



DIVISION OF  
CORPORATION FINANCE

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

April 24, 2024

Kenneth M. Silverman  
Olshan Frome Wolosky LLP

Re: GameStop Corp. (the "Company")  
Incoming letter dated March 11, 2024

Dear Kenneth M. Silverman:

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

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

Copies of all of the correspondence on which this response is based will be made available on our website at <https://www.sec.gov/corpfin/2023-2024-shareholder-proposals-no-action>.

Sincerely,

Rule 14a-8 Review Team

cc: Ryan Derks

March 11, 2024

VIA ONLINE PORTAL SUBMISSION

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

Re: *GameStop Corp.*  
*Shareholder Proposal of Ryan Derks*  
*Securities Exchange Act of 1934 (“Exchange Act”) — Rule 14a-8*

Ladies and Gentlemen:

This letter is to inform you that our client, GameStop Corp. (the “Company”), intends to omit from its proxy statement and form of proxy for its 2024 Annual Meeting of Shareholders (collectively, the “2024 Proxy Materials”) a shareholder proposal and statement in support thereof (the “Proposal”) received from Ryan Derks (the “Proponent”). A copy of the Proposal, together with the Proponent’s cover letter, is attached to this letter as Exhibit A. Pursuant to Rule 14a-8(j), we have concurrently sent copies of this correspondence to the Proponent.

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

**BASIS FOR EXCLUSION**

We hereby respectfully request that the Staff concur in our view that the Proposal may be excluded from the 2024 Proxy Materials pursuant to Rule 14a-8(e)(2) because the Proposal was received by the Company at its principal executive offices after the deadline for submitting shareholder proposals for inclusion in the Company’s 2024 Proxy Materials. In addition, the Company requests the Staff waive the 80-day deadline in Rule 14a-8(j)(1) for good cause.

**BACKGROUND**

On May 2, 2023, the Company filed with the Commission, and commenced distribution of a proxy statement and form of proxy for its 2023 Annual Meeting of Shareholders (“2023

Proxy Statement”) to its shareholders. As required by Rule 14a-5(e), the Company’s 2023 Proxy Statement includes the deadline for receiving shareholder proposals submitted for inclusion in the Company’s proxy statement and form of proxy for the Company’s next annual meeting, calculated in the manner prescribed in Rule 14a-8(e). Under the caption “Proposals Pursuant to Rule 14a-8,” the 2023 Proxy Statement, on page 38 addresses the deadline for shareholder proposals submitted under Rule 14a-8, stating:

Proposals of stockholders pursuant to Rule 14a-8 of the Exchange Act intended to be presented for inclusion in our proxy materials for the annual meeting of stockholders to be held in 202[4] must meet the requirements under Rule 14a-8 and be received by the Secretary, at GameStop Corp., 625 Westport Parkway, Grapevine, Texas 76051, no later than January 3, 2024.

This disclosure is followed by a description of the proxy access provisions of the Company’s Bylaws and the procedures for nominating director nominees and presenting other proposals at the Company’s 2024 Annual Meeting of Shareholders on pages 38 and 39. A copy of pages 38 and 39 of the Company’s 2023 Proxy Statement is attached to this letter as Exhibit B.

As described below, the Company calculated the January 3, 2024 deadline in the manner prescribed in Rule 14a-8(e) and Staff Legal Bulletin No. 14 (July 13, 2001) (“SLB 14”). In addition, the Company confirmed that it intends to hold its 2024 Annual Meeting of Shareholders within 30 days of the anniversary of its 2023 Annual Meeting of Shareholders.

On March 4, 2024, 61 days after the Company’s deadline for submitting shareholder proposals, the Company received the Proposal. The Proposal was sent via United States Postal Service Certified Mail and was addressed and delivered to the Company’s principal executive offices at 625 Westport Parkway, Grapevine, Texas 76051 on March 4, 2024. A copy of the envelope, with tracking number affixed, and tracking information showing the date of delivery is attached to this letter as Exhibit C.

