

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

DIVISION OF
CORPORATION FINANCE

April 12, 2023

Adé Heyliger
Weil, Gotshal & Manges LLP

Re: AMC Entertainment Holdings, Inc. (the "Company")
Incoming letter dated January 30, 2023

Dear Adé Heyliger:

This letter is in response to your correspondence concerning the shareholder proposals (the "Proposals") submitted to the Company by Kevin Barnes (the "Proponent") for inclusion in the Company's proxy materials for its upcoming annual meeting of security holders.

The Proposals state that the board of directors shall expeditiously take the steps necessary, including, but not limited to, promptly calling a special meeting of stockholders to effectuate the revision of the certificate of incorporation to increase the total number of shares of authorized Class A Common Stock, in order to allow the free elective convertibility of AMC Preferred Equity Units; and that the annual meeting should be adjourned to a later date or dates if necessary or appropriate to solicit additional proxies.

There appears to be some basis for your view that the Company may exclude the Proposals under Rule 14a-8(i)(10). Based on the information you have presented, it appears that the Company has already substantially implemented the Proposals. Accordingly, we will not recommend enforcement action to the Commission if the Company omits the Proposals from its proxy materials in reliance on Rule 14a-8(i)(10). In reaching this position, we have not found it necessary to address the alternative bases for omission upon which the Company relies.

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: Kevin Barnes

Weil, Gotshal & Manges LLP

Adé Heyliger
2001 M Street NW, Suite 600
Washington, DC 20036

Adé.Heyliger@weil.com
202-682-7095 (tel)
202-857-0940 (fax)

January 30, 2023

VIA E-MAIL (shareholderproposals@sec.gov)

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

Re: AMC Entertainment Holdings, Inc.
Exclusion of Stockholder Proposal Submitted by Kevin Barnes
Securities Exchange Act of 1934 – Rule 14a-8

Ladies and Gentlemen:

We are writing on behalf of our client, AMC Entertainment Holdings, Inc. ("AMC" or the "Company"), to inform you of the Company's intention to exclude from its proxy statement and form of proxy to be filed and distributed in connection with its 2023 Annual Meeting of Stockholders (collectively, the "2023 Proxy Materials") a stockholder proposal (including the related adjournment proposal, the "Proponent's Proposal") and supporting statement submitted by Kevin Barnes (the "Proponent") mandating the board of directors of the Company (the "Board") to take steps necessary to call a special meeting to seek stockholder approval of an amendment of AMC's Third Amended and Restated Certificate of Incorporation (the "Charter") to increase the number of authorized shares of AMC Class A common stock, par value $0.01 per share (the "Common Stock") in order to convert all outstanding AMC Preferred Equity Units ("APEs") into shares of Common Stock.

Pursuant to Rule 14a-8(j) of the Securities Exchange Act of 1934, as amended (the "Exchange Act") and Staff Legal Bulletin No. 14D (November 7, 2008) ("SLB 14D"), the Company is (i) submitting electronically to the Division of Corporation Finance (the "Staff") of the Securities and Exchange Commission (the "Commission") this letter, related correspondence between the Company and the Proponent, and a supporting opinion of counsel licensed to practice law in the State of Delaware, the Company's jurisdiction of organization, and (ii) is concurrently sending a copy of the same to the Proponent no later than eighty (80) calendar days before the Company intends to file its definitive 2023 Proxy Materials with the Commission.

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

THE PROPONENT PROPOSAL

> Proposal #1: In order to allow the free elective convertibility of APE shares so stockholders can potentially realize their significant intrinsic value, AMC's Board of Directors shall expeditiously take the steps necessary, including, but not limited to, promptly calling a Special Meeting of stockholders, to effectuate the revision of the Third Amended and Restated Certificate of Incorporation shall be revised to increase the total number of shares of Class A Common Stock (par value $0.01 per share) the Company is authorized to issue by the share-count of the APEs to be outstanding at the 2023 Annual Shareholder meeting, [531,716,231 APEs outstanding as of 11/08/22] shares, to a total of approximately [524,173,073 currently authorized Class A Common Stock + 531,716,231 APEs outstanding = 1,055,889,304] shares of Class A Common Stock.
>
> Proposal #2: Adjournment of the 2023 Annual Meeting to a later date or dates, if necessary or appropriate, to solicit additional proxies if there is insufficient vote participation to adopt the Proposal #1.

BASIS FOR EXCLUSION

We hereby request that the Staff concur in our view that the Proponent's Proposal may be excluded from the 2023 Proxy Materials pursuant to the following:

(1) Rules 14a-8(b)(2) and 14a-8(f)(1) of the Exchange Act because the Proponent has failed to provide the requisite proof of continuous share ownership in response to the Company's proper requests for that information;

(2) Rule 14a-8(i)(1) of the Exchange Act because the subject of the Proponent's Proposal is improper subject matter for stockholder action under the Delaware General Corporation Law (the "DGCL"); and

(3) Rule 14a-8(i)(10) of the Exchange Act because the Board has already substantially implemented the Proponent's Proposal.

BACKGROUND

On November 9, 2022, the Proponent submitted (by e-mail and USPS Priority Mail) an initial version of the Proponent's Proposal, a copy of which is attached hereto as *Exhibit A* (the "Initial Proposal Letter"). The Initial Proposal Letter provided the following proposal:

> Proposal #1: In order to allow the free elective convertibility of APE shares so shareholder can potentially realize their significant intrinsic value, AMC's Third Amended and Restated Certificate of Incorporation shall be revised to increase the total number of shares of Class A Common Stock (par value $0.01 per share) the Company is [authorized] to issue by the share-count of the APEs to be outstanding at the 2023 Annual Shareholder meeting, [531,716,231 APEs outstanding as of 11/08/22] shares, to a total of approximately [524,173,073 currently authorized Class A Common Stock + 531,716,231 APEs outstanding = 1,055,889,304] shares of Class A Common Stock.
>
> Proposal #2: Adjournment of the 2023 Annual Meeting to a later date or dates, if necessary or appropriate, to solicit additional proxies if there is insufficient vote participation to adopt the Proposal #1.

With the Initial Proposal Letter, the Proponent included copies of a Direct Registration Advice Statement (the "DRS Statement") from Computershare Trust Company, N.A., the Company's transfer agent, evidencing purported ownership as of October 17, 2022 of 111 APEs and 11 shares of Common Stock. Because the Initial Proposal Letter did not include evidence demonstrating satisfaction of the ownership requirements of Rule 14a-8(b) of the Exchange Act, on November 30, 2022, the Company sent to the Proponent (by e-mail and Federal Express) a notice of deficiency, a copy of which is attached hereto as *Exhibit B* (the "First Notice of Deficiency"), identifying this procedural defect[1] and explaining how the Proponent could cure it, and also noting the Company's belief that the Proponent's Proposal is improper subject matter for stockholder action under the DGCL. The First Deficiency Notice also attached a copy of Rule 14a-8, as amended, as well as copies of SLB 14D, Staff Legal Bulletin No. 14F (Oct. 18, 2011) ("SLB 14F") and Staff Legal Bulletin No. 14G (Oct. 16, 2012) ("SLB 14G").

On December 2, 2022, the Proponent responded (by e-mail and Federal Express) to the First Deficiency Notice (the "First Response Letter"), a copy of which is attached hereto as *Exhibit C*, amending the Proponent's Proposal to read as follows:

> Proposal #1: In order to allow the free elective convertibility of APE shares so stockholders can potentially realize their significant intrinsic value, AMC's Board of Directors shall expeditiously take the steps necessary, including, but not limited to, promptly calling a Special Meeting of stockholders, to effectuate the revision of

[1] The Proponent's submission also included an additional procedural defect under Rule 14a-8 concerning the Proponent's intent to hold the securities through the date of the 2023 annual meeting. The Company also identified this defect in the First Deficiency Notice. However, this deficiency is not further discussed in this no-action request as the Proponent corrected it in subsequent correspondence.

> the Third Amended and Restated Certificate of Incorporation shall be revised to increase the total number of shares of Class A Common Stock (par value $0.01 per share) the Company is authorized to issue by the share-count of the APEs to be outstanding at the 2023 Annual Shareholder meeting, [531,716,231 APEs outstanding as of 11/08/22] shares, to a total of approximately [524,173,073 currently authorized Class A Common Stock + 531,716,231 APEs outstanding = 1,055,889,304] shares of Class A Common Stock.
>
> Proposal 2: Adjournment of the 2023 Annual Meeting to a later date or dates, if necessary or appropriate, to solicit additional proxies if there is insufficient vote participation to adopt the Proposal #1.

With the First Response Letter, the Proponent provided copies of a heavily redacted activity statement from Interactive Brokers LLC purporting to show the Proponent's ownership of AMC securities (the "Broker Statement") for the period from November 1, 2022 to November 30, 2022. However, the Broker Statement failed to show that the Proponent 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 (the "Ownership Requirements"). On December 13, 2022, the Company sent to the Proponent (by e-mail and Federal Express) a second notice of deficiency (the "Second Notice of Deficiency"), a copy which is attached hereto as *Exhibit D*, which among other things, again properly sought verification of share ownership from the Proponent, notified the Proponent of the requirements of Rule 14a-8 and explained how the Proponent could cure the procedural deficiency, as well as the Company's belief that the Proponent's Proposal, as amended, is still improper subject matter for stockholder action under the DGCL. In accordance with Staff Legal Bulletin No. 14L (Nov. 3, 2021) ("SLB 14L"), the Second Deficiency Notice also provided information regarding the "record" holder requirements, and attached a copy of SLB 14L.

On December 22, 2022, the Company entered into a forward purchase agreement (the "Forward Purchase Agreement") with Antara Capital, LP (the "Investor"), pursuant to which the Company will, subject to the satisfaction of certain closing conditions, (i) sell to the Investor 106,595,106 APEs for an aggregate purchase price of $75.1 million (the "Forward Purchase APEs") and (ii) simultaneously purchase from the Investor, on a private basis, $100 million aggregate principal amount of the Company's 10%/12% Cash/PIK Toggle Second Lien Notes due in 2026 in exchange for 91,026,191 APEs (together with the Forward Purchase APEs, the "Private Placement APEs"). The Investor also confirmed a $34.9 million purchase of 60,000,000 APEs (the "Initial APEs") under the Company's at-the-market program. In connection with its entry into the Forward Purchase Agreement, the Company also announced its intention to hold a special meeting of the Company's stockholders (the "Special Meeting") within the later of 90 days of the date of the Forward Purchase Agreement or 90 days from the filing of the notice required by the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, for a vote to amend the Charter to increase the number of authorized shares of Common Stock and amend the Charter to effect a 10-1 reverse-stock split of the Common Stock (collectively, the "Charter Amendment Proposals"), which will permit the full conversion of the APEs into Common Stock. The Investor has also agreed to vote, or cause to be voted, the Private Placement APEs and

Initial APEs and any additional APEs and Common Stock owned or controlled, either directly or indirectly by the Investor or any of its affiliates, in favor of the Charter Amendment Proposals at the Special Meeting.

The Company has set February 8, 2023 as the record date to determine the eligible voting stockholders for the Special Meeting, has announced March 14, 2023 as the date for the Special Meeting and the Board has approved recommending that stockholders vote "for" the Charter Amendment Proposals at the Special Meeting. On January 27, 2023, the Company filed with the Commission a preliminary proxy statement in connection with the Special Meeting. If the Charter Amendment Proposals receive the requisite stockholder approval, the Company will file shortly thereafter the certificate of amendment with Delaware's Secretary of State reflecting the Charter Amendment Proposals, which will then trigger the automatic conversion of all outstanding APEs into Common Stock. The text of the proposed Charter amendments is attached hereto as *Exhibit E*.

On December 27, 2022, the Proponent responded to the Company's Second Notice of Deficiency with a second response letter (the "Second Response Letter"), a copy of which is attached hereto as *Exhibit F*. The Second Response Letter failed (i) to provide any proof of the Proponent satisfying the Ownership Requirements or (ii) to amend the Proponent's Proposal. To date, the Company has not received from the Proponent sufficient proof of continuous share ownership in response to the many proper requests for that information.

ANALYSIS

I. The Proponent's Proposal May Be Excluded Under Rules 14a-8(b)(2) and 14a-8(f)(1) for Failure to Establish the Requisite Eligibility To Submit the Proponent's Proposal

Rule 14a-8(b)(1) provides, in part, that to be eligible to submit a proposal for an annual or special meeting, a stockholder proponent must satisfy one of the Ownership Requirements by continuously having held either: at least (A) $2,000 in market value of the Company's securities entitled to vote on the proposal for at least three years; (B) $15,000 in market value of the Company's securities entitled to vote on the proposal for at least two years; or (C) $25,000 in market value of the Company's shares entitled to vote on the proposal for at least one year. Rule 14a-8(f) provides that a company may exclude a stockholder proposal if the proponent fails to provide evidence of eligibility under Rule 14a-8, including the Ownership Requirements of Rule 14a-8(b).

The DRS Statement provided by the Proponent lists 11 shares of Common Stock (at a value of $69.96) and 111 APEs (at a value of $210.90) as of October 17, 2022, thereby failing to provide proof of any of the requisite Ownership Requirements.

Similarly, in Staff Legal Bulletin No. 14 (July 13, 2001), the Staff is clear that "monthly, quarterly or other periodic investment statements" are not sufficient to "demonstrate sufficiently continuous ownership of the securities", and a "shareholder must submit an affirmative written

statement from the record holder of his or her securities that specifically verifies that the shareholder owned the securities *continuously* for [the requisite period] as of the time of submitting the proposal." The Staff has consistently permitted exclusion of stockholder proposals on the grounds that the brokerage statement or account statement did not satisfy the requirement to demonstrate continuous proof of ownership. See *FedEx Corp.* (avail. June 28, 2018) (an account statement, broker trade confirmation and a list of stock transactions was insufficient verification of continuous ownership); *PepsiCo, Inc.* (avail. Jan. 20, 2016) (account statement showing ownership of company shares as of a certain date was insufficient verification of continuous ownership); *Int'l Business Machines Corp.* (avail. January 31, 2014) (security record and position report showing ownership account names and a quantity of company shares held as of a certain date was insufficient verification of continuous ownership). Here, the Broker Statement only demonstrates ownership of securities for the period from November 1, 2022 to November 30, 2022, rather than the continuous ownership of the requisite number of securities for the requisite amount of time required by the Ownership Requirements. It does not provide sufficient evidence that the Proponent continuously met the Ownership Requirements for the requisite amount of time preceding and including the date of the submission of the Proponent's Proposal.

The Proponent's only response to the Company's repeated requests that he provide proof of his Ownership Requirements is that the Company's First Deficiency Letter was not timely. Rule 14a-8(f) provides that, "within 14 calendar days of receiving [the proponent's] proposal, the company must notify [the proponent] in writing of any procedural or eligibility deficiencies, as well as of the time frame for [the proponent's] response." Rule 14a-8(f) however does not say what happens if a company sends its deficiency notice more than 14 days after receiving the proposal. Although the rule expressly provides for exclusion if a stockholder misses his or her own 14-day deadline to respond to a deficiency notice from the company, it does not similarly provide for a waiver if the company misses its 14-day deadline to issue a deficiency notice.

For example, in *Exelon Corp.* (avail. Feb. 23, 2009), the Staff considered Exelon's intention to exclude a stockholder proposal based on eligibility deficiencies under Rule 14a-8(b). Exelon missed Rule 14a-8(f)'s 14-day period and, instead, first notified the proponents of the eligibility deficiency in writing a few months after receipt of the proposal. Exelon argued in its no-action request that the proponents were in no way affected or prejudiced by Exelon's failure to provide written notice of the deficiencies within Rule 14a-8(f)'s 14-day period since this failure did not shorten the period for the proponents to correct the deficiency—Exelon, just like AMC here, still gave the proponent the full 14 days from the date of receipt of the deficiency notice(s) to make the requisite showing under Rule 14a-8(b). The Staff in *Exelon* agreed that there "appears to be some basis for your view that Exelon may exclude the proposal under Rule 14a-8(f)," and noted that Exelon gave the proponents the full 14 calendar days to try to correct the deficiency and that the proponents failed to do so.

Here, while the Company informed the Proponent of the deficiencies 29 days after receiving the Initial Proposal Letter, the Proponent was given an additional 14 days after each of the First Deficiency Notice and the Second Deficiency Notice to provide the necessary documentation establishing his Ownership Requirements, and to date the Proponent has failed to

do so. Therefore, the Proponent has not been prejudiced by the Company's failure to timely send the First Deficiency Notice within 14 days of the receipt of the Initial Proposal Letter.

Accordingly, considering the circumstances described above, the Company believes that to permit the Proponent to submit the Proponent's Proposal without ever having submitted the necessary proof establishing his Ownership Requirements would run counter to the purpose and spirit of Rule 14a-8, particularly given the ample time and opportunities afforded to the Proponent to provide this information, and we therefore ask that the Staff concur that the Company may exclude the Proponent's Proposal under Rule 14a-8(b) and Rule 14a-8(f)(1).

II. The Proponent's Proposal May Be Excluded Under Rule 14a-8(i)(1) as Improper Subject.

Rule 14a-8(i)(1) permits a company to omit a stockholder proposal "[i]f the proposal is not a proper subject for action by the stockholders under the laws of the jurisdiction of the company's organization."

An AMC stockholder has no authority under Delaware law to force the Board to take or initiate action to amend the Charter, and moreover, AMC stockholders have no authority under Delaware law to directly implement the Proponent's Proposal. Section 242(b) of the DGCL ("Section 242") provides that in order for a corporation that has capital stock to amend its certificate of incorporation, "its board of directors shall adopt resolutions setting forth the amendment proposed declaring its advisability and either calling a special meeting of the stockholders entitled to vote in respect thereof for the consideration of such amendment or directing that the amendment proposed be considered at the next annual meeting of the stockholders." Section 242 "prescribes a two-step process that must be followed in precise sequence to amend a Delaware corporation's charter." *AGR Halifax Fund Inc. v. Fiscina*, 743 A.2d 1188, 1192 (Del. Ch. 1999). First, the board of directors must adopt a resolution setting forth a proposed amendment declaring its advisability and directing that it be considered at either the special meeting of the stockholders or at the next annual meeting of the stockholders. *Id*. Second, the stockholders must approve the proposed amendment at either the special or annual stockholders meeting. *Id.* "Both steps must occur in that sequence, and under no circumstances, may the stockholders act before the mandated board action proposing and recommending the amendment." *Id. (citing Williams v. Geier,* 671 A.2d 1368, 1381 (Del. 1996)). *See also* the supporting opinion of counsel licensed to practice law in the State of Delaware, the Company's jurisdiction of organization, a copy of which is attached hereto as *Exhibit G*. The Staff has consistently held that stockholder proposals that mandate an amendment of a company's charter may be excluded. *See, e.g., CytRx Corp.* (avail. June 26, 2018); *Cambridge Heart, Inc.* (avail. Mar. 25, 2008); *UAL Corp.* (avail. Feb. 7, 2001); *Boeing Co.* (avail. Feb. 6, 2001); *Great Lakes Chemical Corp.* (avail. Mar. 8, 1999).

Here, the Proponent's Proposal does not **request** or **recommend** that the Board take the steps necessary to amend the Charter (see SLB 14D); instead it provides that the Board "**shall** expeditiously take the steps necessary" (emphasis added) to amend the Charter, and would, if approved by the stockholders, be binding on the Company. The Proponent is thereby attempting

to force the Board to act in accordance with the Proponent's mandate (rather than using the Board's judgment in accordance with its fiduciary duties), which would abdicate the Board's duty to consider the amendment to the Charter before putting it to stockholder for approval. The Proponent's Proposal would thereby circumvent the statutory scheme for charter amendments prescribed by Delaware law and thus is not proper subject for stockholder action. *See CytRx Corp.* (avail. June 26, 2018); *Cambridge Heart, Inc.* (avail. Mar. 25, 2008); *Watt Industries Inc.* (avail. July 10, 1998); *Hechinger Co*. (avail. Mar. 31, 1997).

Accordingly, we ask that the Staff concur that the Company may exclude the Proponent's Proposal under Rule 14a-8(i)(1).

III. The Proponent's Proposal May Be Excluded Under Rule 14a-8(i)(10) of the Exchange Act As Substantially Implemented.

Rule 14a-8(i)(10) permits a company to exclude a shareholder proposal from its proxy materials if the company has substantially implemented the proposal. Interpreting the predecessor to Rule 14a-8(i)(10), the Commission stated that the purpose of the Rule 14a-8(i)(10) exclusion is to "avoid the possibility of stockholders having to consider matters which have already been favorably acted upon by management." Commission Release No. 34-12598 (July 7, 1976). While the exclusion was originally interpreted to allow exclusion of a stockholder proposal only when the proposal was "fully effected" by the company, the Commission has revised its approach over time to allow for exclusion of proposals that have been "substantially implemented." Commission Release No. 34- 20091 (August 16, 1983) and Commission Release No. 40018 (May 21, 1998). Applying this standard, the Staff has noted that "a determination that the [c]ompany has substantially implemented the proposal depends upon whether [the company's] particular policies, practices and procedures compare favorably with the guidelines of the proposal." *Texaco, Inc.* (avail. Mar. 28, 1991). In other words, substantial implementation under Rule 14a-8(i)(10) requires a company's actions to have satisfactorily addressed both the proposal's underlying concerns and its essential objective. *See, e.g.*, *Exelon Corp.* (avail. Feb. 26, 2010); *Anheuser-Busch Companies, Inc.* (avail. Jan. 17, 2007); *ConAgra Foods, Inc.* (avail. Jul. 3, 2006).

When a company can demonstrate that it already has taken actions to address the underlying concerns and essential objectives of a shareholder proposal, the Staff has consistently concurred that the proposal has been "substantially implemented" and may be excluded. *See, e.g.*, *The Brink's Company* (avail. February 5, 2015); *Visa, Inc.* (avail. November 14, 2014); *Exxon Mobil Corp.* (avail. Mar. 23, 2009). Here, the Proponent's Proposal aims to force the Board to expeditiously take the steps necessary including "calling a Special Meeting" whereby stockholders can vote to amend the Charter to provide for the "Automatic Conversion of APEs into freely traded common shares on the NYSE." Specifically, the Proponent's Proposal seeks an amendment to increase the number of authorized shares of Common Stock to a sufficient number to permit the full conversion of all the currently outstanding shares of AMC Series A Preferred Stock (and thereby the APEs) into Common Stock and allow the proxy voting period to be extended as necessary to adequately solicit the votes required for approval. As discussed above, in connection with entry into the Forward Purchase Agreement, the Board has already taken the

steps necessary to call a special meeting of stockholders, including filing a preliminary proxy statement with the Commission on January 27, 2023, to do exactly that. Specifically, the Board has approved and determined to submit for stockholder approval the Charter Amendment Proposals at the upcoming Special Meeting to be held on March 14, 2023, which if approved by AMC stockholders will accomplish exactly what the Proponent requests -- the full conversion of all outstanding APEs into shares of Common Stock. In the Second Response Letter, the Proponent acknowledges as much, noting that "a successful voting outcome at the Special Meeting for full []APE convertibility makes [the Proponent's Proposal] a [moot] issue for the [AMC] 2023 Annual Meeting."

The Proponent's Proposal therefore may properly be excluded from the 2023 Proxy Materials pursuant to Rule 14a-8(i)(10) because the Company has substantially implemented the Proponent's Proposal, which will be put to a vote of AMC stockholders at the Special Meeting to be held on March 14, 2023 and before the AMC 2023 annual meeting. *See, e.g.*, *The Brink's Company* (avail. Mar. 23, 2009) (granting no-action relief under Rule 14a-8(i)(10) where the company represented that it "will provide shareholders at [the] annual meeting with an opportunity to approve amendments to [the company's] articles of incorporation" that were requested by the proponent); *Visa, Inc.* (avail. November 14, 2014) (same).

Finally, we also note that the Staff proposed amendments to Rule 14a-8(i)(10) on July 13, 2022 (Commission Release No. 34-95267), which provide guidance on how the Commission may approach requests to exclude proposals from companies' proxy statements under "substantially implemented" grounds. Specifically, under the proposed rules, the company would have to show that it has implemented the "essential elements" of the proposal in order to grant relief for exclusion. Under the proposed release, a company can show that it has met the essential elements of the Proponent's Proposal by showing that it has accomplished its "primary objective." We believe that AMC has substantially implemented the stated primary objective of the Proponent's Proposal by taking the steps necessary to call a special meeting to permit stockholder vote to amend the Charter to allow all of the outstanding APEs to convert into Common Stock.

Accordingly, we ask that the Staff concur that the Company may exclude the Proponent's Proposal under Rule 14a-8(i)(10).

CONCLUSION

For the foregoing reasons we believe that the Proponent's Proposal may be omitted from the 2023 Proxy Materials and respectfully request that the Staff confirm that it will not recommend any enforcement action if the Proponent's Proposal is excluded.

We would be happy to provide you with any additional information and answer any questions that you may have regarding this subject. If we can be of any further assistance in this matter, please do not hesitate to contact me at ade.heyliger@weil.com or (202) 682-7095, or Kevin Connor, Senior Vice President, General Counsel and Secretary, at KConnor@amctheatres.com or 913-213-2506.

