



DIVISION OF  
CORPORATION FINANCE

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

March 13, 2024

Kristina V. Fink  
American Express Company

Re: American Express Company (the "Company")  
Incoming letter dated December 20, 2023

Dear Kristina V. Fink:

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

The Proposal requests that the board of directors issue a report concerning its oversight of management's decision-making regarding the potential use of a merchant category code for standalone gun and ammunition stores.

We are unable to concur in your view that the Company may exclude the Proposal under Rule 14a-8(i)(7). In our view, the Proposal transcends ordinary business matters and does not seek to micromanage the Company.

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: Scott Shepard  
National Center for Public Policy Research

December 20, 2023

**Via Online Shareholder Proposal Form**

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

**Re: Shareholder Proposal Submitted by the National Center for Public Policy Research**

Dear Sir or Madam:

In accordance with Rule 14a-8(j) under the Securities Exchange Act of 1934, as amended (the “Exchange Act”), American Express Company, a New York corporation (the “Company”), hereby gives notice of the Company’s intention to omit from its proxy statement for its 2024 annual meeting of shareholders (the “2024 Proxy Statement”) a shareholder proposal (the “Proposal”) submitted by the National Center for Public Policy Research (the “Proponent”). A copy of the Proposal, together with the supporting statement included in the Proposal, is attached hereto as Exhibit A.

The Company requests confirmation that the staff of the Division of Corporation Finance (the “Staff”) of the Securities and Exchange Commission (the “Commission”) will not recommend any enforcement action if the Company omits the Proposal from the 2024 Proxy Statement pursuant to Rule 14a-8(i)(7) under the Exchange Act because the Proposal deals with matters relating to the Company’s ordinary business operations and seeks to micromanage the Company.

In accordance with Rule 14a-8(j), we are submitting this letter to the Commission no later than 80 calendar days before the Company expects to file its definitive 2024 Proxy Statement with the Commission. Pursuant to Staff Legal Bulletin No. 14D (CF), Shareholder Proposals (November 7, 2008) and related Staff guidance, we have submitted this letter and its attachments to the Commission electronically through the Staff’s online Shareholder Proposal Form. In accordance with Rule 14a-8(j), a copy of this submission is being forwarded simultaneously to the Proponent. This letter constitutes the Company’s statement of the reasons it deems the omission of the Proposal from the 2024 Proxy Statement to be proper.

The Company intends to file its definitive 2024 proxy materials on March 15, 2023 and print shortly thereafter.

**THE PROPOSAL**

The proposed resolution included in the Proposal provides as follows:

**Resolved:** Shareholders request that the American Express Company (the Company) Board of Directors issue a public report, omitting proprietary and privileged information, concerning its

oversight of management's decision-making regarding the potential use of a merchant category code (MCC) for standalone gun and ammunition stores. This report should cover the Company's governance of MCC standards, as well as disclose and explain the justification for its position on an MCC for gun and ammunition stores, and the risk associated with its position.

On November 21, 2023, within 14 days of the Company's receipt of the Proposal, the Company sent to the Proponent via email a notification of eligibility and procedural deficiencies with respect to the Proposal (the "Deficiency Letter"). The Proponent provided additional documentation in response to the Deficiency Letter on November 22, 2023. Copies of the Deficiency Letter and all related correspondence are attached hereto as Exhibit B.

### **BASIS FOR EXCLUSION**

In accordance with Rule 14a-8, the Company hereby respectfully requests that the Staff concur with the Company's view that the Proposal may be excluded from the 2024 Proxy Statement pursuant to Rule 14a-8(i)(7) under the Exchange Act, because the Proposal deals with matters relating to the Company's ordinary business operations and seeks to micromanage the Company.

### **ANALYSIS**

**Under Rule 14a-8(i)(7), the Proposal may be omitted because it deals with matters relating to the Company's ordinary business operations and seeks to micromanage the Company.**

#### *1) Rule 14a-8(i)(7) Background*

Pursuant to Rule 14a-8(i)(7), a shareholder proposal may be excluded if it "deals with a matter relating to the company's ordinary business operations." According to the Commission's prior guidance, the term "ordinary business" refers to matters that are not necessarily "ordinary" in the common meaning of the word, but instead the term "is rooted in the corporate law concept [of] providing management with flexibility in directing certain core matters involving the company's business and operations." *See* Exchange Act Release No. 34-40018 (May 21, 1998) (the "1998 Release").

In the 1998 Release, the Commission explained that 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," and identified two central considerations that underlie this policy. The first 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 second consideration relates to "the degree to which the proposal seeks 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."