## ANALYSIS

### **I. The Proposal May Be Excluded From The Company’s 2024 Proxy Materials Pursuant To Rule 14a-8(e)(2) Because The Proposal Was Received By The Company At Its Principal Executive Offices After The Deadline For Submitting Shareholder Proposals For Inclusion In The Company’s 2024 Proxy Materials.**

Under Rule 14a-8(f)(1) a company may exclude a shareholder proposal if the proponent fails to follow one of the eligibility or procedural requirements contained in Rule 14a-8. Ordinarily, a company may exclude a proposal on this basis only after it has timely notified the proponent of an eligibility or procedural problem and the proponent has timely failed to adequately correct the problem. However, per Rule 14a-8(f)(1), a company “need not provide [the proponent] such notice of a deficiency if the deficiency cannot be remedied, *such as if [the proponent] fail[s] to submit a proposal by the company’s properly determined deadline.*” (emphasis added)

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

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

SLB 14, Section C.3.b indicates that, to calculate the deadline, a company should “[i] start with the release date disclosed in the previous year’s proxy statement; [ii] increase the year by one; and [iii] count back 120 calendar days.” Consistent with this guidance, to calculate the deadline for receiving shareholder proposals submitted for the Company’s 2024 Annual Meeting of Shareholders, the Company (i) started with the release date of its 2023 Proxy Statement (i.e., May 2, 2023),<sup>2</sup> (ii) increased the year by one (i.e., May 2, 2024), and (iii) counted back 120 calendar days. As per SLB 14, Section C.3.b, “day one” for purposes of this calculation was May 1, 2024, resulting in a deadline for receiving shareholder proposals submitted for inclusion in the Company’s 2024 Proxy Materials of January 3, 2024, as disclosed on page 38 of the Company’s 2023 Proxy Statement. See Exhibit B. As noted above and in Exhibit C to this letter, the Company received the Proposal 61 days after this deadline, on March 4, 2024.

The Staff strictly construes the deadline for shareholder proposals under Rule 14a-8, permitting companies to exclude from proxy materials those proposals received at companies’ principal executive offices after the deadline. See, e.g., *The PNC Financial Services Group, Inc.* (avail. Feb. 20, 2024) (concurring with the exclusion of a proposal received one day after the submission deadline); *Tesla, Inc.* (avail. Mar. 23, 2023) (concurring with the exclusion of a proposal received 61 days after the submission deadline); *GameStop Corp.* (avail. Apr. 21, 2022) (concurring with the exclusion of a proposal received 61 days after the submission deadline); *Walgreens Boots Alliance, Inc.* (avail. Oct. 12, 2021) (concurring with the exclusion of a proposal received two days after the submission deadline); *Hewlett Packard Enterprise Co.* (avail. Jan. 15, 2021) (concurring with the exclusion of a proposal received two days after the submission deadline); *General Dynamics Corp.* (avail. Jan. 8, 2021, recon. denied Mar. 17,

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<sup>1</sup> Also under Rule 14a-8(e)(2), “if the company did not hold an annual meeting the previous year, or if the date of this year’s annual meeting has been changed by more than 30 days from the date of the previous year’s meeting, then the deadline is a reasonable time before the company begins to print and send its proxy materials.” This portion of Rule 14a-8(e)(2) is not applicable in the instant case because, as noted earlier, the Company has confirmed that it intends to hold its 2024 Annual Meeting of Shareholders within 30 days of the anniversary of its 2023 Annual Meeting of Shareholders.

<sup>2</sup> As stated above, the Company’s 2023 Proxy Statement was filed on May 2, 2023 and the Notice of the 2023 Annual Meeting of Shareholders included in the Company’s 2023 Proxy Statement indicated that the Company “will send a full set of proxy materials or a Notice of Internet Availability of Proxy Materials (the “Notice of Internet Availability”) on or about May 2, 2023, and provide access to our proxy materials over the Internet, beginning on May 2, 2023.” See <https://www.sec.gov/Archives/edgar/data/1326380/000119312523132649/d464616ddef14a.htm>.

