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

DIVISION OF
CORPORATION FINANCE

April 24, 2024

Kenneth M. Silverman
Olshan Frome Wolosky LLP

Re: GameStop Corp. (the "Company")
Incoming letter dated February 8, 2024

Dear Kenneth M. Silverman:

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

The Proposal asks the Company to take certain actions with respect to its direct stock purchase plan and its transfer agent.

There appears to be some basis for your view that the Company may exclude the Proposal under Rule 14a-8(i)(7). In our view, the Proposal relates to ordinary business matters. Accordingly, we will not recommend enforcement action to the Commission if the Company omits the Proposal from its proxy materials in reliance on Rule 14a-8(i)(7). In reaching this position, we have not found it necessary to address the alternative basis 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/2023-2024-shareholder-proposals-no-action.

Sincerely,

Rule 14a-8 Review Team

cc: Justin Kilmer

OLSHAN

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February 8, 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 Justin Kilmer
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") from Justin Kilmer (the "Proponent"). A copy of the Proposal is attached to this letter as Exhibit A.

Pursuant to Rule 14a-8(j), we have:

- filed this letter with the Securities and Exchange Commission (the "Commission") no later than eighty (80) calendar days before the date on which the Company intends to file its definitive 2024 Proxy Materials with the Commission; and

- concurrently sent a copy 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 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.

THE PROPOSAL

The Company received the below Proposal from the Proponent, which states in relevant part as follows:

> My proposal is for GameStop to protect its shareholders by doing one or more of the following: 1) discontinue the DirectStock plan with Computershare, 2) require Computershare to address the above concerns through transparent disclosure, and/or 3) choose another transfer agent that provides clear statements and transparency about DRS versus plan ownership.

BASES FOR EXCLUSION

The Company respectfully requests the Staff's concurrence that the Company may exclude the Proposal from its 2024 Proxy Materials in reliance on:

- Rule 14a-8(i)(7) because the Proposal deals with a matter relating to the Company's ordinary business operations.

- Rule 14a-8(i)(3) because it is impermissibly misleading in violation of Rule 14a-9 under the Exchange Act.

ANALYSIS

I. The Proposal May Be Excluded from the Company's 2024 Proxy Materials Pursuant to Rule 14a-8(i)(7) Because It Relates to the Company's Ordinary Business Operations.

Rule 14a-8(i)(7) permits a company to exclude a shareholder proposal if the proposal "deals with a matter relating to the company's ordinary business operations." The underlying policy of the ordinary business exclusion is "to confine the resolution of ordinary business problems to management and the board of directors, since it is impracticable for shareholders to decide how to solve such problems at an annual shareholders meeting." SEC Release No. 34-40018 (May 21, 1998) (the "1998 Release"). As set out in the 1998 Release, there are two "central considerations" underlying the ordinary business exclusion. One consideration is that "[c]ertain tasks are so fundamental to management's ability to run a company on a day-to-day basis that they could not, as a practical matter, be subject to direct shareholder oversight." The other consideration is that a proposal should not "seek[] to 'micro-manage' the company by probing too deeply into matters of a complex nature upon which shareholders, as a group, would not be in a position to make an informed judgment." The Proposal implicates both of these considerations.

The Proposal may be excluded pursuant to Rule 14a-8(i)(7) because it relates to the Company's offering of a direct stock purchase plan through its transfer agent, Computershare (the "DirectStock Plan"), and the relationship between the Company and Computershare. The Proposal requests the Company to terminate both its DirectStock Plan and/or relationship with Computershare. The decision to offer a direct stock purchase plan, the terms of any such direct

stock purchase plan, the use of the Company's transfer agent to facilitate such a plan, as well as the management of the relationship of the Company's transfer agent are decisions that involve a broad range of business considerations, such as timing, cost, ease of administration, availability of alternatives and contractual obligations. None of these considerations, let alone the interaction among them, is appropriate for direct oversight by shareholders who lack the requisite day-to-day familiarity with the business. Were such decisions subject to direct shareholder oversight, the Company would be significantly hindered in its day-to-day operations.

In addition to interfering with management's day-to-day operations, the Proposal also seeks to "micro-manage" the Company. Specifically, the Proposal instructs the Company to modify the details of its DirectStock Plan. Determinations about how and whether to amend a stock purchase plan are inherently complex, and shareholders as a group are not in an appropriate position to make informed decisions on such determinations because such determinations require analysis of costs, benefits, management of activity, and numerous other considerations.