Sincerely,

AK Heyliger

Adé Heyliger

Cc: Kevin Connor, AMC Entertainment Holdings, Inc.
Kevin Barnes

Attachments

EXHIBIT A

Initial Proposal Letter

November 9, 2022

AMC Entertainment Holdings, Inc.
Attention: Mr. Adam M. Aron, Chief Executive Officer, President, & Chairman of the Board of Directors
11500 Ash Street
Leawood, KS 66211
aaron@amctheaters.com
Via Email & USPS Priority Mail

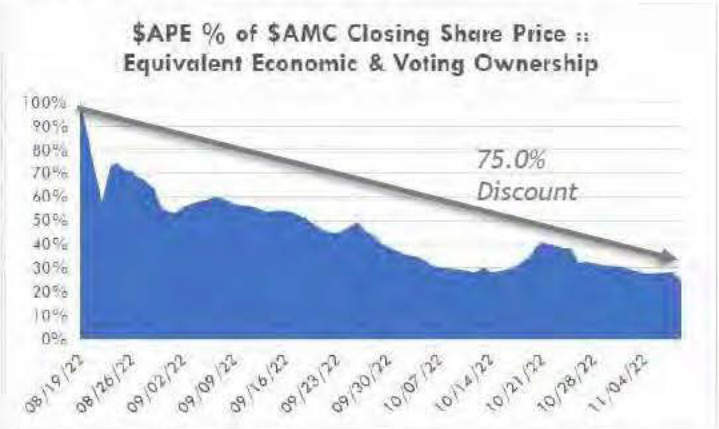
RE: 2023 Annual Meeting Rule 14a-8 Proxy Proposal for the Free Conversion of AMC Preferred Equity Units

Mr. Aron:

As a private investor and fellow shareholder of AMC Entertainment Holdings, Inc. ("AMC" or the "Company"), I have the utmost respect for your thoughtful leadership and operational excellence since joining the Company in January 2016 – and especially during the particularly challenging periods of COVID-19 and now rising inflation. By connecting with hundreds of thousands of AMC fans at more direct and deeper level than most public-company CEOs, you successfully extended the runway available for the Company's transformation much further than many suits on Wall Street envisioned!

While the issuance of AMC Preferred Equity Units (the "APEs" or "Preferred Stock") earlier this year was an elegant potential solution to prior shareholders' reticence back in 2021 to vote in favor of increasing the authorized common share count under the Company's Third Amended and Restated Certificate of Incorporation, the absolute and relative market share price performance of the APEs has been ***ABYSMALL***!!!





Therefore, to unlock the economically equivalent ownership and rights voting in AMC represented by APEs, I hereby request, pursuant to Rule 14a-8 under the Securities Exchange Act of 1934 ("Rule 14a-8"), at the 2023 Annual Meeting that all AMC shareholders be given the opportunity to provide an affirmative vote by

holders of the Company's outstanding capital stock for approval of the optional "Automatic Conversion" of APEs into freely traded common shares on the NYSE. Specifically, this "Common Stock Amendment" shall increase the number of authorized shares of Common Stock to a sufficient number, but not a single share more, to permit the full elective conversion of all the currently outstanding shares of Preferred Stock into Common Stock and allow the proxy voting period to be extended as necessary to adequately solicit the votes required for approval. In Appendix A, my detailed proposed language for inclusion in AMC's 2023 SEC Form DEF 14A Proxy (the "Proxy") is provided.

In the spirit of cooperation and efficiency, I would potentially be willing to withdraw this Rule 14a-8 demand if AMC's Board of Directors itself recommends a shareholder vote on an analogous proposal or if another AMC shareholder has already filed an analogous proposal. As per Rule 14a-8, Appendix B of this letter includes the most recent account statements from the Company's share transfer agent, ComputerShare, documenting my status as an AMC shareholder of record; I am also a beneficial owner of many more shares of the Company via my brokerage account. Finally, for the record, I reserve the right to further amend or replace this Proxy proposal up to the deadline for submission of stockholder proposals for inclusion in the proxy materials for the 2023 annual meeting.

Please promptly confirm receipt of this proposal and I look forward to discussing this critical Proxy matter further at your earliest convenience during regular business hours. For reference, my direct phone number is PII and my email address is PII

Respectfully,

Kevin Barnes

Kevin Barnes

CC:
Kevin Connor, Senior Vice President, General Counsel and Secretary, *kconnor@amctheaters.com*
Sean Goodman, Executive Vice President and Chief Financial Officer, *sgoodman@amctheaters.com*

Appendix A:

Stockholder Proposal By Retail Investor Kevin Barnes for the Free Conversion of APEs

I, Kevin Barnes, 💎🤲 and a retail investor, am the beneficial owner of a sufficient amount of AMC's securities for a sufficient duration under Rule 14a-8 of the Securities Exchange Act of 1934 to submit the following proposals for inclusion in AMC's 2023 proxy statement and have given appropriate notice of the intention to present the proposal below at the 2023 Annual Meeting. The proposals and the supporting statement appear below.

Supporting Statement:

Some suits on Wall Street appear to be trying to oppress the APEs!!! This injustice cannot stand! With over [39.32] million APEs currently sold short by unscrupulous speculators, shareholders of AMC Entertainment must consider all options to ensure the trading price of our shares adequately represents the strong fundamentals of the underlying business.[1] By allowing our fellow APE shareholders to convert, at their individual election, into common shares, miscreant short-sellers may be forced to repurchase their short positions when the APE shares are recalled for elective conversion. 🚀

Proposal 1: In order to allow the free elective convertibility of APE shares so shareholder can potentially realize their significant intrinsic value, AMC's Third Amended and Restated Certificate of Incorporation shall be revised to increase the total number of shares of Class A Common Stock (par value $0.01 per share) the Company is authoritized to issue by the share-count of the APEs to be outstanding at the 2023 Annual Shareholder meeting, [531,716,231 APEs outstanding as of 11/08/22] shares, to a total of approximately [524,173,073 currently authorized Class A Common Stock + 531,716,231 APEs outstanding = 1,055,889,304] shares of Class A Common Stock.

Proposal 2: Adjournment of the 2023 Annual Meeting to a later date or dates, if necessary or appropriate, to solicit additional proxies if there is insufficient vote participation to adopt the Proposal #1.

[Note: Bracketed numerical figures to be updated with the most recent information as of the publication date of AMC's SEC Form DEF 14A for the 2023 Annual Meeting]

<<END>>

[1] APE shares sold short data provided by Morningstar, Inc. - as of [10/13/22] reporting period

***Appendix B**: ComputerShare Registered Shareholder Statements*



Certain account updates now available via TEXT MESSAGE. Enroll at www.cshare.us/smsop

000244

Computershare

Computershare Trust Company, N.A.
PO Box 43006
Providence, RI 02940-3006
Within USA, US territories & Canada 800 962 4284
Outside USA, US territories & Canada 781 575 3120
www.computershare.com/investor

AMC ENTERTAINMENT HOLDINGS, INC. is incorporated under the laws of the State of DE.

KEVIN BARNES
PII
[redacted]

Holder Account Number

[redacted]

Company ID AMCE
SSN/TIN Certified Yes

AMC ENTERTAINMENT HOLDINGS, INC. - Direct Registration (DRS) Advice

Transaction(s)

Date	Transaction Description	Total Shares/Units	CUSIP	Class Description
17 Oct 2022	Dtc Stock Withdrawals (Drs)	111.000000	00165C203	Preferred Equity Units

Account Information: Date: 17 Oct 2022 (Excludes transactions pending settlement)

Dividend Reinvestment Balance	Direct Registration Balance	Total Shares/ Units	Price Per Share ($)	Value ($)	CUSIP	Class Description
0.000000	111.000000	111.000000	1.900000	210.90	00165C203	Preferred Equity Units

IMPORTANT INFORMATION — RETAIN FOR YOUR RECORDS.

This advice is your record of the share transaction in your account on the books of the Company as part of the Direct Registration System. This advice is neither a negotiable instrument nor a security, and delivery of it does not of itself confer any rights to the recipient. It should be kept with your important documents as a record of your ownership of these shares. No action on your part is required. If offered and you wish to obtain a certificate, please access your account via the Investor Center website or contact a customer service agent. Fees may apply to certificate issuances. Certificate requests made as part of a transfer request may automatically be changed to book issuance. The IRS requires that we report the cost basis of certain shares acquired after January 1, 2011. If your shares were covered by the legislation and you have sold or transferred the shares and requested a specific cost basis calculation method, we have processed as requested. If you did not specify a cost basis calculation method, we have defaulted to either the first in, first out (FIFO) for equity issuers or for certain closed-end funds, average cost basis method. Please note that Closed-End Funds and/or Registered Investment Companies are not required to report cost basis until January 1, 2012. Please visit our website or consult your tax advisor if you need additional information about cost basis. Upon request, the Company will furnish to any shareholder, without charge, a full statement of the designations, rights (including rights under any Company's Rights Agreement, if any), preferences and limitations of the shares of each class and series authorized to be issued, and the authority of the Board of Directors to divide the shares into series and to determine and change rights, preferences and limitations of any class or series. Assets are not deposits of Computershare and are not insured by the Federal Deposit Insurance Corporation, the Securities Investor Protection Corporation, or any other federal or state agency.

If you do not keep in contact with us or do not have any activity in your account for the time periods specified by state law, your property could become subject to state unclaimed property laws and transferred to the appropriate state.



Certain account updates now available via TEXT MESSAGE. Enroll at www.cshare.us/smsop

000243

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AMC ENTERTAINMENT HOLDINGS, INC. is incorporated under the laws of the State of DE.

KEVIN BARNES
PII
[redacted]

Holder Account Number

[redacted]

Company ID AMCE
SSN/TIN Certified Yes

AMC ENTERTAINMENT HOLDINGS, INC. - Direct Registration (DRS) Advice

Transaction(s)

Date	Transaction Description	Total Shares/Units	CUSIP	Class Description
17 Oct 2022	Dtc Stock Withdrawals (Drs)	11.000000	00165C104	Class A Common Stock

Account Information: Date: 17 Oct 2022 (Excludes transactions pending settlement)

Dividend Reinvestment Balance	Direct Registration Balance	Total Shares/ Units	Price Per Share ($)	Value ($)	CUSIP	Class Description
0.000000	11.000000	11.000000	6.360000	69.96	00165C104	Class A Common Stock

IMPORTANT INFORMATION — RETAIN FOR YOUR RECORDS.

This advice is your record of the share transaction in your account on the books of the Company as part of the Direct Registration System. This advice is neither a negotiable instrument nor a security, and delivery of it does not of itself confer any rights to the recipient. It should be kept with your important documents as a record of your ownership of these shares. No action on your part is required. If offered and you wish to obtain a certificate, please access your account via the Investor Center website or contact a customer service agent. Fees may apply to certificate issuances. Certificate requests made as part of a transfer request may automatically be changed to book issuance. The IRS requires that we report the cost basis of certain shares acquired after January 1, 2011. If your shares were covered by the legislation and you have sold or transferred the shares and requested a specific cost basis calculation method, we have processed as requested. If you did not specify a cost basis calculation method, we have defaulted to either the first in, first out (FIFO) for equity issuers or for certain closed-end funds, average cost basis method. Please note that Closed-End Funds and/or Registered Investment Companies are not required to report cost basis until January 1, 2012. Please visit our website or consult your tax advisor if you need additional information about cost basis. Upon request, the Company will furnish to any shareholder, without charge, a full statement of the designations, rights (including rights under any Company's Rights Agreement, if any), preferences and limitations of the shares of each class and series authorized to be issued, and the authority of the Board of Directors to divide the shares into series and to determine and change rights, preferences and limitations of any class or series. Assets are not deposits of Computershare and are not insured by the Federal Deposit Insurance Corporation, the Securities Investor Protection Corporation, or any other federal or state agency.

If you do not keep in contact with us or do not have any activity in your account for the time periods specified by state law, your property could become subject to state unclaimed property laws and transferred to the appropriate state.

EXHIBIT B

First Notice of Deficiency

amc THEATRES
WE MAKE MOVIES BETTER®

KEVIN M. CONNOR, ESQ.
GENERAL COUNSEL &
SENIOR VICE PRESIDENT

DIRECT: 913 213 2506
kconnor@amctheatres.com

Via email - [redacted PII]
and UPS # 1Z6813840197561548

November 30, 2022

Mr. Kevin Barnes
[redacted PII]

Re: Notice of Deficiency

Dear Mr. Barnes,

We received your stockholder proposal (the "Proposal") on November 9, 2022 for inclusion in the proxy materials of AMC Entertainment Holdings, Inc. ("AMC") for the 2023 Annual Meeting of Stockholders (the "Annual Meeting") pursuant to Rule 14a-8 under the Securities Exchange Act of 1934, as amended (the "Exchange Act").

We appreciate your interest and support of AMC, and we value you as a stockholder of the company. We also appreciate and understand your motivation for the Proposal. However, under the express terms of the AMC Preferred Equity Units and AMC's Series A Convertible Participating Preferred Stock (collectively, "APEs"), our board of directors (the "AMC Board") has the reserved power to determine in its sole discretion whether to advance a stockholder proposal of the nature you have proposed. If the AMC Board determines, including for the reasons you have expressed, to advance a similar proposal, then we will publicly provide the required disclosures announcing that proposal.

However, unless and until the AMC Board makes that determination, we are not required to submit the Proposal, including for other technical and substantive reasons under the proxy rules of the Securities and Exchange Commission (the "SEC") and the Delaware General Corporation Law (the "DGCL").

Under the SEC's proxy rules, in order to be eligible to submit a stockholder proposal, a stockholder proponent must have continuously held (i) at least $2,000 in market value of AMC's securities entitled to vote on the proposal for at least three years; or (ii) at least $15,000 in market value of AMC's securities entitled to vote on the proposal for at least two years; or (iii) at least $25,000 in market value of AMC's securities entitled to vote on the proposal for at least one year. Additionally, a stockholder proponent must also provide a written statement

that they intend to continue to hold the requisite amount AMC securities through the date of the 2023 Meeting.

Based on our review of the information in your letter, our records, and regulatory materials, we are unable to conclude that you have held the requisite amount of AMC securities for the requisite amount of time, as required by Rule 14a-8. Therefore, the Proposal contains a procedural deficiency, which SEC regulations require us to bring to your attention. Unless you can remedy this deficiency with confirming documentation in the proper time frame, as discussed below, you will not be eligible to submit the Proposal for inclusion in our proxy materials for the Annual Meeting.

You may remedy this deficiency by providing a written statement from the record holder of your shares (usually a bank or broker) and a participant in the Depository Trust Company (DTC) verifying that, at the time you submitted the Proposal, you had beneficially held the requisite number of AMC securities continuously for the requisite amount of time. For information regarding the acceptable methods of proving your ownership of the minimum number of AMC securities, please see Exchange Act Rule 14a-8(b)(2) in Exhibit A. For reference, the SEC's Staff Legal Bulletin Nos. 14F and 14G provide additional guidance with respect to the standard for proof of ownership and are also included in Exhibit A hereto. Please also provide a written statement that you intend to continue to hold the requisite amount AMC securities through the date of the 2023 Meeting.

However, even if that deficiency is cured, we note that the Proposal, which seeks stockholder approval of an amendment of AMC's Third Amended and Restated Certificate of Incorporation (the "Charter") to increase the number of authorized shares of AMC Class A common stock, is not a proper subject for action by stockholders under the DGCL, the Charter and the terms of the APEs. See Paragraph B of Staff Legal Bulletin No. 14D included in Exhibit A hereto. Specifically, under the DGCL, in order for the Charter to be amended as a matter of state law, any such proposed Charter amendment must be initiated by the AMC Board and then approved by the AMC stockholders.

Again, we thank you for registering your concern about the trading price of the APEs, and to that end please rest assured that the AMC Board will take into account the considerations you have mentioned, together with others, in making a determination as to whether or when it would make a similar proposal.

For your reference, a copy of Rule 14a-8 and Staff Legal Bulletin Nos. 14D, 14F and 14G are attached hereto as Exhibit A.

You may direct your response to my attention at kconnor@amctheatres.com. The SEC rules require that the documentation be postmarked or transmitted electronically to us no later than 14 calendar days from the date you receive this letter. Once we receive your additional documentation relating to the procedural deficiencies noted about, we will be in a position to determine whether the Proposal is procedurally eligible for inclusion in the proxy materials for the Annual Meeting. We also reserve the right to submit a no-action request to the staff of the

SEC, as appropriate, with respect to this Proposal, in light of it in our view not being a proper subject for action by stockholders.

Very truly yours,



Kevin M. Connor

Attachments

Exhibit A

(see attached)

This content is from the eCFR and is authoritative but unofficial.

Title 17 - Commodity and Securities Exchanges
Chapter II - Securities and Exchange Commission
Part 240 - General Rules and Regulations, Securities Exchange Act of 1934

Source: Sections 240.21F-1 through 240.21F-17 appear at 76 FR 34363, June 13, 2011.
Source: 72 FR 33620, June 18, 2007, unless otherwise noted.
Source: Sections 240.16c-1 through 240.16c-4 appear at 56 FR 7273, Feb. 21, 1991, unless otherwise noted.
Source: Sections 240.16b-1 through 240.16b-8 appear at 56 FR 7270, Feb. 21, 1991, unless otherwise noted.
Source: Sections 240.15Fb1-1 through 240.15Fb6-2 appear at 80 FR 49013, Aug. 14, 2015, unless otherwise noted.
Source: Sections 240.15.Ca1-1 through 240.15Cc1-1 appear at 52 FR 16839, May 6, 1987, unless otherwise noted.
Source: Sections 240.13d-1 through 240.13f-1 appear at 43 FR 18495, Apr. 28, 1978, unless otherwise noted.
Source: Sections 240.12d1-1 through 240.12d-6 appear at 19 FR 670, Feb. 5, 1954, unless otherwise noted.
Source: Sections 240.12b-1 through 240.12b-36 appear at 13 FR 9321, Dec. 31, 1948, unless otherwise noted.
Source: 77 FR 30751, May 23, 2012, unless otherwise noted.
Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z-2, 77z-3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78c-3, 78c-5, 78d, 78e, 78f, 78g, 78i, 78j, 78j-1, 78k, 78k-1, 78*l*, 78m, 78n, 78n-1, 78o, 78o-4, 78o-10, 78p, 78q, 78q-1, 78s, 78u-5, 78w, 78x, 78dd, 78*ll*, 78mm, 80a-20, 80a-23, 80a-29, 80a-37, 80b-3, 80b-4, 80b-11, and 7201 *et seq.*, and 8302; 7 U.S.C. 2(c)(2)(E); 12 U.S.C. 5221(e)(3); 18 U.S.C. 1350; Pub. L. 111-203, 939A, 124 Stat. 1376 (2010); and Pub. L. 112-106, sec. 503 and 602, 126 Stat. 326 (2012), unless otherwise noted. Section 240.3a4-1 also issued under secs. 3 and 15, 89 Stat. 97, as amended, 89 Stat. 121 as amended; Section 240.3a12-8 also issued under 15 U.S.C. 78a *et seq.*, particularly secs. 3(a)(12), 15 U.S.C. 78c(a)(12), and 23(a), 15 U.S.C. 78w(a); *See Part 240 for more*

Editorial Note: Nomenclature changes to part 240 appear at 57 FR 36501, Aug. 13, 1992, and 57 FR 47409, Oct. 16, 1992.

§ 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.

Shareholder Proposals

Staff Legal Bulletin No. 14D (CF)

Action: Publication of CF Staff Legal Bulletin

Date: November 7, 2008

Summary: This staff legal bulletin provides information for companies and shareholders regarding rule 14a-8 under the Securities Exchange Act of 1934.

Supplementary Information: The statements in this legal bulletin represent the views of the Division of Corporation Finance. This bulletin is not a rule, regulation, or statement of the Securities and Exchange Commission. Further, the Commission has neither approved nor disapproved its content. The references to "we," "our," and "us" are to the Division of Corporation Finance.

Contacts: For further information, please contact the Office of Chief Counsel in the Division of Corporation Finance at (202) 551-3500.

A. What is the purpose of this bulletin?

This bulletin is part of a continuing effort by the Division of Corporation Finance to identify and provide guidance on issues that commonly arise under rule 14a-8. Specifically, this bulletin contains information regarding:

- shareholder proposals that recommend, request, or require a board of directors to unilaterally amend the company's articles or certificate of incorporation;
- a new e-mail address established for the receipt of rule 14a-8 no-action requests and related correspondence;
- whether a company must send a notice of defect if the company's records indicate that the proponent has not owned the minimum amount of securities for the required period of time as set forth in rule 14a-8(b); and
- the requirement that a proponent send copies of correspondence to the company and the manner in which the company and a proponent should provide additional correspondence to us and to each other.

The following additional guidance regarding rule 14a-8 is available on the Commission's web site:

- SLB No. 14, which explains the rule 14a-8 no-action process and addresses matters of interest to companies and proponents;
- SLB No. 14A, which clarifies our position on shareholder proposals related to equity compensation plans;
- SLB No. 14B, which clarifies and updates some of the guidance contained in SLB No. 14; and
- SLB No. 14C, which addresses additional matters of interest to companies and proponents, and clarifies and updates some of the guidance contained in SLB No. 14 and SLB No. 14B.

B. A shareholder proposal recommends, requests, or requires that the board of directors amend the company's charter. If, under applicable state law, the charter can be amended only if the amendment is initiated by the board and subsequently approved by the shareholders, may a company exclude a proposal under rule 14a-8(i)(1), rule 14a-8(i)(2), or rule 14a-8(i)(6) based solely on the argument that the board does not have the unilateral authority or power under state law to amend the charter?

If a proposal recommends, requests, or requires the board of directors to amend the company's charter, we may concur that there is some basis for the company to omit the proposal in reliance on rule 14a-8(i)(1), rule 14a-8(i)(2), or rule 14a-8(i)(6) if the company meets its burden of establishing that applicable state law requires any such amendment to be initiated by the board and then approved by shareholders in order for the charter to be amended as a matter of law. In accordance with longstanding staff practice, however, our response may permit the proponent to revise the proposal to provide that the board of directors "take the steps necessary" to amend the company's charter. If the proponent revises the proposal in this manner within the time frame specified in our response letter, we do not believe there would be a basis for the company to exclude the proposal under rule 14a-8(i)(1), rule 14a-8(i)(2), or rule 14a-8(i)(6). The chart below includes examples of revisions that we have previously permitted in response to no-action requests similar to those discussed in this question and answer.

Company	Proposal	Date of our response	Our response

Company	Proposal	Date of our response	Our response

SBC Communications Inc.

Resolved that as of December 31, 2005 the number of SBC Board of Director seats will be reduced from twenty one (21) to fourteen (14).

Jan. 11, 2004

We concurred in the company's view that the proposal could be excluded under rules 14a-8(i)(2) and 14a-8(i)(6), unless the proponent revised the proposal as a recommendation or request that the board of directors take the steps necessary to implement the proposal.

Gyrodyne Co. of America, Inc.

It is proposed that the classified board be abolished and all Directors, effective after the election of Directors in 1999, be elected annually.

Aug. 18, 1999

We concurred in the company's view that the proposal could be excluded under rule 14a-8(i)(1), unless the proponent revised the proposal as a recommendation or request that the board of directors take the steps necessary to implement the proposal.

Sears, Roebuck and Co.

Resolved: That the stockholders . . . urge the Board of Directors to amend the Company's Restated Certificate of Incorporation to declassify the Board of Directors for the purpose of Director elections.

Feb. 17, 1989

We concurred in the company's view that the proposal could be excluded under rules 14a-8(c)(2) and 14a-8(c)(6) [now rules 14a-8(i)(2) and 14a-8(i)(6)], unless the proponent revised the proposal to urge that the board of directors take the steps necessary to effect the proposed amendment to the certificate of incorporation.

C. May companies and shareholders e-mail us rule 14a-8 no-action requests and related correspondence?

Yes. We have established a new e-mail address for the receipt of no-action requests and correspondence related to rule 14a-8. Companies and proponents may submit requests for no-action relief under rule 14a-8 and related correspondence to us at shareholderproposals@sec.gov. This mailbox should not be used to submit other types of no-action requests or correspondence. Please include your name and telephone number in any submission directed to this mailbox. Remember that your e-mail is not confidential, and others may intercept and read your e-mail. We will process no-action requests and related correspondence received through this mailbox in the same manner as requests and correspondence submitted in paper.

D. If a proponent is listed in a company's records as a registered holder, and the records indicate that the proponent has not owned the minimum amount of securities for the required period of time as set forth in rule 14a-8(b), must the company send the proponent a notice of defect if it wishes to exclude the proposal on eligibility grounds?

Yes. If a proponent is listed in a company's records as a registered holder, the company can confirm that the proponent's holdings satisfy the ownership eligibility requirements of rule 14a-8(b). Because the proponent can also hold the company's securities by other means, however, such as through a broker or bank, the company's records do not prove conclusively that the proponent fails to meet the ownership eligibility requirement. As a result, in situations in which a company's records indicate that the proponent does not satisfy the ownership eligibility requirement in rule 14a-8(b), the company must inform the proponent that the proponent must provide proof of ownership that satisfies the requirements of rule 14a-8(b) if the company intends to exclude the proposal based upon the proponent's failure to satisfy the requirements of rule 14a-8(b).

E. Does rule 14a-8 require proponents to provide companies with any correspondence they send to us? If so, how should the correspondence be transmitted?

Yes. Rule 14a-8(k) requires a proponent to provide the company with a copy of any correspondence submitted in response to the company's no-action request. In addition, as stated in section G.9 of SLB No. 14, both the company and the proponent should promptly forward to each other copies of all correspondence provided to us in connection with rule 14a-8 no-action requests. We encourage companies and proponents to use the same means of transmitting correspondence to each other as they use to transmit materials to us. For example, if a company transmits correspondence to us via overnight mail, the company should transmit a copy to the proponent via overnight mail as well.