2021) (concurring with the exclusion of a proposal received four days after the submission deadline); *DTE Energy Co. (Moore)* (avail. Dec. 18, 2018) (concurring with the exclusion of a proposal received two days after the submission deadline); *Verizon Communications, Inc.* (avail. Jan. 4, 2018) (concurring with the exclusion of a proposal received one day after the submission deadline); *Dean Foods Co.* (avail. Jan. 27, 2014) (concurring with the exclusion of a proposal received three days after the submission deadline); *PepsiCo, Inc.* (avail. Jan. 3, 2014) (same); *Tootsie Roll Industries, Inc.* (avail. Jan. 14, 2008) (proposal received two days after company's deadline, even when deadline fell on a Saturday).

We note that although the Proposal was submitted after the deadline set forth in the Company's 2023 proxy statement for Rule 14a-8 proposals, it was submitted prior to the deadline prescribed under the Company's bylaws for non-Rule 14a-8 proposals. In this regard, we are aware of *Smith & Wesson Holding Corp.* (avail. Aug. 7, 2014), in which the Staff did not concur with exclusion under Rule 14a-8(e)(2) of a proposal submitted after that company's Rule 14a-8 deadline. However, the facts in the present situation are very different from those addressed in *Smith & Wesson*. In *Smith & Wesson*, one of the proponent's "major" arguments was that the company did not clearly disclose the Rule 14a-8 deadline in its proxy statement.<sup>3</sup> In contrast, here the Company's 2023 proxy statement clearly states, "[p]roposals of stockholders pursuant to Rule 14a-8 of the Exchange Act intended to be presented for inclusion in our proxy materials for the annual meeting of stockholders to be held in 202[4] must meet the requirements under Rule 14a-8 and be received by the Secretary, at GameStop Corp., 625 Westport Parkway, Grapevine, Texas 76051, no later than January 3, 2024." Finally, the form in which the Proponent submitted the proposal suggests that the Proponent intended to submit the Proposal pursuant to the procedures for Rule 14a-8 proposals. The Proponent's letter for the Proposal specifically states that it is an "item to be included in this year's annual meeting proxy vote" and includes a supporting statement and statement of ownership, and the Proponent did not comply with the informational requirements applicable to shareholder proposals otherwise submitted pursuant to the Company's bylaws.

Accordingly, the Proposal is properly excludable from the Company's 2024 Proxy Materials because it was not received at the Company's principal executive offices within the timeframe required under Rule 14a-8(e)(2).

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

The Company further requests that the Staff waive the 80-day filing requirement set forth in Rule 14a-8(j) for good cause. Rule 14a-8(j)(1) requires that, if a company "intends to exclude a proposal from its proxy materials, it must file its reasons with the Commission no later than 80 calendar days before it files its definitive proxy statement and form of proxy with the Commission." However, Rule 14a-8(j)(1) allows the Staff to waive the deadline if a company can show "good cause." The Company did not receive the Proposal until March 4, 2024, which is less than 80 days before the Company intends to file its 2024 Proxy Materials. Accordingly,

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<sup>3</sup> The proponent's response letter states, for example, that "there is no specific mention of Rule 14a-8" in Smith and Wesson's proxy statement.

March 11, 2024

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we believe that the Company has “good cause” for its inability to meet the 80-day requirement, and we respectfully request that the Staff waive the 80-day requirement with respect to this letter.

### CONCLUSION

Based upon the foregoing analysis, we respectfully request that the Staff concur that it will take no action if the Company excludes the Proposal from its 2024 Proxy Materials. We would be happy to provide you with any additional information and answer any questions that you may have regarding this subject.

