms purchases in this manner also lumps all sales at firearms stores together, providing little information other than the fact that an individual made a lawful purchase of an item at that particular category of merchant. This effectively means that all patrons of these stores are tagged in the merchant category code system regardless of whether they purchase a hat, a rifle, or even a pack of bubblegum.<sup>4</sup> This also means that high ticket items such as a gun safe, a hallmark of responsible gun ownership, would simply be viewed as a large purchase at a firearms store – and therefore inherently suspicious by gun control advocates.<sup>5</sup>

It is also unclear to what extent the merchant category code information from firearm store sales would be shared with law enforcement or other governmental entities. For instance, banks and other card issuers already block card purchases considered risky or prone to fraud and act as agents of the government in monitoring payments for suspicious activity, including transactions that could finance terrorism.<sup>6</sup>

As such, included in this risk evaluation should be a consideration of whether the best choice is not to track these lawful and constitutionally protected purchases in any way, as well as the dangers associated with sharing any information gathered with government representatives

<sup>1</sup> <https://www.wsj.com/articles/visa-mastercard-amex-to-track-gun-shops-with-new-merchant-code-11662915056>;  
<https://www.foxbusiness.com/economy/visa-mastercard-amex-categorize-gun-store-sales-separately>;  
<https://www.npr.org/2022/09/11/1122261276/visa-mastercard-american-express-gun-sales>

<sup>2</sup> <https://www.foxbusiness.com/economy/visa-mastercard-amex-categorize-gun-store-sales-separately>

<sup>3</sup> <https://www.upmc.com/media/news/fabio-firearms>;

<https://www.washingtonpost.com/news/work/wp/2016/07/27/new-evidence-confirms-what-gun-rights-advocates-have-been-saying-for-a-long-time-about-crime/>; <https://www.heritage.org/crime-and-justice/commentary/here-are-8-stubborn-facts-gun-violence-america>

<sup>4</sup> <https://www.npr.org/2022/09/11/1122261276/visa-mastercard-american-express-gun-sales>

<sup>5</sup> <https://www.npr.org/2022/09/11/1122261276/visa-mastercard-american-express-gun-sales>;

<https://www.foxbusiness.com/economy/visa-mastercard-amex-categorize-gun-store-sales-separately>

<sup>6</sup> <https://www.wsj.com/articles/visa-mastercard-amex-to-track-gun-shops-with-new-merchant-code-11662915056>

whose use of the information can only be to surveil and harass those who exercise their lawful right to keep and bear Arms.<sup>7</sup>

About 40% of Americans say they or someone in their household owns a gun, and 22% of individuals (about 72 million people) report owning a gun.<sup>8</sup> And given valid concerns over the privacy of gun ownership – case in point, the tracking of purchases from firearms stores by financial institutions – it is very likely those numbers are even higher. The Company should therefore carefully evaluate the potential risks to its bottom-line and its customers before it further embraces the agenda of the anti-Second Amendment lobby.

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<sup>7</sup>[https://www.law.cornell.edu/wex/second\\_amendment#:~:text=The%20Second%20Amendment%20of%20the,regarding%20the%20Amendment%27s%20intended%20scope](https://www.law.cornell.edu/wex/second_amendment#:~:text=The%20Second%20Amendment%20of%20the,regarding%20the%20Amendment%27s%20intended%20scope)

<sup>8</sup> <https://wamu.org/story/20/09/18/how-many-people-in-the-u-s-own-guns/>

**Exhibit B**

Deficiency Letters and Related Correspondence

See attached.



**Kristina V. Fink**Vice President  
Corporate Secretary and Chief Governance Officer

November 15, 2022

*Via email and overnight mail to:*Sarah Rehberg  
Coordinator, Free Enterprise Project

[REDACTED]

[REDACTED]

[REDACTED]

**Re: Shareholder Proposal Regarding Firearms Risk**

Dear Ms. Rehberg:

On behalf of American Express Company (the "Company"), we formally acknowledge receipt, on November 9, 2022, of the shareholder proposal by the National Center for Public Policy Research ("NCPPR") submitted on November 4, 2022 relating the request for the Board of Directors to conduct an evaluation and issue a report describing if and how the Company intends to reduce the risk associated with tracking, collecting, or sharing information regarding the processing of payments involving its cards and/or electronic payment system services for the sale and purchase of firearms (the "Submission"). Your submission to the Company also contained a cover sheet from UBS Financial Services Inc. ("UBS"), dated November 3, 2022, and a copy of a brokerage account statement, dated October 2022, purporting to reflect certain stock held in NCPPR's securities brokerage account with UBS.

***Rule 14a-8(b)(1): Proof of Ownership***

Since the Company's records do not indicate that NCPPR is a registered holder of the Company's stock, you are required to submit to the Company a written statement from the record holder of NCPPR's shares verifying NCPPR's eligibility pursuant to Rule 14a-8(b)(1) of the Securities Exchange Act of 1934. A copy of the Rule 14a-8(b)(1), which was amended by the Securities and Exchange Commission (the "SEC") on September 23, 2020 for annual meetings held on or after January 1, 2022, is enclosed.<sup>1</sup> Rule 14a-8(b)(1) requires that shareholder proponents continuously hold the company's shares, constituting at least (i) \$2,000 in market value for at least three years, (ii) \$15,000 in market value for at least two years, or (iii) \$25,000 in market value for at least one year, in each case preceding and including the date the proposal was submitted to the company.

<sup>1</sup> An electronic version of Rule 14a-8 is available at: [https://www.ecfr.gov/cgi-bin/text-idx?SID=eda72c517290a19689f72f6355af8d66&node=se17.4.240\\_114a\\_68&rgn=div8#](https://www.ecfr.gov/cgi-bin/text-idx?SID=eda72c517290a19689f72f6355af8d66&node=se17.4.240_114a_68&rgn=div8#).

office:  
fax:200 Vesey Street  
New York, NY 10285



Since the Company's records do not indicate that NCPPR is a registered holder, you are required by Rule 14a-8(b)(1) to submit to the Company a written statement from the record holder of NCPPR's shares of the Company's common stock (usually a broker or bank, such as UBS) verifying that at the time the proposal was submitted, NCPPR had continuously held the requisite number of shares.

The SEC Staff published Staff Legal Bulletins No. 14F ("SLB 14F")<sup>2</sup> and No. 14G ("SLB 14G")<sup>3</sup> to provide guidance in helping shareholders comply with the requirement to prove ownership by providing a written statement from the "record" holder of the securities. In SLB 14F, the SEC Staff stated that only brokers or banks that are Depository Trust Company ("DTC") participants (clarified in SLB 14G to include affiliates thereof) will be viewed as "record" holders for purposes of Rule 14a-8. You can confirm whether NCPPR's broker or bank is a DTC participant by checking DTC's participant list, which is currently available on the Internet at: <http://www.dtcc.com/client-center/dtc-directories>. If NCPPR's shares are held through a broker or bank that is *not* a DTC participant, you will need to obtain proof of ownership from the DTC participant through which the bank or broker holds NCPPR's Company shares. You should be able to find out the name of the DTC participant(s) by asking NCPPR's broker or bank.

If the DTC participant that holds NCPPR's shares knows its broker or bank's holdings, but does not know NCPPR's holdings, you may satisfy the proof of ownership requirements by submitting two proof-of-ownership statements: one from NCPPR's broker or bank confirming NCPPR's ownership and the other from the DTC participant confirming the broker or bank's ownership.

The SEC Staff previously issued Staff Legal Bulletin 14L ("SLB 14L"),<sup>4</sup> which provides the following as a suggested format for a broker or bank statement providing the required proof of ownership as of the date of the proposal's submission for purposes of Rule 14a-8(b):

"As of [date the proposal is submitted], [name of shareholder] held, and has held continuously for at least [one year] [two years] [three years], [number of securities] shares of [company name] [class of securities]."

Alternatively, if applicable, you may provide us with a copy of a Schedule 13D, Schedule 13G, Form 3, Form 4 and/or Form 5 filed with the SEC, or amendments to those documents or updated forms, reflecting NCPPR's ownership of the required amount of Company shares as of the date on which the one-year eligibility period begins, along with a written statement that NCPPR continuously held the required number or amount of shares for the requisite period as of the date of the statement.

The UBS cover sheet and the accompanying snapshot of a brokerage account statement, dated October 2022, are insufficient to satisfy these requirements. First, brokerage account

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<sup>2</sup> An electronic version of SLB 14F is available at: <https://www.sec.gov/corpfin/staff-legal-bulletin-14f-shareholder-proposals>.

<sup>3</sup> An electronic version of SLB 14G is available at: <https://www.sec.gov/corpfin/staff-legal-bulletin-14g-shareholder-proposals>.

