



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 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 Robert McLaughlin for inclusion in the Company's proxy materials for its upcoming annual meeting of security holders.

The Proposal requests that the Company approve a one-time use coupon for shareholders of record towards a future purchase at the Company's stores.

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: Robert McLaughlin

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 Robert McLaughlin
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 Robert McLaughlin (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:

As a shareholder in this company, I am writing to propose the company and/or its board of directors approve a one-time use coupon, for shareholders of record, towards a future purchase at GameStop, either in-store or online. The coupon will:

- Be limited to one per household
- Expire if not used before December 31, 2024
- Be applicable for purchases up to \$500
- Be valid for 10% off any purchase if the shareholder holds 100 shares or more total
- Be valid for 5% off if the shareholder holds less than 100 shares total

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)(13) because the Proposal relates to a specific amount of cash or stock dividends; and
- Rule 14a-8(i)(7) because the Proposal deals with a matter relating to the Company's ordinary business operations.

ANALYSIS

I. The Proposal May Be Excluded from the Company's 2024 Proxy Materials Pursuant to Rule 14a-8(i)(13) Because It Relates to a Specific Amount of Cash or Stock Dividends.

Rule 14a-8(i)(13) states that a registrant may omit a shareholder proposal from its proxy materials if the proposal "relates to specific amounts of cash or stock dividends." The Proposal seeks to direct the board of directors of the Company to declare a dividend in the form of a coupon for shareholders of record (the "Coupon") that will (1) be applicable for purchases of Company products up to \$500, (2) be valid for 10% off any purchase if the shareholder holds 100 shares of GameStop common stock (the "Common Stock") or more total and (3) be valid for 5% off if the shareholder holds less than 100 shares of Common Stock total. Additionally, the Proposal indicates that the Coupon would serve as a "reward" to shareholders, many of whom "buy merchandise from GameStop, both in-store and online."

In connection with its adoption in 1976, the Staff noted that “[t]he purpose of [Rule 14a-8(i)(13)] was to prevent security holders from being burdened with a multitude of conflicting proposals on such matters.” The Staff was concerned that several proponents might independently submit to an issuer proposals asking that different amounts of dividends be paid. The Staff has consistently interpreted Rule 14a-8(i)(13) of the Exchange Act broadly, permitting the exclusion of shareholder proposals that purport to set minimum amounts or ranges of dividends or that would establish formulas for determining dividends. See *Ruth’s Hospitality Group, Inc.* (Apr. 8, 2022) (in which the Staff concurred in exclusion of a proposal to end stock buybacks until a previous dividend rate was reestablished and corporate debt was eliminated); *Philip Morris International Inc.* (Jan. 31, 2019) (in which the Staff concurred in exclusion of a proposal requesting that the company “bring the balance sheet to a minimally acceptable position” and that until then, “the annual dividend be reduced to \$1.00 until such time as assets over liabilities equals at least 110 percent, or shareholders equity of at least \$5 billion”); *HomeTrust Bancshares, Inc.* (Aug. 31, 2015) (in which the Staff concurred in exclusion of a proposal requesting the annual payment of a dividend equal to 50% of after-tax profits); *Bassett Furniture Industries, Incorporated* (Jan. 23, 2012) (in which the Staff concurred in exclusion of a proposal to pay a dividend of at least \$4.00 of cash per share); *Exxon Mobil Corporation* (Mar. 17, 2009) (in which the Staff concurred in exclusion of a proposal to pay dividend of 50% of net income); *American Express Company* (Dec. 21, 2007) (in which the Staff concurred in exclusion of a proposal to pay a special dividend of \$9.00 per share); *Source Interlink Companies, Inc.* (Jan. 5, 2007) (in which the Staff concurred in exclusion of a proposal to pay a special dividend of \$5.00 per share); *Computer Sciences Corporation* (Mar. 30, 2006) (in which the Staff concurred in exclusion of a proposal to pay annual dividend of not less than 50% of earnings); and *Microsoft Corporation* (July 19, 2002) (in which the Staff concurred in exclusion of a proposal to pay dividend of 50% of current and subsequent year earnings).

We believe the Proposal may be excluded under Rule 14a-8(i)(13) of the Exchange Act because, as with the excluded proposals referenced above, the Proposal asks that the board of directors declare a specific dividend in the form of the Coupon as a reward for existing shareholders to be used towards purchases from the Company.