Pursuant to Rule 14a-8(i)(7), the Staff has consistently granted no action relief to shareholder proposals that relate to the day-to-day operations of a company, in particular regarding the specific details and implementation of share repurchase plans. While the Company's DirectStock Plan is a plan whereby shares can be purchased by registered shareholders, as opposed to a repurchase plan where the Company repurchases shares from the public, the Company believes the DirectStock Plan involves similar complex determinations as to those involved in the implementation of a share repurchase plan. Were shareholders to have the ability to exercise direct oversight over the minutiae of direct stock purchase plans, companies that choose to offer such plans would be significantly hindered in their day-to-day operations and their ability to offer shares pursuant to such plans. For example, see *Pfizer Inc.* (Feb. 7, 2003), (in which the Staff concurred in exclusion of a proposal requesting shareholders to vote on whether the company should spend $5 billion to repurchase issued and outstanding shares on the open market or use those funds to increase the dividend); *Inland American Real Estate Trust, Inc.* (Sep. 3, 2013) (in which the Staff concurred in exclusion of a proposal requiring the company to amend its repurchase plan or implement a plan to repurchase shares held by a subset of shareholders holding shares in an individual retirement account and that are required to withdraw some minimum amount from the retirement account); *Fauquier Bankshares, Inc.* (Feb. 21, 2012) (in which the Staff concurred in the exclusion of a proposal related to the mechanics and implementation of the issuer's share repurchase program); *Concurrent Computer Corporation* (July 13, 2011) (in which the Staff concurred in exclusion of a proposal relating to the implementation and particular terms of a share repurchase program "involve decisions that relate to the conduct of the ordinary business operations of the company"); *Vishay Intertechnology, Inc.* (Mar. 23, 2009) (in which the Staff concurred in exclusion of a proposal under Rule 14a-8(i)(7) requiring the board of directors to make an irrevocable offer to repurchase and cancel the company's class B shares in exchange for the company's publicly traded shares, noting that the repurchase of securities relates to ordinary business operations); *Ryerson, Inc.* (Apr. 6, 2007) (in which the Staff concurred in exclusion of a proposal under Rule 14a-8(i)(7) seeking to implement a stock repurchase program because it related to the company's ordinary business operations); *Medstone International* (May 1, 2003) (in which the Staff concurred in exclusion of a proposal seeking to establish pricing criteria for repurchase of the issuer's stock); *Apple Computer, Inc.* (Mar. 3, 2003) (in which the Staff concurred in exclusion of a proposal that contained specific procedures for the design and

implementation of a share repurchase program, including how to set the purchase price); *Ford Motor Co.* (Mar. 28, 2000) (in which the Staff concurred in exclusion of a proposal under Rule 14a-8(i)(7) seeking to implement a stock repurchase program because it related to the company's ordinary business operations). Similarly, the Staff has granted "no action" requests pursuant to Rule 14a-8(i)(7) with respect to proposals to amend an existing share repurchase program. See *LTV Corporation* (Feb. 15, 2000) (in which the Staff concurred in exclusion of a proposal seeking to amend a stock repurchase plan*); Food Lion, Inc.* (Feb. 22, 1996) (in which the Staff concurred in exclusion of a proposal mandating an amendment to an existing stock repurchase plan, noting that the proposal was "directed at a matter relating to the conduct of the company's ordinary business operations (i.e., determination of the terms and conditions of an existing stock repurchase plan)").

The Staff has also consistently concurred that a company's decisions with respect to and relationship with its transfer agent involve ordinary business operations and are therefore not a proper subject for shareholder oversight. For example, in *Ameren Corporation* (Feb. 27, 2000) the Staff concurred with the exclusion pursuant to Rule 14a-8(i)(7) of a shareholder proposal mandating that the company and its transfer agent not show antagonism to shareholders applying for nonresident alien status in connection with tax withholdings, and aid shareholders in filling out IRS Forms W-8 and W-9 necessary to claim that status. The company in *Ameren Corporation* argued that "compliance with the Proposal would implement policies which are not in the interest of the Company and is likely to result in actions that are inconsistent with the requirements of the Code." In *General Electric Company* (Jan. 5, 2005), the Staff concurred in the exclusion of a proposal pursuant to Rule 14a-8(i)(7) that the company's board adopt a policy that the selection of GE's transfer agent be submitted to shareholders for ratification. In concurring with the exclusion of the proposal, the Staff noted that the proposal related to the company's "ordinary business operations (i.e., the selection of GE's transfer agent and registrar)." See also, *AT&T* Corp. (Jan. 30, 2001) (in which the Staff concurred in exclusion of a proposal requesting that company terminate its transfer agent); *Schering-Plough Corporation* (Jan. 12, 1993) (in which the Staff concurred in exclusion of a proposal requiring the company to discontinue using its present stock transfer agent and to substitute one of two named transfer agents); *Lance, Inc*. (Feb. 12, 1981) (in which the Staff concurred in exclusion of a proposal to terminate company's outside legal counsel and transfer agent).