<sup>4</sup> An electronic version of SLB 14L is available at: <https://www.sec.gov/corpfin/staff-legal-bulletin-14l-shareholder-proposals>.

statements are insufficient to demonstrate sufficiently continuous ownership of the securities. See Staff Legal Bulletin No. 14, Item C(1)(c)(2).<sup>5</sup> Second, the documents provided do not verify ownership of the securities continuously through the November 4, 2022 submission date. Accordingly, to date, the Company has not received sufficient proof that NCPPR has satisfied Rule 14a-8's ownership requirements as of the date of the Submission.

The SEC's rules require you to remedy the procedural deficiency described above in a response that is either postmarked or transmitted electronically to the Company no later than 14 days from the date you receive this letter. If you do not remedy the procedural defect discussed in this letter within 14 days of receipt of this letter, the Company may be allowed to exclude the proposal from consideration at the 2023 annual meeting of shareholders and from the Company's proxy statement for the 2023 annual meeting of shareholders.

Please direct all correspondence to Kristina V. Fink, Vice President, Corporate Secretary and Chief Governance Officer, American Express, [REDACTED]

Very truly yours,



Kristina Fink  
Vice President, Corporate Secretary and Chief Governance Officer

Enclosure

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<sup>5</sup> An electronic version of SLB 14 is available at: <https://www.sec.gov/interp/legals/cfs1b14.htm>.

#### **§240.14a-8 Shareholder proposals.**

This section addresses when a company must include a shareholder's proposal in its proxy statement and identify the proposal in its form of proxy when the company holds an annual or special meeting of shareholders. In summary, in order to have your shareholder proposal included on a company's proxy card, and included along with any supporting statement in its proxy statement, you must be eligible and follow certain procedures. Under a few specific circumstances, the company is permitted to exclude your proposal, but only after submitting its reasons to the Commission. We structured this section in a question-and-answer format so that it is easier to understand. The references to "you" are to a shareholder seeking to submit the proposal.

(a) *Question 1: What is a proposal?* A shareholder proposal is your recommendation or requirement that the company and/or its board of directors take action, which you intend to present at a meeting of the company's shareholders. Your proposal should state as clearly as possible the course of action that you believe the company should follow. If your proposal is placed on the company's proxy card, the company must also provide in the form of proxy means for shareholders to specify by boxes a choice between approval or disapproval, or abstention. Unless otherwise indicated, the word "proposal" as used in this section refers both to your proposal, and to your corresponding statement in support of your proposal (if any).

(b) *Question 2: Who is eligible to submit a proposal, and how do I demonstrate to the company that I am eligible?* (1) To be eligible to submit a proposal, you must satisfy the following requirements:

(i) You must have continuously held:

(A) At least \$2,000 in market value of the company's securities entitled to vote on the proposal for at least three years; or

(B) At least \$15,000 in market value of the company's securities entitled to vote on the proposal for at least two years; or

(C) At least \$25,000 in market value of the company's securities entitled to vote on the proposal for at least one year; or

(D) The amounts specified in paragraph (b)(3) of this section. This paragraph (b)(1)(i)(D) will expire on the same date that §240.14a-8(b)(3) expires; and

(ii) You must provide the company with a written statement that you intend to continue to hold the requisite amount of securities, determined in accordance with paragraph (b)(1)(i)(A) through (C) of this section, through the date of the shareholders' meeting for which the proposal is submitted; and

(iii) You must provide the company with a written statement that you are able to meet with the company in person or via teleconference no less than 10 calendar days, nor more than 30 calendar days, after submission of the shareholder proposal. You must include your contact information as well as business days and specific times that you are available to discuss the proposal with the company. You must identify times that are within the regular business hours of the company's principal executive offices. If these hours are not disclosed in the company's proxy statement for the prior year's annual meeting, you must identify times that are between 9 a.m. and 5:30 p.m. in the time zone of the company's principal executive offices. If you elect to co-file a proposal, all co-filers must either:

- (A) Agree to the same dates and times of availability, or
- (B) Identify a single lead filer who will provide dates and times of the lead filer's availability to engage on behalf of all co-filers; and
- (iv) If you use a representative to submit a shareholder proposal on your behalf, you must provide the company with written documentation that:
  - (A) Identifies the company to which the proposal is directed;
  - (B) Identifies the annual or special meeting for which the proposal is submitted;
  - (C) Identifies you as the proponent and identifies the person acting on your behalf as your representative;
  - (D) Includes your statement authorizing the designated representative to submit the proposal and otherwise act on your behalf;
  - (E) Identifies the specific topic of the proposal to be submitted;
  - (F) Includes your statement supporting the proposal; and
  - (G) Is signed and dated by you.
- (v) The requirements of paragraph (b)(1)(iv) of this section shall not apply to shareholders that are entities so long as the representative's authority to act on the shareholder's behalf is apparent and self-evident such that a reasonable person would understand that the agent has authority to submit the proposal and otherwise act on the shareholder's behalf.
- (vi) For purposes of paragraph (b)(1)(i) of this section, you may not aggregate your holdings with those of another shareholder or group of shareholders to meet the requisite amount of securities necessary to be eligible to submit a proposal.
- (2) One of the following methods must be used to demonstrate your eligibility to submit a proposal:
  - (i) If you are the registered holder of your securities, which means that your name appears in the company's records as a shareholder, the company can verify your eligibility on its own, although you will still have to provide the company with a written statement that you intend to continue to hold the requisite amount of securities, determined in accordance with paragraph (b)(1)(i)(A) through (C) of this section, through the date of the meeting of shareholders.
  - (ii) If, like many shareholders, you are not a registered holder, the company likely does not know that you are a shareholder, or how many shares you own. In this case, at the time you submit your proposal, you must prove your eligibility to the company in one of two ways:
    - (A) The first way is to submit to the company a written statement from the "record" holder of your securities (usually a broker or bank) verifying that, at the time you submitted your proposal, you continuously held at least \$2,000, \$15,000, or \$25,000 in market value of the company's securities entitled to vote on the proposal for at least three years, two years, or one year, respectively. You must also include your own written statement that you intend to continue to hold the requisite amount of securities, determined in accordance with paragraph (b)(1)(i)(A) through (C) of this section, through the date of the shareholders' meeting for which the proposal is submitted; or

(B) The second way to prove ownership applies only if you were required to file, and filed, a Schedule 13D (§240.13d-101), Schedule 13G (§240.13d-102), Form 3 (§249.103 of this chapter), Form 4 (§249.104 of this chapter), and/or Form 5 (§249.105 of this chapter), or amendments to those documents or updated forms, demonstrating that you meet at least one of the share ownership requirements under paragraph (b)(1)(i)(A) through (C) of this section. If you have filed one or more of these documents with the SEC, you may demonstrate your eligibility to submit a proposal by submitting to the company:

(1) A copy of the schedule(s) and/or form(s), and any subsequent amendments reporting a change in your ownership level;

(2) Your written statement that you continuously held at least \$2,000, \$15,000, or \$25,000 in market value of the company's securities entitled to vote on the proposal for at least three years, two years, or one year, respectively; and

(3) Your written statement that you intend to continue to hold the requisite amount of securities, determined in accordance with paragraph (b)(1)(i)(A) through (C) of this section, through the date of the company's annual or special meeting.

(3) If you continuously held at least \$2,000 of a company's securities entitled to vote on the proposal for at least one year as of January 4, 2021, and you have continuously maintained a minimum investment of at least \$2,000 of such securities from January 4, 2021 through the date the proposal is submitted to the company, you will be eligible to submit a proposal to such company for an annual or special meeting to be held prior to January 1, 2023. If you rely on this provision, you must provide the company with your written statement that you intend to continue to hold at least \$2,000 of such securities through the date of the shareholders' meeting for which the proposal is submitted. You must also follow the procedures set forth in paragraph (b)(2) of this section to demonstrate that:

(i) You continuously held at least \$2,000 of the company's securities entitled to vote on the proposal for at least one year as of January 4, 2021; and

(ii) You have continuously maintained a minimum investment of at least \$2,000 of such securities from January 4, 2021 through the date the proposal is submitted to the company.

(iii) This paragraph (b)(3) will expire on January 1, 2023.

(c) *Question 3: How many proposals may I submit?* Each person may submit no more than one proposal, directly or indirectly, to a company for a particular shareholders' meeting. A person may not rely on the securities holdings of another person for the purpose of meeting the eligibility requirements and submitting multiple proposals for a particular shareholders' meeting.

(d) *Question 4: How long can my proposal be?* The proposal, including any accompanying supporting statement, may not exceed 500 words.