II. 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 Staff has consistently recognized that decisions regarding the amount of dividends to be paid deal with matters relating to the conduct of a company’s ordinary business operations. See *Pfizer Inc.* (available Feb. 4, 2005) (permitting, on ordinary business grounds, the exclusion of a proposal requesting a dividend increase in lieu of a \$5 billion share repurchase); *M&F Worldwide Corp.* (available Mar. 29, 2000) (in which the Staff concurred in exclusion of a proposal to implement actions relating to share repurchases, cash dividends, sales of assets and curtailment of non-operating activities); *Monsanto Company* (available Feb. 23, 1976) (in which the Staff concurred in exclusion of a proposal to establish a dividend of at least 50% of earnings in any given year). The Staff also has permitted the exclusion, on ordinary business grounds, of proposals relating to other aspects of the declaration and payment of dividends. See *The Walt Disney Company* (Sept. 27, 1993) (in which the Staff concurred in exclusion of a proposal to implement a dividend reinvestment plan); *Bel/South Corporation* (Jan. 26, 1993) (in which the Staff concurred in exclusion of a proposal for payment of dividends via a direct deposit); and *NYNEX Corporation* (Jan. 19, 1989) (in which the Staff concurred in exclusion of a proposal for the determination of dividend payment dates).

By urging the distribution of a dividend in the form of a Coupon based on shares of Common Stock held by a shareholder of record, the Proposal seeks to establish the form and specific amount of dividend, an ordinary business matter that is within the sole discretion of the board of directors pursuant the Company’s bylaws and the Delaware General Corporation Law. The specifics of a dividend requires careful consideration by the Company’s board of directors, using its good faith business judgment of the best interests of the Company, and is based on an in-depth knowledge of the Company’s business and a detailed review of the Company’s financial statements. 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 has consistently sought to prevent.

In addition, the Proposal effectively amounts to an attempt to direct the Company to offer a discount on the products and services of the Company, which firmly falls within the day-to-day decision making authority of Company management. The Staff has consistently granted no-action relief for shareholder proposals, such as the Proposal, that relate to the day-to-day operations of a company, specifically when the proposal relates to the products and services offered for sale by the company. For example, see *PayPal Holdings, Inc.* (Apr. 10, 2023) (in which the Staff concurred in exclusion of a proposal requesting the board of the company to revise transparency reports to include explanations of account suspensions and closures); *Johnson & Johnson* (Mar. 2, 2023) (in which the Staff concurred in exclusion of a proposal requesting Johnson & Johnson to publish a report explaining and itemizing all costs and participation in membership organizations); *Wells Fargo & Co.* (Mar. 2, 2023) (in which the Staff concurred in exclusion of a proposal requesting Wells Fargo to publish a report specifying the company’s policy in responding to requests to close accounts operating under the authority of the executive branch of the United States Government); *PayPal Holdings, Inc.* (Apr. 2, 2021) (in

which the Staff concurred in exclusion of a proposal asking that the board take steps to insure that PayPal users are given “specific, good and substantial reasons” for any frozen account or service termination); *Nike, Inc.* (Jun. 19, 2020) (in which the Staff concurred in exclusion of a proposal requesting the company to research “the market potential of creating a shoe and apparel line of products, that is geared to the needs and wants of the over 40 years of age customers, that were athletes or wan-a be athletes” and suggesting that the company launch this line under a “consumer direct” marketing approach incorporating the theme of “STILL DOING IT”); *McDonald’s Corporation* (Mar. 12, 2019) (in which the Staff concurred in exclusion of a proposal requesting the formation of a special board committee on food integrity to carry out duties specified in the proposal in an effort to restore public confidence in the company’s food quality and integrity, on the basis that the proposal related to “the products and services offered for sale by the Company”); *Verizon Communications Inc.* (Jan. 29, 2019) (in which the Staff concurred in exclusion of a proposal asking the company to offer company shareholders the same discounted pricing on company products and services as is offered to company employees, on the basis that the proposal related to “the Company’s discount pricing policies”); *The Home Depot, Inc.* (Mar. 21, 2018) (in which the Staff concurred in exclusion of a proposal requesting that the company end its sale of glue traps, on the basis that the proposal related to “the products and services offered for sale by the Company”); *Cabelas Incorporated* (Apr. 7, 2016) (in which the Staff concurred in exclusion of a proposal asking the board to adopt a policy specifying the types of weapons the company could sell, on the basis that the proposal related to the “products and services offered for sale by the company”); *The Walt Disney Company* (Nov. 23, 2015) (in which the Staff concurred in exclusion of a proposal asking the board to approve the release of the film *Song of the South* on Blu-ray in 2016 for its 70th anniversary, on the basis that the proposal related to the “products and services offered for sale by the company”); *Papa John’s International, Inc.* (Feb. 13, 2015) (in which the Staff concurred in exclusion of a proposal requesting that the company expand its menu offerings to include vegan cheeses and vegan meats, on the basis that the proposal related to “the products offered for sale by the company and does not focus on a significant policy issue”); and *Telular Corporation* (Dec. 5, 2003) (in which the Staff concurred in exclusion of a proposal to appoint a board committee to explore strategic alternatives to maximize shareholder value appeared to relate in part to non-extraordinary transactions).