Additionally, by urging the creation of a new stock purchase plan containing specific terms and conditions, the Proposal impedes on ordinary business matters that are within the sole discretion of the board of directors pursuant the Company's bylaws and the Delaware General Corporation Law. The logistics of implementing a new stock purchase plan via Computershare involve careful consideration by the Company's board of directors and management, using their good faith business judgment of the best interests of the Company, and are based on an in-depth knowledge of the Company's business. These are the kind of complex matters on which shareholders, as a group, would be unable to make an informed judgment, "due to their lack of... intimate knowledge of the [company's] business." See Exchange Act Release No. 34-12999 (Nov. 22, 1976). Allowing shareholders to decide on such matters would result in "micro-management" of the Company and the Company's board of directors, a situation that the Commission consistently sought to prevent.

The Proposal also does not involve a significant policy issue. As set out in the 1998 Release, proposals "focusing on sufficiently significant social policy issues (e.g., significant discrimination matters) generally would not be considered to be excludable [under Rule 14a-8(i)(7)], 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." Accordingly, and as is appropriate, an issue must meet certain standards to be deemed a significant policy issue. In determining whether an issue should be deemed a significant policy issue, the Staff considers whether the issue has been the subject of widespread and/or sustained public debate. The issue of whether the Company should implement a direct stock purchase plan does not meet this standard, as the Company is not aware of any widespread or sustained public debate regarding this issue.

Accordingly, we believe that the Proposal may be excluded from the 2024 Proxy Materials pursuant to Rule 14a-8(i)(7).

II. The Proposal May Be Excluded from the Company's 2024 Proxy Materials Pursuant to Rule 14a-8(i)(3) Because It Contains Materially False and Misleading Statements in Violation of Rule 14a-9 Under the Exchange Act.

Rule 14a-8(i)(3) permits the exclusion of a shareholder proposal if "the proposal or supporting statement is contrary to any of the Commission's proxy rules, including Rule 14a-9, which prohibits materially false or misleading statements in proxy soliciting materials." As the Staff explained in Staff Legal Bulletin No. 14B (Sep. 15, 2004), Rule 14a-8(i)(3) permits the exclusion of a shareholder proposal if the company demonstrates that a statement is materially false or misleading. Applying this standard, the Staff has allowed exclusion of an entire proposal that contains false and misleading statements speaking to the proposal's fundamental premise. For example, in early 2007, a number of companies sought to exclude shareholder proposals requesting the adoption of a company policy allowing shareholders at each annual meeting to vote on an advisory resolution to approve the compensation committee report disclosed in the proxy statement. Because then-recent amendments to Regulation S-K no longer required the compensation committee report to address executive compensation policies, the Staff in each case permitted the companies to exclude the shareholder proposals. See, e.g., *Energy East Corp.* (Feb. 12, 2007); *Bear Stearns Cos. Inc.* (Jan. 30, 2007). See also *Ferro Corp.* (Mar. 17, 2015) (in which the Staff concurred in exclusion of a proposal requesting the company change its jurisdiction of incorporation from Ohio to Delaware because the proposal contained false assertions regarding corporate law in Ohio).

The Company believes that the Proposal contains false and misleading statements regarding the Company's DirectStock Plan. The Proposal misrepresents the operation of the DirectStock Plan, the relationship between directly registered shares and shares acquired through the DirectStock Plan and interactions between shares acquired through the DirectStock Plan and The Depository Trust Company ("DTC"). Including the Proposal and supporting statement would materially mislead shareholders as to what they are being asked to vote on. In particular, the Proposal asserts that (1) if a person has directly registered shares and has any shares purchased through the DirectStock Plan all shares are moved into the DirectStock Plan, (2) enabling the dividend reinvestment feature of the DirectStock Plan causes shares to be moved into the DirectStock Plan, (3) having a sell order limit removes the shareholder's shares from