(e) *Question 5: What is the deadline for submitting a proposal?* (1) If you are submitting your proposal for the company's annual meeting, you can in most cases find the deadline in last year's proxy statement. However, if the company did not hold an annual meeting last year, or has changed the date of its meeting for this year more than 30 days from last year's meeting, you can usually find the deadline in one of the company's quarterly reports on Form 10-Q (§249.308a of this chapter), or in shareholder reports of investment companies under §270.30d-1 of this chapter of the Investment Company Act of 1940. In order to avoid controversy, shareholders should submit their proposals by means, including electronic means, that permit them to prove the date of delivery.

(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 shareholders in connection with the previous year's annual meeting. However, 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.

(3) If you are submitting your proposal for a meeting of shareholders other than a regularly scheduled annual meeting, the deadline is a reasonable time before the company begins to print and send its proxy materials.

(f) *Question 6: What if I fail to follow one of the eligibility or procedural requirements explained in answers to Questions 1 through 4 of this section?* (1) The company may exclude your proposal, but only after it has notified you of the problem, and you have failed adequately to correct it. Within 14 calendar days of receiving your proposal, the company must notify you in writing of any procedural or eligibility deficiencies, as well as of the time frame for your response. Your response must be postmarked, or transmitted electronically, no later than 14 days from the date you received the company's notification. A company need not provide you such notice of a deficiency if the deficiency cannot be remedied, such as if you fail to submit a proposal by the company's properly determined deadline. If the company intends to exclude the proposal, it will later have to make a submission under §240.14a-8 and provide you with a copy under Question 10 below, §240.14a-8(j).

(2) If you fail in your promise to hold the required number of securities through the date of the meeting of shareholders, then the company will be permitted to exclude all of your proposals from its proxy materials for any meeting held in the following two calendar years.

(g) *Question 7: Who has the burden of persuading the Commission or its staff that my proposal can be excluded?* Except as otherwise noted, the burden is on the company to demonstrate that it is entitled to exclude a proposal.

(h) *Question 8: Must I appear personally at the shareholders' meeting to present the proposal?* (1) Either you, or your representative who is qualified under state law to present the proposal on your behalf, must attend the meeting to present the proposal. Whether you attend the meeting yourself or send a qualified representative to the meeting in your place, you should make sure that you, or your representative, follow the proper state law procedures for attending the meeting and/or presenting your proposal.

(2) If the company holds its shareholder meeting in whole or in part via electronic media, and the company permits you or your representative to present your proposal via such media, then you may appear through electronic media rather than traveling to the meeting to appear in person.

(3) If you or your qualified representative fail to appear and present the proposal, without good cause, the company will be permitted to exclude all of your proposals from its proxy materials for any meetings held in the following two calendar years.

(i) *Question 9: If I have complied with the procedural requirements, on what other bases may a company rely to exclude my proposal?* (1) Improper under state law: If the proposal is not a proper subject for action by shareholders under the laws of the jurisdiction of the company's organization;

NOTE TO PARAGRAPH (i)(1): Depending on the subject matter, some proposals are not considered proper under state law if they would be binding on the company if approved by shareholders. In our experience, most proposals that are cast as recommendations or requests that the board of directors take specified action are proper under state law. Accordingly, we will assume that a proposal drafted as a recommendation or suggestion is proper unless the company demonstrates otherwise.

(2) *Violation of law*: If the proposal would, if implemented, cause the company to violate any state, federal, or foreign law to which it is subject;

NOTE TO PARAGRAPH (i)(2): We will not apply this basis for exclusion to permit exclusion of a proposal on grounds that it would violate foreign law if compliance with the foreign law would result in a violation of any state or federal law.

(3) *Violation of proxy rules*: If the proposal or supporting statement is contrary to any of the Commission's proxy rules, including §240.14a-9, which prohibits materially false or misleading statements in proxy soliciting materials;

(4) *Personal grievance; special interest*: If the proposal relates to the redress of a personal claim or grievance against the company or any other person, or if it is designed to result in a benefit to you, or to further a personal interest, which is not shared by the other shareholders at large;

(5) *Relevance*: If the proposal relates to operations which account for less than 5 percent of the company's total assets at the end of its most recent fiscal year, and for less than 5 percent of its net earnings and gross sales for its most recent fiscal year, and is not otherwise significantly related to the company's business;

(6) *Absence of power/authority*: If the company would lack the power or authority to implement the proposal;

(7) *Management functions*: If the proposal deals with a matter relating to the company's ordinary business operations;

(8) *Director elections*: If the proposal:

(i) Would disqualify a nominee who is standing for election;

(ii) Would remove a director from office before his or her term expired;

(iii) Questions the competence, business judgment, or character of one or more nominees or directors;

(iv) Seeks to include a specific individual in the company's proxy materials for election to the board of directors; or

(v) Otherwise could affect the outcome of the upcoming election of directors.

(9) *Conflicts with company's proposal*: If the proposal directly conflicts with one of the company's own proposals to be submitted to shareholders at the same meeting;

NOTE TO PARAGRAPH (i)(9): A company's submission to the Commission under this section should specify the points of conflict with the company's proposal.

(10) *Substantially implemented*: If the company has already substantially implemented the proposal;

NOTE TO PARAGRAPH (i)(10): A company may exclude a shareholder proposal that would provide an advisory vote or seek future advisory votes to approve the compensation of executives as disclosed pursuant to Item 402 of Regulation S-K (§229.402 of this chapter) or any successor to Item 402 (a "say-on-pay vote") or that relates to the frequency of say-on-pay votes, provided that in the most recent shareholder vote required by §240.14a-21(b) of this chapter a single year (*i.e.*, one, two, or three years) received approval of a majority of votes cast on the matter and the company has adopted a policy on the frequency of say-on-pay votes that is consistent with the choice of the majority of votes cast in the most recent shareholder vote required by §240.14a-21(b) of this chapter.

(11) *Duplication*: If the proposal substantially duplicates another proposal previously submitted to the company by another proponent that will be included in the company's proxy materials for the same meeting;

(12) *Resubmissions*. If the proposal addresses substantially the same subject matter as a proposal, or proposals, previously included in the company's proxy materials within the preceding five calendar years if the most recent vote occurred within the preceding three calendar years and the most recent vote was:

- (i) Less than 5 percent of the votes cast if previously voted on once;
- (ii) Less than 15 percent of the votes cast if previously voted on twice; or
- (iii) Less than 25 percent of the votes cast if previously voted on three or more times.

(13) *Specific amount of dividends*: If the proposal relates to specific amounts of cash or stock dividends.

(j) *Question 10*: What procedures must the company follow if it intends to exclude my proposal? (1) If the 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. The company must simultaneously provide you with a copy of its submission. The Commission staff may permit the company to make its submission later than 80 days before the company files its definitive proxy statement and form of proxy, if the company demonstrates good cause for missing the deadline.

(2) The company must file six paper copies of the following:

- (i) The proposal;
- (ii) An explanation of why the company believes that it may exclude the proposal, which should, if possible, refer to the most recent applicable authority, such as prior Division letters issued under the rule; and
- (iii) A supporting opinion of counsel when such reasons are based on matters of state or foreign law.

(k) *Question 11*: May I submit my own statement to the Commission responding to the company's arguments?

Yes, you may submit a response, but it is not required. You should try to submit any response to us, with a copy to the company, as soon as possible after the company makes its submission. This way, the Commission staff will have time to consider fully your submission before it issues its response. You should submit six paper copies of your response.



(l) *Question 12:* If the company includes my shareholder proposal in its proxy materials, what information about me must it include along with the proposal itself?

(1) The company's proxy statement must include your name and address, as well as the number of the company's voting securities that you hold. However, instead of providing that information, the company may instead include a statement that it will provide the information to shareholders promptly upon receiving an oral or written request.

(2) The company is not responsible for the contents of your proposal or supporting statement.

(m) *Question 13:* What can I do if the company includes in its proxy statement reasons why it believes shareholders should not vote in favor of my proposal, and I disagree with some of its statements?

(1) The company may elect to include in its proxy statement reasons why it believes shareholders should vote against your proposal. The company is allowed to make arguments reflecting its own point of view, just as you may express your own point of view in your proposal's supporting statement.

(2) However, if you believe that the company's opposition to your proposal contains materially false or misleading statements that may violate our anti-fraud rule, §240.14a-9, you should promptly send to the Commission staff and the company a letter explaining the reasons for your view, along with a copy of the company's statements opposing your proposal. To the extent possible, your letter should include specific factual information demonstrating the inaccuracy of the company's claims. Time permitting, you may wish to try to work out your differences with the company by yourself before contacting the Commission staff.

(3) We require the company to send you a copy of its statements opposing your proposal before it sends its proxy materials, so that you may bring to our attention any materially false or misleading statements, under the following timeframes:

(i) If our no-action response requires that you make revisions to your proposal or supporting statement as a condition to requiring the company to include it in its proxy materials, then the company must provide you with a copy of its opposition statements no later than 5 calendar days after the company receives a copy of your revised proposal; or

(ii) In all other cases, the company must provide you with a copy of its opposition statements no later than 30 calendar days before its files definitive copies of its proxy statement and form of proxy under §240.14a-6.