More recently, in *Staff Legal Bulletin No. 14L* (November 3, 2021) (“SLB No. 14L”), the Staff rescinded prior guidance that a company may exclude a shareholder proposal in respect of its ordinary business operation if the proposal did not raise a policy issue that was significant to a particular company. In SLB No. 14L, the Staff realigned its approach for determining whether a proposal relates to ordinary business to provide an exception for proposals that raise significant social policy issues that transcend the ordinary business of the company. In explaining the change, the Staff noted, “[W]e 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,” which “did not yield consistent, predictable results.”

In addition, in SLB No. 14L, the Staff provided guidance on its position on micromanagement when evaluating requests to exclude a proposal on that basis under the ordinary business exception. The Staff stated that it will no longer view proposals that seek detail or seek to promote timeframes or methods as *per se* micromanagement. Instead, the Staff will focus on the level of detail and granularity sought in the proposal and may look to well-established frameworks or references in considering what level of detail may be too complex for shareholder input. The Staff also noted that it will look to the sophistication of investors generally, the availability of data and the robustness of public discussion in considering whether a proposal’s matter is too complex for shareholders, as a group, to make an informed judgment.

- 2) *The Proposal may be excluded because it involves issues within the Company’s ordinary business operations.*

The Commission has stated that a proposal requesting the dissemination of a report is excludable under Rule 14a-8(i)(7) if the substance of the proposal is within the ordinary business of the company. *See* Exchange Act Release No. 34-20091 (Aug. 16, 1983) (“[T]he staff will consider whether the subject matter of the special report or the committee involves a matter of ordinary business; where it does, the proposal will be excludable under Rule 14a-8(c)(7).”); *see also Rite Aid Corporation* (May 2, 2022) (permitting exclusion under Rule 14a-8(i)(7) of a proposal that requested a report on the Company’s customer service ranking within the drugstore industry); *Netflix, Inc.* (Mar. 14, 2016) (permitting exclusion under Rule 14a-8(i)(7) of a proposal that requested a report describing how company management identifies, analyzes and oversees reputational risks related to offensive and inaccurate portrayals of Native Americans, American Indians and other indigenous peoples, how it mitigates these risks and how the company incorporates these risk assessment results into company policies and decision-making, noting that the proposal related to the ordinary business matter of the “nature, presentation and content of programming and film production”).

The Staff has also consistently permitted exclusion of shareholder proposals relating to a company’s general legal compliance program. *See, e.g., JPMorgan Chase & Co.* (Mar. 21, 2023) (permitting exclusion under Rule 14a-8(i)(7) of a proposal requesting a report on “the [c]ompany’s policy in responding to requests to close, or in issuing warnings of imminent closure about, customer accounts by any agency or entity operating under the authority of the executive branch of the United States Government.”); *Eagle Bancorp, Inc.* (Mar. 29, 2022) (permitting exclusion under Rule 14a-8(i)(7) of a proposal requesting an independent review of certain investigations performed by the company); *Navient Corp.* (Mar. 26, 2015, recon. denied Apr. 8, 2015) (permitting exclusion under Rule 14a-8(i)(7) of a proposal requesting “a report on the

company's internal controls over student loan servicing operations, including a discussion of the actions taken to ensure compliance with applicable federal and state laws," as "concern[ing] a company's legal compliance program"); *Raytheon Co.* (Mar. 25, 2013) (permitting exclusion under Rule 14a-8(i)(7) of a proposal requesting a report on "the board's oversight of the [c]ompany's efforts to implement the provisions of the Americans with Disabilities Act, the Fair Labor Standards Act, and the Age Discrimination in Employment Act," noting that "[p]roposals that concern a company's legal compliance program are generally excludable under Rule 14a-8(i)(7)"); *FedEx Corp.* (July 14, 2009) (permitting exclusion under Rule 14a-8(i)(7) of a proposal requesting a report on compliance by the company and its contractors with federal and state laws governing the proper classification of employees and contractors, noting that the proposal relates to the ordinary business matter of a company's "general legal compliance program"); *The Coca-Cola Co.* (Jan. 9, 2008) (permitting exclusion under Rule 14a-8(i)(7) of a proposal seeking an annual report comparing laboratory tests of the company's products against national laws and the company's global quality standards, noting that the proposal relates to the ordinary business matter of the "general conduct of a legal compliance program"); *Verizon Communications Inc.* (Jan. 7, 2008) (permitting exclusion under Rule 14a-8(i)(7) of a proposal seeking the adoption of policies to ensure that the company does not illegally trespass on private property and a report on company policies for preventing and handling such incidents, noting that the proposal relates to the ordinary business matter of a company's "general legal compliance program"); *The AES Corp.* (Jan. 9, 2007) (permitting exclusion under Rule 14a-8(i)(7) of a proposal requesting that the board create an ethics committee to monitor the company's compliance with, among other things, federal and state laws, noting that the proposal relates to the ordinary business matter of the "general conduct of a legal compliance program").