direct registration and (4) 10% to 20% of directly registered shares are put into DTC for operational efficiency. If a shareholder's shares are in the DirectStock Plan, it is because the shareholder purchased those shares and the shareholder is free to remove them from the DirectStock Plan at any time. If the shares are removed from the DirectStock Plan, they cannot be reinserted into any plan without the consent of the shareholder. Additionally, the Company understands from Computershare that it does in fact send notices to shareholders when shares are purchased through the DirectStock Plan. The direct reinvestment feature is only available to shareholders whose shares were purchased through and continue to be subject to the DirectStock Plan. However, this feature is not currently applicable as the Company has not declared dividends since 2019 and, as disclosed in its periodic filings with the Commission, currently has no intention of paying dividends. Having an open sell order limit does not automatically take such shares out of direct registration (to the extent such shares were directly registered), but Computershare does restrict the ability of the shareholder to take certain actions with respect to such shares given that they are subject to an active trade order. In addition, the shares that have been moved to the DTC are moved in order to complete sales initiated by shareholders. Computershare has endeavored to clarify these issues for concerned shareholders through its Frequently Asked Questions page (the "FAQ Page") on Computershare's website. Specifically, the FAQ Page states, "DRS shares do not require enrollment into a 'plan.'" Additionally, the FAQ page also states that an "investor can, at any time, withdra[w] all or part of their shares in [the DirectStock Plan] book-entry form and have them added to their DRS holding. The investor is able to transfer whole shares from [the DirectStock Plan] book-entry to DRS at any time." The FAQ page explains that Computershare holds only "a portion of the aggregate DSPP book-entry shares via its broker in DTC for operational efficiency, i.e. to enable any sales to be settled efficiently (and Computershare determines the portion needed for operational efficiency reasons. Such shares are not available for lending. These shares are eligible to be withdrawn from DTC)".

The false and misleading statements described above relate to the Proposal's fundamental purpose – that the Company discontinue its DirectStock Plan and choose a new transfer agent – due to various incorrect assertions thus rendering these false and misleading statements material to shareholders in deciding how to vote on the Proposal's merits.

For these reasons, we believe that the Proposal may be excluded from the 2024 Proxy Materials pursuant to Rule 14a-8(i)(3).

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. If we can be of any further assistance in this matter, please do not hesitate to call me at (212) 451-2300.

Sincerely,

Kenneth M. Silverman

Enclosures

cc: Mark Robinson, General Counsel and Secretary, GameStop Corp.
Justin Kilmer

Exhibit A

December 19, 2023

GameStop Corp.
625 Westpoint Parkway
Grapevine, TX 76051

Members of the Board,

My name is Justin Kilmer and I would like to submit a shareholder proposal for the 2024 annual shareholder meeting. I am an individual investor with directly registered ownership of over $100,000 of GameStop Corp. stock. I have maintained this position for over two years and I intend to hold these shares through the date of the 2024 annual shareholder meeting.

There is confusion surrounding directly registered shares and Computershare's DirectStock plan shares. While statements have been released by Computershare, the SEC clarified the ownership distinction on July 12, 2023 noting that plan shares are not DRS (https://www.sec.gov/about/reports-publications/investor-publications/holding-your-securities-get-the-facts). This is a fact that Computershare should have made clear years ago.

Many GME recordholders are still unaware that their DRS holdings are brought into the DirectStock plan if: 1) they have any plan shares, 2) DRIP is enabled, or 3) a sell limit is set. In many cases, GME shareholders are automatically enrolled in the DirectStock plan without their knowledge.

As of April 21, 2023, over one-third of all GME record holders were enrolled in Computershare's DirectStock plan. According to the DirectStock plan brochure and Computershare's public statements, DRS shares are pulled into the DirectStock plan and a portion ("typically" 10-20%) of all these shares are held at DTC for operational efficiency. Many shareholders believe their shares have been withdrawn from the DTC and are directly registered, while they actually remain in the system. Is this the reason why GME stopped describing shares on the registrar as "directly registered" starting with the 2022 10K report?