[63 FR 29119, May 28, 1998; 63 FR 50622, 50623, Sept. 22, 1998, as amended at 72 FR 4168, Jan. 29, 2007; 72 FR 70456, Dec. 11, 2007; 73 FR 977, Jan. 4, 2008; 76 FR 6045, Feb. 2, 2011; 75 FR 56782, Sept. 16, 2010; 85 FR 70294, Nov. 4, 2020]

EFFECTIVE DATE NOTE: At 85 FR 70294, Nov. 4, 2020, §240.14a-8 was amended by adding paragraph (b)(3), effective Jan. 4, 2021 through Jan. 1, 2023.



**UBS Financial Services Inc.**  
1000 Harbor Blvd  
3<sup>rd</sup> Floor  
Weehawken, NJ 07086

**Confirmation**

[ubs.com/fs](https://ubs.com/fs)

Office of the Secretary  
American Express Company

November 17, 2022

## **Confirmation: Information regarding the account of The National Center for Public Policy Research**

Dear Sir or Madam,

The following client has requested that UBS Financial Services Inc provide you with a letter of reference to confirm it's banking relationship with our firm.

As of 11/17/2022, The National Center for Public Policy Research holds, and has held continuously for at least three years, more than \$2000 of American Express Company common stock.

### **Disclosure**

Please be aware this account is a securities account, not a "bank" account. Securities, mutual funds and other non-deposit investment products are not FDIC-insured or bank guaranteed and are subject to market fluctuation. The assets in the account, including cash balances, may also be subject to the risk of withdrawal and transfer.

### **Questions**

If you have any questions about this information, please contact the UBS Wealth Advice Center at 877-827-7870.

UBS Financial Services is a member firm of the Securities Investor Protection Corporation (SIPC).

Sincerely,

Evan Yeaw  
Head of Wealth Advice Center Operations  
UBS Financial Services

November 23, 2022

*Via email and overnight mail to:*

Sarah Rehberg  
Coordinator, Free Enterprise Project

[REDACTED]

**Re: Shareholder Proposal Regarding Firearms Risk**

Dear Ms. Rehberg:

I am writing on behalf of American Express Company (the “Company”), which received on November 9, 2022, the shareholder proposal by the National Center for Public Policy Research (“NCPPR”) submitted on November 4, 2022 (the “Submission Date”) relating to the request for the Board of Directors to conduct an evaluation and issue a report describing if and how the Company intends to reduce the risk associated with tracking, collecting, or sharing information regarding the processing of payments involving its cards and/or electronic payment system services for the sale and purchase of firearms (the “Submission”). The Submission to the Company also contained a cover sheet from UBS Financial Services Inc. (“UBS”), dated November 3, 2022, and a copy of a brokerage account statement, dated October 2022, purporting to reflect certain Company stock held in NCPPR’s securities brokerage account with UBS (the “First UBS Letter”).

***Rule 14a-8(b)(1): Proof of Ownership***

In the Company’s letter to you dated November 15, 2022 (the “Prior Deficiency Notice”), we informed you of certain deficiencies regarding the Submission and the First UBS Letter and provided information on how to remedy those deficiencies. This letter supplements the Prior Deficiency Notice.

We acknowledge receipt of your email correspondence on November 17, 2022, which attached a letter from UBS, dated November 17, 2022, purporting to reflect NCPPR’s stock ownership in the Company (the “Second UBS Letter”). The Second UBS Letter does not satisfy the ownership requirements of Rule 14a-8. As we explained in the Prior Deficiency Notice, Rule 14a-8(b) of the Securities Exchange Act of 1934, as amended, provides that a stockholder proponent must submit sufficient proof of its continuous ownership of company shares for the requisite period. Rule 14a-8(b)(1) requires that shareholder proponents continuously hold the company’s shares, constituting at least (i) \$2,000 in market value for at least three years, (ii) \$15,000 in market value for at least two years, or (iii) \$25,000 in market value for at least one

year, in each case preceding and including the date the proposal was submitted to the company. A copy of Rule 14a-8(b)(1) is enclosed.<sup>1</sup>

The Second UBS Letter is insufficient because, while it verifies ownership of at least \$2,000 of the Company shares from November 17, 2019 to November 17, 2022, the Second UBS Letter does not verify ownership of the Company shares for the three-year period preceding and including the Submission Date. Accordingly, to date, the Company has not received sufficient proof that NCPPR has satisfied Rule 14a-8's ownership requirements as of the Submission Date.

To remedy this defect, you are required by Rule 14a-8(b)(1) to submit to the Company a written statement from the record holder of NCPPR's shares of the Company's common stock (usually a broker or bank, such as UBS) verifying that as of the Submission Date, NCPPR had continuously held the requisite number of shares for the requisite period. As discussed in the Prior Deficiency Letter, the Securities and Exchange Commission Staff previously issued Staff Legal Bulletin 14L ("SLB 14L"),<sup>2</sup> which provides the following as a suggested format for a broker or bank statement providing the required proof of ownership as of the date of the proposal's submission for purposes of Rule 14a-8(b):

"As of [date the proposal is submitted], [name of shareholder] held, and has held continuously for at least [one year] [two years] [three years], [number of securities] shares of [company name] [class of securities]."

The Securities and Exchange Commission's rules require you to remedy the procedural deficiency described above in a response that is either postmarked or transmitted electronically to the Company no later than 14 days from the date you receive this letter. If you do not remedy the procedural defect discussed in this letter within 14 days of receipt of this letter, the Company may be allowed to exclude the proposal from consideration at the 2023 annual meeting of shareholders and from the Company's proxy statement for the 2023 annual meeting of shareholders.

Please direct all correspondence to Kristina V. Fink, Vice President, Corporate Secretary and Chief Governance Officer, American Express, [REDACTED].

Very truly yours,

*Kristina V. Fink*

Kristina Fink  
Vice President, Corporate Secretary and Chief Governance Officer

Enclosure

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<sup>1</sup> An electronic version of Rule 14a-8 is available at: [https://www.ecfr.gov/cgi-bin/text-idx?SID=eda72c517290a19689f72f6355af8d66&node=se17.4.240\\_114a\\_68&rgn=div8#](https://www.ecfr.gov/cgi-bin/text-idx?SID=eda72c517290a19689f72f6355af8d66&node=se17.4.240_114a_68&rgn=div8#).

<sup>2</sup> An electronic version of SLB 14L is available at: <https://www.sec.gov/corpfin/staff-legal-bulletin-14l-shareholder-proposals>.

## **§240.14a-8 Shareholder proposals.**

This section addresses when a company must include a shareholder's proposal in its proxy statement and identify the proposal in its form of proxy when the company holds an annual or special meeting of shareholders. In summary, in order to have your shareholder proposal included on a company's proxy card, and included along with any supporting statement in its proxy statement, you must be eligible and follow certain procedures. Under a few specific circumstances, the company is permitted to exclude your proposal, but only after submitting its reasons to the Commission. We structured this section in a question-and-answer format so that it is easier to understand. The references to "you" are to a shareholder seeking to submit the proposal.

(a) *Question 1: What is a proposal?* A shareholder proposal is your recommendation or requirement that the company and/or its board of directors take action, which you intend to present at a meeting of the company's shareholders. Your proposal should state as clearly as possible the course of action that you believe the company should follow. If your proposal is placed on the company's proxy card, the company must also provide in the form of proxy means for shareholders to specify by boxes a choice between approval or disapproval, or abstention. Unless otherwise indicated, the word "proposal" as used in this section refers both to your proposal, and to your corresponding statement in support of your proposal (if any).

(b) *Question 2: Who is eligible to submit a proposal, and how do I demonstrate to the company that I am eligible?* (1) To be eligible to submit a proposal, you must satisfy the following requirements:

(i) You must have continuously held:

(A) At least \$2,000 in market value of the company's securities entitled to vote on the proposal for at least three years; or

(B) At least \$15,000 in market value of the company's securities entitled to vote on the proposal for at least two years; or

(C) At least \$25,000 in market value of the company's securities entitled to vote on the proposal for at least one year; or

(D) The amounts specified in paragraph (b)(3) of this section. This paragraph (b)(1)(i)(D) will expire on the same date that §240.14a-8(b)(3) expires; and

(ii) You must provide the company with a written statement that you intend to continue to hold the requisite amount of securities, determined in accordance with paragraph (b)(1)(i)(A) through (C) of this section, through the date of the shareholders' meeting for which the proposal is submitted; and

(iii) You must provide the company with a written statement that you are able to meet with the company in person or via teleconference no less than 10 calendar days, nor more than 30 calendar days, after submission of the shareholder proposal. You must include your contact information as well as business days and specific times that you are available to discuss the proposal with the company. You must identify times that are within the regular business hours of the company's principal executive offices. If these hours are not disclosed in the company's proxy statement for the prior year's annual meeting, you must identify times that are between 9 a.m. and 5:30 p.m. in the time zone of the company's principal executive offices. If you elect to co-file a proposal, all co-filers must either:

(A) Agree to the same dates and times of availability, or

(B) Identify a single lead filer who will provide dates and times of the lead filer's availability to engage on behalf of all co-filers; and

(iv) If you use a representative to submit a shareholder proposal on your behalf, you must provide the company with written documentation that:

(A) Identifies the company to which the proposal is directed;

(B) Identifies the annual or special meeting for which the proposal is submitted;

(C) Identifies you as the proponent and identifies the person acting on your behalf as your representative;

(D) Includes your statement authorizing the designated representative to submit the proposal and otherwise act on your behalf;

(E) Identifies the specific topic of the proposal to be submitted;

(F) Includes your statement supporting the proposal; and

(G) Is signed and dated by you.