F. Conclusion

We hope that this bulletin, along with SLB No. 14, SLB No. 14A, SLB No. 14B, and SLB No. 14C, helps you gain a better understanding of rule 14a-8, the no-action request process, and our views on some significant issues that commonly arise during our review of rule 14a-8 no-action requests. We believe that these bulletins contain information that will assist in the efficient operation of the rule 14a-8 process for both companies and shareholders.

Modified: Nov. 7, 2008

Shareholder Proposals

Staff Legal Bulletin No. 14F (CF)

Action: Publication of CF Staff Legal Bulletin

Date: October 18, 2011

Summary: This staff legal bulletin provides information for companies and shareholders regarding Rule 14a-8 under the Securities Exchange Act of 1934.

Supplementary Information: The statements in this bulletin represent the views of the Division of Corporation Finance (the "Division"). This bulletin is not a rule, regulation or statement of the Securities and Exchange Commission (the "Commission"). Further, the Commission has neither approved nor disapproved its content.

Contacts: For further information, please contact the Division's Office of Chief Counsel by calling (202) 551-3500 or by submitting a web-based request form at https://www.sec.gov/forms/corp_fin_interpretive.

A. The purpose of this bulletin

This bulletin is part of a continuing effort by the Division to provide guidance on important issues arising under Exchange Act Rule 14a-8. Specifically, this bulletin contains information regarding:

- Brokers and banks that constitute "record" holders under Rule 14a-8(b)(2)(i) for purposes of verifying whether a beneficial owner is eligible to submit a proposal under Rule 14a-8;
- Common errors shareholders can avoid when submitting proof of ownership to companies;
- The submission of revised proposals;
- Procedures for withdrawing no-action requests regarding proposals submitted by multiple proponents; and
- The Division's new process for transmitting Rule 14a-8 no-action responses by email.

You can find additional guidance regarding Rule 14a-8 in the following bulletins that are available on the Commission's website: SLB No. 14, SLB No. 14A, SLB No. 14B, SLB No. 14C, SLB No. 14D and SLB No. 14E.

B. The types of brokers and banks that constitute "record" holders under Rule 14a-8(b)(2)(i) for purposes of verifying whether a beneficial owner is eligible to submit a proposal under Rule 14a-8

1. Eligibility to submit a proposal under Rule 14a-8

To be eligible to submit a shareholder proposal, a shareholder must have continuously held at least $2,000 in market value, or 1%, of the company's securities entitled to be voted on the proposal at the shareholder meeting for at least one year as of the date the shareholder submits the proposal. The shareholder must also continue to hold the required amount of securities through the date of the meeting and must provide the company with a written statement of intent to do so.[1]

The steps that a shareholder must take to verify his or her eligibility to submit a proposal depend on how the shareholder owns the securities. There are two types of security holders in the U.S.: registered owners and beneficial owners.[2] Registered owners have a direct relationship with the issuer because their ownership of shares is listed on the records maintained by the issuer or its transfer agent. If a shareholder is a registered owner, the company can independently confirm that the shareholder's holdings satisfy Rule 14a-8(b)'s eligibility requirement.

The vast majority of investors in shares issued by U.S. companies, however, are beneficial owners, which means that they hold their securities in book-entry form through a securities intermediary, such as a broker or a bank. Beneficial owners are sometimes referred to as "street name" holders. Rule 14a-8(b)(2)(i) provides that a beneficial owner can provide proof of ownership to support his or her eligibility to submit a proposal by submitting a written statement "from the 'record' holder of [the] securities (usually a broker or bank)," verifying that, at the time the proposal was submitted, the shareholder held the required amount of securities continuously for at least one year.[3]

2. The role of the Depository Trust Company

Most large U.S. brokers and banks deposit their customers' securities with, and hold those securities through, the Depository Trust Company ("DTC"), a registered clearing agency acting as a securities depository. Such brokers and banks are often referred to as "participants" in DTC.[4] The names of these DTC participants, however, do not appear as the registered owners of the securities deposited with DTC on the list of shareholders maintained by the company or, more typically, by its transfer agent. Rather, DTC's nominee, Cede & Co., appears on the shareholder list as the sole registered owner of securities deposited with DTC by the DTC participants. A company can request from DTC a "securities position listing" as of a specified date, which identifies the DTC participants having a position in the company's securities and the number of securities held by each DTC participant on that date.[5]

3. Brokers and banks that constitute "record" holders under Rule 14a-8(b)(2)(i) for purposes of verifying whether a beneficial owner is eligible to submit a proposal under Rule 14a-8

In *The Hain Celestial Group, Inc.* (Oct. 1, 2008), we took the position that an introducing broker could be considered a "record" holder for purposes of Rule 14a-8(b)(2)(i). An introducing broker is a broker that engages in sales and other activities involving customer contact, such as opening customer accounts and accepting customer orders, but is not permitted to maintain custody of customer funds and securities.[6] Instead, an introducing broker engages another broker, known as a "clearing broker," to hold custody of client funds and securities, to clear and execute customer trades, and to handle other functions such as issuing confirmations of customer trades and customer account statements. Clearing brokers generally are DTC participants; introducing brokers generally are not. As introducing brokers generally are not DTC participants, and therefore typically do not appear on DTC's securities position listing, *Hain Celestial* has required companies to accept proof of ownership letters from brokers in cases where, unlike the positions of registered owners and brokers and banks that are DTC participants, the company is unable to verify the positions against its own or its transfer agent's records or against DTC's securities position listing.

In light of questions we have received following two recent court cases relating to proof of ownership under Rule 14a-8[7] and in light of the Commission's discussion of registered and beneficial owners in the Proxy Mechanics Concept Release, we have reconsidered our views as to what types of brokers and banks should be considered "record" holders under Rule 14a-8(b)(2)(i). Because of the transparency of DTC participants' positions in a company's securities, we will take the view going forward that, for Rule 14a-8(b)(2)(i) purposes, only DTC participants should be viewed as "record" holders of securities that are deposited at DTC. As a result, we will no longer follow *Hain Celestial*.

We believe that taking this approach as to who constitutes a "record" holder for purposes of Rule 14a-8(b)(2)(i) will provide greater certainty to beneficial owners and companies. We also note that this approach is consistent with

Exchange Act Rule 12g5-1 and a 1988 staff no-action letter addressing that rule,[8] under which brokers and banks that are DTC participants are considered to be the record holders of securities on deposit with DTC when calculating the number of record holders for purposes of Sections 12(g) and 15(d) of the Exchange Act.

Companies have occasionally expressed the view that, because DTC's nominee, Cede & Co., appears on the shareholder list as the sole registered owner of securities deposited with DTC by the DTC participants, only DTC or Cede & Co. should be viewed as the "record" holder of the securities held on deposit at DTC for purposes of Rule 14a-8(b)(2)(i). We have never interpreted the rule to require a shareholder to obtain a proof of ownership letter from DTC or Cede & Co., and nothing in this guidance should be construed as changing that view.

How can a shareholder determine whether his or her broker or bank is a DTC participant?

Shareholders and companies can confirm whether a particular 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/~/media/Files/Downloads/client-center/DTC/alpha.ashx.

What if a shareholder's broker or bank is not on DTC's participant list?

The shareholder will need to obtain proof of ownership from the DTC participant through which the securities are held. The shareholder should be able to find out who this DTC participant is by asking the shareholder's broker or bank.[9]

If the DTC participant knows the shareholder's broker or bank's holdings, but does not know the shareholder's holdings, a shareholder could satisfy Rule 14a-8(b)(2)(i) by obtaining and submitting two proof of ownership statements verifying that, at the time the proposal was submitted, the required amount of securities were continuously held for at least one year – one from the shareholder's broker or bank confirming the shareholder's ownership, and the other from the DTC participant confirming the broker or bank's ownership.

How will the staff process no-action requests that argue for exclusion on the basis that the shareholder's proof of ownership is not from a DTC participant?

The staff will grant no-action relief to a company on the basis that the shareholder's proof of ownership is not from a DTC participant only if the company's notice of defect describes the required proof of ownership in a manner that is consistent with the guidance contained in this bulletin. Under Rule 14a-8(f)(1), the shareholder will have an opportunity to obtain the requisite proof of ownership after receiving the notice of defect.

C. Common errors shareholders can avoid when submitting proof of ownership to companies

In this section, we describe two common errors shareholders make when submitting proof of ownership for purposes of Rule 14a-8(b)(2), and we provide guidance on how to avoid these errors.

First, Rule 14a-8(b) requires a shareholder to provide proof of ownership that he or she has "continuously held at least $2,000 in market value, or 1%, of the company's securities entitled to be voted on the proposal at the meeting for at least one year by the date you submit the proposal" (emphasis added).[10] We note that many proof of ownership letters do not satisfy this requirement because they do not verify the shareholder's beneficial ownership for the entire one-year period preceding and including the date the proposal is submitted. In some cases, the letter speaks as of a date *before* the date the proposal is submitted, thereby leaving a gap between the date of the verification and the date the proposal is submitted. In other cases, the letter speaks as of a date *after*

the date the proposal was submitted but covers a period of only one year, thus failing to verify the shareholder's beneficial ownership over the required full one-year period preceding the date of the proposal's submission.

Second, many letters fail to confirm continuous ownership of the securities. This can occur when a broker or bank submits a letter that confirms the shareholder's beneficial ownership only as of a specified date but omits any reference to continuous ownership for a one-year period.

We recognize that the requirements of Rule 14a-8(b) are highly prescriptive and can cause inconvenience for shareholders when submitting proposals. Although our administration of Rule 14a-8(b) is constrained by the terms of the rule, we believe that shareholders can avoid the two errors highlighted above by arranging to have their broker or bank provide the required verification of ownership as of the date they plan to submit the proposal using the following format:

> "As of [date the proposal is submitted], [name of shareholder] held, and has held continuously for at least one year, [number of securities] shares of [company name] [class of securities]."[11]

As discussed above, a shareholder may also need to provide a separate written statement from the DTC participant through which the shareholder's securities are held if the shareholder's broker or bank is not a DTC participant.

D. The submission of revised proposals

On occasion, a shareholder will revise a proposal after submitting it to a company. This section addresses questions we have received regarding revisions to a proposal or supporting statement.

1. A shareholder submits a timely proposal. The shareholder then submits a revised proposal before the company's deadline for receiving proposals. Must the company accept the revisions?

Yes. In this situation, we believe the revised proposal serves as a replacement of the initial proposal. By submitting a revised proposal, the shareholder has effectively withdrawn the initial proposal. Therefore, the shareholder is not in violation of the one-proposal limitation in Rule 14a-8(c).[12] If the company intends to submit a no-action request, it must do so with respect to the revised proposal.

We recognize that in Question and Answer E.2 of SLB No. 14, we indicated that if a shareholder makes revisions to a proposal before the company submits its no-action request, the company can choose whether to accept the revisions. However, this guidance has led some companies to believe that, in cases where shareholders attempt to make changes to an initial proposal, the company is free to ignore such revisions even if the revised proposal is submitted before the company's deadline for receiving shareholder proposals. We are revising our guidance on this issue to make clear that a company may not ignore a revised proposal in this situation.[13]

2. A shareholder submits a timely proposal. After the deadline for receiving proposals, the shareholder submits a revised proposal. Must the company accept the revisions?

No. If a shareholder submits revisions to a proposal after the deadline for receiving proposals under Rule 14a-8(e), the company is not required to accept the revisions. However, if the company does not accept the revisions, it must treat the revised proposal as a second proposal and submit a notice stating its intention to exclude the revised proposal, as required by Rule 14a-8(j). The company's notice may cite Rule 14a-8(e) as the reason for excluding the revised proposal. If the company does not accept the revisions and intends to exclude the initial proposal, it would also need to submit its reasons for excluding the initial proposal.

3. If a shareholder submits a revised proposal, as of which date must the shareholder prove his or her share ownership?

A shareholder must prove ownership as of the date the original proposal is submitted. When the Commission has discussed revisions to proposals,[14] it has not suggested that a revision triggers a requirement to provide proof of ownership a second time. As outlined in Rule 14a-8(b), proving ownership includes providing a written statement that the shareholder intends to continue to hold the securities through the date of the shareholder meeting. Rule 14a-8(f)(2) provides that if the shareholder "fails in [his or her] 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 [the same shareholder's] proposals from its proxy materials for any meeting held in the following two calendar years." With these provisions in mind, we do not interpret Rule 14a-8 as requiring additional proof of ownership when a shareholder submits a revised proposal.[15]

E. Procedures for withdrawing no-action requests for proposals submitted by multiple proponents

We have previously addressed the requirements for withdrawing a Rule 14a-8 no-action request in SLB Nos. 14 and 14C. SLB No. 14 notes that a company should include with a withdrawal letter documentation demonstrating that a shareholder has withdrawn the proposal. In cases where a proposal submitted by multiple shareholders is withdrawn, SLB No. 14C states that, if each shareholder has designated a lead individual to act on its behalf and the company is able to demonstrate that the individual is authorized to act on behalf of all of the proponents, the company need only provide a letter from that lead individual indicating that the lead individual is withdrawing the proposal on behalf of all of the proponents.

Because there is no relief granted by the staff in cases where a no-action request is withdrawn following the withdrawal of the related proposal, we recognize that the threshold for withdrawing a no-action request need not be overly burdensome. Going forward, we will process a withdrawal request if the company provides a letter from the lead filer that includes a representation that the lead filer is authorized to withdraw the proposal on behalf of each proponent identified in the company's no-action request.[16]

F. Use of email to transmit our Rule 14a-8 no-action responses to companies and proponents

To date, the Division has transmitted copies of our Rule 14a-8 no-action responses, including copies of the correspondence we have received in connection with such requests, by U.S. mail to companies and proponents. We also post our response and the related correspondence to the Commission's website shortly after issuance of our response.

In order to accelerate delivery of staff responses to companies and proponents, and to reduce our copying and postage costs, going forward, we intend to transmit our Rule 14a-8 no-action responses by email to companies and proponents. We therefore encourage both companies and proponents to include email contact information in any correspondence to each other and to us. We will use U.S. mail to transmit our no-action response to any company or proponent for which we do not have email contact information.

Given the availability of our responses and the related correspondence on the Commission's website and the requirement under Rule 14a-8 for companies and proponents to copy each other on correspondence submitted to the Commission, we believe it is unnecessary to transmit copies of the related correspondence along with our no-action response. Therefore, we intend to transmit only our staff response and not the correspondence we receive from the parties. We will continue to post to the Commission's website copies of this correspondence at the same time that we post our staff no-action response.

[1] *See* Rule 14a-8(b).

[2] For an explanation of the types of share ownership in the U.S., see Concept Release on U.S. Proxy System, Release No. 34-62495 (July 14, 2010) [75 FR 42982] ("Proxy Mechanics Concept Release"), at Section II.A. The term "beneficial owner" does not have a uniform meaning under the federal securities laws. It has a different meaning in this bulletin as compared to "beneficial owner" and "beneficial ownership" in Sections 13 and 16 of the Exchange Act. Our use of the term in this bulletin is not intended to suggest that registered owners are not beneficial owners for purposes of those Exchange Act provisions. *See* Proposed Amendments to Rule 14a-8 under the Securities Exchange Act of 1934 Relating to Proposals by Security Holders, Release No. 34-12598 (July 7, 1976) [41 FR 29982], at n.2 ("The term 'beneficial owner' when used in the context of the proxy rules, and in light of the purposes of those rules, may be interpreted to have a broader meaning than it would for certain other purpose[s] under the federal securities laws, such as reporting pursuant to the Williams Act.").

[3] If a shareholder has filed a Schedule 13D, Schedule 13G, Form 3, Form 4 or Form 5 reflecting ownership of the required amount of shares, the shareholder may instead prove ownership by submitting a copy of such filings and providing the additional information that is described in Rule 14a-8(b)(2)(ii).

[4] DTC holds the deposited securities in "fungible bulk," meaning that there are no specifically identifiable shares directly owned by the DTC participants. Rather, each DTC participant holds a pro rata interest or position in the aggregate number of shares of a particular issuer held at DTC. Correspondingly, each customer of a DTC participant – such as an individual investor – owns a pro rata interest in the shares in which the DTC participant has a pro rata interest. *See* Proxy Mechanics Concept Release, at Section II.B.2.a.

[5] *See* Exchange Act Rule 17Ad-8.

[6] *See* Net Capital Rule, Release No. 34-31511 (Nov. 24, 1992) [57 FR 56973] ("Net Capital Rule Release"), at Section II.C.

[7] *See KBR Inc. v. Chevedden*, Civil Action No. H-11-0196, 2011 U.S. Dist. LEXIS 36431, 2011 WL 1463611 (S.D. Tex. Apr. 4, 2011); *Apache Corp. v. Chevedden,* 696 F. Supp. 2d 723 (S.D. Tex. 2010). In both cases, the court concluded that a securities intermediary was not a record holder for purposes of Rule 14a-8(b) because it did not appear on a list of the company's non-objecting beneficial owners or on any DTC securities position listing, nor was the intermediary a DTC participant.

[8] *Techne Corp.* (Sept. 20, 1988).

[9] In addition, if the shareholder's broker is an introducing broker, the shareholder's account statements should include the clearing broker's identity and telephone number. *See* Net Capital Rule Release, at Section II.C.(iii). The clearing broker will generally be a DTC participant.

[10] For purposes of Rule 14a-8(b), the submission date of a proposal will generally precede the company's receipt date of the proposal, absent the use of electronic or other means of same-day delivery.

[11] This format is acceptable for purposes of Rule 14a-8(b), but it is not mandatory or exclusive.

[12] As such, it is not appropriate for a company to send a notice of defect for multiple proposals under Rule 14a-8(c) upon receiving a revised proposal.

[13] This position will apply to all proposals submitted after an initial proposal but before the company's deadline for receiving proposals, regardless of whether they are explicitly labeled as "revisions" to an initial proposal, unless the shareholder affirmatively indicates an intent to submit a second, *additional* proposal for inclusion in the company's proxy materials. In that case, the company must send the shareholder a notice of defect pursuant to Rule 14a-8(f)(1) if it intends to exclude either proposal from its proxy materials in reliance on Rule 14a-8(c). In light of this guidance, with respect to proposals or revisions received before a company's deadline for submission, we will no longer follow *Layne Christensen Co.* (Mar. 21, 2011) and other prior staff no-action letters in which we took the view that a proposal would violate the Rule 14a-8(c) one-proposal limitation if such proposal is submitted to a

company after the company has either submitted a Rule 14a-8 no-action request to exclude an earlier proposal submitted by the same proponent or notified the proponent that the earlier proposal was excludable under the rule.

[14] *See, e.g.*, Adoption of Amendments Relating to Proposals by Security Holders, Release No. 34-12999 (Nov. 22, 1976) [41 FR 52994].

[15] Because the relevant date for proving ownership under Rule 14a-8(b) is the date the proposal is submitted, a proponent who does not adequately prove ownership in connection with a proposal is not permitted to submit another proposal for the same meeting on a later date.

[16] Nothing in this staff position has any effect on the status of any shareholder proposal that is not withdrawn by the proponent or its authorized representative.

Modified: Oct. 18, 2011

Shareholder Proposals

Staff Legal Bulletin No. 14G (CF)

Action: Publication of CF Staff Legal Bulletin

Date: October 16, 2012

Summary: This staff legal bulletin provides information for companies and shareholders regarding Rule 14a-8 under the Securities Exchange Act of 1934.

Supplementary Information: The statements in this bulletin represent the views of the Division of Corporation Finance (the "Division"). This bulletin is not a rule, regulation or statement of the Securities and Exchange Commission (the "Commission"). Further, the Commission has neither approved nor disapproved its content.

Contacts: For further information, please contact the Division's Office of Chief Counsel by calling (202) 551-3500 or by submitting a web-based request form at https://www.sec.gov/forms/corp_fin_interpretive.

A. The purpose of this bulletin

This bulletin is part of a continuing effort by the Division to provide guidance on important issues arising under Exchange Act Rule 14a-8. Specifically, this bulletin contains information regarding:

- the parties that can provide proof of ownership under Rule 14a-8(b)(2)(i) for purposes of verifying whether a beneficial owner is eligible to submit a proposal under Rule 14a-8;
- the manner in which companies should notify proponents of a failure to provide proof of ownership for the one-year period required under Rule 14a-8(b)(1); and
- the use of website references in proposals and supporting statements.

You can find additional guidance regarding Rule 14a-8 in the following bulletins that are available on the Commission's website: SLB No. 14, SLB No. 14A, SLB No. 14B, SLB No. 14C, SLB No. 14D, SLB No. 14E and SLB No. 14F.

B. Parties that can provide proof of ownership under Rule 14a-8(b)(2)(i) for purposes of verifying whether a beneficial owner is eligible to submit a proposal under Rule 14a-8

1. Sufficiency of proof of ownership letters provided by affiliates of DTC participants for purposes of Rule 14a-8(b)(2)(i)

To be eligible to submit a proposal under Rule 14a-8, a shareholder must, among other things, provide documentation evidencing that the shareholder has continuously held at least $2,000 in market value, or 1%, of the company's securities entitled to be voted on the proposal at the shareholder meeting for at least one year as of

the date the shareholder submits the proposal. If the shareholder is a beneficial owner of the securities, which means that the securities are held in book-entry form through a securities intermediary, Rule 14a-8(b)(2)(i) provides that this documentation can be in the form of a "written statement from the 'record' holder of your securities (usually a broker or bank)...."

In SLB No. 14F, the Division described its view that only securities intermediaries that are participants in the Depository Trust Company ("DTC") should be viewed as "record" holders of securities that are deposited at DTC for purposes of Rule 14a-8(b)(2)(i). Therefore, a beneficial owner must obtain a proof of ownership letter from the DTC participant through which its securities are held at DTC in order to satisfy the proof of ownership requirements in Rule 14a-8.

During the most recent proxy season, some companies questioned the sufficiency of proof of ownership letters from entities that were not themselves DTC participants, but were affiliates of DTC participants.[1] By virtue of the affiliate relationship, we believe that a securities intermediary holding shares through its affiliated DTC participant should be in a position to verify its customers' ownership of securities. Accordingly, we are of the view that, for purposes of Rule 14a-8(b)(2)(i), a proof of ownership letter from an affiliate of a DTC participant satisfies the requirement to provide a proof of ownership letter from a DTC participant.

2. Adequacy of proof of ownership letters from securities intermediaries that are not brokers or banks

We understand that there are circumstances in which securities intermediaries that are not brokers or banks maintain securities accounts in the ordinary course of their business. A shareholder who holds securities through a securities intermediary that is not a broker or bank can satisfy Rule 14a-8's documentation requirement by submitting a proof of ownership letter from that securities intermediary.[2] If the securities intermediary is not a DTC participant or an affiliate of a DTC participant, then the shareholder will also need to obtain a proof of ownership letter from the DTC participant or an affiliate of a DTC participant that can verify the holdings of the securities intermediary.

C. Manner in which companies should notify proponents of a failure to provide proof of ownership for the one-year period required under Rule 14a-8(b)(1)

As discussed in Section C of SLB No. 14F, a common error in proof of ownership letters is that they do not verify a proponent's beneficial ownership for the entire one-year period preceding and including the date the proposal was submitted, as required by Rule 14a-8(b)(1). In some cases, the letter speaks as of a date *before* the date the proposal was submitted, thereby leaving a gap between the date of verification and the date the proposal was submitted. In other cases, the letter speaks as of a date *after* the date the proposal was submitted but covers a period of only one year, thus failing to verify the proponent's beneficial ownership over the required full one-year period preceding the date of the proposal's submission.

Under Rule 14a-8(f), if a proponent fails to follow one of the eligibility or procedural requirements of the rule, a company may exclude the proposal only if it notifies the proponent of the defect and the proponent fails to correct it. In SLB No. 14 and SLB No. 14B, we explained that companies should provide adequate detail about what a proponent must do to remedy all eligibility or procedural defects.

We are concerned that companies' notices of defect are not adequately describing the defects or explaining what a proponent must do to remedy defects in proof of ownership letters. For example, some companies' notices of defect make no mention of the gap in the period of ownership covered by the proponent's proof of ownership letter or other specific deficiencies that the company has identified. We do not believe that such notices of defect serve the purpose of Rule 14a-8(f).

Accordingly, going forward, we will not concur in the exclusion of a proposal under Rules 14a-8(b) and 14a-8(f) on the basis that a proponent's proof of ownership does not cover the one-year period preceding and including the date the proposal is submitted unless the company provides a notice of defect that identifies the specific date on which the proposal was submitted and explains that the proponent must obtain a new proof of ownership letter verifying continuous ownership of the requisite amount of securities for the one-year period preceding and including such date to cure the defect. We view the proposal's date of submission as the date the proposal is postmarked or transmitted electronically. Identifying in the notice of defect the specific date on which the proposal was submitted will help a proponent better understand how to remedy the defects described above and will be particularly helpful in those instances in which it may be difficult for a proponent to determine the date of submission, such as when the proposal is not postmarked on the same day it is placed in the mail. In addition, companies should include copies of the postmark or evidence of electronic transmission with their no-action requests.

D. Use of website addresses in proposals and supporting statements

Recently, a number of proponents have included in their proposals or in their supporting statements the addresses to websites that provide more information about their proposals. In some cases, companies have sought to exclude either the website address or the entire proposal due to the reference to the website address.