Correspondence regarding this letter should be sent to [shareholderproposals@olshanlaw.com](mailto:shareholderproposals@olshanlaw.com). If we can be of any further assistance in this matter, please do not hesitate to call me at (212) 451-2300.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Kenneth M. Silverman', with a long horizontal flourish extending to the right.

Kenneth M. Silverman

Enclosures

cc: Mark Robinson, General Counsel and Secretary, GameStop Corp.  
Ryan Derks

**Exhibit A**

Dear Sir or Madam,

This is Ryan Deeks writing to you. Please find enclosed an item to be included in this year's annual meeting proxy vote. Also, a statement of ownership that proves my eligibility to submit.

If you see any errors, please contact me using the information on my business card.

- Ryan



## "Comprehensive Audit of GME Shares"

### **Proposal:**

As committed shareholders of GameStop Corp. (GME), we propose an exhaustive audit and recount of all issued and outstanding shares, to be executed with the cooperation of our brokerage partners, Cede & Co, and Computershare, the transfer agent. This action is aimed at affirming the accuracy and integrity of GameStop's share distribution, bolstering shareholder confidence through unparalleled transparency.

### **Rationale:**

To uphold GameStop's reputation for corporate transparency and to address shareholder concerns about the precise composition of the company's share capital, we advocate for a meticulous recall and recount of shares. This endeavor is designed to fortify investor trust and provide a definitive overview of GameStop's share structure.

### **Execution Plan:**

**Timeline:** Initiate the recount within 14 days post-approval, ensuring completion within 120 days from the approval date.

**Legal Compliance:** Undertake this share audit in full compliance with all relevant state and federal legal frameworks, guaranteeing the process's integrity and legality.

**Communication:** GameStop Corp. will issue comprehensive updates on the recount's progress every 15 days via the company's official Twitter/X account, ensuring shareholders are well-informed and engaged.

**Involved Parties:** This audit should be completed by GameStop, Inc and verified by GameStop, Inc's approved auditor. It should involve GameStop, Inc, ComputerShare, Cede & Co, and any other firm's holding shares of GameStop.

### **Detailed Report:**

Upon completion of the audit, GameStop Corp. shall present a detailed report, including but not limited to:

- A precise tally of the total issued and outstanding shares.
- The location of each share, including the number of shares held by each brokerage firm and details about any difference in numbers reported.
- Verification of shares held in treasury and those available in the public domain.
- An analysis of share distribution patterns, identifying any discrepancies or anomalies in share allocations among brokers. The report will also include details such as number of shares held directly at ComputerShare(DRS), any possible short positions(naked or otherwise), data from Cede & Co, or any other items that may cause harm to shareholders.
- A summary of findings, including any discrepancies uncovered during the recount process and recommendations for rectifying identified issues. Finally, a plan for GameStop, Inc to see those recommendations through.

### **Conclusion:**

At the end of the audit, all data should be made public through GameStop, Inc's official Twitter/X account and [www.GameStop.com](http://www.GameStop.com). If anything is found during this audit that would bring harm to shareholders value then GameStop, Inc will be required to officially petition the SEC for a federal audit and investigation into the firms responsible. We urge our fellow shareholders to endorse this initiative, affirming our collective dedication to transparency, accountability, and the enduring value of our investment in GameStop.

**Exhibit B**

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## OTHER MATTERS

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

### Financial and Other Information

We are furnishing our Annual Report for the fiscal year ended January 28, 2023, including consolidated financial statements, together with this Proxy Statement.

### Cautionary Statement Regarding Forward Looking Statements

This Proxy Statement contains forward-looking statements within the meaning of the Private Securities Litigation Reform Act of 1995. Such statements may include, but are not limited to, statements related to risks associated with our compensation programs, our future performance, our plans, objectives, expectations and intentions, and other statements that are not historical facts. Such statements are based upon the current beliefs and expectations of our management and are subject to significant risks and uncertainties. Actual results may differ from those set forth in the forward-looking statements. We undertake no obligation to publicly update or revise any forward-looking statements except as required by law. Factors that may cause actual results to differ materially from those contemplated by the statements in this Proxy Statement can be found in our most recent Annual Report on Form 10-K for the fiscal year ended January 28, 2023 filed with the SEC on March 28, 2023.