(v) The requirements of paragraph (b)(1)(iv) of this section shall not apply to shareholders that are entities so long as the representative's authority to act on the shareholder's behalf is apparent and self-evident such that a reasonable person would understand that the agent has authority to submit the proposal and otherwise act on the shareholder's behalf.

(vi) For purposes of paragraph (b)(1)(i) of this section, you may not aggregate your holdings with those of another shareholder or group of shareholders to meet the requisite amount of securities necessary to be eligible to submit a proposal.

(2) One of the following methods must be used to demonstrate your eligibility to submit a proposal:

(i) If you are the registered holder of your securities, which means that your name appears in the company's records as a shareholder, the company can verify your eligibility on its own, although you will still have to provide the company with a written statement that you intend to continue to hold the requisite amount of securities, determined in accordance with paragraph (b)(1)(i)(A) through (C) of this section, through the date of the meeting of shareholders.

(ii) If, like many shareholders, you are not a registered holder, the company likely does not know that you are a shareholder, or how many shares you own. In this case, at the time you submit your proposal, you must prove your eligibility to the company in one of two ways:

(A) The first way is to submit to the company a written statement from the "record" holder of your securities (usually a broker or bank) verifying that, at the time you submitted your proposal, you continuously held at least \$2,000, \$15,000, or \$25,000 in market value of the company's securities entitled to vote on the proposal for at least three years, two years, or one year, respectively. You must also include your own written statement that you intend to continue to hold the requisite amount of securities, determined in accordance with paragraph (b)(1)(i)(A) through (C) of this section, through the date of the shareholders' meeting for which the proposal is submitted; or

(B) The second way to prove ownership applies only if you were required to file, and filed, a Schedule 13D (§240.13d-101), Schedule 13G (§240.13d-102), Form 3 (§249.103 of this chapter), Form 4 (§249.104 of this chapter), and/or Form 5 (§249.105 of this chapter), or amendments to those documents or updated forms, demonstrating that you meet at least one of the share ownership requirements under paragraph (b)(1)(i)(A) through (C) of this section. If you have filed one or more of these documents with the SEC, you may demonstrate your eligibility to submit a proposal by submitting to the company:

(1) A copy of the schedule(s) and/or form(s), and any subsequent amendments reporting a change in your ownership level;

(2) Your written statement that you continuously held at least \$2,000, \$15,000, or \$25,000 in market value of the company's securities entitled to vote on the proposal for at least three years, two years, or one year, respectively; and

(3) Your written statement that you intend to continue to hold the requisite amount of securities, determined in accordance with paragraph (b)(1)(i)(A) through (C) of this section, through the date of the company's annual or special meeting.

(3) If you continuously held at least \$2,000 of a company's securities entitled to vote on the proposal for at least one year as of January 4, 2021, and you have continuously maintained a minimum investment of at least \$2,000 of such securities from January 4, 2021 through the date the proposal is submitted to the company, you will be eligible to submit a proposal to such company for an annual or special meeting to be held prior to January 1, 2023. If you rely on this provision, you must provide the company with your written statement that you intend to continue to hold at least \$2,000 of such securities through the date of the shareholders' meeting for which the proposal is submitted. You must also follow the procedures set forth in paragraph (b)(2) of this section to demonstrate that:

(i) You continuously held at least \$2,000 of the company's securities entitled to vote on the proposal for at least one year as of January 4, 2021; and

(ii) You have continuously maintained a minimum investment of at least \$2,000 of such securities from January 4, 2021 through the date the proposal is submitted to the company.

(iii) This paragraph (b)(3) will expire on January 1, 2023.

(c) *Question 3: How many proposals may I submit?* Each person may submit no more than one proposal, directly or indirectly, to a company for a particular shareholders' meeting. A person may not rely on the securities holdings of another person for the purpose of meeting the eligibility requirements and submitting multiple proposals for a particular shareholders' meeting.

(d) *Question 4: How long can my proposal be?* The proposal, including any accompanying supporting statement, may not exceed 500 words.

(e) *Question 5: What is the deadline for submitting a proposal?* (1) If you are submitting your proposal for the company's annual meeting, you can in most cases find the deadline in last year's proxy statement. However, if the company did not hold an annual meeting last year, or has changed the date of its meeting for this year more than 30 days from last year's meeting, you can usually find the deadline in one of the company's quarterly reports on Form 10-Q (§249.308a of this chapter), or in shareholder reports of investment companies under §270.30d-1 of this chapter of the Investment Company Act of 1940. In order to avoid controversy, shareholders should submit their proposals by means, including electronic means, that permit them to prove the date of delivery.



(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 shareholders in connection with the previous year's annual meeting. However, 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.

(3) If you are submitting your proposal for a meeting of shareholders other than a regularly scheduled annual meeting, the deadline is a reasonable time before the company begins to print and send its proxy materials.

(f) *Question 6: What if I fail to follow one of the eligibility or procedural requirements explained in answers to Questions 1 through 4 of this section?* (1) The company may exclude your proposal, but only after it has notified you of the problem, and you have failed adequately to correct it. Within 14 calendar days of receiving your proposal, the company must notify you in writing of any procedural or eligibility deficiencies, as well as of the time frame for your response. Your response must be postmarked, or transmitted electronically, no later than 14 days from the date you received the company's notification. A company need not provide you such notice of a deficiency if the deficiency cannot be remedied, such as if you fail to submit a proposal by the company's properly determined deadline. If the company intends to exclude the proposal, it will later have to make a submission under §240.14a-8 and provide you with a copy under Question 10 below, §240.14a-8(j).

(2) If you fail in your promise to hold the required number of securities through the date of the meeting of shareholders, then the company will be permitted to exclude all of your proposals from its proxy materials for any meeting held in the following two calendar years.

(g) *Question 7: Who has the burden of persuading the Commission or its staff that my proposal can be excluded?* Except as otherwise noted, the burden is on the company to demonstrate that it is entitled to exclude a proposal.

(h) *Question 8: Must I appear personally at the shareholders' meeting to present the proposal?* (1) Either you, or your representative who is qualified under state law to present the proposal on your behalf, must attend the meeting to present the proposal. Whether you attend the meeting yourself or send a qualified representative to the meeting in your place, you should make sure that you, or your representative, follow the proper state law procedures for attending the meeting and/or presenting your proposal.

(2) If the company holds its shareholder meeting in whole or in part via electronic media, and the company permits you or your representative to present your proposal via such media, then you may appear through electronic media rather than traveling to the meeting to appear in person.

(3) If you or your qualified representative fail to appear and present the proposal, without good cause, the company will be permitted to exclude all of your proposals from its proxy materials for any meetings held in the following two calendar years.

(i) *Question 9: If I have complied with the procedural requirements, on what other bases may a company rely to exclude my proposal?* (1) Improper under state law: If the proposal is not a proper subject for action by shareholders under the laws of the jurisdiction of the company's organization;



NOTE TO PARAGRAPH (i)(1): Depending on the subject matter, some proposals are not considered proper under state law if they would be binding on the company if approved by shareholders. In our experience, most proposals that are cast as recommendations or requests that the board of directors take specified action are proper under state law. Accordingly, we will assume that a proposal drafted as a recommendation or suggestion is proper unless the company demonstrates otherwise.

(2) *Violation of law*: If the proposal would, if implemented, cause the company to violate any state, federal, or foreign law to which it is subject;

NOTE TO PARAGRAPH (i)(2): We will not apply this basis for exclusion to permit exclusion of a proposal on grounds that it would violate foreign law if compliance with the foreign law would result in a violation of any state or federal law.