In SLB No. 14, we explained that a reference to a website address in a proposal does not raise the concerns addressed by the 500-word limitation in Rule 14a-8(d). We continue to be of this view and, accordingly, we will continue to count a website address as one word for purposes of Rule 14a-8(d). To the extent that the company seeks the exclusion of a website reference in a proposal, but not the proposal itself, we will continue to follow the guidance stated in SLB No. 14, which provides that references to website addresses in proposals or supporting statements could be subject to exclusion under Rule 14a-8(i)(3) if the information contained on the website is materially false or misleading, irrelevant to the subject matter of the proposal or otherwise in contravention of the proxy rules, including Rule 14a-9.[3]

In light of the growing interest in including references to website addresses in proposals and supporting statements, we are providing additional guidance on the appropriate use of website addresses in proposals and supporting statements.[4]

1. References to website addresses in a proposal or supporting statement and Rule 14a-8(i)(3)

References to websites in a proposal or supporting statement may raise concerns under Rule 14a-8(i)(3). In SLB No. 14B, we stated that the exclusion of a proposal under Rule 14a-8(i)(3) as vague and indefinite may be appropriate if neither the shareholders voting on the proposal, nor the company in implementing the proposal (if adopted), would be able to determine with any reasonable certainty exactly what actions or measures the proposal requires. In evaluating whether a proposal may be excluded on this basis, we consider only the information contained in the proposal and supporting statement and determine whether, based on that information, shareholders and the company can determine what actions the proposal seeks.

If a proposal or supporting statement refers to a website that provides information necessary for shareholders and the company to understand with reasonable certainty exactly what actions or measures the proposal requires, and such information is not also contained in the proposal or in the supporting statement, then we believe the proposal would raise concerns under Rule 14a-9 and would be subject to exclusion under Rule 14a-8(i)(3) as vague and indefinite. By contrast, if shareholders and the company can understand with reasonable certainty exactly what actions or measures the proposal requires without reviewing the information provided on the website, then we believe that the proposal would not be subject to exclusion under Rule 14a-8(i)(3) on the basis of the reference to the website address. In this case, the information on the website only supplements the information contained in the proposal and in the supporting statement.

2. Providing the company with the materials that will be published on the referenced website

We recognize that if a proposal references a website that is not operational at the time the proposal is submitted, it will be impossible for a company or the staff to evaluate whether the website reference may be excluded. In our view, a reference to a non-operational website in a proposal or supporting statement could be excluded under Rule 14a-8(i)(3) as irrelevant to the subject matter of a proposal. We understand, however, that a proponent may wish to include a reference to a website containing information related to the proposal but wait to activate the website until it becomes clear that the proposal will be included in the company's proxy materials. Therefore, we will not concur that a reference to a website may be excluded as irrelevant under Rule 14a-8(i)(3) on the basis that it is not yet operational if the proponent, at the time the proposal is submitted, provides the company with the materials that are intended for publication on the website and a representation that the website will become operational at, or prior to, the time the company files its definitive proxy materials.

3. Potential issues that may arise if the content of a referenced website changes after the proposal is submitted

To the extent the information on a website changes after submission of a proposal and the company believes the revised information renders the website reference excludable under Rule 14a-8, a company seeking our concurrence that the website reference may be excluded must submit a letter presenting its reasons for doing so. While Rule 14a-8(j) requires a company to submit its reasons for exclusion with the Commission no later than 80 calendar days before it files its definitive proxy materials, we may concur that the changes to the referenced website constitute "good cause" for the company to file its reasons for excluding the website reference after the 80-day deadline and grant the company's request that the 80-day requirement be waived.

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[1] An entity is an "affiliate" of a DTC participant if such entity directly, or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with, the DTC participant.

[2] Rule 14a-8(b)(2)(i) itself acknowledges that the record holder is "usually," but not always, a broker or bank.

[3] Rule 14a-9 prohibits statements in proxy materials which, at the time and in the light of the circumstances under which they are made, are false or misleading with respect to any material fact, or which omit to state any material fact necessary in order to make the statements not false or misleading.

[4] A website that provides more information about a shareholder proposal may constitute a proxy solicitation under the proxy rules. Accordingly, we remind shareholders who elect to include website addresses in their proposals to comply with all applicable rules regarding proxy solicitations.

Modified: Oct. 16, 2012

EXHIBIT C

First Response Letter

December 2, 2022

AMC Entertainment Holdings, Inc.
Attention: Mr. Kevin Connor – General Counsel & Senior Vice President
11500 Ash Street
Leawood, KS 66211
kconnor@amctheatres.com
Via Email & FEDEX

RE: 2023 Annual Meeting Rule 14a-8 Proxy Proposal for the Convertibility of AMC Preferred Equity Units

Mr. Connor:

Thank you for confirming on Wednesday the receipt of my "stockholder proposal (the "Proposal") **on November 9, 2022**, for inclusion in the proxy materials of AMC Entertainment Holdings, Inc ("AMC") for the 2023 Annual Meeting of Stockholders (the "Annual Meeting") pursuant to Rule 14a-8 under the Securities Exchange Act of 1934, as amended (the "Exchange Act")." However, as per the helpfully attached Exchange Act Rule 14a-8(f) included with your correspondence, "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." Hence, AMC's purported "Notice of Deficiency" dated November 30, 2022, was transmitted well past the applicable notice deadline and thus is inherently void. Moreover, the purported rationale supporting AMC's Notice of Deficiency is fatally flawed and thus I am prepared, if necessary, to vigorously and publicly dispute any no-action request by AMC to the staff of the SEC regarding this critical Proposal.

First, my stockholder proposal on November 9, 2022, validly demonstrated eligibility to submit a stockholder proposal and intent to continue to hold the requisite amount of AMC securities through the date of the 2023 Annual Meeting. Moreover, the stockholder eligibility language of my Proposal has been successfully utilized, including in Twitter's 2022 Proxy Statement, for precedent SEC-reviewed stockholder proxy proposals.[1] Specifically, Appendix A of my November 9, 2022 Proposal certified "I, Kevin Barnes...am the beneficial owner of a sufficient amount of AMC's securities for a sufficient duration under Rule 14a-8 of the Securities Exchange Act of 1934 to submit the following proposals for inclusion in AMC's 2023 proxy statement and have given appropriate notice of the intention to present the proposal below at the 2023 Annual Meeting." However, in the spirit of cooperation and to further supplement the original November 9, 2022, Proposal's confirming

[1] Twitter, Inc. Proxy Statement & Notice of 2022 Annual Meeting of Stockholders, dated 04/12/22 – page 37. Available via: *https://www.sec.gov/Archives/edgar/data/1418091/000114036122014049/ny20001921x3_def14a.htm#tPS*
Also, for the record, I have no connection to, or knowledge regarding, Twitter, Inc. stockholders Whistle Stop Capital, LLC and/or Handlery Hotels Inc.

documentation evidence of my status as an AMC stockholder of record, I have attached in Appendix B the written account statement from one of my Depository Trust Company registered brokerage accounts to further demonstrate my beneficial ownership of AMC securities. Finally, to further supplement the record, I hereby certify my intent to continue to hold the requisite amount of AMC securities through the date of the 2023 meeting and will attend the 2023 stockholder meeting, either personally in Leawood or via electronic media if allowed, to present the proposal.

Second, in light of AMC's Board of Directors apparently obstructionist interpretation of the Delaware General Corporate Law (the "DGCL") and the Securities and Exchange Commission proxy rules, I have elected to *"take the steps necessary"* to slightly revise the Proposal to update AMC's Third Amended and Restated Certificate of Incorporation (the "Charter"). Specifically, as per the helpfully attached SEC Staff Legal Bulletin No. 14D included with your correspondence, the SEC "do[es] not believe there would be a basis for the company to exclude the proposal under rule 14a-8(i)(1), rule 14a-8(i)(2), or rule 14a-8(i)(6)" when the proponent "revise[d] the proposal to provide that the board of directors "take the steps necessary" to amend the company's charter."

As per my original November 9, 2022, Proposal and in the spirit of cooperation & efficiency, I remain open to potentially withdrawing my Rule 14a-8 demand if AMC's Board of Directors itself recommends a stockholder vote on an analogous proposal or if another AMC stockholder has filed an analogous proposal. However, if the current AMC Board of Directors perpetuates its apparently obstructionist posture regarding APE convertibility, I am also prepared to seek appropriate new Board of Directors representation for my fellow AMC stockholders via the new universal proxy card system for contested directors election at the 20023 Annual Meeting, which SEC Chair Gary Gensler believes "is an important aspect of shareholder democracy."[2]

Please promptly confirm receipt of this letter and I look forward to further discussing this critical Proposal at your earliest convenience during regular business hours. For reference, my direct phone number is [redacted] and my email address is [redacted].

Respectfully,

Kevin Barnes

Kevin Barnes

CC:
Mr. Adam M. Aron, Chief Executive Officer & Chairman of the Board of Directors, *aaron@amctheaters.com*
Sean Goodman, Executive Vice President and Chief Financial Officer, *sgoodman@amctheaters.com*

[2] "SEC Adopts New Rules for Universal Proxy Cards in Contested Director Elections," Securities and Exchange Commission, dated 11/17/21. Available via: *https://www.sec.gov/news/press-release/2021-235*

Appendix A: Amended as of December 2, 2022

Stockholder Proposal By Retail Investor Kevin Barnes for Elective Convertibility of APEs

I, Kevin Barnes, 💎 🤝 and a retail investor, am the beneficial owner of a sufficient amount of AMC's securities for a sufficient duration under Rule 14a-8 of the Securities Exchange Act of 1934, as amended, to submit the following proposals for inclusion in AMC's 2023 proxy statement and have given appropriate notice of the intention to present the proposal below at the 2023 Annual Meeting. The proposals and the supporting statement appear below.

Supporting Statement:

Some suits on Wall Street appear to be trying to oppress the APEs!!! This injustice cannot stand! With over [50.67] million APEs currently sold short by unscrupulous speculators, stockholders of AMC Entertainment must consider all options to ensure the trading price of our shares adequately represents the strong fundamentals of the underlying business.[3] By allowing our fellow APE preferred stockholders to convert, at their individual election, into common shares, miscreant short-sellers may be forced to repurchase their short positions when the APE shares are recalled for elective conversion. 🚀 🚀 🚀

Proposal #1: In order to allow the free elective convertibility of APE shares so stockholders can potentially realize their significant intrinsic value, AMC's Board of Directors shall expeditiously take the steps necessary, including, but not limited to, promptly calling a Special Meeting of stockholders, to effectuate the revision of the Third Amended and Restated Certificate of Incorporation to increase the total number of shares of Class A Common Stock (par value $0.01 per share) the Company is authorized to issue by the share-count of the APEs outstanding at the 2023 Annual Shareholder meeting, [531,716,231 APEs outstanding as of 11/08/22] shares, to a total of approximately [524,173,073 currently authorized Class A Common Stock + 531,716,231 APEs outstanding = 1,055,889,304] shares of Class A Common Stock.

Proposal #2: Adjournment of the 2023 Annual Meeting to a later date or dates, if necessary or appropriate, to solicit additional proxies if there is insufficient vote participation to adopt Proposal #1.

[Note: Bracketed numerical figures to be updated with the most recent information as of the publication date of AMC's SEC Form DEF 14A for the 2023 Annual Meeting]

<<END>>

[3] APE shares sold short data provided by Morningstar, Inc. - as of [11/15/22] reporting period

***Appendix B**: Interactive Brokers, LLC (DTC Participant #0017) Beneficial Stockholder Documentation*

InteractiveBrokers

Activity Statement

November 1, 2022 - November 30, 2022

Help

Interactive Brokers LLC, Two Pickwick Plaza, Greenwich, CT 06830

Account Information

Name	Kevin Barnes
Account	PII
Accounts Included	
Account Type	Advisor Master
Customer Type	Individual
Account Capabilities	Cash
Base Currency	USD

Net Asset Value

	October 31, 2022	November 30, 2022			
	Total	Long	Short	Total	Change
Cash	[redacted]				
Cash Collateral					
Stock					
Securities Lent					
Options					
Bonds					
Interest Accruals					
Dividend Accruals					
Total					
Time Weighted Rate of Return					4.75%

Change in NAV	Total
Starting Value	[redacted]
Mark-to-Market	
Dividends	
Withholding Tax	
Change in Dividend Accruals	
Interest	
Change in Interest Accruals	
Other Fees	
Commissions	
Other FX Translations	
Ending Value	

Mark-to-Market Performance Summary

	Quantity		Price		Mark-to-Market P/L					
Symbol	Prior	Current	Prior	Current	Position	Transaction	Commissions	Other	Total	Code
Stocks										
[redacted]										

Mark-to-Market Performance Summary

Symbol	Quantity Prior	Quantity Current	Price Prior	Price Current	Mark-to-Market P/L Position	Transaction	Commissions	Other	Total	Code
APE	20,000	75,000	2.0500	0.9718	[redacted]					
Total Stocks										

Mark-to-Market Performance Summary

Symbol	Quantity Prior	Quantity Current	Price Prior	Price Current	Mark-to-Market P/L Position	Mark-to-Market P/L Transaction	Mark-to-Market P/L Commissions	Mark-to-Market P/L Other	Mark-to-Market P/L Total	Code
Equity and Index Options										
[redacted]										
Total Equity and Index Options										
Forex										
[redacted]										
Total (All Assets)										
Broker Interest Paid and Received										
Other Fees										
Total P/L for Statement Period										

Realized & Unrealized Performance Summary

Symbol	Cost Adj.	Realized S/T Profit	Realized S/T Loss	Realized L/T Profit	Realized L/T Loss	Realized Total	Unrealized S/T Profit	Unrealized S/T Loss	Unrealized L/T Profit	Unrealized L/T Loss	Unrealized Total	Total	Code
Stocks													
[redacted]													
APE	0.00	6.94	-6.94	0.00	0.00	0.00							

Realized & Unrealized Performance Summary

Symbol	Cost Adj.	Realized S/T Profit	Realized S/T Loss	Realized L/T Profit	Realized L/T Loss	Realized Total	Unrealized S/T Profit	Unrealized S/T Loss	Unrealized L/T Profit	Unrealized L/T Loss	Unrealized Total	Total	Code
[redacted]													
Total Stocks													
Equity and Index Options													

Realized & Unrealized Performance Summary

Symbol	Cost Adj.	Realized S/T Profit	Realized S/T Loss	Realized L/T Profit	Realized L/T Loss	Realized Total	Unrealized S/T Profit	Unrealized S/T Loss	Unrealized L/T Profit	Unrealized L/T Loss	Unrealized Total	Total	Code
[redacted]													
Total Equity and Index Options													
Forex													
[redacted]													
Total (All Assets)													

Notes

1. This statement uses wash sales P/L for realized and unrealized P/L calculations.

Cash Report

	Total	Securities	Futures
Base Currency Summary	[redacted]		
Cash Detail			
Starting Cash			
Commissions			
Dividends			
Broker Interest Paid and Received			
Trades (Sales)			
Trades (Purchase)			
Other Fees			
Payment In Lieu of Dividends			
Withholding Tax			

Cash Report

	Total	Securities	Futures
Cash FX Translation Gain/Loss	[redacted]		
Ending Cash			
Ending Settled Cash			
Cash Collateral Detail			
Starting Cash Collateral			
Net Securities Lent Activity			
Ending Cash Collateral			
Net Cash Detail			
Net Cash Balance			
Net Settled Cash Balance			
CAD			
Cash Detail			
Starting Cash			
Trades (Sales)			
Ending Cash			
Ending Settled Cash			
EUR			
Cash Detail			
Starting Cash			
Broker Interest Paid and Received			
Trades (Purchase)			
Ending Cash			
Ending Settled Cash			
JPY			
Cash Detail			
Starting Cash			
Broker Interest Paid and Received			
Trades (Sales)			
Trades (Purchase)			
Ending Cash			
Ending Settled Cash			
NOK			
Cash Detail			
Starting Cash			
Commissions			
Trades (Sales)			
Trades (Purchase)			
Ending Cash			
Ending Settled Cash			
USD			
Cash Detail			
Starting Cash			
Commissions			
Dividends			
Broker Interest Paid and Received			
Trades (Sales)			

Cash Report

	Total	Securities	Futures
Trades (Purchase)	[redacted]		
Other Fees			
Payment In Lieu of Dividends			
Withholding Tax			
Ending Cash			
Ending Settled Cash			
Cash Collateral Detail			
Starting Cash Collateral			
Net Securities Lent Activity			
Ending Cash Collateral			
Net Cash Detail			
Net Cash Balance			
Net Settled Cash Balance			

Open Positions

Symbol	Quantity	Mult	Cost Price	Cost Basis	Close Price	Value	Unrealized P/L	Code
Stocks								
CAD								
[redacted]								
Total								
Total in USD								
JPY								
[redacted]								
Total								
Total in USD								
NOK								
[redacted]								
Total								
Total in USD								
USD								
[redacted]								
APE	75,000	1	[redacted]					

Open Positions

[redacted]

Total

Total Stocks in USD

Symbol	Quantity	Mult	Cost Price	Cost Basis	Close Price	Value	Unrealized P/L	Code
Equity and Index Options								
USD								

[redacted]

Total

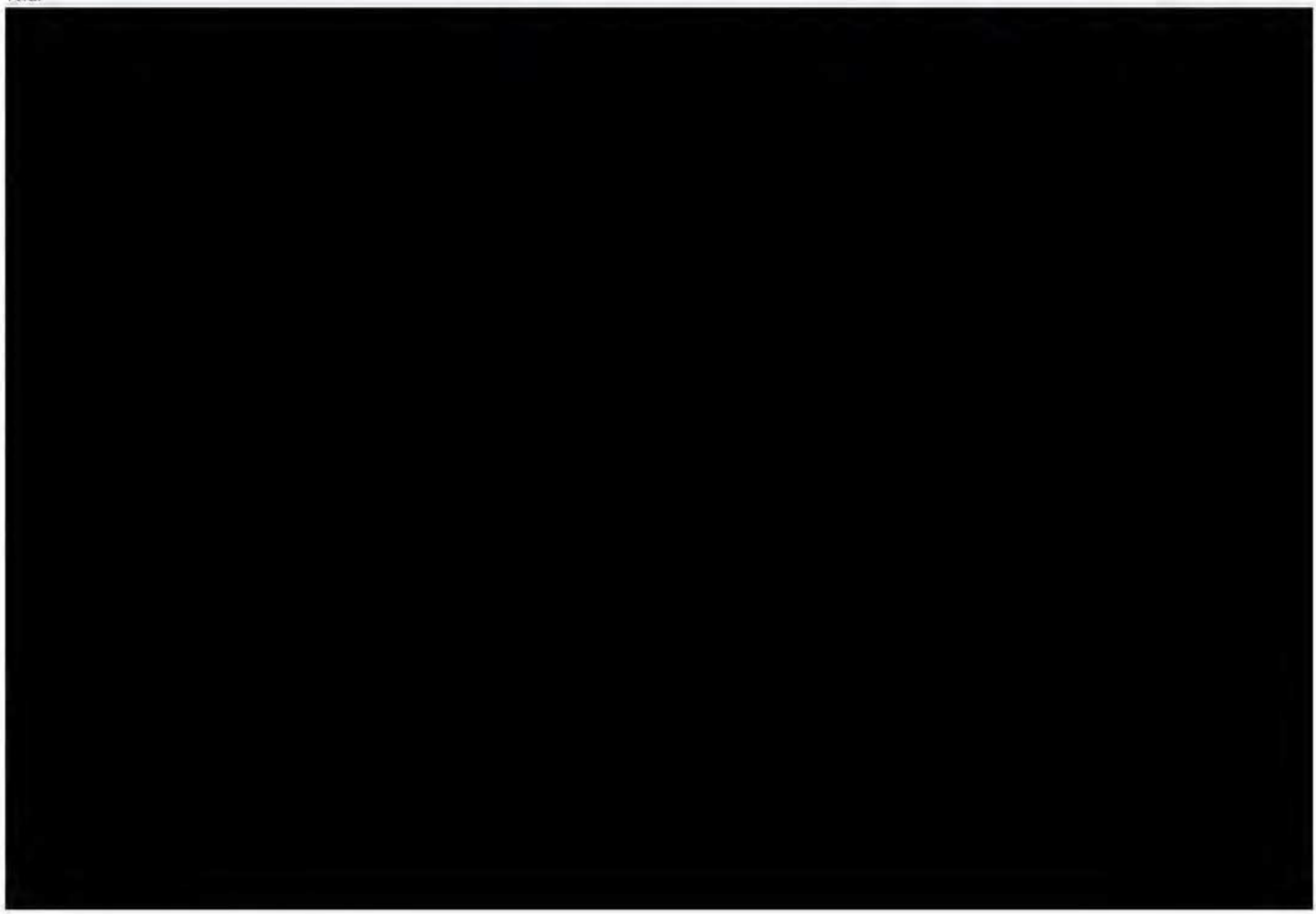
Symbol	Quantity	Accrued Int	Cost Price	Cost Basis	Close Price	Value	Unrealized P/L	Code
Bonds								
USD								

[redacted]

Total

Forex Balances

Description	Quantity	Cost Price	Cost Basis in USD	Close Price	Value in USD	Unrealized P/L in USD	Code
Forex							



[redacted]

Trades

Account	Symbol	Date/Time	Quantity	T. Price	C. Price	Proceeds	Comm/Fee	Basis	Realized P/L	MTM P/L	Code
Stocks											
NOK											
[redacted]											
USD											
[redacted]											
U[redacted]54	APE	2022-11-10, 09:45:59	9,861	1.3297	1.4000	-13,112.17	-49.30	13,161.48	0.00	693.23	O;P
U[redacted]7	APE	2022-11-10, 09:45:59	139	1.3297	1.4000	-184.83	-0.70	185.52	0.00	9.77	O;P
U[redacted]54	APE	2022-11-21, 13:38:13	5,000	1.268676	1.2700	-6,443.38	-25.00	6,468.38	0.00	-93.38	O;P
U[redacted]54	APE	2022-11-23, 12:34:28	5,000	1.187956	1.2100	-5,939.78	-25.00	5,964.78	0.00	110.22	O;P
U[redacted]54	APE	2022-11-25, 09:36:59	4,800	1.1800	1.2200	-5,664.00	-24.00	5,688.00	0.00	192.00	O

Trades

U[redacted]54	APE	2022-11-25, 11:02:03	5,200	1.2150	1.2200	-6,318.00	-26.00	6,344.00	0.00	26.00	O
U[redacted]54	APE	2022-11-29, 12:58:45	10,000	1.066217	1.0500	-10,662.17	-50.00	10,712.17	0.00	-162.17	O;P
U[redacted]7	APE	2022-11-29, 15:32:57	8,807	1.06704333	1.0500	-9,397.45	-44.04	9,441.49	0.00	-150.10	O;P
U[redacted]54	APE	2022-11-29, 15:32:57	193	1.06704333	1.0500	-205.94	-0.96	206.90	0.00	-3.29	O;P
U[redacted]54	APE	2022-11-30, 14:43:53	6,000	0.9051	0.9718	-5,430.60	-30.00	5,460.60	0.00	400.20	O;P
Total APE			**55,000**			**-63,358.32**	**-275.00**	**63,633.32**	**0.00**	**1,022.48**	

[redacted]

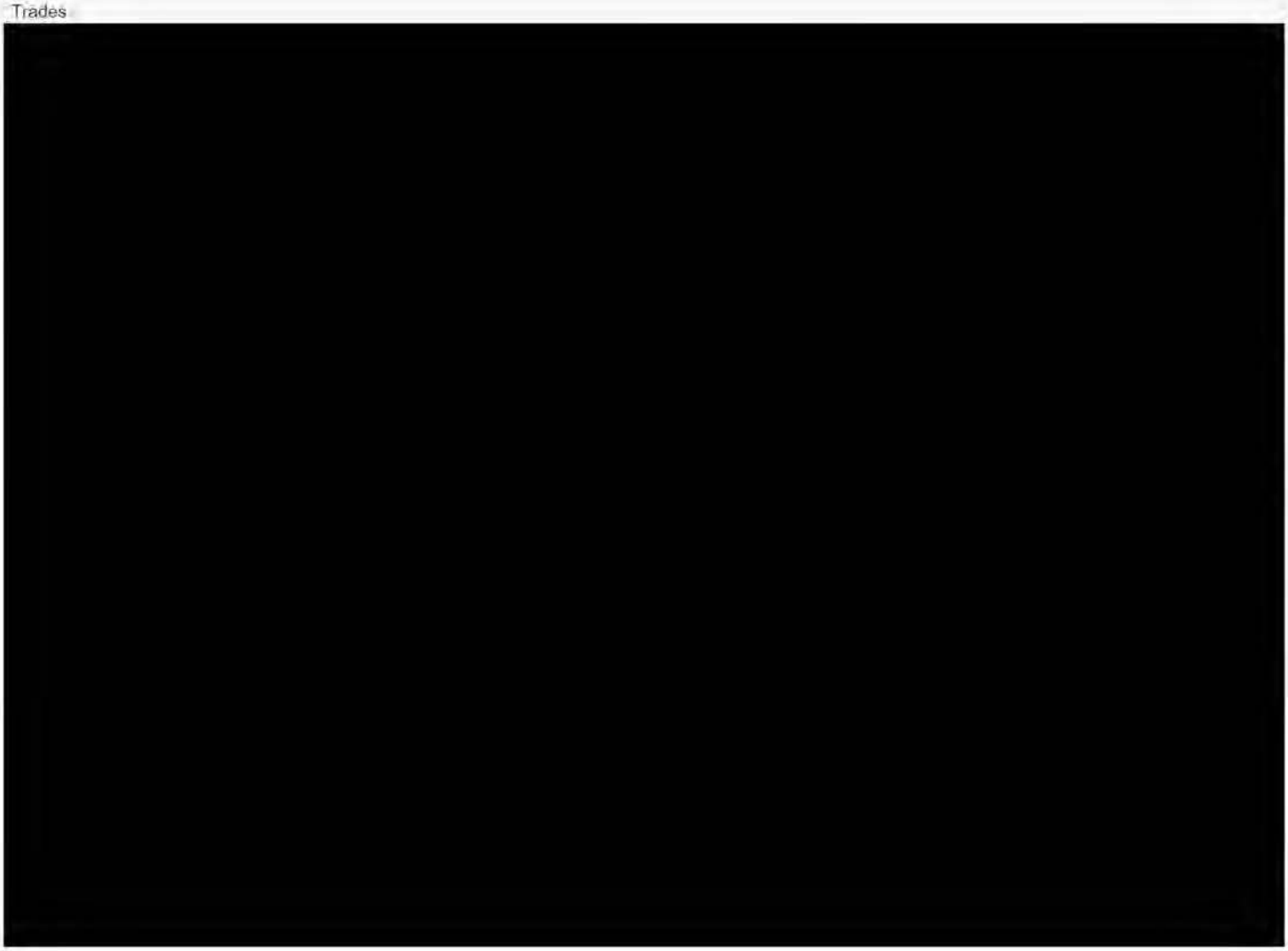
Trades



Trades



Trades



Interest Accruals

Base Currency Summary	[redacted]
Starting Accrual Balance	
Interest Accrued	
Accrual Reversal	
FX Translation	
Ending Accrual Balance	
EUR	
Starting Accrual Balance	
Interest Accrued	
Accrual Reversal	
Ending Accrual Balance	
Ending Accrual Balance in USD	
JPY	
Starting Accrual Balance	
Interest Accrued	
Accrual Reversal	
Ending Accrual Balance	
Ending Accrual Balance in USD	
USD	
Starting Accrual Balance	
Interest Accrued	
Accrual Reversal	
Ending Accrual Balance	

Interest

Account	Date	Description	Amount
[redacted]			

Withholding Tax

Account	Date	Description	Amount	Code
[redacted]				

Dividends

Account	Date	Description	Amount
[redacted]			

Fees

Account	Date	Description	Amount
Other Fees			
[redacted]			

Notes

1. Market data is provided by Global Financial Information Services (GmbH). Your local broker collects amounts owed for fees and tax for such data on behalf of Global Financial Information Services (GmbH). Note, you are responsible for any applicable taxes relating to the provision of these services.