### Proposals Pursuant to Rule 14a-8

Proposals of stockholders pursuant to Rule 14a-8 of the Exchange Act intended to be presented for inclusion in our proxy materials for the annual meeting of stockholders to be held in 2023 must meet the requirements under Rule 14a-8 and be received by the Secretary, at GameStop Corp., 625 Westport Parkway, Grapevine, Texas 76051, no later than January 3, 2024. However, if the date of the 2023 annual meeting is more than 30 days before or after June 15, 2024, then the deadline for submitting any stockholder proposal for inclusion in the proxy materials relating to such annual meeting will be a reasonable time before we begin to print and mail such proxy materials.

### Proxy Access Director Nominees

Under the proxy access provisions of our Bylaws, stockholders are entitled to nominate and include in our proxy materials director nominees, provided that the eligibility and procedural requirements specified in our Bylaws, including advance notice requirements, are satisfied. The notice must be delivered to the Secretary at our principal executive offices, at 625 Westport Parkway, Grapevine, Texas 76051, not less than 120 days nor more than 150 days prior to the first anniversary of the date of our Proxy Statement in connection with the most recent annual meeting of stockholder. As a result, any notice given by a stockholder pursuant to the proxy access provisions of our Bylaws with respect to the 2024 annual meeting must be received no earlier than the close of business on December 4, 2023, and no later than the close of business on January 3, 2024. However, in the event that the date of the 2024 annual meeting is more than 30 days before June 15, 2024 or more than 60 days after June 15, 2024, then the notice, to be timely, must be delivered not earlier than the close of business on the 120th day prior to the date of the 2024 annual meeting and not later than the close of business on the later of (x) the 90th day prior to the date of the 2024 annual meeting or (y) the 10th day following the day of the first public announcement of the date of the 2024 annual meeting.

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

### Other Proposals and Nominees

Any stockholder who wishes to propose any business to be considered by the stockholders at the 2024 annual meeting or who wants to nominate a person for election to the Board at that meeting, other than (i) a proposal for inclusion in the Proxy Statement pursuant to Rule 14a-8 or (ii) pursuant to the proxy access Bylaw provisions, in each case as described above, must provide a written notice that sets forth the specified information described in our Bylaws concerning the proposed business or nominee. To be timely, a stockholder's notice must be delivered to or mailed and received at our principal executive offices not less than 90 days nor more than 120 days prior to the first anniversary date of our immediately preceding annual meeting, which, with respect to the 2024 annual meeting, would be no earlier than the close of business on February 16, 2024 and no later than the close of business on

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**GameStop**

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March 17, 2024. However, in the event that the date of the 2024 annual meeting is more than 25 days before or after June 15, 2024, then the notice, to be timely, must be delivered not later than the close of business on the tenth day following the date on which the notice of the date of the meeting is mailed or publicly announced. In addition to the requirements contained in our Bylaws, to comply with the universal proxy rules (when effective), stockholders who intend to solicit proxies in support of director nominees other than our nominees must provide notice that sets forth the information required by Rule 14a-19 under the Exchange Act no later than April 16, 2024 (the 60th day prior to the first anniversary of the annual meeting for the preceding year's annual meeting).

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

By Order of the Board of Directors



Matt Furlong  
Chief Executive Officer

May 2, 2023

**GameStop**

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**Exhibit C**

From: Derks



**CERTIFIED MAIL**



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Retail



76051

U.S. POSTAGE PAID  
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FEB 20, 2024

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**Ready Post**

Document Mailer

**To:** Game Stop, Inc  
Corporate Secretary OR Board Secretary  
625 Westport Parkway  
Grapevine, TX 76051

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