(3) *Violation of proxy rules*: If the proposal or supporting statement is contrary to any of the Commission's proxy rules, including §240.14a-9, which prohibits materially false or misleading statements in proxy soliciting materials;

(4) *Personal grievance; special interest*: If the proposal relates to the redress of a personal claim or grievance against the company or any other person, or if it is designed to result in a benefit to you, or to further a personal interest, which is not shared by the other shareholders at large;

(5) *Relevance*: If the proposal relates to operations which account for less than 5 percent of the company's total assets at the end of its most recent fiscal year, and for less than 5 percent of its net earnings and gross sales for its most recent fiscal year, and is not otherwise significantly related to the company's business;

(6) *Absence of power/authority*: If the company would lack the power or authority to implement the proposal;

(7) *Management functions*: If the proposal deals with a matter relating to the company's ordinary business operations;

(8) *Director elections*: If the proposal:

(i) Would disqualify a nominee who is standing for election;

(ii) Would remove a director from office before his or her term expired;

(iii) Questions the competence, business judgment, or character of one or more nominees or directors;

(iv) Seeks to include a specific individual in the company's proxy materials for election to the board of directors; or

(v) Otherwise could affect the outcome of the upcoming election of directors.

(9) *Conflicts with company's proposal*: If the proposal directly conflicts with one of the company's own proposals to be submitted to shareholders at the same meeting;

NOTE TO PARAGRAPH (i)(9): A company's submission to the Commission under this section should specify the points of conflict with the company's proposal.

(10) *Substantially implemented*: If the company has already substantially implemented the proposal;

NOTE TO PARAGRAPH (i)(10): A company may exclude a shareholder proposal that would provide an advisory vote or seek future advisory votes to approve the compensation of executives as disclosed pursuant to Item 402 of Regulation S-K (§229.402 of this chapter) or any successor to Item 402 (a "say-on-pay vote") or that relates to the frequency of say-on-pay votes, provided that in the most recent shareholder vote required by §240.14a-21(b) of this chapter a single year (*i.e.*, one, two, or three years) received approval of a majority of votes cast on the matter and the company has adopted a policy on the frequency of say-on-pay votes that is consistent with the choice of the majority of votes cast in the most recent shareholder vote required by §240.14a-21(b) of this chapter.

(11) *Duplication*: If the proposal substantially duplicates another proposal previously submitted to the company by another proponent that will be included in the company's proxy materials for the same meeting;

(12) *Resubmissions*. If the proposal addresses substantially the same subject matter as a proposal, or proposals, previously included in the company's proxy materials within the preceding five calendar years if the most recent vote occurred within the preceding three calendar years and the most recent vote was:

- (i) Less than 5 percent of the votes cast if previously voted on once;
- (ii) Less than 15 percent of the votes cast if previously voted on twice; or
- (iii) Less than 25 percent of the votes cast if previously voted on three or more times.

(13) *Specific amount of dividends*: If the proposal relates to specific amounts of cash or stock dividends.

(j) *Question 10*: What procedures must the company follow if it intends to exclude my proposal? (1) If the 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. The company must simultaneously provide you with a copy of its submission. The Commission staff may permit the company to make its submission later than 80 days before the company files its definitive proxy statement and form of proxy, if the company demonstrates good cause for missing the deadline.

(2) The company must file six paper copies of the following:

- (i) The proposal;
- (ii) An explanation of why the company believes that it may exclude the proposal, which should, if possible, refer to the most recent applicable authority, such as prior Division letters issued under the rule; and
- (iii) A supporting opinion of counsel when such reasons are based on matters of state or foreign law.

(k) *Question 11*: May I submit my own statement to the Commission responding to the company's arguments?

Yes, you may submit a response, but it is not required. You should try to submit any response to us, with a copy to the company, as soon as possible after the company makes its submission. This way, the Commission staff will have time to consider fully your submission before it issues its response. You should submit six paper copies of your response.

(l) *Question 12:* If the company includes my shareholder proposal in its proxy materials, what information about me must it include along with the proposal itself?

(1) The company's proxy statement must include your name and address, as well as the number of the company's voting securities that you hold. However, instead of providing that information, the company may instead include a statement that it will provide the information to shareholders promptly upon receiving an oral or written request.

(2) The company is not responsible for the contents of your proposal or supporting statement.

(m) *Question 13:* What can I do if the company includes in its proxy statement reasons why it believes shareholders should not vote in favor of my proposal, and I disagree with some of its statements?

(1) The company may elect to include in its proxy statement reasons why it believes shareholders should vote against your proposal. The company is allowed to make arguments reflecting its own point of view, just as you may express your own point of view in your proposal's supporting statement.

(2) However, if you believe that the company's opposition to your proposal contains materially false or misleading statements that may violate our anti-fraud rule, §240.14a-9, you should promptly send to the Commission staff and the company a letter explaining the reasons for your view, along with a copy of the company's statements opposing your proposal. To the extent possible, your letter should include specific factual information demonstrating the inaccuracy of the company's claims. Time permitting, you may wish to try to work out your differences with the company by yourself before contacting the Commission staff.

(3) We require the company to send you a copy of its statements opposing your proposal before it sends its proxy materials, so that you may bring to our attention any materially false or misleading statements, under the following timeframes:

(i) If our no-action response requires that you make revisions to your proposal or supporting statement as a condition to requiring the company to include it in its proxy materials, then the company must provide you with a copy of its opposition statements no later than 5 calendar days after the company receives a copy of your revised proposal; or

(ii) In all other cases, the company must provide you with a copy of its opposition statements no later than 30 calendar days before its files definitive copies of its proxy statement and form of proxy under §240.14a-6.

[63 FR 29119, May 28, 1998; 63 FR 50622, 50623, Sept. 22, 1998, as amended at 72 FR 4168, Jan. 29, 2007; 72 FR 70456, Dec. 11, 2007; 73 FR 977, Jan. 4, 2008; 76 FR 6045, Feb. 2, 2011; 75 FR 56782, Sept. 16, 2010; 85 FR 70294, Nov. 4, 2020]

EFFECTIVE DATE NOTE: At 85 FR 70294, Nov. 4, 2020, §240.14a-8 was amended by adding paragraph (b)(3), effective Jan. 4, 2021 through Jan. 1, 2023.



**UBS Financial Services Inc.**  
1000 Harbor Blvd  
3<sup>rd</sup> Floor  
Weehawken, NJ 07086

**Confirmation**

[ubs.com/fs](https://ubs.com/fs)

Office of the Secretary  
American Express Company

November 23, 2022

## **Confirmation: Information regarding the account of The National Center for Public Policy Research**

Dear Sir or Madam,

The following client has requested that UBS Financial Services Inc provide you with a letter of reference to confirm it's banking relationship with our firm.

As of 11/23/2022, The National Center for Public Policy Research holds, and has held continuously since 11/4/2019, more than \$2000 of American Express Company common stock.

### **Disclosure**

Please be aware this account is a securities account, not a "bank" account. Securities, mutual funds and other non-deposit investment products are not FDIC-insured or bank guaranteed and are subject to market fluctuation. The assets in the account, including cash balances, may also be subject to the risk of withdrawal and transfer.

### **Questions**

If you have any questions about this information, please contact the UBS Wealth Advice Center at 877-827-7870.

UBS Financial Services is a member firm of the Securities Investor Protection Corporation (SIPC).

Sincerely,

Evan Yeaw  
Head of Wealth Advice Center Operations  
UBS Financial Services



January 24, 2023

**Via email: [shareholderproposals@sec.gov](mailto:shareholderproposals@sec.gov)**

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

**RE: Stockholder Proposal of the National Center for Public Policy Research, Securities Exchange Act of 1934 – Rule 14a-8**

Ladies and Gentlemen,

This correspondence is in response to the letter of Kristina V. Fink on behalf of American Express (the “Company”) dated December 24, 2022, requesting that your office (the “Commission” or “Staff”) take no action if the Company omits our shareholder proposal (the “Proposal”) from its 2023 proxy materials for its 2023 annual shareholder meeting.

### **RESPONSE TO AMERICAN EXPRESS’ CLAIMS**

Our Proposal asks the Company’s Board of Directors to:

conduct an evaluation and issue a report within the next year (at reasonable cost, excluding proprietary information) describing if and how the Company intends to reduce the risk associated with tracking, collecting, or sharing information regarding the processing of payments involving its cards and/or electronic payment system services for the sale and purchase of firearms.

The Company seeks to exclude the Proposal from the 2023 Proxy Materials pursuant to Rule 14a-8(i)(7) because it claims the subject matter of the Proposal directly concerns the Company’s ordinary business operations.

Under Rule 14a-8(g), the Company bears the burden of persuading the Staff that it may omit our Proposal. The Company has failed to meet that burden.