In this instance, the Proposal requests that the Board issue a report concerning its oversight of management's decision-making regarding the potential use of an MCC for standalone gun and ammunition stores ("MCC 5723"). The Proposal specifies that such a report should cover "the Company's governance of MCC standards, as well as disclose and explain the justification for its position on an MCC for gun and ammunition stores, and the risk associated with its position." The subject matter of the Proposal is the Company's operation of its payment processing services and the ordinary business matter of the Company's legal compliance program in evaluating the risks related to the potential use of MCC 5723 given recently enacted state laws related to the code.

The Company is a globally integrated payments company that offers its products and services worldwide. Processing payments is central to the Company's business, with the Company offering credit card, charge card, banking and other payment and financing products as well as merchant acquisition and processing services. There are many different players and providers who may be involved in payment processing transactions, including financial institutions with whom the Company has a direct relationship; merchants with whom the Company does not have a direct relationship; network enablement providers; affiliate or reseller programs; technology partners involved in specific types of activities (e.g., digital wallets); and so forth. Each participant may also have various lines of business and operate across different geographies or show up in the Company's network in multiple ways. Given the Company's complex payment processing business, decisions around enabling or not enabling MCC codes which can categorize the types of businesses where cards and/or electronic payment system services may be used are essential to management's ability to run the Company in compliance with all applicable laws and regulations and involve what are fundamentally management

questions.

MCC 5723 was approved by the Geneva, Switzerland-based International Organization for Standardization (“ISO”), for gun and ammunition stores on September 9, 2022. The Company initially announced that it would implement MCC 5723, as did other payment processing businesses, but then announced in March 2023 that it paused its implementation of MCC 5723 in light of recently proposed legislation in multiple U.S. states. Specifically, since the creation of MCC 5723, a number of states including Texas, Florida, Montana, North Dakota, West Virginia, Mississippi and Idaho have passed legislation that, among other things, prohibits or restricts the use of MCC 5723 by payment card issuers / networks like the Company.<sup>1</sup> Similar proposed legislation is pending in several other states.<sup>2</sup> At the same time, one state (California) has passed legislation requiring payment card networks like the Company to, among other things, make MCC 5723 available for certain merchants by as early as July 1, 2024.<sup>3</sup> Given the uncertainty created by laws that vary (and potentially conflict) by state as well as the ongoing nature of these developments, the Company continues to monitor and evaluate the risks associated with the potential use of MCC 5723 to ensure compliance with all applicable federal and state laws and regulations.

The Company is highly regulated and subject to extensive and comprehensive regulation under federal and state laws, as well as the applicable laws of the jurisdictions outside the United States where the Company does business. MCCs are technical standards that payment card issuers/networks and other payment service providers have used for nearly two decades, and there are hundreds of industry categories. These codes relate to a merchant’s primary business. They are one of many inputs that the Company receives from merchants, processors, payment facilitators and/or merchant acquirers to understand the industries in which the Company’s merchants operate. Similar to other card networks, the Company generally adopts MCCs issued by ISO to follow the industry standards designed to facilitate consistency and interoperability across the global payments ecosystem. The Company does not and cannot use MCCs to track product-level purchases or individual consumers’ personal information, as MCCs only provide information with respect to a merchant’s primary business and do not provide Stock Keeping Unit level data that is associated with specific products purchased at a merchant. Decisions regarding the use or enablement of MCCs involve legal, regulatory and operational considerations of the kind that are fundamental to the Company’s day-to-day operations such that they cannot, as a practical matter, be subject to shareholder oversight. As a result, the Company believes the Proposal may be properly omitted from the 2024 Proxy Statement pursuant to Rule 14a-8(i)(7).

3) *The Proposal may be excluded because it seeks to “micromanage” the Company.*

The Proposal also can be excluded under Rule 14a-8(i)(7) because it seeks to micromanage 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.” *See* 1998 Release. In SLB No. 14L, the Staff clarified that in evaluating companies’ micromanagement arguments, it will “focus on the level of granularity sought in the proposal and whether and to what

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<sup>1</sup> *See* H.B. No. 2837 (Tex. 2023), S.B. No.214 (Fla. 2023), S.B. No. 359 (Mont. 2023), H.B. No. 1487 (N.D. 2023), H.B. No. 2004 (W. Va. 2023), H.B. No. 1110 (Miss. 2023), and H.B. No. 295 (Idaho, 2023).