Change in Dividend Accruals

Account	Symbol	Date	Ex Date	Pay Date	Quantity	Tax	Fee	Gross Rate	Gross Amount	Net Amount	Code
Starting Dividend Accruals in USD											
Stocks											
USD											
[redacted]											
Total											
Ending Dividend Accruals in USD											

Borrow Fee Details

Account	Value Date	Symbol	Quantity	Price	Value	Fee Rate (%)	Borrow Fee	Code

Borrow Fee Details

Account	Value Date	Symbol	Quantity	Price	Value	Fee Rate (%)	Borrow Fee	Code

Borrow Fee Details

Account	Value Date	Symbol	Quantity	Price	Value	Fee Rate (%)	Borrow Fee	Code

Borrow Fee Details

Account	Value Date	Symbol	Quantity	Price	Value	Fee Rate (%)	Borrow Fee	Code
[redacted]								

Borrow Fee Details

Account	Value Date	Symbol	Quantity	Price	Value	Fee Rate (%)	Borrow Fee	Code

Borrow Fee Details

Account	Value Date	Symbol	Quantity	Price	Value	Fee Rate (%)	Borrow Fee	Code

Borrow Fee Details

Account	Value Date	Symbol	Quantity	Price	Value	Fee Rate (%)	Borrow Fee	Code
[redacted]								

Borrow Fee Details

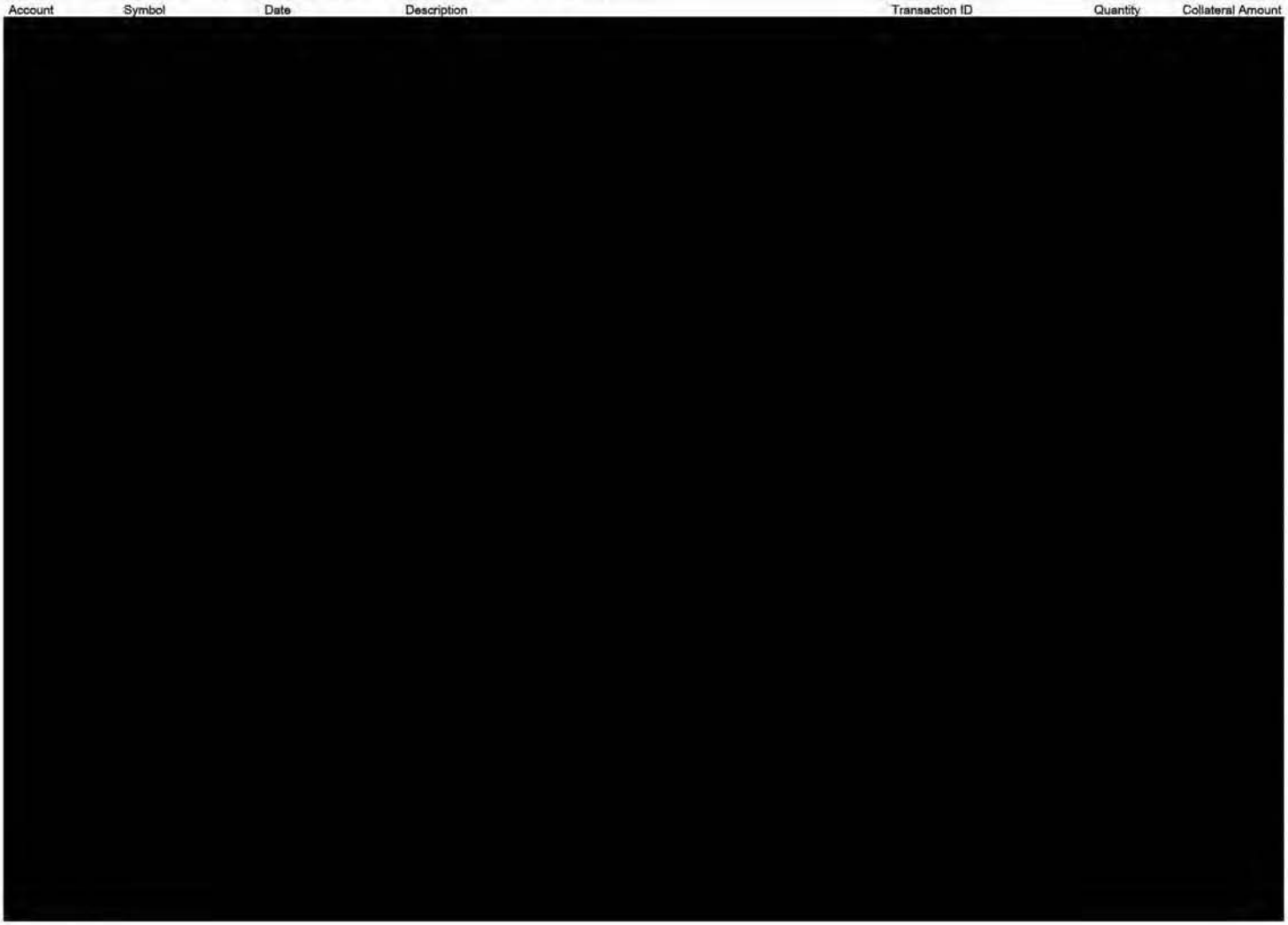
Account	Value Date	Symbol	Quantity	Price	Value	Fee Rate (%)	Borrow Fee	Code

Borrow Fee Details

Account	Value Date	Symbol	Quantity	Price	Value	Fee Rate (%)	Borrow Fee	Code
[redacted]								

IBKR Managed Securities Lent Activity (Stock Yield Enhancement Program)

Account	Symbol	Date	Description	Transaction ID	Quantity	Collateral Amount



IBKR Managed Securities Lent Activity (Stock Yield Enhancement Program)

Account	Symbol	Date	Description	Transaction ID	Quantity	Collateral Amount
[redacted]						

IBKR Managed Securities Lent Activity (Stock Yield Enhancement Program)

Account	Symbol	Date	Description	Transaction ID	Quantity	Collateral Amount



IBKR Managed Securities Lent Activity (Stock Yield Enhancement Program)

Account	Symbol	Date	Description	Transaction ID	Quantity	Collateral Amount
[redacted]						

IBKR Managed Securities Lent Interest Details (Stock Yield Enhancement Program)

Account	Value Date	Symbol	Start Date	Quantity	Collateral Amount	Interest Rate Earned by IB (%)	Interest Paid to IB	Interest Rate on Customer Collateral (%)	Interest Paid to Customer	Code

IBKR Managed Securities Lent Interest Details (Stock Yield Enhancement Program)

Account	Value Date	Symbol	Start Date	Quantity	Collateral Amount	Interest Rate Earned by IB (%)	Interest Paid to IB	Interest Rate on Customer Collateral (%)	Interest Paid to Customer	Code

IBKR Managed Securities Lent Interest Details (Stock Yield Enhancement Program)

Account	Value Date	Symbol	Start Date	Quantity	Collateral Amount	Interest Rate Earned by IB (%)	Interest Paid to IB	Interest Rate on Customer Collateral (%)	Interest Paid to Customer	Code

Financial Instrument Information

Symbol	Description	Conid	Security ID	Listing Exch	Multiplier	Type	Code
Stocks							
[redacted]							
APE	AMC ENTERTAINMENT-PFD EQ UT	579914478	US00165C2035	NYSE	1	MISC.	
[redacted]							

Financial Instrument Information

Symbol	Description	Conid	Security ID	Listing Exch	Multiplier	Type	Code

Codes

Code	Meaning	Code (Cont.)	Meaning (Cont.)
A	Assignment	LD	Adjusted by Loss Disallowed from Wash Sale
ADR	ADR Fee Accrual	LI	Last In, First Out (LIFO) tax basis election
AEx	Automatic exercise for dividend-related recommendation.	LT	Long Term P/L
AFx	AutoFX conversion resulting from trading	Lo	Direct Loan
Adj	Adjustment	M	Entered manually by IB
Al	Allocation	MEx	Manual exercise for dividend-related recommendation.
Aw	Away Trade	ML	Maximize Losses tax basis election
B	Automatic Buy-in	MLG	Maximize Long Term Gain tax basis election
Bo	Direct Borrow	MLL	Maximize Long Term Loss tax basis election
C	Closing Trade	MSG	Maximize Short Term Gain tax basis election
CD	Cash Delivery	MSL	Maximize Short Term Loss tax basis election
CP	Complex Position	O	Opening Trade
Ca	Cancelled	P	Partial Execution
Co	Corrected Trade	PI	Price Improvement
Cx	Part or all of this transaction was a Crossing executed as dual agent by IB for two IB customers	Po	Interest or Dividend Accrual Posting
ETF	ETF Creation/Redemption	Pr	Part or all of this transaction was executed by the Exchange as a Crossing by IB against an IB affiliate and is therefore classified as a Principal and not an agency trade
Ep	Resulted from an Expired Position	R	Dividend Reinvestment
Ex	Exercise	RED	Redemption to Investor
FP	IB acted as agent for the fractional share portion of this trade, which was executed by an IB affiliate as principal.	RI	Recurring Investment
FPA	IB acted as agent for both the fractional share portion and the whole share portion of this trade; the fractional share portion was executed by an IB Affiliate as principal.	RP	IB acted as agent for the fractional share portion of this trade, which was executed by an IB affiliate as riskless principal.
G	Trade in Guaranteed Account Segment	RPA	IB acted as agent for both the fractional share portion and the whole share portion of this trade; the fractional share portion was executed by an IB Affiliate as riskless principal.
GEA	Exercise or Assignment resulting from offsetting positions	Re	Interest or Dividend Accrual Reversal
HC	Highest Cost tax basis election	Ri	Reimbursement
HFI	Investment Transferred to Hedge Fund	SI	This order was solicited by Interactive Brokers
HFR	Redemption from Hedge Fund	SL	Specific Lot tax basis election
I	Internal Transfer	SO	This order was marked as solicited by your Introducing Broker
IA	This transaction was executed against an IB affiliate	SS	Customer designated this trade for shortened settlement and so is subject to execution at prices above the prevailing market
INV	Investment Transfer from Investor	ST	Short Term P/L
IPO	This transaction was executed as part of an IPO in which IB was a member of the selling group and is classified as a Principal trade.	T	Transfer
L	Ordered by IB (Margin Violation)	Un	Unvested shares from stock grant

Notes/Legal Notes

Notes

1. Most stock exchange transactions settle on the trade date plus two business days. Options, futures and US open-end mutual fund transactions settle on trade date plus one business day. (Some exchanges and other transaction types may have longer or shorter settlement periods.) Ending settled cash reflects the cash that has actually settled.
2. Initial and maintenance margin requirements are available within the Account Window of the Trader Workstation.
3. Interactive Brokers LLC receives compensation from fund companies in connection with the purchase and holding of fund shares by customers of Interactive Brokers LLC. Such compensation includes, but is not limited to, Rule 12b-1 fees that are paid out of the funds assets. The source and amount of any remuneration received by Interactive Brokers LLC in connection with a transaction will be furnished upon written request of the customer. IB may share a portion of the compensation received from fund companies with your financial advisor or introducing broker.
4. Quantities preceded by a "-" sign indicate sell transactions. Other transactions are purchases.

Notes/Legal Notes

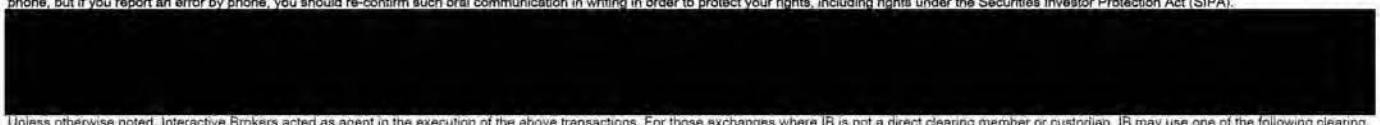
5. IB acts as agent in executing the fractional share portion of your order. In certain circumstances, IB routes the fractional portion of your order to an affiliate, which may execute the fractional portion of the order as principal. In such circumstances, this is indicated by the codes associated with the trade. If an IB affiliate acts as principal in executing any fractional share portion of your order, the order will be executed at the price displayed for the opposite side of the NBBO from your order (the offer if you are buying and the bid if you are selling) at the time of execution. If an IB affiliate is acting as riskless principal in connection with filling the fractional share portion of your order, the affiliate will execute the fractional share portion of your order at the price it receives for the execution of the whole share.
6. In case of partial executions, commissions are charged on the total quantity executed on the original order. The commission is displayed on the first partial execution only.
7. Each closed lot indicated above with a reference to note (6) was chosen by the end of the trading day to be sold versus the specific opening purchase identified in that row.
8. Trade execution times are displayed in Eastern Time.
9. Applicable commodity Regulatory Fees for your transactions are available on the IB website at www.interactivebrokers.com/en/accounts/fees/exchangeAndRegulatoryFees.php.
10. Borrow Fee Rate represents the cost to borrow stock expressed in percent per annum. It is applied to the cash collateral amount on the stock borrow contract and is separate from any interest earned on credit cash balances. Similarly, Loan Fee Rate represents the benefit to lend stock. A positive rate indicates a cost to the borrower/benefit to the lender and a negative rate indicates a benefit to the borrower/cost to the lender. In general, the fee rates for hard-to-borrow stocks are higher than for normal availability stocks.
11. Interest Rate on Customer Collateral represents the interest paid on the collateral posted to the customer's account and received from lending stock. A positive rate indicates a benefit to the lender.
12. The closing prices on this Activity Statement are indicative and may come from third-party sources. Interactive Brokers does not warrant the accuracy of the prices provided by third-party sources. Due to time zone differences, certain non-US mutual funds may deliver closing prices after the Activity Statement has been produced and the closing prices for such funds will reflect the previous day's price.
13. All Market Data and Research services are provided through Global Financial Information Services (GmbH).
14. Market data is provided by Global Financial Information Services (GmbH). Your local broker collects amounts owed for fees and tax for such data on behalf of Global Financial Information Services (GmbH). Note, you are responsible for any applicable taxes relating to the provision of these services.

Fixed Income Notes

1. Call features for bonds or preferred stocks may affect the yield. For zero coupon, compound interest and multiplier securities, there are no periodic payments and securities may be callable below maturity value without notice to holder unless registered. For asset-backed securities, the actual yield may vary depending on the speed at which the underlying note is pre-paid. For additional information regarding bond yield, please contact the IB Help Desk at: help@interactivebrokers.com. If this debt security is unrated by a nationally recognized statistical rating organization, it may pose a high risk of default. You should consult a financial advisor to determine whether unrated bonds are appropriate for your portfolio in light of your goals and your financial circumstances. Fees charged by bond trading centers are included in the cost of bond transactions.

Legal Notes

1. **Please promptly report any inaccuracy or discrepancy in this statement, or in your account. Contact the IB Customer Service Department in writing using the form available on the IB website. You may also contact IB by phone, but if you report an error by phone, you should re-confirm such oral communication in writing in order to protect your rights, including rights under the Securities Investor Protection Act (SIPA).**



2. Unless otherwise noted, Interactive Brokers acted as agent in the execution of the above transactions. For those exchanges where IB is not a direct clearing member or custodian, IB may use one of the following clearing agents or sub-custodians: Interactive Brokers Australia Pty Limited; Interactive Brokers Canada Inc.; Interactive Brokers Central Europe Zrt.; Interactive Brokers Hong Kong Limited; Interactive Brokers Securities Japan, Inc.; Interactive Brokers (U.K.) Limited; IBKR Financial Services AG; ABN Amro Clearing Singapore Pte. Ltd.; BBVA Bancomer, S.A.; BNP Securities Services, Milan Branch; BMO Harris Bank N.A.; Citibank Europe plc; Skandinaviska Enskilda Banken AB (including select branches).
3. IB acts as agent or riskless principal in foreign currency exchange transactions and as riskless principal in spot precious metals transactions. Such transactions are executed against an IB affiliate or a third party, which acts as principal in such transactions and may have a long or short position and may have profited or lost in connection with the transaction. Foreign currency exchange and spot precious metals transactions executed by Customer through IB are not regulated or overseen by the SEC or the CFTC.
4. Trades marked with the exchange indicator of TMBR were effected by IB as agent through a market making affiliate, which acted as principal in the transaction and may have a long or short position in the security and may have profited or lost in connection with the transaction.
5. All VWAP trades are effected pursuant to an average price formula based on a reference price provided by a third-party data provider. Additional information and reference prices are available upon request. IB, as agent, effects VWAP transactions through a market making affiliate, which acts as principal in such transactions and may have a long or short position in the security and may have profited or lost in connection with the transaction.
6. IB accepts liquidity rebates or other order flow payments from Alternative Trading Systems, market makers and exchanges for certain orders in stocks. IB receives payment for some option orders pursuant to exchange-mandated marketing fee programs or other arrangements. The source and nature of any compensation received by IB in connection with any transaction is available upon written request of the customer. For further information, check the IB website and the Order Routing and Payment for Order Flow Disclosure provided when you opened your account and annually or email help@interactivebrokers.com.
7. For security futures trades, if not already indicated on this statement, information about the time of any transaction, the identity of the counterparty to the transaction, and whether IB is acting as agent or principal, as agent for the counterparty, as agent for both parties to the contract, or as principal, and if acting as principal, whether the transaction was a block transaction or an exchange for physicals transaction, will be available upon written request of the customer.
8. Customer is requested to promptly advise Interactive Brokers of any material change in Customer's investment objectives or financial situation.
9. A financial statement of Interactive Brokers LLC is available for your personal inspection at www.interactivebrokers.com or at its offices, or a copy of it will be mailed upon your written request.
10. For trades executed on either the Australian Stock Exchange Ltd ("ASX") or Chi-X Australia Pty Ltd ("Chi-X"), this confirmation is issued subject to: (i) the directions, decisions and requirements of the Market Operator, the relevant Market Integrity Rules, the relevant Market Operating Rules, the Clearing Rules and where relevant, the Settlement Rules; (ii) the customs and usages of the relevant Market; and (iii) the correction of errors and omissions. Interactive Brokers LLC (ARBN: 091191141, AFSL: 245574, Participant on Chi-X Australia)("IB") is not a participant on the ASX, and will route orders to the ASX through its affiliate, Timber Hill Australia Pty Ltd (ABN 25079993534, AFSL: 244380, Participant on the ASX)("THA") who executes such orders. Your ASX and Chi-x Australia trades will be cleared through ABN Amro Clearing Sydney Pty Ltd, an ACH participant. If your transaction was a crossing transaction, IB may have either acted on behalf of (i) both the buyer and seller of this transaction, or (ii) on behalf of the buyer or seller on one side of the transaction and act as Principal on the other side. Under the Corporations Act 2001, where IB enters into an exchange traded derivatives on a customer's behalf, IB is regarded as having issued the derivative to the customer.

Notes/Legal Notes

11. For All Options Trades Executed on the Stock Exchange of Hong Kong ("SEHK"): (a) Options can involve a high degree of risk and may not be suitable for every investor. Investors should ensure they understand those risks before participating in the options market. (b) All options contracts executed on the SEHK were executed by Timber Hill Securities Hong Kong on behalf of Interactive Brokers LLC. (c) In the event of a default committed by Interactive Brokers LLC resulting in the client suffering any pecuniary loss, the client shall have a right to claim under the Investor Compensation Fund established under the Hong Kong Securities and Futures Ordinance, subject to the terms of the Investor Compensation Fund from time to time. (d) All Exchange Traded Options Business made for or on behalf of a client shall be subject to the relevant provisions of the constitution, Rules of The Stock Exchange of Hong Kong Limited ("SEHK Rules"), regulations, the Articles, customs and usages of SEHK, the Options Trading Rules, the Clearing Rules of SEOCH, the CCASS Rules and the laws of Hong Kong, which shall be binding on both Interactive Brokers LLC and the client.

12. Deposits held away from Interactive Brokers LLC may not qualify under SIPC protection. Also, futures and options on futures are not covered by SIPC.

SIPC Member

EXHIBIT D

Second Notice of Deficiency

AMC THEATRES
WE MAKE MOVIES BETTER®

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GENERAL COUNSEL &
SENIOR VICE PRESIDENT

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kconnor@amctheatres.com

Via e-mail - [redacted]
and UPS # 1Z6813840192987204

December 13, 2022

Mr. Kevin Barnes
[redacted]

Re: Notice of Deficiency

Dear Mr. Barnes,

We refer to your correspondence dated December 2, 2022 regarding your stockholder proposal (as revised therein, the "Revised Proposal") for inclusion in the proxy materials of AMC Entertainment Holdings, Inc. ("AMC") for the 2023 Annual Meeting of Stockholders (the "Annual Meeting") pursuant to Rule 14a-8 under the Securities Exchange Act of 1934, as amended.

We truly appreciate your continuing interest and support of AMC and understand your motivation for the Revised Proposal. However, as we previously explained, under the proxy rules of the Securities and Exchange Commission (the "SEC"), in order to be eligible to submit the Revised Proposal, you must provide us with evidence demonstrating that you have continuously held (i) at least $2,000 in market value of AMC's securities entitled to vote on the proposal for at least three years; or (ii) at least $15,000 in market value of AMC's securities entitled to vote on the proposal for at least two years; or (iii) at least $25,000 in market value of AMC's securities entitled to vote on the proposal for at least one year.

Based on our review of the information in your correspondence received to date, our records, and regulatory materials, including your redacted activity statement from InteractiveBrokers for the period from November 1, 2022 to November 30, 2022, we are unable to conclude that you have held the requisite amount of AMC securities for the requisite amount of time noted above, as required by Rule 14a-8. The regulations of the SEC require us to bring this procedural deficiency to your attention, and to provide you an opportunity to remedy this deficiency with confirming documentation in the proper time frame. If you fail to do so, you will not be eligible to submit the Revised Proposal for inclusion in our proxy materials for the Annual Meeting.

As provided in Section E of the SEC's Staff Legal Bulleting No. 14L (see Exhibit A hereto), one means of remedying this deficiency is to provide a written statement from the record

holder of your shares (usually a bank or broker) and a participant in the Depository Trust Company (DTC) which can, but is not required to, follow this format:

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

Separately, even if the aforementioned deficiency is cured, the Revised Proposal—which still mandates that AMC's board of directors (the "AMC Board") seeks stockholder approval of an amendment of AMC's Third Amended and Restated Certificate of Incorporation (the "Charter") to increase the number of authorized shares of AMC Class A common stock—is not a proper subject for action by stockholders under the Delaware General Corporation Law (the "DGCL") and the terms of the of the AMC Preferred Equity Units and AMC's Series A Convertible Participating Preferred Stock (collectively, "APEs"). Under the DGCL, in order for the Charter to be amended as a matter of state law, any such proposed Charter amendment must be initiated by the AMC Board in its sole discretion and then approved by the AMC stockholders. Further, under the express terms of the APEs, the AMC Board has the reserved power to determine in its sole discretion whether to advance a stockholder proposal of the nature you have proposed. Please rest assured that the AMC Board will take into account the considerations you have previously mentioned, together with others, in making a determination as to whether or when it would make a similar proposal to amend the Charter.