## Analysis

### *Part I. Rule 14a-8(i)(7).*

The Company seeks to prevent action on our Proposal via Rule 14a-8(i)(7), the ordinary business exception. The exception, in its entirety, permits exclusion of a proposal “[i]f the proposal deals with a matter relating to the company’s ordinary business operations.”<sup>1</sup>

The initial rule does not flesh out this provision at all. It has, though, been amended. One of those amendments, made in 1998, was restated and explained in a Staff Legal Bulletin (SLB) in 2002. There the Staff explained that:

[t]he fact that a proposal relates to ordinary business matters does not conclusively establish that a company may exclude the proposal from its proxy materials. ...[P]roposals that relate to ordinary business matters but that focus on ‘sufficiently significant social policy issues ... would not be considered to be excludable because the proposals would transcend the day-to-day business matters.’<sup>2</sup>

As the amendment itself explained, in detail particularly relevant to our considerations here:

The policy underlying the ordinary business exclusion rests on two central considerations. 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. Examples include the management of the workforce, such as the hiring, promotion, and termination of employees, decisions on production quality and quantity, and the retention of suppliers. **However, proposals relating to such matters but focusing on sufficiently significant social policy issues (e.g., significant discrimination matters) generally would not be considered to be excludable, because the proposals would transcend the day-to-day business matters and raise policy issues so significant that it would be appropriate for a shareholder vote.**<sup>3</sup>

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<sup>1</sup> 17 C.F.R. § 240.14a-8(i)(7).

<sup>2</sup> *Staff Legal Bulletin* No. 14A (July 12, 2002) (quoting *Amendments to Rules on Shareholder Proposals, Exchange Act Release* No. 40018 (May 21, 1998), available at <https://www.sec.gov/rules/final/34-40018.htm>) (last accessed Jan. 3, 2022).

<sup>3</sup> *Amendments to Rules on Shareholder Proposals, Exchange Act Release* No. 40018 (May 21, 1998) (emphasis added), available at <https://www.sec.gov/rules/final/34-40018.htm> (last accessed Jan. 3, 2022).

There matters stood until 2017. That fall, Staff issued a bulletin (“SLB 14I”) recognizing that corporate boards would likely have some insight into whether issues raised in shareholder proposals were of sufficiently substantial importance to transcend the category of ordinary business operations.<sup>4</sup> It therefore invited corporations, in arguing for an ordinary business exception, to include in support of their claims details of their boards’ analyses of the shareholder proposals and the underlying policy significance of those proposals.<sup>5</sup> Staff expanded this guidance further in 2018 (“SLB 14J”) and suggested that in demonstrating its board’s analysis of the substantiality of an issue, a company should be expansive in its communications with the Staff.<sup>6</sup> In doing so, Staff welcomed details about particulars such whether the company had already addressed the issue in some manner, including the difference – or the delta – between the proposal’s specific request and the actions the company has already taken, and an analysis of whether the delta presented a significant policy issue for the company.<sup>7</sup> Additional Staff guidance appeared again in the fall of 2019 (“SLB 14K”), wherein Staff underscored the value of the 2018 “delta analysis.”<sup>8</sup>

Then most recently, on November 3, 2021, Staff reverted to the aforementioned 1998 guidance by rescinding SLB 14I, SLB 14J, and SLB 14K following “a review of staff experience applying the guidance in them.”<sup>9</sup> Relevantly, of the rescinded bulletins, Staff said an “undue emphasis was placed on evaluating the significance of a policy issue to a particular company at the expense of whether the proposal focuses on a significant social policy....” Staff went on to explain that it was prospectively realigning its “approach for determining whether a proposal relates to ‘ordinary business’ with the standard the Commission initially articulated in 1976, which provided an exception for certain proposals that raise significant social policy issues, and which the Commission subsequently reaffirmed in the 1998 Release.”<sup>10</sup>

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<sup>4</sup> See *Staff Legal Bulletin* No. 14I (Nov. 17, 2017), available at <https://www.sec.gov/interps/legal/cfslb14i.htm> (Feb. 20, 2020) (“A board acting in this capacity and with the knowledge of the company’s business and the implications for a particular proposal on that company’s business is well situated to analyze, determine and explain whether a particular issue is sufficiently significant because the matter transcends ordinary business and would be appropriate for a shareholder vote.”).

<sup>5</sup> See *id.* (“Accordingly, going forward, we would expect a company’s no-action request to include a discussion that reflects the board’s analysis of the particular policy issue raised and its significance. That explanation would be most helpful if it detailed the specific processes employed by the board to ensure that its conclusions are well-informed and well-reasoned.”).

<sup>6</sup> See *Staff Legal Bulletin* No. 14J (Oct. 23, 2018), available at <https://www.sec.gov/corpfin/staff-legal-bulletin-14j-shareholder-proposals> (last accessed Jan. 3, 2022).

<sup>7</sup> *Id.*

<sup>8</sup> See *Staff Legal Bulletin* No. 14K (Oct. 16, 2019), available at <https://www.sec.gov/corpfin/staff-legal-bulletin-14k-shareholder-proposals> (last accessed Jan. 3, 2022).

<sup>9</sup> See *Staff Legal Bulletin* No. 14L (Nov. 3, 2021), available at <https://www.sec.gov/corpfin/staff-legal-bulletin-14l-shareholder-proposals> (last accessed Jan. 3, 2022).

<sup>10</sup> *Id.*

***Part II. The non-omissibility of our Proposal is fully established by the Staff's decision in Mastercard (avail. Apr. 22, 2022).***

Our Proposal is substantially indistinguishable, for Staff-review purposes, from the proposal that was found non-omissible in *Mastercard* (avail. Apr. 22, 2022). The resolution of our Proposal is based on and is materially indistinguishable from the proposal in that proceeding. The supporting statements of each proposal cover similar territory in explaining the very similar concerns that animated submission of the proposals. The only distinction between our Proposal and the one submitted in *Mastercard* is that ours seeks an evaluation and report on how the Company intends to reduce the risk associated with “tracking, collecting, or sharing information” regarding the use of its systems for firearms purchases, whereas the proposal in *Mastercard* seeks an evaluation and report on how that company intends to reduce the risk associated with the use of its systems for specific firearms purchases; both unambiguously concern the risks to a company of how its systems are used to purchase firearms. The only difference is that our Proposal is framed through a pro-Second Amendment lens, unlike the proposal in *Mastercard*, which is framed through an anti-Second Amendment lens. But the Staff may not permit or deny omission of proposals on the grounds of the Staff’s personal attitude toward the focus of otherwise identical proposals. As a result, *Mastercard* is determinative in this case.

As we have noted, the resolution of our Proposal asks the Company to:

conduct an evaluation and issue a report within the next year (at reasonable cost, excluding proprietary information) describing if and how the Company ***intends to reduce the risk associated with tracking, collecting, or sharing information regarding the processing of payments involving its cards and/or electronic payment system services for the sale and purchase of firearms.***

The resolution in *Mastercard* asked the Board of Directors of that company to:

conduct an evaluation and issue a report within the next year (at reasonable cost, excluding proprietary information) describing if and how MasterCard Inc. (MasterCard or “The Company”) ***intends to reduce the risk associated with the processing of payments involving its cards and/or electronic payment system services for the sale and purchase of untraceable firearms, including “Buy, Build, Shoot” firearm kits, components and/or accessories used to assemble privately made firearms known as “Ghost Guns”.***

(emphasis added) These proposals are substantially similar. Each raises the critical issue of firearms and the utilization of each respective company’s cards and services to purchase them. Each therefore implicates *the very same* issue of substantial social policy that transcend ordinary business. The *Mastercard* proposal having been found non-omissible, so must our Proposal be.

Additionally, each supporting statement explains the concerns that motivate the proposal in materially equivalent ways. Like our Proposal, the *Mastercard* proposal cited concerns



surrounding company policy related to firearm transactions and sought a report to shareholders on how it manages risks related to these transactions. And like our Proposal, the *Mastercard* proposal expressed concern over potential financial risk to the company with regard to how it treats firearms sales. Yet none of this content was deemed to have intruded into ordinary business operations in a way that rendered the proposal inadmissible. And nor can it in this proceeding simply because ours views the issue through a pro-Second Amendment as opposed to an anti-Second Amendment lens.

Therefore, the proposal in *Mastercard* having been found non-omissible, so must ours be.