Further, in April 2023, the Staff concurred with the Company’s exclusion of proposals that requested the Company to create a new line of NFTs and issue a dividend of such newly created NFTs to the Company’s shareholders. See *GameStop Corp.* (April 25, 2023).

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 issue a dividend in the form of a coupon to “reward shareholders” does not meet this standard, as the Company is not aware of any widespread or sustained public debate regarding this issue.

February 8, 2024

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

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,

A handwritten signature in blue ink, appearing to read "Ken M. Silverman", written over a light blue horizontal line.

Kenneth M. Silverman

Enclosures

cc: Mark Robinson, General Counsel and Secretary, GameStop Corp.
Robert McLaughlin

Exhibit A

December 13, 2023

Secretary, at GameStop Corp.

625 Westport Parkway

Grapevine, Texas 76051

Dear GameStop Board of Directors,

As a shareholder in this company, I am writing to propose the company and/or its board of directors approve a one-time use coupon, for shareholders of record, towards a future purchase at GameStop, either in-store or online. The coupon will:

- Be limited to one per household
- Expire if not used before December 31, 2024
- Be applicable for purchases up to \$500
- Be valid for 10% off any purchase if the shareholder holds 100 shares or more total
- Be valid for 5% off if the shareholder holds less than 100 shares total

Many loyal shareholders not only are GameStop Pro members, but also buy merchandise from GameStop, both in-store and online. In July 2022, GameStop announced and executed a 4-for-1 stock split; however, this has been the most recent action taken to directly reward shareholders.

There are several publicly traded companies on the New York Stock Exchange (NYSE) that reward verified shareholders with additional perks. Examples include:

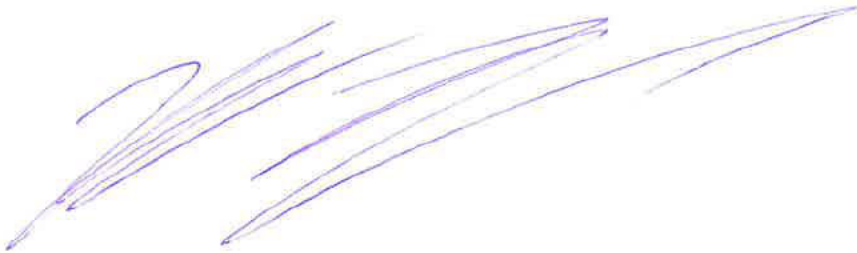
- Carnival Cruise Lines (CCL) with onboard credit on sailings
- AMC Entertainment Holdings Inc (AMC) with free concessions at theaters
- Berkshire Hathaway Class B (BRK.B) with discounted insurance premiums

If it is still the goal of this board to delight customers and drive shareholder value, this coupon will do just that. Regardless of where GME shareholders hold their shares, this simple action will delight both your shareholders and customers who are one in the same.

I intend to hold the requisite amount of securities through the date of the shareholders meeting for which the proposal is submitted. I am also available to meet with the company in person or via teleconference no less than 10 calendar days, nor more than 30 calendar days, after the submission of this shareholder proposal.

I strongly believe that issuing this coupon would be a beneficial move for the company and its shareholders. I urge the board of directors to carefully consider this proposal and take action as appropriate.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Robert McLaughlin', written in a cursive style.

Robert McLaughlin



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Secretary
GameStop Corp.
625 Westport Parkway
Grapevine, TX 76051

76051-674025