You may direct your response to my attention at kconnor@amctheatres.com. The SEC rules require that the aforementioned documentation be postmarked or transmitted electronically to us no later than 14 calendar days from the date you receive this letter. Once we receive your additional documentation relating to the procedural deficiency noted above, we will be in a position to determine whether the Revised Proposal is procedurally eligible for inclusion in the proxy materials for the Annual Meeting. We also reserve the right to submit a no-action request to the staff of the SEC, as appropriate, with respect to the Revised Proposal, in light of our continuing view that it is not a proper subject for action by stockholders.

Very truly yours,



Kevin M. Connor

Attachment

Exhibit A

Shareholder Proposals: Staff Legal Bulletin No. 14L (CF)

Division of Corporation Finance
Securities and Exchange Commission

Action: Publication of CF Staff Legal Bulletin

Date: November 3, 2021

Summary: This staff legal bulletin provides information for companies and shareholders regarding Rule 14a-8 under the Securities Exchange Act of 1934.

Supplementary Information: The statements in this bulletin represent the views of the Division of Corporation Finance (the "Division"). This bulletin is not a rule, regulation or statement of the Securities and Exchange Commission (the "Commission"). Further, the Commission has neither approved nor disapproved its content. This bulletin, like all staff guidance, has no legal force or effect: it does not alter or amend applicable law, and it creates no new or additional obligations for any person.

Contacts: For further information, please contact the Division's Office of Chief Counsel by submitting a web-based request form at https://www.sec.gov/forms/corp_fin_interpretive.

A. The Purpose of This Bulletin

The Division is rescinding Staff Legal Bulletin Nos. 14I, 14J and 14K (the "rescinded SLBs") after a review of staff experience applying the guidance in them. In addition, to the extent the views expressed in any other prior Division staff legal bulletin could be viewed as contrary to those expressed herein, this staff legal bulletin controls.

This bulletin outlines the Division's views on Rule 14a-8(i)(7), the ordinary business exception, and Rule 14a-8(i)(5), the economic relevance exception. We are also republishing, with primarily technical, conforming changes, the guidance contained in SLB Nos. 14I and 14K relating to the use of graphics and images, and proof of ownership letters. In addition, we are providing new guidance on the use of e-mail for submission of proposals, delivery of notice of defects, and responses to those notices.

In Rule 14a-8, the Commission has provided a means by which shareholders can present proposals for the shareholders' consideration in the company's proxy statement. This process has become a cornerstone of shareholder engagement on important matters. Rule 14a-8 sets forth several bases for exclusion of such proposals. Companies often request assurance that the staff will not recommend enforcement action if they omit a proposal based on one of these exclusions ("no-action relief"). The Division is issuing this bulletin to streamline and simplify our process for reviewing no-action requests, and to clarify the standards staff will apply when evaluating these requests.

B. Rule 14a-8(i)(7)

1. Background

Rule 14a-8(i)(7), the ordinary business exception, is one of the substantive bases for exclusion of a shareholder proposal in Rule 14a-8. It permits a company to exclude a proposal that "deals with a matter relating to the company's ordinary business operations." The purpose of the exception 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."[1]

2. Significant Social Policy Exception

Based on a review of the rescinded SLBs and staff experience applying the guidance in them, we recognize that 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,[2] complicating the application of Commission policy to proposals. In particular, we 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. We have also concluded that such analysis did not yield consistent, predictable results.

Going forward, the staff will realign 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,[3] and which the Commission subsequently reaffirmed in the 1998 Release. This exception is essential for preserving shareholders' right to bring important issues before other shareholders by means of the company's proxy statement, while also recognizing the board's authority over most day-to-day business matters. For these reasons, staff 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.[4]

Under this realigned approach, proposals that the staff previously viewed as excludable because they did not appear to raise a policy issue of significance for the company may no longer be viewed as excludable under Rule 14a-8(i)(7). For example, proposals squarely raising human capital management issues with a broad societal impact would not be subject to exclusion solely because the proponent did not demonstrate that the human capital management issue was significant to the company.[5]

Because the staff is no longer taking a company-specific approach to evaluating the significance of a policy issue under Rule 14a-8(i)(7), it will no longer expect a board analysis as described in the rescinded SLBs as part of demonstrating that the proposal is excludable under the ordinary business exclusion. Based on our experience, we believe that board analysis may distract the company and the staff from the proper application of the exclusion. Additionally, the "delta" component of board analysis – demonstrating that the difference between the company's existing actions addressing the policy issue and the proposal's request is insignificant – sometimes confounded the application of Rule 14a-8(i)(10)'s substantial implementation standard.

3. Micromanagement

Upon further consideration, the staff has determined that its recent application of the micromanagement concept, as outlined in SLB Nos. 14J and 14K, expanded the concept of micromanagement beyond the Commission's policy directives. Specifically, we believe that the rescinded guidance may have been taken to mean that any limit on company or board discretion constitutes micromanagement.

The Commission has stated that the policy underlying the ordinary business exception rests on two central considerations. The first relates to the proposal's subject matter; the second relates to the degree to which the

proposal "micromanages" 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."[6] The Commission clarified in the 1998 Release that specific methods, timelines, or detail do not necessarily amount to micromanagement and are not dispositive of excludability.

Consistent with Commission guidance, the staff will take a measured approach to evaluating companies' micromanagement arguments – recognizing that proposals seeking detail or seeking to promote timeframes or methods do not per se constitute micromanagement. Instead, we 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. We would expect the level of detail included in a shareholder proposal to be consistent with that needed to enable investors to assess an issuer's impacts, progress towards goals, risks or other strategic matters appropriate for shareholder input.

Our recent letter to ConocoPhillips Company[7] provides an example of our current approach to micromanagement. In that letter the staff denied no-action relief for a proposal requesting that the company set targets covering the greenhouse gas emissions of the company's operations and products. The proposal requested that the company set emission reduction targets and it did not impose a specific method for doing so. The staff concluded this proposal did not micromanage to such a degree to justify exclusion under Rule 14a-8(i)(7).

Additionally, in order to assess whether a proposal probes matters "too complex" for shareholders, as a group, to make an informed judgment,[8] we may consider the sophistication of investors generally on the matter, the availability of data, and the robustness of public discussion and analysis on the topic. The staff may also consider references to well-established national or international frameworks when assessing proposals related to disclosure, target setting, and timeframes as indicative of topics that shareholders are well-equipped to evaluate.

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. As the Commission stated in its 1998 Release:

> [In] the Proposing Release we explained that one of the considerations in making the ordinary business determination was the degree to which the proposal seeks to micro-manage the company. We cited examples such as where the proposal seeks intricate detail, or seeks to impose specific time-frames or to impose specific methods for implementing complex policies. Some commenters thought that the examples cited seemed to imply that all proposals seeking detail, or seeking to promote time-frames or methods, necessarily amount to 'ordinary business.' We did not intend such an implication. Timing questions, for instance, could involve significant policy where large differences are at stake, and proposals may seek a reasonable level of detail without running afoul of these considerations.

While the analysis in this bulletin may apply to any subject matter, many of the proposals addressed in the rescinded SLBs requested companies adopt timeframes or targets to address climate change that the staff concurred were excludable on micromanagement grounds.[9] Going forward we would not concur in the exclusion of similar proposals that suggest targets or timelines so long as the proposals afford discretion to management as to how to achieve such goals.[10] We believe our current approach to micromanagement will help to avoid the dilemma many proponents faced when seeking to craft proposals with sufficient specificity and direction to avoid being excluded under Rule 14a-8(i)(10), substantial implementation, while being general enough to avoid exclusion for "micromanagement."[11]

C. Rule 14a-8(i)(5)

Rule 14a-8(i)(5), the "economic relevance" exception, permits a company to exclude a proposal that "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."

Based on a review of the rescinded SLBs and staff experience applying the guidance in them, we are returning to our longstanding approach, prior to SLB No. 14I, of analyzing Rule 14a-8(i)(5) in a manner we believe is consistent with Lovenheim v. Iroquois Brands, Ltd.[12] As a result, and consistent with our pre-SLB No. 14I approach and Lovenheim, proposals that raise issues of broad social or ethical concern related to the company's business may not be excluded, even if the relevant business falls below the economic thresholds of Rule 14a-8(i)(5). In light of this approach, the staff will no longer expect a board analysis for its consideration of a no-action request under Rule 14a-8(i)(5).

D. Rule 14a-8(d)[13]

1. Background

Rule 14a-8(d) is one of the procedural bases for exclusion of a shareholder proposal in Rule 14a-8. It provides that a "proposal, including any accompanying supporting statement, may not exceed 500 words."

2. The Use of Images in Shareholder Proposals

Questions have arisen concerning the application of Rule 14a-8(d) to proposals that include graphs and/or images.[14] The staff has expressed the view that the use of "500 words" and absence of express reference to graphics or images in Rule 14a-8(d) do not prohibit the inclusion of graphs and/or images in proposals.[15] Just as companies include graphics that are not expressly permitted under the disclosure rules, the Division is of the view that Rule 14a-8(d) does not preclude shareholders from using graphics to convey information about their proposals.[16]

The Division recognizes the potential for abuse in this area. The Division believes, however, that these potential abuses can be addressed through other provisions of Rule 14a-8. For example, exclusion of graphs and/or images would be appropriate under Rule 14a-8(i)(3) where they:

- make the proposal materially false or misleading;
- render the proposal so inherently vague or indefinite that neither the stockholders voting on the proposal, nor the company in implementing it, would be able to determine with any reasonable certainty exactly what actions or measures the proposal requires;
- directly or indirectly impugn character, integrity or personal reputation, or directly or indirectly make charges concerning improper, illegal, or immoral conduct or association, without factual foundation; or
- are irrelevant to a consideration of the subject matter of the proposal, such that there is a strong likelihood that a reasonable shareholder would be uncertain as to the matter on which he or she is being asked to vote.[17]

Exclusion would also be appropriate under Rule 14a-8(d) if the total number of words in a proposal, including words in the graphics, exceeds 500.

E. Proof of Ownership Letters[18]

In relevant part, Rule 14a-8(b) provides that a proponent must prove eligibility to submit a proposal by offering proof that it "continuously held" the required amount of securities for the required amount of time.[19]

In Section C of SLB No. 14F, we identified two common errors shareholders make when submitting proof of ownership for purposes of satisfying Rule 14a-8(b)(2).[20] In an effort to reduce such errors, we provided a suggested format for shareholders and their brokers or banks to follow when supplying the required verification of ownership.[21] Below, we have updated the suggested format to reflect recent changes to the ownership

thresholds due to the Commission's 2020 rulemaking.[22] We note that brokers and banks are not required to follow this format.

> "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]."

Some companies apply an overly technical reading of proof of ownership letters as a means to exclude a proposal. We generally do not find arguments along these lines to be persuasive. For example, we did not concur with the excludability of a proposal based on Rule 14a-8(b) where the proof of ownership letter deviated from the format set forth in SLB No. 14F.[23] In those cases, we concluded that the proponent nonetheless had supplied documentary support sufficiently evidencing the requisite minimum ownership requirements, as required by Rule 14a-8(b). We took a plain meaning approach to interpreting the text of the proof of ownership letter, and we expect companies to apply a similar approach in their review of such letters.

While we encourage shareholders and their brokers or banks to use the sample language provided above to avoid this issue, such formulation is neither mandatory nor the exclusive means of demonstrating the ownership requirements of Rule 14a-8(b).[24] We recognize that the requirements of Rule 14a-8(b) can be quite technical. Accordingly, companies should not seek to exclude a shareholder proposal based on drafting variances in the proof of ownership letter if the language used in such letter is clear and sufficiently evidences the requisite minimum ownership requirements.

We also do not interpret the recent amendments to Rule 14a-8(b)[25] to contemplate a change in how brokers or banks fulfill their role. In our view, they may continue to provide confirmation as to how many shares the proponent held continuously and need not separately calculate the share valuation, which may instead be done by the proponent and presented to the receiving issuer consistent with the Commission's 2020 rulemaking.[26] Finally, we believe that companies should identify any specific defects in the proof of ownership letter, even if the company previously sent a deficiency notice prior to receiving the proponent's proof of ownership if such deficiency notice did not identify the specific defect(s).

F. Use of E-mail

Over the past few years, and particularly during the pandemic, both proponents and companies have increasingly relied on the use of emails to submit proposals and make other communications. Some companies and proponents have expressed a preference for emails, particularly in cases where offices are closed. Unlike the use of third-party mail delivery that provides the sender with a proof of delivery, parties should keep in mind that methods for the confirmation of email delivery may differ. Email delivery confirmations and company server logs may not be sufficient to prove receipt of emails as they only serve to prove that emails were sent. In addition, spam filters or incorrect email addresses can prevent an email from being delivered to the appropriate recipient. The staff therefore suggests that to prove delivery of an email for purposes of Rule 14a-8, the sender should seek a reply e-mail from the recipient in which the recipient acknowledges receipt of the e-mail. The staff also encourages both companies and shareholder proponents to acknowledge receipt of emails when requested. Email read receipts, if received by the sender, may also help to establish that emails were received.

1. Submission of Proposals

Rule 14a-8(e)(1) provides that in order to avoid controversy, shareholders should submit their proposals by means, including electronic means, that permit them to prove the date of delivery. Therefore, where a dispute arises regarding a proposal's timely delivery, shareholder proponents risk exclusion of their proposals if they do not receive a confirmation of receipt from the company in order to prove timely delivery with email submissions. Additionally, in those instances where the company does not disclose in its proxy statement an email address for submitting proposals, we encourage shareholder proponents to contact the company to obtain the correct email

address for submitting proposals before doing so and we encourage companies to provide such email addresses upon request.

2. Delivery of Notices of Defects

Similarly, if companies use email to deliver deficiency notices to proponents, we encourage them to seek a confirmation of receipt from the proponent or the representative in order to prove timely delivery. Rule 14a-8(f)(1) provides that the company must notify the shareholder of any defects within 14 calendar days of receipt of the proposal, and accordingly, the company has the burden to prove timely delivery of the notice.

3. Submitting Responses to Notices of Defects

Rule 14a-8(f)(1) also provides that a shareholder's response to a deficiency notice must be postmarked, or transmitted electronically, no later than 14 days from the date of receipt of the company's notification. If a shareholder uses email to respond to a company's deficiency notice, the burden is on the shareholder or representative to use an appropriate email address (e.g., an email address provided by the company, or the email address of the counsel who sent the deficiency notice), and we encourage them to seek confirmation of receipt.

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[1] Release No. 34-40018 (May 21, 1998) (the "1998 Release"). Stated a bit differently, the Commission has explained that "[t]he 'ordinary business' exclusion is based in part on state corporate law establishing spheres of authority for the board of directors on one hand, and the company's shareholders on the other." Release No. 34-39093 (Sept. 18, 1997).

[2] For example, SLB No. 14K explained that the staff "takes a company-specific approach in evaluating significance, rather than recognizing particular issues or categories of issues as universally 'significant.'" Staff Legal Bulletin No. 14K (Oct. 16, 2019).

[3] Release No. 34-12999 (Nov. 22, 1976) (the "1976 Release") (stating, in part, "proposals of that nature [relating to the economic and safety considerations of a nuclear power plant], as well as others that have major implications, will in the future be considered beyond the realm of an issuer's ordinary business operations").

[4] 1998 Release ("[P]roposals . . . focusing on sufficiently significant social policy issues. . .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").

[5] *See, e.g., Dollar General Corporation* (Mar. 6, 2020) (granting no-action relief for exclusion of a proposal requesting the board to issue a report on the use of contractual provisions requiring employees to arbitrate employment-related claims because the proposal did not focus on specific policy implications of the use of arbitration at the company). We note that in the 1998 Release the Commission stated: "[P]roposals relating to [workforce management] 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." Matters related to employment discrimination are but one example of the workforce management proposals that may rise to the level of transcending the company's ordinary business operations.

[6] 1998 Release.

[7] *ConocoPhillips Company* (Mar. 19, 2021).

[8] *See* 1998 Release and 1976 Release.

[9] *See, e.g., PayPal Holdings, Inc.* (Mar. 6, 2018) (granting no-action relief for exclusion of a proposal asking the company to prepare a report on the feasibility of achieving net-zero emissions by 2030 because the staff concluded it micromanaged the company); *Devon Energy Corporation* (Mar. 4, 2019) (granting no-action relief for

exclusion of a proposal requesting that the board in annual reporting include disclosure of short-, medium- and long-term greenhouse gas targets aligned with the Paris Climate Agreement because the staff viewed the proposal as requiring the adoption of time-bound targets).

[10] *See ConocoPhillips Company* (Mar. 19, 2021).

[11] To be more specific, shareholder proponents have expressed concerns that a proposal that was broadly worded might face exclusion under Rule 14a-8(i)(10). Conversely, if a proposal was too specific it risked exclusion under Rule 14a-8(i)(7) for micromanagement.

[12] 618 F. Supp. 554 (D.D.C. 1985).

[13] This section previously appeared in SLB No. 14I (Nov. 1, 2017) and is republished here with only minor, conforming changes.

[14] Rule 14a-8(d) is intended to limit the amount of space a shareholder proposal may occupy in a company's proxy statement. *See* 1976 Release.

[15] *See General Electric Co.* (Feb. 3, 2017, Feb. 23, 2017); *General Electric Co.* (Feb. 23, 2016). These decisions were consistent with a longstanding Division position. *See Ferrofluidics Corp.* (Sept. 18, 1992).

[16]Companies should not minimize or otherwise diminish the appearance of a shareholder's graphic. For example, if the company includes its own graphics in its proxy statement, it should give similar prominence to a shareholder's graphics. If a company's proxy statement appears in black and white, however, the shareholder proposal and accompanying graphics may also appear in black and white.

[17] *See General Electric Co.* (Feb. 23, 2017).

[18] This section previously appeared in SLB No. 14K (Oct.16, 2019) and is republished here with minor, conforming changes. Additional discussion is provided in the final paragraph.

[19] Rule 14a-8(b) requires proponents to have 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.

[20]Staff Legal Bulletin No. 14F (Oct. 18, 2011).

[21]The Division suggested the following formulation: "As of [date the proposal is submitted], [name of shareholder] held, and has held continuously for at least one year, [number of securities] shares of [company name] [class of securities]."

[22] Release No. 34-89964 (Sept. 23, 2020) (the "2020 Release").

[23] *See Amazon.com, Inc.* (Apr. 3, 2019); *Gilead Sciences, Inc.* (Mar. 7, 2019).

[24] *See* Staff Legal Bulletin No.14F, n.11.

[25] *See* 2020 Release.

[26] 2020 Release at n.55 ("Due to market fluctuations, the value of a shareholder's investment in a company may vary throughout the applicable holding period before the shareholder submits the proposal. In order to determine whether the shareholder satisfies the relevant ownership threshold, the shareholder should look at whether, on any date within the 60 calendar days before the date the shareholder submits the proposal, the shareholder's investment is valued at the relevant threshold or greater. For these purposes, companies and shareholders should determine the market value by multiplying the number of securities the shareholder continuously held for the relevant period by the highest selling price during the 60 calendar days before the shareholder submitted the proposal. For purposes of this calculation, it is important to note that a security's highest selling price is not necessarily the same as its highest closing price.") (citations omitted).

Modified: Nov. 3, 2021

EXHIBIT E

Proposed Amendments to the Certificate of Incorporation

Certificate of Amendment to the
Third Amended and Restated Certificate of Incorporation
of
AMC Entertainment Holdings, Inc.

AMC Entertainment Holdings, Inc., a corporation organized and existing under and by virtue of the General Corporation Law of the State of Delaware (the "Corporation"), does hereby certify:

1. This Certificate of Amendment amends the Third Amended and Restated Certificate of Incorporation of the Corporation, as amended by the Certificate of Amendment dated July 29, 2020, and as further amended by the Certificate of Amendment dated January 22, 2021 (as amended, the "Certificate of Incorporation") as follows:

   i. Section A of Article IV of the Certificate of Incorporation is hereby replaced in its entirety with the following:

   "A. The total number of shares of capital stock that the Corporation has authority to issue is 600,000,000 shares, consisting of (i) 550,000,000 shares of Class A Common Stock, par value $0.01 per share (the "Common Stock") and (ii) 50,000,000 shares of Preferred Stock, par value $0.01 per share (the "Preferred Stock")."

   ii. That Article IV of the Certificate of Incorporation is hereby amended by a new Section P stating the following:

   "P. REVERSE SPLIT. Upon the effectiveness of this Certificate of Amendment (the "Effective Time"), the shares of Common Stock issued and outstanding immediately prior to the Effective Time and the shares of Common Stock issued and held in the treasury of the Corporation immediately prior to the Effective Time are reclassified into a smaller number of shares such that every ten (10) shares of Common Stock immediately prior to the Effective Time is reclassified into one (1) share of Common Stock (the "Reverse Stock Split"). No fractional shares of Common Stock will be issued in connection with the Reverse Stock Split. In lieu of any fractional share of Common Stock that a stockholder would otherwise be entitled to receive as a result of the Reverse Stock Split, the Corporation shall arrange for the disposition of fractional interests by causing the transfer agent to (i) aggregate and sell such fractional interests and (ii) allocate and distribute the net proceeds from such sale among the holders of fractional interests as their respective interests appear on the records books of the Corporation."

2. The foregoing amendments to the Certificate of Incorporation were duly adopted in accordance with the provisions of Section 242 of General Corporation Law of the State of Delaware.

3. The foregoing amendments to the Certificate of Incorporation shall become effective at 12:01 a.m. (New York City time) on [●], 2023.

IN WITNESS WHEREOF, the Corporation has caused this Certificate of Amendment to the Certificate of Incorporation to be executed by the undersigned officer, duly authorized, as of the [●] day of [●], 2023.

AMC ENTERTAINMENT HOLDINGS, INC.

By: _____

Name: Kevin M. Connor

Title: Senior Vice President, General Counsel & Secretary

EXHIBIT F

Second Response Letter

December 27, 2022

AMC Entertainment Holdings, Inc.
Attention: Mr. Kevin Connor – General Counsel & Senior Vice President
11500 Ash Street
Leawood, KS 66211
kconnor@amctheatres.com
Via Email & FEDEX

RE: 2023 Annual Meeting Rule 14a-8 Proxy Proposal for the Convertibility of AMC Preferred Equity Units

Mr. Connor:

Happy Holidays and I write in response to your letter dated 12/13/22 and transmitted on 12/14/22. In addition, I have a reviewed, on a preliminary basis, the AMC Entertainment Holdings, Inc. ("AMC" or the "Company") forward purchase agreement dated 12/22/22 (the "Forward Purchase Agreement") with Antara Capital, LP ("Antara"), pursuant to which the Company will (i) sell to Antara 106,595,106 AMC Preferred Equity Units ("APEs") for an aggregate purchase price of $75.1 million and (ii) simultaneously purchase from the Antara, on a private basis, $100 million aggregate principal amount of the Company's 10%/12% Cash/PIK Toggle Second Lien Notes due 2026 in exchange for 91,026,191 APEs. Specifically, the Forward Purchase Agreement stipulates *"promptly after the Closing Date, the Company shall (i) call a special meeting of the Company's stockholders (the "Special Meeting") for a vote to amend the Company's amended and restated certificate of incorporation to increase the number of authorized shares of the Company's Class A common stock ("Common Stock") to a number at least sufficient to permit the full conversion of the then-outstanding shares of Preferred Stock into Common Stock*." Based on my rough math derived from the Forward Purchase Agreement transaction milestones, it appears the AMC Special Meeting is currently scheduled to occur no later than the second week of May 2023.

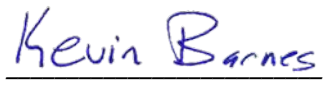
This holiday season has also reminded me of my dearly departed grandfather, Vern, who always wore both a tartan plaid belt and bright red suspenders for Christmas celebrations to both maximize the spirit of the season and to also prudently avoid any potential wardrobe malfunctions while gallivanting around the Christmas tree with his rambunctious grandchildren. In light of the continued $APE pricing dislocation relative to $AMC common shares, it seems prudent for AMC to adopt a similar "belt and suspenders" approach to ensuring the full convertibility of its Preferred Stock into Common Stock on an accelerated basis. Specifically, due to the uncertainty of common shareholder affirmative participation at the pending Special Meeting (as demonstrated by <24% "For" votes cast from eligible common shares outstanding for the re-election of Mr. Adam Aron to the

Board of Directors at the 2022 Annual Meeting[1]), it seems beneficial to all AMC stakeholders to ensure proposals for the full convertibility of the Company's Preferred Stock into Common Stock is on the agenda for the pending Special Meeting, and, if necessary, also at the 2023 Annual Meeting. It would be highly unfortunate if the Special Meeting fails to meet the necessary shareholder quorum for convertibility approval due to low turn-out, and then due to Delaware General Corporate Law advance notice and record date timing requirements, AMC shareholders had to wait until the 2024 Annual Meeting to vote again on this critical issue.

To reiterate my follow-up letter dated 12/02/22, as AMC failed to respond within the Exchange Act Rule 14a-8(f) mandated 14 calendar days of receipt of my original stockholder proposal dated 11/09/22 (the "Proposal"), AMC's purported "Notice of Deficiency" dated 11/30/22 is inherently void and, moreover, is predicated on fatally flawed rationale. Thus, while I remain hopeful a successful voting outcome at the Special Meeting for full $APE convertibility makes this a mute issue for the 2023 Annual Meeting, I am prepared, if necessary, to vigorously and publicly dispute any no-action request by AMC to the staff of the SEC regarding my critical stockholder Proposal. Moreover, I would note the AMC Board of Directors now apparently i) appreciates, under its business judgement discretion, the critical importance of prompt full $APE convertibility, ii) acknowledges the possibility of full $APE convertibility under Delaware General Corporation Law and amendment of AMC's Third Amended and Restated Certificate of Incorporation, and iii) supports taking these necessary convertibility steps based on the Antara Forward Purchase Agreement dated 12/22/22.

