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

DIVISION OF
CORPORATION FINANCE

April 23, 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 Chris Mueller for inclusion in the Company's proxy materials for its upcoming annual meeting of security holders.

The Proposal requests that the Company stop allowing recurring purchases through its direct stock purchase plan until certain vulnerabilities are resolved.

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: Chris Mueller

1325 AVENUE OF THE AMERICAS ▪ NEW YORK, NEW YORK 10019
TELEPHONE: 212.451.2300 ▪ FACSIMILE: 212.451.2222

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 Chris Mueller
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 Chris Mueller (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: GameStop needs to stop allowing recurring purchases through DirectStock plan at Computershare until these vulnerabilities can be resolved. "One time" purchases do not have the same issues. Since individual "one time" purchases are not "scheduled", the purchase dates are more random and limit the exposure to manipulation that is currently happening with recurring buys.

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 direct stock purchase plan offered through its transfer agent Computershare (the "DirectStock Plan"). The Proposal requests the Company modify the plan to prohibit recurring

purchases. The decision to offer a direct stock purchase plan and the terms of any such direct stock purchase plan 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)").

Additionally, by urging the amendment of the Company's existing DirectStock Plan to allow for certain customizations, 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 direct 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 and the terms of such a plan do 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, which serve as the basis for the Proposal. The Proponent alleges that the availability of recurring purchases under the DirectStock Plan allows for market manipulation and suggests that the Company and Computershare are facilitating fraudulent behavior. The Proponent also alleges that "BofA Securities," "internet users (with positions of power and influence)" and potentially others utilize the DirectStock Plan's recurring purchase feature to manipulate the market. Whether these assertions are factually accurate is unclear at best, as they appear to be mere speculative assertions made by the Proponent regarding potential wrongdoing of third parties. Further, including speculative assertions of market manipulation without supporting evidence will leave shareholders misguided regarding the purposes of the shareholder vote.

Moreover, it is unclear how the recurring purchases authorized under the DirectStock Plan are related to the transactions about which the Proponent expresses concerns. Finally, neither the Company, nor Computershare, allow recurring purchases to facilitate any fraudulent or illegal conduct. The disclosure of recurring purchases is used to facilitate market transparency.

The false and misleading statements described above relate to the Proposal's fundamental purpose – that the Company disallow recurring purchases under its DirectStock Plan – due to various speculative 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.
Chris Mueller

Exhibit A

December 19, 2023

GameStop Corp.
625 Westpoint Parkway
Grapevine, TX 76051

Members of the Board,

My name is Chris Mueller, 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 stock. I have maintained a position over $25,000 for over two years, and I intend to hold these shares through the date of the 2024 annual shareholder meeting. I would be happy to meet with the board to discuss my proposal at any time.

I occasionally purchase shares of GameStop stock directly through our transfer agent Computershare. Some of my purchases are "one time buys" and other purchases have been enrolled in recurring purchases that happen on the 1st and 15th of each month. Although these shares are not DRS, this has been a convenient way to buy shares before I move them to DRS.

Unfortunately and surprisingly, it has come to my attention that the bi-monthly recurring purchases with DirectStock plan have vulnerabilities that are ripe for exploitation. Day traders and options traders are allegedly arbitraging my purchases by following a specific formula that I describe below. Unless changes are made, the recurring purchases that BofA Securities is processing occur on very predictable dates and times. This predictable formula isn't exclusive to just GME stock, but includes hundreds of other issuers using DirectStock plan at Computershare as well. For those unaware, BofA Securities was recently fined $24 million by FINRA in November 2023 for spoofing US treasuries.

The "formula" for when GameStop DirectStock recurring plan purchases happen is T+3 from the 1st and 15th (excluding weekends and bank holidays). The purchases generally occur between 9:50am and 11:30am EST. The 2024 dates these purchases will very likely occur are: Jan 5, Jan 19, Feb 6, Feb 21, Mar 6, Mar 20, April 4, April 18, May 6, May 20, June 6, June 21, July 5, July 18, Aug 6, Aug 20, Sept 6, Sept 19, Oct 4, Oct 18, Nov 6, Nov 21, Dec 5, Dec 19.

Knowing these dates and times allows for alleged market manipulators to take advantage of my current investment plan purchases. There are internet users (with positions of power and influence) who participate in very popular public spaces that are aware of these scheduled purchase dates (and times). These individuals publicly promote for more investors to buy directly on these dates while participating in options trading discussions (around these dates) at the same time.

My proposal: GameStop needs to stop allowing recurring purchases through DirectStock plan at Computershare until these vulnerabilities can be resolved. "One time" purchases do not have the same issues. Since individual "one time" purchases are not "scheduled", the purchase dates are more random and limit the exposure to manipulation that is currently happening with recurring buys.

Thank you for time,

Chris Mueller

[redacted]

CHRISTOPHER MUELLER
[redacted] PII
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