***Part III. The Proposal does not relate to the Company's ordinary business operations.***

***A. The Proposal does not relate to particular products and services offered by the Company.***

The Company argues our Proposal is omissible because it relates to a company's decision to sell or distribute specific products or services. The proceedings the Company cites to support this argument, however, are completely inapplicable to the instant proceeding. Those proceedings—*Wal-Mart Stores, Inc.* (avail Mar. 20, 2014), *Kroger* (avail. Apr. 7, 2016), *The Home Depot, Inc.* (avail. Mar. 21, 2018), *Walgreens Boots Alliance, Inc.* (avail. Nov. 7, 2016, recon. denied November 22, 2016), *Amazon.com, Inc.* (avail. Mar. 27, 2015), *Rite Aid Corp.* (avail. Mar. 24, 2015), and *Dillard's, Inc.* (avail. Feb. 27, 2012)—all concern the sale of specific products by the companies in those proceedings, all of which are retailers. A “retail store” is defined as: “a place of business usually owned and operated by a retailer but sometimes owned and operated by a manufacturer or by someone other than a retailer in which merchandise is sold primarily to ultimate consumers.”<sup>11</sup> Despite its attempt to categorize itself as such for purposes of these proceedings, the Company is not a retail store that deals in the sale of merchandise in the same way that the companies in the proffered proceedings do. To the contrary, American Express does not sell firearms, nor can one purchase groceries, paint, electronics, medicine, or clothing from the Company as one can at the companies in the proceedings—or prevent the purchase of such items either. Consequently, these proceedings are wholly inapplicable.

The *Wal-Mart* and *Kroger* proceedings are rendered particularly inapplicable by this distinction between the nature of the businesses of those companies and American Express. Both of the proposals in those proceedings involved whether those companies should cease selling firearms; however, the Company does not sell firearms and even if it did, our Proposal doesn't ask for the Company to stop doing anything. Rather, all our Proposal does is request the Company assess how it “intends to reduce the risk associated with tracking, collecting, or sharing information” regarding the use of its cards and systems for sale and purchase of firearms.

As such, given the Company does not sell firearms, and given that the “tracking, collecting, or sharing of information” regarding the sale and purchase of firearms is not a service offered by

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<sup>11</sup> <https://www.merriam-webster.com/dictionary/retail%20store>

the Company, it is unclear how our Proposal relates to a particular product or service offered by the Company and is therefore omissible on those grounds.

***B. The Proposal does not seek to micromanage the Company.***

Next the Company claims that our Proposal is omissible because it seeks to micromanage 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.” But this argument is also flawed. Our Proposal doesn’t seek any probing or require any judgment by shareholders. It is simply a proposal that requests that *the Board of Directors* conduct an evaluation and issue a related report.

The Company argues, however, that this request for the Board of Directors to “[c]onduct[] an evaluation of the risks associated with processing payments for the sale and purchase of firearms...would unnecessarily micromanage the Company.” In particular, the Company claims that our Supporting Statement’s note that any such risk evaluation should include “a consideration of whether the best choice is not to track these lawful and constitutionally protected purchases in any way,” effectively supplants the Company’s judgment with our own. But requesting that the evaluation include a consideration as to whether the Company’s potential activity of tracking, collecting, or sharing information regarding firearms purchases in no way seeks to supplant the Company’s judgment in doing so or not doing so. It simply requests that the Board, as part of its evaluation, take the basic, threshold step of considering the underlying premise of tracking, collecting, or sharing information related to firearms purchases. It does not instruct the Board on how to complete that assessment, let alone demand the outcome of that assessment.

The Company also claims that the Proposal should be excluded because it requests that the Company publicly disclose information about its data management and risk management strategies and that such is beyond the expertise and experience of shareholders. The Company asserts, “[t]he tracking, collecting and sharing of transaction data is a multi-faceted endeavor guided by numerous factors, including but not limited to legal and regulatory requirements and business considerations.” But the Proposal doesn’t attempt to dictate which information the Company includes in its outward facing report on its evaluation—only whether the Company conducts one. Moreover, the Proposal expressly “exclud[es] proprietary information,” thereby providing the Company with the discretion to leave out specific information regarding strategies and legal/regulatory/business information.

***C. The Proposal focuses on a Significant Social Policy issue that transcends ordinary business matters.***

Finally, the Company alleges our Proposal does not focus on a significant social policy issue. But this ignores the very real concerns and vigorous public debate over firearms that is the focus of our Proposal and was the focus in *Mastercard* (Apr. 22, 2022). As previously discussed, our Proposal is virtually identical to, for Staff review purposes, the proposal in *Mastercard*, which

requested the Company evaluate and issue a report on if and how the Company intends to reduce the risk associated with the processing of payments involving its cards and/or its electronic payment system services for the sale and purchase of untraceable firearms. Both address fundamental concerns over gun ownership and gun privacy. The Staff having found that proposal to transcend ordinary business matters, so must it determine our Proposal to transcend ordinary business matters as well.

And regardless of the Staff's decision in *Mastercard*, the debate over the International Standards Organization's (ISO) adoption of the Merchant Category Code (MCC) for sales at firearms stores has undoubtedly been an issue of significant social policy concern for both gun control advocates and gun rights defenders alike. Obtaining the ability to track, collect, and share information related to firearms purchases was indeed the impetus behind the ISO adopting the MCC for firearms retailers. As explained in an aptly titled CBS article, *New way to track suspect credit card sales of guns and ammo approved by international organization*, the "New York-based Amalgamated Bank first began the effort to create a code to track firearms and ammunition sales back in July 2021."<sup>12</sup> Democrat lawmakers were likewise involved in advocating for the MCC such as Democrat Senator Elizabeth Warren, Rep. Dean, as well as several New York City officials, including Democrat Mayor Eric Adams, who referred to the decision as "common sense."<sup>13</sup> Gun control advocacy group Everytown for Gun Safety exclaimed that, "Now banks and credit card companies can more easily report dangerous and potentially illegal gun purchases to law enforcement."<sup>14</sup>

But while many individuals and groups were advocating for and cheering on the adoption of the firearms retailers MCC, many others were voicing their legitimate concern over how the decision to adopt the MCC would impact the rights of gun owners. The National Rifle Association asserted the code creates a national gun registry,<sup>15</sup> and criticized the ISO's decision to create a firearm specific code, stating it "is nothing more than a capitulation to anti-gun politicians and activists bent on eroding the rights of law-abiding Americans one transaction at a time."<sup>16</sup> As expressed by the National Shooting Sports Foundation, the firearms code "chills the free exercise of Constitutionally protected rights and does nothing to assist law enforcement with crime prevention or holding criminals accountable."<sup>17</sup> Given that about 40 percent of Americans say they or someone in their household owns a gun, and 22 percent of individuals (about 72 million people) report owning a gun, as we point out in our Supporting Statement, decisions over the

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<sup>12</sup> <https://www.cbsnews.com/news/credit-card-sales-of-guns-and-ammo-merchant-codes/>

<sup>13</sup> <https://www.cbsnews.com/news/credit-card-companies-gun-sales-congress-letters/>;  
<https://www.cbsnews.com/news/credit-card-sales-of-guns-and-ammo-merchant-codes/>;  
<https://www.cnbc.com/2022/09/12/gun-law-advocates-hail-credit-card-code-as-way-to-cut-down-suspicious-sales.html>; <https://www.amalgamatedbank.com/news/amalgamated-bank-petition-new-code-gun-and-ammunition-stores-has-been-approved-international>

<sup>14</sup> <https://twitter.com/GunaRockYa/status/1568334205586743296>; <https://www.axios.com/2022/09/12/gun-stores-credit-cards-visa-mastercard-american-express>

<sup>15</sup> <https://www.cbsnews.com/news/nra-credit-card-sales-tracking-gun-purchases-iso/>

<sup>16</sup> <https://www.businessinsider.com/gun-sales-credit-card-code-visa-mastercard-amex-2022-9?op=1>

<sup>17</sup> <https://www.axios.com/2022/09/12/gun-stores-credit-cards-visa-mastercard-american-express>

tracking, collecting, and/or sharing of information regarding firearms purchases are therefore of significant social policy concern and transcends ordinary business.

### **Conclusion**

Our Proposal seeks only an evaluation and report describing if and how the Company intends to reduce the risk associated with tracking, collecting, or sharing information regarding firearms purchases, not in any way the management of the Company, and it does so about issues that the Staff has unquestionably declared of significant social policy interest.

The Company has clearly failed to meet its burden that it may exclude our Proposal under Rule 14a-8(g). Therefore, based upon the analysis set forth above, we respectfully request that the Staff reject the Company's request for a no-action letter concerning our Proposal.

A copy of this correspondence has been timely provided to the Company. If we can provide additional materials to address any queries the Commission may have with respect to this letter, please do not hesitate to call us at (202) 507-6398 or email us at [sshepard@nationalcenter.org](mailto:sshepard@nationalcenter.org) and at [srehberg@nationalcenter.org](mailto:srehberg@nationalcenter.org).

Sincerely,

A handwritten signature in black ink, appearing to read "Scott Shepard", with a long horizontal flourish extending to the right.

Scott Shepard  
FEP Director

A handwritten signature in black ink, appearing to read "Sarah Rehberg", with a long horizontal flourish extending to the right.

Sarah Rehberg  
National Center for Public Policy Research

cc: Kristina V. Fink, American Express ([Kristina.V.Fink@aexp.com](mailto:Kristina.V.Fink@aexp.com))