Please promptly confirm receipt of this letter and I look forward to further discussing this critical Proposal at your earliest convenience during regular business hours. For reference, my email address is [redacted] and my direct is [redacted] (but I may have delayed access to voicemail though 01/04/23 due to international travel plans).

Respectfully,



Kevin Barnes

CC:
Mr. Adam M. Aron, Chief Executive Officer & Chairman of the Board of Directors, *aaron@amctheaters.com*
Sean Goodman, Executive Vice President and Chief Financial Officer, *sgoodman@amctheaters.com*
John Merriwether, Vice President, Capital Markets and Investor Relations, *jmerriwether@amctheatres.com*

[1] AMC 8-K Dated June 17, 2022, available via: *https://www.sec.gov/ix?doc=/Archives/edgar/data/1411579/000155837022010100/amc-20220616x8k.htm*

EXHIBIT G

Opinion of Delaware Counsel

RICHARDS LAYTON & FINGER

January 30, 2023

AMC Entertainment Holdings, Inc.
One AMC Way
11500 Ash Street, Leawood, KS

Re: Stockholder Proposal Submitted By Kevin Barnes

Ladies and Gentlemen:

We have acted as special Delaware counsel to AMC Entertainment Holdings, Inc., a Delaware corporation (the "Company"), in connection with the proposal (the "Proposal") submitted by Kevin Barnes (the "Proponent") that Proponent intends to present at the Company's 2023 annual meeting of stockholders. In this connection, you have requested our opinion as to a certain matter under the General Corporation Law of the State of Delaware (the "General Corporation Law").

For purposes of rendering our opinion as expressed herein, we have been furnished and have reviewed the following documents:

(i) the Third Amended and Restated Certificate of Incorporation of the Company as filed with the Secretary of State of the State of Delaware on December 17, 2013, as amended (the "Certificate of Incorporation");

(ii) the Third Amended and Restated Bylaws of the Company, as amended (the "Bylaws"); and

(iii) the Proposal.

With respect to the foregoing documents, we have assumed: (a) the genuineness of all signatures, and the incumbency, authority, legal right and power and legal capacity under all applicable laws and regulations, of each of the officers and other persons and entities signing or whose signatures appear upon each of said documents as or on behalf of the parties thereto; (b) the conformity to authentic originals of all documents submitted to us as certified, conformed, photostatic, electronic or other copies; and (c) that the foregoing documents, in the forms submitted to us for our review, have not been and will not be altered or amended in any respect material to our opinion as expressed herein. For the purpose of rendering our opinion as expressed herein, we have not reviewed any document other than the documents set forth above, and, except as set forth in this opinion, we assume there exists no provision of any such other document that bears upon or is inconsistent with our opinion as expressed herein. We have conducted no independent factual investigation of our own, but rather have relied solely upon the

foregoing documents, the statements and information set forth therein, and the additional matters recited or assumed herein, all of which we assume to be true, complete and accurate in all material respects.

The Proposal

The Proposal[1] reads as follows:

> In order to allow the free elective convertibility of APE shares so stockholders can potentially realize their significant intrinsic value, AMC's Board of Directors shall expeditiously take the steps necessary, including, but not limited to, promptly calling a Special Meeting of stockholders, to effectuate the revision of the Third Amended and Restated Certificate of Incorporation to increase the total number of shares of Class A Common Stock (par value $0.01 per share) the Company is authorized to issue by the share-count of the APEs outstanding at the 2023 Annual Shareholder meeting, [531,716,231 APEs outstanding as of 11/08/22] shares, to a total of approximately [524,173,073 currently authorized Class A Common Stock + 531,716,231 APEs outstanding = 1,055,889,304] shares of Class A Common Stock.

The Proposal mandates that the Board of Directors of the Company (the "Board") take the steps necessary to adopt an amendment to the Certificate of Incorporation (the "Proposed Charter Amendment") that would increase the total authorized shares of the Company's Class A Common Stock.

Discussion

You have asked our opinion as to whether implementation of the Proposal would violate the General Corporation Law. For the reasons set forth below, in our opinion, the implementation of the Proposal by the Company would violate the General Corporation Law.

I. The Proposal, If Adopted and Implemented, Would Violate Delaware Law

The Proposal purports to obligate the Board to take the required steps to amend the Certificate of Incorporation to increase the authorized number of shares of Class A Common Stock. Specifically, the Proposal provides that "AMC's Board of Directors *shall* expeditiously take the steps necessary … to effectuate the revision of the Third Amended and Restated Certificate of Incorporation to increase the total number of shares of Class A Common Stock (par value $0.01 per share) the Company is authorized to issue[.]" See The Proposal (emphasis

[1] Proponent additionally put forth a second proposal ("Proposal 2"), which is not addressed in this Opinion. Proposal 2 reads as follows: "Adjournment of the 2023 Annual Meeting to a later date or dates, if necessary or appropriate, to solicit additional proxies if there is insufficient vote participation to adopt the Proposal #1."

added). Such a mandate from the stockholders to the Board impermissibly requires the Board to abdicate its statutory and fiduciary obligations to determine the advisability of the Proposed Charter Amendment prior to submitting it to the stockholders (and, even if the Board were to determine that such amendment is advisable, the Company could not guarantee that the stockholders of the Company would adopt such amendment). As a result, the Proposal, if implemented, would violate Delaware law.

A. Requirements Under § 242 of the General Corporation Law

Under Delaware law, in general, neither the Board nor the stockholders have the unilateral power to amend the Certificate of Incorporation.[2] Instead, under Section 242 of the General Corporation Law, to become effective, an amendment to the Certificate of Incorporation must be "declared advisable" by the Board and, only after such declaration of advisability, submitted to stockholders for adoption. Specifically, Section 242 provides:

> Every amendment [to the Certificate of Incorporation] . . . shall be made and effected in the following manner: (1) if the corporation has capital stock, its board of directors shall adopt a resolution setting forth the amendment proposed, declaring its advisability, and either calling a special meeting of the stockholders entitled to vote in respect thereof for consideration of such amendment or directing that the amendment proposed be considered at the next annual meeting of the stockholders. . . . If a majority of the outstanding stock entitled to vote thereon, and a majority of the outstanding stock of each class entitled to vote thereon as a class has been voted in favor of the amendment, a certificate setting forth the amendment and certifying that such amendment has been duly adopted in accordance with this section shall be executed, acknowledged and filed and shall become effective in accordance with § 103 of this title.

8 Del. C. § 242(b)(1); see 1 R. Franklin Balotti & Jesse A. Finkelstein, The Delaware Law of Corporations & Business Organizations § 8.10 (4th Ed. 2023-1 Supp.) ("After the corporation has received payment for its stock an amendment of its certificate of incorporation is permitted only in accordance with Section 242 of the General Corporation Law."). Only if both the Board and the stockholders adopt the amendment has it been properly authorized and become effective. Because the implementation of the Proposal would require the Board to exceed its authority under Delaware law, the Proposal, if adopted by the stockholders and implemented by the Board, would be invalid under the General Corporation Law.

[2] There are a few limited circumstances not implicated here where the board of directors of a Delaware corporation may amend the certificate of incorporation without approval of the stockholders.

The requirement that the Board first declare an amendment advisable is a board decision, not a stockholder decision. As the Court stated in Williams v. Geier, 671 A.2d 1368 (Del. 1996):

> Like the statutory scheme relating to mergers under 8 Del. C. § 251, it is significant that two discrete corporate events must occur, in precise sequence, to amend the certificate of incorporation under 8 Del. C. § 242: First, the board of directors must adopt a resolution declaring the advisability of the amendment and calling for a stockholder vote. Second, a majority of the outstanding stock entitled to vote must vote in favor. The stockholders may not act without prior board action.

Id. at 1381. See also Stroud v. Grace, 606 A.2d 75, 87 (Del. 1992) ("When a company seeks to amend its certificate of incorporation, Section 242(b)(1) requires the board to ... include a resolution declaring the advisability of the amendment...."); Klang v. Smith's Food & Drug Centers, Inc., C.A. No. 15012, slip. op. at 40 (Del. Ch. May 13, 1997) ("Pursuant to 8 Del. C. § 242, amendment of a corporate certificate requires a board of directors to adopt a resolution which declares the advisability of the amendment and calls for a shareholder vote. Thereafter, in order for the amendment to take effect, a majority of outstanding stock must vote in its favor."); David A. Drexler et al., Delaware Corporation Law & Practice, § 32.04 (2022) ("The board must duly adopt resolutions which (i) set forth the proposed amendment, (ii) declare its advisability, and (iii) either call a special meeting of stockholders to consider the proposed amendment or direct that the matter be placed on the agenda at the next annual meeting of stockholders. This sequence must be followed precisely."); Balotti & Finkelstein, The Delaware Law of Corporations & Business Organizations, § 9.13 (4th Ed. 2023-1 Supp.) ("Section 251(b) parallels the requirement in Section 242, requiring that a board deem a proposed amendment to the certificate of incorporation to be 'advisable' before it can be submitted for a vote by stockholders."). Because a board of directors has a statutory duty to determine that an amendment is advisable prior to submitting it for stockholder action, the Board could not purport to bind itself to adopt the Proposed Charter Amendment.

This was made clear by the Delaware Supreme Court in Smith v. Van Gorkom, where the Court found the analogous declaration of advisability requirement in the merger statutes to prohibit the board from submitting to stockholders for approval a merger agreement without an affirmative recommendation. See Smith v. Van Gorkom, 488 A.2d 858, 888 (Del. 1985) (The board could not "take a neutral position and delegate to the stockholders the unadvised decision as to whether to accept or reject the merger."). Following Van Gorkom, Section 251 of the General Corporation Law was amended to permit a merger agreement to be submitted to stockholders if the board changed its recommendation after its initial recommendation which made clear that an initial recommendation is required. Notably, no similar amendment was made to the amendment provisions of Section 242, so an amendment to the certificate of incorporation may not legally be submitted to stockholders without the Board's declaration of advisability.

B. Fiduciary Duties of the Board When Considering Charter Amendments

The decision to propose an amendment to the certificate of incorporation and declare its advisability is a managerial duty reserved to the board of directors by statute; it therefore falls within the exclusive province of the board. As the Court of Chancery stated in the 1990 case of Paramount Communications, Inc. v. Time Inc., 1989 WL 79880, *30 (Del. Ch. July 14, 1989) aff'd 571 A.2d 1140 (Del. 1989):

> The corporation law does not operate on the theory that directors, in exercising their powers to manage the firm, are obligated to follow the wishes of a majority of shares. In fact, directors, not shareholders, are charged with the duty to manage the firm.

With respect to the decision whether to submit the Proposed Charter Amendment to stockholders for consideration, the Delaware courts have been clear that stockholders may not direct or commit the Board with respect to matters for which they have statutory responsibility and fiduciary duties to make their best judgment. Directors cannot be required to delegate or abdicate their decision-making authority to the stockholders with respect to matters which they are expressly required under the General Corporation Law to approve before stockholder action can be taken. See Rosenblatt v. Getty Oil Co., 1983 WL 8936, at *18-19 (Del. Ch. Sept. 19, 1983) aff'd 493 A.2d 929 (Del. 1985) ("[D]irectors cannot lawfully agree to surrender to others the duties of corporate management which the statutes impose upon them."); Abercrombie v. Davies, 123 A.2d 893, 899-900 (Del. Ch. 1956) rev'd on other grounds, 130 A.2d 338 (Del. 1957) ("So long as the corporate form is used as presently provided by our statutes this Court cannot give legal sanction to agreements which have the effect of removing from directors in a very substantial way their duty to use their own best judgment on management matters. . . . [Stockholders] cannot under the present law commit the directors to a procedure which might force them to vote contrary to their own best judgment."); see also Paramount Commc'ns Inc., 1989 WL 79880, at *30 ("The corporation law does not operate on the theory that directors, in exercising their powers to manage the firm, are obligated to follow the wishes of a majority of shares."); Air Prods. & Chems., Inc. v. Airgas, Inc., 16 A.3d 48, 124 (Del. Ch. 2011) ("[T]he fiduciary duty to manage a corporate enterprise includes the selection of a time frame for achievement of corporate goals. That duty may not be delegated to the stockholders.") (quoting Paramount Commc'ns, Inc. v. Time, Inc., 571 A.2d 1140, 1154 (Del. 1990)).

In a similar situation, the Delaware Supreme Court invalidated a proposed bylaw that would have impermissibly infringed on the directors' exercise of their fiduciary duties. CA, Inc. v. AFSCME Employees Pension Plan, 953 A.2d 227, 237 (Del. 2008). In CA, the Court held that a proposed bylaw, which would have required the board to pay a dissident stockholder's proxy expenses for running a successful "short slate," impermissibly infringed on the directors' exercise of their fiduciary duties because it would have required the board to expend corporate funds even in cases where the board of directors believed doing so would not be in the best interests of the corporation and its stockholders. Id. at 240. Like the proposed bylaw in CA, to the extent the Proposal purports to require the Board to approve and declare advisable the Proposed Charter Amendment in order to increase the authorized shares of the Company's Class A Common Stock, it would purport to commit the directors to subordinate

their fiduciary duties to act in the best interests of the Company. Such a result would violate Delaware law. See, e.g., Spiegel v. Buntrock, 571 A.2d 767, 772-73 (Del. 1990) ("A basic principle of the General Corporation Law of the State of Delaware is that directors, rather than shareholders, manage the business and affairs of the corporation."); Pogostin v. Rice, 480 A.2d 619, 624 (Del. 1984) ("[T]he bedrock of the General Corporation Law of the state of Delaware is the rule that the business and affairs of a corporation are managed by and under the direction of its board.").

To the extent the Proposal purports to require the Board to take the steps necessary to adopt the Proposed Charter Amendment, it purports to require the Board to defer to the views of a majority of the Corporation's stockholders without regard to the Board's fiduciary duties and whether the Board's own business judgment would counsel against amending the Certificate of Incorporation in that manner. See, e.g., Nagy v. Bistricer, 770 A.2d 43, 62, 64 (Del. Ch. 2000) (holding that directors breached their fiduciary duties to the corporation by abdicating their duty to determine a fair merger price and noting that "[t]his abdication is inconsistent with the [Company] board's non-delegable duty to approve the [m]erger only if the [m]erger was in the best interests of [the Company] and its stockholders."). Unlike the Board, stockholders are not acting as fiduciaries when they vote. In fact, the stockholders are free to vote in their own economic self-interest, without regard to the best interests of the Company or the other stockholders generally. See Williams v. Geier, 671 A.2d at 1380-81 ("Stockholders (even a controlling stockholder bloc) may properly vote in their own economic interest, and majority stockholders are not to be disenfranchised because they may reap a benefit from corporate action which is regular on its face"); cf. Kahn v. Lynch Communication Systems, Inc., 638 A.2d 1110, 1113 ("This Court has held that 'a shareholder owes a fiduciary duty only if it owns a majority interest in or exercises control over the business affairs of the corporation'") (internal citations omitted).

In light of the fact that the Company's stockholders would be entitled to vote their shares in their own self-interest on the Proposal, allowing the stockholders, through the implementation of the Proposal, to effectively direct the Board to propose an amendment to the Certificate of Incorporation and declare such amendment advisable would have the result of requiring the Board to "put" to the stockholders the duty to make a decision that the Board is solely responsible to make under Section 242 of the General Corporation Law. See 8 Del. C. § 242. The Delaware Supreme Court has stated that a board may not, consistent with its fiduciary duties, simply "put" to stockholders matters for which they have management responsibility under Delaware law. See Smith v. Van Gorkom, 488 A.2d 858, 887 (Del. 1985) (holding board not permitted to take a noncommittal position on a merger and "simply leave the decision to [the] stockholders").[3] Because the Board owes a fiduciary duty to the Company and

[3] The Court of Chancery has, however, held that a board of directors could agree, by adopting a board policy, to submit the final decision on whether or not to adopt a stockholder rights plan to a vote of the stockholders. See Unisuper Ltd. v. News Corp., C.A. No. 1699 (Del. Ch. Dec. 20, 2005). The case of a board reaching an agreement with stockholders what is advisable and in the best interests of the corporation and its stockholders—as was the case in Unisuper—in order to induce the stockholders to act in a certain way which the board believed to

"all" stockholders, the Board must also take into account the interests of the stockholders who did not vote in favor of the proposals, and those of the corporation generally.

The Delaware courts have consistently held that directors who abdicate their duty to determine the advisability of a merger agreement prior to submitting the agreement for stockholder action breach their fiduciary duties under Delaware law. See, e.g., Nagy v. Bistricer, 770 A.2d 43, 62 (Del. Ch. 2000) (finding delegation by target directors to acquiring corporation of the power to set the amount of merger consideration to be received by its stockholders in a merger to be "inconsistent with the [] board's non-delegable duty to approve the [m]erger only if the [m]erger was in the best interests of [] [the corporation] and its stockholders") (emphasis added); accord Jackson v. Turnbull, C.A. No. 13042, slip op. at 41 (Del. Ch. Feb. 8, 1994), aff'd, 653 A.2d 306 (Del. 1994) (TABLE) (finding that a board cannot delegate its authority to set the amount of consideration to be received in a merger approved pursuant to Section 251(b) of the General Corporation Law); Smith, 488 A.2d at 888 (finding that a board cannot delegate to stockholders the responsibility under Section 251 of the General Corporation Law to determine that a merger agreement is advisable). Indeed, a board of directors of a Delaware corporation cannot even delegate the power to determine the advisability of an amendment to its certificate of incorporation to a committee of directors under Section 141(c) of the General Corporation Law. See 8 Del. C. § 141(c)(1) ("but no such committee shall have the power or authority in reference to amending the certificate of incorporation"); see also 8 Del. C. § 141(c)(2) ("but no such committee shall have the power or authority in reference to the following matter: (i) approving or adopting, or recommending to the stockholders, any action or matter (other than the election or removal of directors) expressly required by this chapter to be submitted to stockholders for approval"). A similar analysis should apply to the board's duty to consider the advisability of an amendment to the certificate of incorporation prior to submitting it to a stockholder vote.

II. The Proposal is Not a Proper Matter for Stockholder Action Under Delaware Law

As set forth in Section I above, the Proposal, if implemented, would violate Delaware law. Accordingly, the Proposal, in our opinion, is an improper subject for stockholder action under Delaware law.

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be in the best interests of stockholders, is different from the case of stockholders attempting to unilaterally direct the Board's statutory duty to determine whether an amendment to the corporation's certificate of incorporation is advisable (as is the case with the Proposal).

CONCLUSION

Based upon and subject to the foregoing and subject to the limitations stated herein, it is our opinion that the Proposal, if implemented, would violate Delaware law. The foregoing opinion is limited to the General Corporation Law. We have not considered and express no opinion on any other laws or the laws of any other state or jurisdiction, including federal laws regulating securities or any other federal laws, or the rules and regulations of stock exchanges or of any other regulatory body.

The foregoing opinion is rendered solely for your benefit in connection with the matters addressed herein. We understand that you may furnish a copy of this opinion letter to the Securities and Exchange Commission and the Proponent in connection with the matters addressed herein, and we consent to your doing so. Except as stated in this paragraph, this opinion letter may not be furnished or quoted to, nor may the foregoing opinion be relied upon by, any other person or entity for any purpose without our prior written consent.

Very truly yours,



MDA/SCH

February 19, 2023

U.S. Securities and Exchange Commission
Division of Corporation Finance
Office of Chief Counsel
100 F Street, NE
Washington, D.C. 20549
Via Email: *shareholderproposals@sec.gov*

RE: AMC Entertainment Holdings, Inc. – Requested Exclusion of Stockholder Proposal Submitted by Kevin Barnes under Securities Exchange Act of 1934 – Rule 14a-8

Ladies and Gentlemen:

As a 💎🤲 and a retail investor, I, Kevin Barnes, (the "Proponent"), am pleased to submit this response letter pursuant to Rule 14a-8(k) promulgated under the Securities Exchange Act of 1934, as amended (the "Exchange Act"), in response to the AMC Entertainment Holdings, Inc. ("AMC" or the "Company") letter dated 01/30/23 (the "AMC Exclusion Letter"), which seeks to exclude the Proponent's properly submitted Rule 14a-8 stockholder proposal and supporting statement (the "Proposal") from the proxy materials to be distributed by the Company in connection with its 2023 Annual Meeting of Stockholders (collectively, the "2023 Proxy Materials"). In summary, the Proposal calls for the AMC Board of Directors to take the steps necessary to amend AMC's Third Amended and Restated Certificate of Incorporation (the "Charter") to increase the number of authorized shares of AMC Class A common stock, par value $0.01 per share (the "Common Stock") in order to convert all outstanding AMC Preferred Equity Units ("APE" or "APEs") into shares of Common Stock.

After submission of the Proposal and the AMC Exclusion Letter, this week on Wednesday 02/14/23, AMC filed with the SEC a Form DEF-14A Proxy for a Special Meeting currently scheduled for 03/14/23, which seeks cross-conditional stockholder approval to Proposal Number 1) increase the number of the Company's authorized shares of common stock, and also Proposal Number 2) effectuate a 1-for-10 reverse stock split, for the conversion

of the APE preferred units into shares of Common Stock.[1] Unlike Proponent's narrowly crafted Proposal on APE convertibility, the 03/14/23 Special Meeting proposals have cross-conditioned both approvals on each other, such the approval of both the authorized share count and reverse stock split is required for each of them to take effect. Moreover, because the proposed 03/14/23 Special Meeting voting results are likely at least a month away, it remains unknown if the Proponent's Proposal will be substantially implemented by the commencement of the Company's 2023 Annual Meeting of Stockholders and/or if AMC's common stockholders will support both of the cross-conditioned proposals versus Proponent's much narrower scope of action with fewer associated potential downsides.

In accordance with Section C of Staff Legal Bulletin No. 14D (Nov. 7, 2008) ("SLB 14D"), I am emailing this letter and its attachments to the SEC Division of Corporation Finance via *shareholderproposals@sec.gov*. In accordance with Rule 14a-8(K) and Section E of SLB 14D, I am simultaneously emailing a copy of this letter and its attachments to the Company and their external advisors undersigned on the 01/30/23 letter. For reference, a copy of the Proponent's Proposal and Supporting Statement is attached in Appendix A to this correspondence.

Background

Since its founding with a single-screen theater in 1920 in Kansas City, Missouri, AMC Entertainment Holdings, Inc. has grown into the world's largest movie theater chain with over 11,000 screens and annual revenue of >$4.0bn. However, evolving consumer entertainment preferences and the COVID-19 pandemic resulted in AMC becoming being dangerously overleveraged with significant debt and lease liabilities. In order to raise much-needed liquidity since the onset of the COVID-19 pandemic, AMC has engaged in multiple rounds of equity issuances, increasing its total shares of Class A common stock outstanding almost 10x from 52.0 million shares as of 02/19/19 to 517.6 million shares as of 02/08/23. However, because AMC's Third Amended and Restated Certificate of Incorporation limits its authorized shares of common stock to 524.1 million shares, AMC

[1] AMC Entertainment Holdings, Inc. Form DEF-14A, dated 02/14/23, available via:
https://www.sec.gov/Archives/edgar/data/1411579/000110465923020458/tm232700-2_def14a.htm

is effectively unable to raise additional common share capital to fund its future business operations, which also calls into question the future prospects for the Company's 31,198 dedicated employees.

On 08/19/22, the AMC paid a special dividend of one APE for each share of common stock outstanding at the close of business on 08/15/22. Each APE is a depositary share and represents an interest in one one-hundredth (1/100th) of a share of Series A Convertible Participating Preferred Stock, par value $0.01 (the "Series A Preferred Stock"). Each APE is designed to have the same economic and voting rights as a share of Common Stock, as described further in its SEC filed governing instruments.[2]

Since the initial APE special dividend last year, the Company has issued an additional 412.2 million APE units to raise additional equity capital to strengthen its balance sheet and repay debt. However, given the consistent market trading discount between the price of APEs compared to the Common Stock, as of 02/14/23, the Board of Directors of AMC represented in its SEC Form DEF-14A a belief that is in the best interests of all stockholders for the Company to simplify its capital structure, thereby eliminating the discount that has been applied to the APEs in the market and reducing AMC's cost of capital.

On 11/09/02, the Proponent submitted (by e-mail and USPS Priority Mail) an initial version of the Proponent's Proposal, a copy of which was attached to the AMC Exclusion Letter in Exhibit A (the "Initial Proposal Letter"). Specifically, the Initial Proposal the Proposal calls for the AMC Board of Directors to amend AMC's Third Amended and Restated Certificate of Incorporation to increase the number of authorized shares of AMC Class A common stock, par value $0.01 per share in order to allow the free elective convertibility of all outstanding AMC Preferred Equity Units into shares of Common Stock.

On 11/30/22, ***21 days after*** the Company's acknowledged receipt of Proponent's Proposal and not at all within the **14 days mandated** by SEC Rule 14a-8(f), AMC responded to the Proponent raising minutia purported

[2] AMC Entertainment Holdings, Inc. 8-K, Exhibit 99.2, dated 08/04/22, available via:
https://www.sec.gov/Archives/edgar/data/1411579/000110465922086144/tm2222422d3_ex99-2.htm

procedural and subject matter defects. On 12/02/22, the Proponent responded to the Company's letter dated 11/30/22 and provided supplemental ownership documentation to the Company (the "First Response Letter").