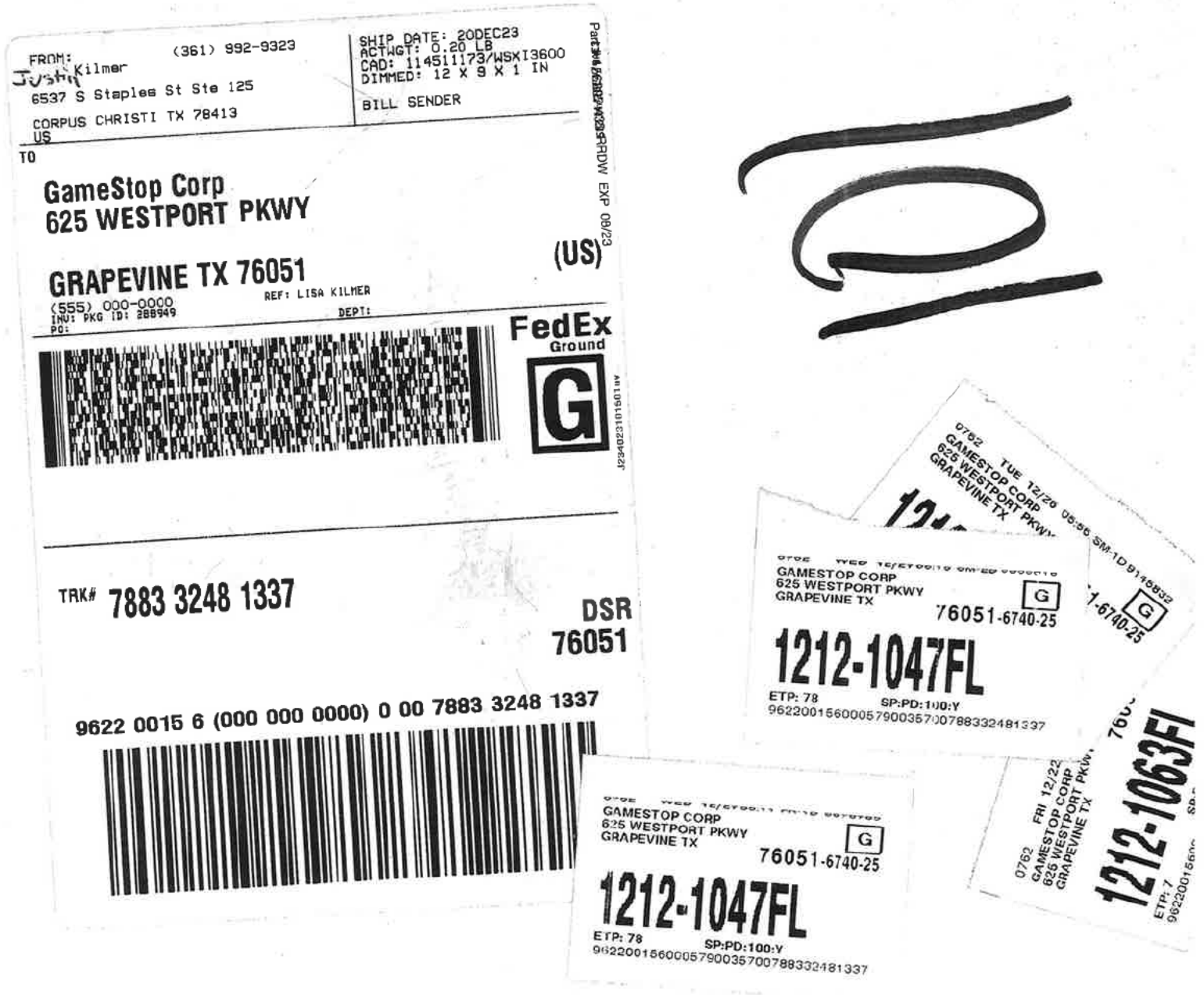
The large amount of shares enrolled in the DirectStock plan and the loose language from Computershare could enable tens of millions of shares to be held at DTC. Unbeknownst to investors, these shares may possibly be exploited by short sellers. The SEC issued an alert that broker-dealers and clearing firms use various options strategies to circumvent Reg SHO close-out requirements (https://www.sec.gov/about/offices/ocie/options-trading-risk-alert.pdf). Instead of buying or locating shares to close out short positions, these entities use options to reset their short positions and avoid failures-to-deliver. This practice is illegal and several complaints were filed with the SEC in 2021 specifically referencing GME.

The large spikes in volume surrounding the 2022 10K and 2023 Q3 recordholder dates (March 22, 2023 and November 30, 2023) suggest this abuse may be continuing. While typical trading volume for GME is approximately 3-5 million per day, it was over 100 million on and around these dates. Could DirectStock plan shares held at DTC for operational efficiency assist with the circumvention of Reg SHO close-out requirements?

My proposal is for GameStop to protect its shareholders by doing one or more of the following: 1) discontinue the DirectStock plan with Computershare, 2) require Computershare to address the above concerns through transparent disclosure, and/or 3) choose another transfer agent that provides clear statements and transparency about DRS versus plan ownership.

Justin Kilmer

[redacted]



FROM:
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