On 12/22/22, the Company entered into a forward purchase agreement (the "Forward Purchase Agreement") with Antara Capital, LP (the "Antara Capital"), for the (i) sale to Antara Capital of 106.6 million APEs for an aggregate purchase price of $75.1 million (the "Forward Purchase APEs") [implied $APE share price of $0.70/share vs prior $AMC closing price of $5.30/share] and (ii) simultaneously purchase from Antara Capital, on a private basis, $100 million aggregate principal amount of the Company's 10%/12% Cash/PIK Toggle Second Lien Notes due in 2026 in exchange for 91.0 million APEs [implied $APE price of $0.39/share based on market price of the Notes]. Antara Capital also confirmed a $34.9 million purchase of 60.0 million APEs (the "Initial APEs") under the Company's at-the-market program at $0.58/share. In connection with its entry into the Forward Purchase Agreement, the Company also announced its intention to hold a special meeting of the Company's stockholders (the "Special Meeting") for a vote to amend the Charter to increase the number of authorized shares of Common Stock and amend the Charter to effect a 10-1 reverse-stock split of the Common Stock (collectively, the "Charter Amendment Proposals"), which will permit the full conversion of the APEs into Common Stock. Antara Capital has also agreed to vote, or cause to be voted, the Private Placement APEs and Initial APEs and any additional APEs and Common Stock owned or controlled, either directly or indirectly by Antara Capital or any of its affiliates, in favor of the Charter Amendment Proposals at the Special Meeting.

As per the Company's DEF-14A filed on 02/14/23, the Antara Capital's Special Meeting has been scheduled at this time for 03/14/22. If the Charter Amendment Proposals receive the requisite stockholder approval, the Company will file shortly thereafter the certificate of amendment with Delaware's Secretary of State reflecting the Charter Amendment Proposals, which will then trigger the automatic conversion of all outstanding APEs into Common Stock. However, at this time, AMC has provided no assurances that the cross-conditioned Charter Amendment Proposals will both be accepted by stockholders or fully implemented prior to the Company's 2023 Annual Meeting of Stockholders. Hence, the Proponent still resolutely believes the

stockholder's narrow 14a-8 proposal solely for APE convertibility, but not the reverse share split and associated potential downsides of this additional action, is of utmost importance to all fellow AMC stockholders.

COMPANY'S PURPORTED BASIS FOR EXCLUSION OF THE VALID STOCKHOLDER'S PROPOSAL:

On 01/30/23, AMC's external counsel submitted a letter demanding that the SEC Staff concur with its unilateral view that the Proposal may be excluded from the 2023 Proxy Materials purportedly pursuant to:

- Claim A: Rules 14a-8(b)(2) and 14a-8(f)(1) of the Exchange Act because the Proponent has failed to provide the requisite proof of continuous share ownership in response to the Company's proper requests for that information.
- Claim B: Rule 14a-8(i)(1) of the Exchange Act because the subject of the Proponent's Proposal is improper subject matter for stockholder action under the Delaware General Corporation Law (the "DGCL").
- Claim C: Rule 14a-8(i)(10) of the Exchange Act because the Board has already substantially implemented the Proponent's Proposal.

ANALYSIS

As acknowledged by the AMC Exclusion Letter, the Company failed to comply with the black-letter statutory requirement of Rule 14a-8(f) and thus its purported Proposal deficiency claims are inherently time-barred and void. Specifically, Rule 14a-8(f) provides that, "**within 14 calendar** days of receiving [the proponent's] proposal, the company must notify [the proponent] in writing of any procedural or eligibility deficiencies, as well as of the time frame for [the proponent's] response." Despite receiving the Proponent's Proposal on 11/09/22, the Company waited more than 21 calendar days to initially respond after regular business hours on 11/30/22 to Proponent's Proposal and raise purported technical deficiencies with the Proposal. Moreover, because AMC waited more than 14 days to commence a response to the Proposal, the response timing allowed the Antara

Capital transactions to move forward to the detriment of Proponent and all other APE holders due to the highly dilutive APE issuance at implied prices as low as $0.39/share with Antara Capital as the sole counterparty and beneficiary (versus APE closing price on Friday 02/17/23 at $2.40/share).

Unlike the precedent in *Exelon Corp.* (avail. Feb. 23, 2009) matter where there appears to have been an unresolved factual dispute regarding when the proposal letter was postmarked versus actually received, AMC's 11/30/22 letter explicitly starts with "We received your stockholder proposal on November 9, 2022" and offers no initial explanation or excuse why the Company was unable to comply with the 14 calendar day time-frame allowed for objection by the Rule 14a-8(f) statutory requirement. Moreover, unlike the *Exelon Corp* precedent which involved seemly deranged stockholder requests regarding executive travel, options backdating, and open market share purchases, Proponent's Proposal relates to the narrow issue of APE preferred convertibility into common shares – something the AMC Board of Directors recently acknowledged in the 02/14/22 DEF-14A proxy filing is in the "best interests of our stockholders." If public market issuers, such as AMC, and their platoons of experienced external legal advisors, are not held accountable to the black-letter timing requirements of Rule 14a-8(f), retail investors, such as myself, have limited hope of fulfilling the legislative intention of Rule 14a-8 by being engaged stockholders to hold Boards of Directors and management teams accountable to all fellow stockholders.

Because AMC and their experienced external legal advisors clearly failed to comply with 14a-8(f), Proponent respectfully believes the Staff need not to expend any more of its finite and valuable resources considering the Company's Claims A-C arguments to issue a determination. However, for the sake of completeness, some additional commentary regarding these purported objections is provided below.

Claim A: Rules 14a-8(b)(2) and 14a-8(f)(1) of the Exchange Act because the Proponent has failed to provide the requisite proof of continuous share ownership in response to the Company's proper requests for that information.

Proponent's Initial Proposal Letter dated 11/09/22 included copies of the most recently available Direct Registration Advice Statement (the "DRS Statement") from Computershare Trust Company, N.A., the Company's

sole transfer agent, evidencing Proponent's direct ownership of record of both AMC common shares and APE preferred stock. In response to the purported deficiency claims from the Company on 11/30/22, the Proponent further supplemented on 12/02/22 the ownership documentary record by providing a statement from Interactive Brokers, LLC demonstrating an AMC securities position of no less than $41,000.00 and a further addendum to the record by certifying:

> *"I hereby certify my intent to continue to hold the requisite amount of AMC securities through the date of the 2023 meeting and will attend the 2023 stockholder meeting, either personally in Leawood or via electronic media if allowed, to present the proposal."*

Moreover, as per the Section E of the Securities and Exchange Commission Staff Legal Bulletin No. 14L dated 11/03/21, issuers shall not "apply an overly technical reading of proof of ownership letters as a means to exclude a proposal."

Claim B: Rule 14a-8(i)(1) of the Exchange Act because the subject of the Proponent's Proposal is improper subject matter for stockholder action under the Delaware General Corporation Law (the "DGCL").

Rule 14a-8(i)(1) permits a company to exclude a shareholder proposal only "[i]f the proposal is not a proper subject for action by shareholders under the laws of the jurisdiction of the company's organization." First, as written the Proposal clearly conforms with SEC Staff Legal Bulletin No. 14D which indicates the SEC "do[es] not believe there would be a basis for the company to exclude the proposal under rule 14a-8(i)(1), rule 14a-8(i)(2), or rule 14a-8(i)(6)" when the Proponent's Proposal "provide[s] that the board of directors "**take the steps necessary**" to amend the company's charter. Second, as demonstrated by AMC's 02/14/22 DEF-14A proxy filing proposal to allow the conversion of APE preferred shares is in "best interests of our stockholders for us to simplify our capital structure, thereby eliminating the discount that has been applied to the APEs in the market and reducing our cost of capital" and thus an inherently appropriate subject for a stockholder proposal.

First, under the long-standing SEC Staff Legal Bulletin No. 14D precedent dated 11/07/08, the SEC "do[es] not believe there would be a basis for the company to exclude the proposal under rule 14a-8(i)(1), rule 14a-

8(i)(2), or rule 14a-8(i)(6)" when the Proponent's Proposal "provide[s] that the board of directors "**take the steps necessary**" to amend the company's charter. Moreover, this seminal Staff Legal Bulletin stated, "if the proponent revises the proposal in this manner within the time frame specified in our response letter, we do not believe there would be a basis for the company to exclude the proposal under rule 14a-8(i)(1), rule 14a-8(i)(2), or rule 14a-8(i)(6)" and provided the following table of precedent matters.

Table B: SEC Staff Legal Bulletin No. 14D Discussion of 14a-8(i) Precedents

Company	Stockholder Proposal	SEC Response Date	SEC Response Commentary
SBC Communications Inc.	Resolved that as of December 31, 2005 the number of SBC Board of Director seats will be reduced from twenty one (21) to fourteen (14).	01/11/04	If the proponent revised the proposal as a recommendation or request that the board of directors take the steps necessary to implement the proposal, the proposal could NOT be excluded under rules 14a-8(i)(2) and 14a-8(i)(6).
Gyrodyne Co. of America, Inc.	It is proposed that the classified board be abolished and all Directors, effective after the election of Directors in 1999, be elected annually.	08/18/99	If the proponent revised the proposal as a recommendation or request that the board of directors take the steps necessary to implement the proposal, the proposal could NOT be excluded under rule 14a-8(i)(1).
Sears, Roebuck and Co.	Resolved: That the stockholders . . . urge the Board of Directors to amend the Company's Restated Certificate of Incorporation to declassify the Board of Directors for the purpose of Director elections.	02/17/89	If the proponent revised the proposal to urge that the board of directors take the steps necessary to effect the proposed amendment to the certificate of incorporation, the proposal could NOT be excluded under rules 14a-8(c)(2) and 14a-8(c)(6) [now rules 14a-8(i)(2) and 14a-8(i)(6)].

For the purposes of the stockholder's Proposal for AMC's 2023 Proxy Materials, no further revision is required at this time because the Proponent's "take the steps necessary" clause in the amended Proposal already ameliorates any purported concerns that the DGCL requires any such amendment to be initiated by the board and then approved by shareholders for the charter to be amended as a matter of law.

Second, as demonstrated by i) AMC's 02/14/23 DEF-14A proxy filing proposal to allow the conversion of APE preferred shares, and ii) the Board of Director's business judgement that it is in "best interests of our stockholders for us to simplify our capital structure, thereby eliminating the discount that has been applied to the APEs in the market and reducing our cost of capital" and thus an inherently appropriate subject for a stockholder proposal at the 2023 Annual Meeting. Therefore, the two-step process to amend a Delaware corporations charter has already commenced as the AMC Board of Directors has already adopted a resolution to

amend its Charter to allow the conversion of APE preferred stock, along with other matters, at the AMC Special Meeting currently scheduled 03/14/23.

Claim C: Rule 14a-8(i)(10) of the Exchange Act because the Board has already substantially implemented the Proponent's Proposal.

Rule 14a-8(i)(10) permits a company to exclude a shareholder proposal from its proxy materials if the company has substantially implemented the proposal. As the AMC Special Meeting is currently only scheduled to occur on 03/14/23, the meeting date could be adjourned to a later date at the Board of Director's sole discretion, stockholder litigation in the Delaware Court of Chancery or other federal district court(s) could delay commencement of the Special Meeting, and the stockholder voting outcome on the cross-conditioned proposals is unknown at this time, it is obviously premature to determine of if the Company has "substantially implemented" the Proponent's Proposal.

Moreover, it is important to differentiate between Proponent's narrowly tailored Rule 14a-8 proposal solely focused on APE convertibility, as opposed to the Board of Directors' cross-conditioned Charter Amendment Proposals, including the reverse-share split, being advanced by the Company for the Special Meeting currently scheduled for 03/14/23. For example, AMC's Board of Directors acknowledged in its Special Meeting Proxy Form DEF-14A on pages 15-16 that its Proposal #2 Reverse Share Split could have several adverse negative results, including:

- "There can be no assurance that the increase in the trading price will occur, or, if it does occur, that it will equal or exceed ten times the market price of the Common Stock prior to the Reverse Stock Split."
- "The fewer number of shares that will be available to trade could possibly cause the trading market of the Common Stock to become less liquid, which could have an adverse effect on the price of the Common Stock"

- "There can be no assurance that the Reverse Stock Split will result in a per share price that will attract brokers and investors who do not trade in lower priced stock"
- "The effect of the proposed Reverse Stock Split might be to render more difficult or to discourage a merger, tender offer, proxy contest or change in control of us and the removal of management, which stockholders might otherwise deem favorable"

Due to these potential downsides of the Proposal Number 2 Reverse Share Split acknowledge by AMC's Board of Directors, it is entirely possible that Proponent's fellow stockholders would strongly support the APE convertibility proposal, but not support the reverse share split proposal as advanced by the Board of Directors' cross-conditioned Charter Amendment Proposals at this time. As an analogy, it is standard for a backyard BBQ host to offer guests the choice between a hamburger or a hotdog entree. However, a backyard BBQ host should not be surprised if guests are less enthusiastic about solely a combination hamburger/hotdog smoothie offering.

CONCLUSION

Based upon the forgoing facts and analysis, I respectfully request that the Staff should allow the stockholder's 14a-8 Proposal to be included in AMC Entertainment Holdings, Inc. 2023 Annual Meeting Proxy Materials. Should the Staff disagree with the conclusions set forth in this letter, or should you require any additional information in support of the stockholders' position, I would welcome the opportunity to further discuss these materials as you prepare your response. If I can be of any further assistance on this matter, please do not hesitate to contact me via email at [redacted] or telephonically via [redacted].

Regards,

Kevin Barnes

Kevin Barnes, 💎 🤲

CC:
Mr. Adam M. Aron, Chief Executive Officer & Chairman of the Board of Directors, *aaron@amctheaters.com*
Kevin Connor, General Counsel & Senior Vice President, *kconnor@amctheatres.com*
Sean Goodman, Executive Vice President and Chief Financial Officer, *sgoodman@amctheaters.com*
John Merriwether, Vice President, Capital Markets and Investor Relations, *jmerriwether@amctheatres.com*
Eddie Gladbach, Vice President – Legal, *egladbach@amctheatres.com*
Adé Heyliger, Partner, Weil, Gotshal & Manges LLP, *ade.heyliger@weil.com*

Appendix A: Rule 14a-8 Stockholder Proposal - Amended as of 12/02/22

Stockholder Proposal By Retail Investor Kevin Barnes for Elective Convertibility of APEs

I, Kevin Barnes, 💎🤲 and a retail investor, am the beneficial owner of a sufficient amount of AMC's securities for a sufficient duration under Rule 14a-8 of the Securities Exchange Act of 1934, as amended, to submit the following proposals for inclusion in AMC's 2023 proxy statement and have given appropriate notice of the intention to present the proposal below at the 2023 Annual Meeting. The proposals and the supporting statement appear below.

Supporting Statement:

Some suits on Wall Street appear to be trying to oppress the APEs!!! This injustice cannot stand! With over [50.67] million APEs currently sold short by unscrupulous speculators, stockholders of AMC Entertainment must consider all options to ensure the trading price of our shares adequately represents the strong fundamentals of the underlying business.[3] By allowing our fellow APE preferred stockholders to convert, at their individual election, into common shares, miscreant short-sellers may be forced to repurchase their short positions when the APE shares are recalled for elective conversion. 🚀 🚀 🚀

Proposal #1: In order to allow the free elective convertibility of APE shares so stockholders can potentially realize their significant intrinsic value, AMC's Board of Directors shall expeditiously take the steps necessary, including, but not limited to, promptly calling a Special Meeting of stockholders, to effectuate the revision of the Third Amended and Restated Certificate of Incorporation to increase the total number of shares of Class A Common Stock (par value $0.01 per share) the Company is authorized to issue by the share-count of the APEs outstanding at the 2023 Annual Shareholder meeting, [531,716,231 APEs outstanding as of 11/08/22] shares, to a total of approximately [524,173,073 currently authorized Class A Common Stock + 531,716,231 APEs outstanding = 1,055,889,304] shares of Class A Common Stock.

[Note: Bracketed numerical figures to be updated with the most recent information as of the publication date of AMC's SEC Form DEF 14A for the 2023 Annual Meeting]

<<END>>

[3] APE shares sold short data provided by Morningstar, Inc. - as of [11/15/22] reporting period

Weil, Gotshal & Manges LLP

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February 23, 2023

VIA E-MAIL (shareholderproposals@sec.gov)

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

Re: AMC Entertainment Holdings, Inc. – 2023 Annual Meeting
Supplement to Letter dated January 30, 2023
Relating to Stockholder Proposal Submitted by Kevin Barnes

Ladies and Gentlemen:

We refer to our letter dated January 30, 2023 (the "No Action Request"), submitted on behalf of our client, AMC Entertainment Holdings, Inc. ("AMC" or the "Company"), pursuant to which we requested that the Staff of the Division of Corporate Finance (the "Staff") of the Securities and Exchange Commission concur in AMC's view that the stockholder proposal and supporting statement (the "Proponent's Proposal") submitted by Kevin Barnes may be excluded from the proxy materials to be distributed by AMC in connection with its 2023 annual meeting of stockholders (the "2023 Proxy Materials").

This letter is in response to the letter to the Staff, dated February 19, 2023, submitted by the Proponent (the "Proponent's Letter"), and supplements the No Action Request. In accordance with Rule 14a-8(j), a copy of this letter is also being sent to the Proponent.

The Proponent's Proposal May Be Excluded Under Rules 14a-8(b)(2) and 14a8(f)(1) for Failure to Establish the Requisite Eligibility to Submit the Proponent's Proposal

Contrary to the Proponent's assertions in the Proponent's Letter, AMC has not taken an "overly technical" approach to reading the DRS Statement and Broker Statement as insufficient proof that the Proponent has held the requisite number of AMC securities for the requisite amount of time required by the Ownership Requirements (each capitalized term as defined in the No Action Request). The core tenets of Rule 14a-8 provide that a stockholder must demonstrate its eligibility to submit a proposal under the rule by providing proof of satisfaction of the monetary and temporal aspects of the Ownership Requirements. See Rule 14a-8(b). As explained in the No

Action Request, AMC alerted the Proponent that the DRS Statement and Broker Statement were insufficient proof of the temporal component of the Ownership Requirements under Rule 14a-8(b), which statements reflected the Proponent's brief, and substantially less than one year, ownership of AMC securities. AMC specifically instructed the Proponent in the First Deficiency Notice and Second Deficiency Notice (each as defined in the No Action Request) on how to remedy the defects. In fact, to date, the Company has given the Proponent almost three months to provide the requisite proof of his satisfaction of the Ownership Requirements to no avail.

Similarly, the Proponent's contention that the Company's failure to respond within 14 calendar days of the Initial Proposal Letter (as defined in the No Action Request) belies the fact that he has not in any way been prejudiced or disadvantaged by the minor delay. See discussion of *Exelon Corp.* (Avail. Feb. 23, 2009) in the No Action Request. To permit the Proponent to avoid having to ever provide the requisite proof of his satisfaction of the Ownership Requirements, and thus his eligibility to submit a proposal, due to a technical foot fault by the Company is inconsistent with Rule 14a-8 and should be rejected by the Staff in accordance with Rule 14a-8(b)(2) and Rule 14a-8(f)(1).

The Proponent's Proposal May Be Excluded Under Rule 14a-8(i)(1) as Improper Subject

The Proponent separately argues that the Proponent's Proposal is proper under Delaware law because it provides that the AMC board of directors "take the steps necessary" to amend the Charter (as defined in the No Action Request). However, the Proponent conveniently ignores the preamble to the Proponent's Proposal that mandates that the AMC board of directors "***shall expeditiously***" take the steps necessary, including, but not limited to, promptly calling a special meeting of stockholders, to effectuate the revision of the Charter. *Compare SBC Communications Inc.* (avail. Jan. 11, 2004) (noting that if the proponent revised the proposal "***as a recommendation or request***" that the board take the steps necessary to implement the proposal, that it would not be excluded) (emphasis added); *Gyrodyne Co. of America, Inc.* (avail. Aug. 18, 1999) (same); *Sears, Roebuck & Co.* (avail. Feb. 17, 1989) (noting that if the proponent revised the proposal "***to urge***" that the board take the steps necessary to implement the proposal, that it would not be excluded) (emphasis added). The Proponent's Proposal is not a recommendation, request, or an urging, but is instead an order to the AMC board of directors to take a specific action not permitted by Delaware law. See the opinion of the Company's special Delaware counsel, Richards Layton & Finger, P.A., attached to the No Action Request as Exhibit G. Exclusion of the Proponent's Proposal is therefore appropriate under Rule 14a-8(a)(1).

The Proponent's Proposal May Be Excluded Under Rule 14a-8(i)(10) of the Exchange Act as Substantially Implemented

Lastly, after the submission of the No Action Request, on February 14, 2023, the Company filed a definitive proxy statement in connection with a special meeting called for March 14, 2023 to hold a stockholder vote on two cross-conditioned proposals to amend the Charter to permit the full conversion of the APEs into shares of Common Stock (each as defined in the No Action Request). As described in the definitive proxy statement, the two proposals (the increase the number of authorized shares and the 10-for-1 reverse-stock split) are cross-conditioned as ***both***

must be approved in order to trigger the automatic APEs conversion – i.e., the approval of either condition, alone, would not cause the APE conversion. The AMC board of directors has approved and has recommended that AMC stockholders vote "FOR" these cross-conditioned proposals to the Charter at the special meeting. If these proposals receive the requisite AMC stockholder approval at the special meeting, the Company will file shortly thereafter the amended Charter with Delaware's Secretary of State, which will then trigger the automatic conversion of all outstanding APEs into shares of Common Stock.

The Proponent's position that it is "premature" to determine if the Company has "substantially implemented" the Proponent's Proposal because the "stockholder voting outcome . . . is unknown at this time" is a fundamental misunderstanding of the law. The Company has substantially implemented (in fact, ***actually*** implemented) the Proponent's Proposal by ***calling*** the special meeting to effect the APEs conversion. See Proponent's Proposal ("In order to allow the free elective convertibility of APE shares so stockholders can potentially realize their significant intrinsic value, AMC's Board of Directors shall expeditiously take the steps necessary, including, but not limited to, ***promptly calling a Special Meeting of stockholders*** . . .") (emphasis added). The outcome of the vote or any delay in the special meeting is irrelevant to the substantial implementation analysis because these variables exist for any meeting of stockholders. Further, the Company can never guarantee the outcome of any such stockholder vote. Exclusion of the Proponent's Proposal is therefore appropriate under Rule 14a-8(a)(10).

Conclusion

For the foregoing reasons we believe that the Proponent's Proposal may be omitted from the 2023 Proxy Materials and respectfully request that the Staff confirm that it will not recommend any enforcement action if the Proponent's Proposal is excluded. We would be happy to provide you with any additional information and answer any questions that you may have regarding this subject. Please do not hesitate to contact me at ade.heyliger@weil.com or (202) 682-7095, or Kevin Connor, Senior Vice President, General Counsel and Secretary, at KConnor@amctheatres.com or 913-213-2506.

Sincerely,

AK Heyliger

Adé Heyliger

Cc: Kevin Connor, AMC Entertainment Holdings, Inc.
Kevin Barnes

Weil, Gotshal & Manges LLP

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April 11, 2023

VIA E-MAIL (shareholderproposals@sec.gov)

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

Re: AMC Entertainment Holdings, Inc. – 2023 Annual Meeting
Supplement to Letters dated January 30, 2023 and February 23, 2023
Relating to Stockholder Proposal Submitted by Kevin Barnes

Ladies and Gentlemen:

We refer to our letters dated January 30, 2023 and February 23, 2023 (collectively, the "No Action Request Letters") submitted on behalf of our client, AMC Entertainment Holdings, Inc. ("AMC" or the "Company"), pursuant to which we requested that the Staff of the Division of Corporate Finance (the "Staff") of the Securities and Exchange Commission concur in AMC's view that the stockholder proposal and supporting statement (the "Proponent's Proposal") submitted by Kevin Barnes may be excluded from the proxy materials to be distributed by AMC in connection with its 2023 annual meeting of stockholders. Defined terms not defined herein will continue to have the same meanings as defined in the No Action Request Letters

Among the substantive arguments the Company made in the No Action Request Letters for excluding the Proponent's Proposal was that, by calling the special meeting to effect the APEs conversion, the Company had substantially implemented the proposal pursuant to Rule 14a-8(a)(10) of the Securities and Exchange Act of 1934. See Proponent's Proposal ("In order to allow the free elective convertibility of APE shares so stockholders can potentially realize their significant intrinsic value, AMC's Board of Directors shall expeditiously take the steps necessary, including, but not limited to, ***promptly calling a Special Meeting of stockholders*** . . .") (emphasis added). The Company notes that on March 14, 2023, the Company held a special meeting where stockholders voted on two cross-conditioned proposals to amend the Company's certificate of incorporation to permit the full conversion of the APEs into shares of Common Stock. We therefore believe that exclusion of the Proponent's Proposal is appropriate as the Company has not only substantially implemented the Proponent's Proposal, but in fact, now has ***actually*** implemented the proposal.

If you have any questions, please do not hesitate to contact me at ade.heyliger@weil.com or (202) 682-7095, or Kevin Connor, Senior Vice President, General Counsel and Secretary, at KConnor@amctheatres.com or 913-213-2506.

Sincerely,

AK Heyliger

Adé Heyliger

Cc: Kevin Connor, AMC Entertainment Holdings, Inc.
Kevin Barnes