<sup>2</sup> *See, e.g.*, S.B. No. 148 (Ohio. 2023), A.B. No. 468 (Wis. 2023).

<sup>3</sup> *See* A.B. No. 1587 (Cal. 2023).

extent it inappropriately limits discretion of the board or management.” The Staff further noted that 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*” (emphasis added).

The Proposal attempts to probe too deeply into the judgment of management and the Board by requesting the Company to “disclose and explain the justification for its position on an MCC for gun and ammunition stores.” As noted above, the Company is currently evaluating the potential use of MCC 5723 and its impact on the Company’s business as legal and regulatory requirements continue to develop. As noted above, since ISO’s approval of MCC 5723, a number of states have passed or are considering legislation that would prohibit or restrict the use of MCC 5723 while one state has passed legislation requiring the use of MCC 5723. Formulation and operationalization of any network approach that would be necessary to comply with this patchwork of state regulations, not to mention any other current or future Federal requirements, is complex and technical. Requiring the Company to issue a report on management’s decision-making regarding any potential use of MCC 5723 for which implementation is under ongoing operational evaluation and complex state-by-state legal analysis would impermissibly interfere with the fundamental discretion of management to direct the course (and ultimately, the outcome) of such evaluation and any implementation. Furthermore, this evaluation, and the related operationalization, is necessarily granular and technical as it requires extensive consultation with external legal counsel as well as the third-party acquirers and processors the Company works with on a regular basis. Disrupting the evaluation would be unduly invasive to management’s standard procedures, and shareholders are not in a position to make an informed judgment on such a topic, particularly as the legal and regulatory landscape continues to develop. Reporting the risks associated with the Company’s potential use of MCC 5723 as requested by the Proposal would also unnecessarily micromanage the Company. Even though the Proposal appears to only request the reporting on risks rather than any specific risk management actions, the Proposal’s underlying intent is to oversee and override management’s decision around whether, and under what circumstances, to use or enable a merchant category for firearms retailers, which is squarely within management’s responsibility with respect to the operation of its payment systems as well as its general legal compliance function. The Staff has permitted the exclusion of shareholder proposals that attempt to micromanage a company by substituting shareholder judgment for that of management with respect to complex day-to-day business operations that are beyond the expertise and experience of shareholders. *See, e.g., The Coca-Cola Company* (Feb. 16, 2022) (permitting exclusion of a proposal because it micromanaged the company by requiring it to submit any proposed political statement to the next shareholder meeting for approval).

4) *The Proposal does not raise policy issues that transcend the Company’s ordinary business matters.*

In the 1998 Release, the Commission stated that proposals relating to ordinary business matters but focusing on sufficiently significant policy issues generally would not 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.” This approach allows shareholders to have the “opportunity to express their views . . . [on] proposals that raise sufficiently significant social policy

issues.” See the 1998 Release. The Staff reiterated this guidance in November 2021 and retracted prior guidance with respect to the “nexus requirement,” stating that the “[S]taff 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.” Section B.2. of SLB No. 14L.

The Staff has made clear that the mere mention of an issue with a broad societal impact, or the mere fact that an ordinary business issue might tangentially impact society more broadly, is insufficient to transform a proposal that is otherwise about ordinary business issues into one that pertains to “high-level direction on large strategic corporate matters” that the Staff recently confirmed in SLB No. 14L as deserving shareholder oversight and vote. For example, earlier this year, the Staff concurred with the Company’s exclusion of a prior proposal by the Proponent requesting a report describing the Company’s intention to reduce the risks associated with tracking information regarding firearm sales because such proposal “relate[d] to, and d[id] not transcend, ordinary business matters.” *American Express Company* (Mar. 9, 2023).

The Company acknowledges that in *Mastercard Inc.* (Apr. 25, 2023), the Staff did not concur with the exclusion of a seemingly similar proposal requesting that the company prepare a report describing the “oversight of management’s decision-making regarding any application to ISO to establish a merchant category code (MCC) for standalone gun and ammunition stores.” However, as discussed herein, since ISO’s adoption of MCC 5723 in September of 2022 and the Staff’s response to Mastercard Inc. in April 2023, seven states have enacted legislation prohibiting the use of MCC 5723 while one state has enacted legislation that would require payment card networks to assign MCC 5723 to certain firearms merchants. Further, proposed legislation restricting the use of MCC 5723 is pending in several other states. Accordingly, the Proposal is distinguishable from the proposal in *Mastercard Inc.* because the focus here is not simply on the policies and procedures governing how the Company categorizes firearms merchants. Instead, because of the complex mosaic of state laws that have been enacted and may be enacted in the future related to the implementation of MCC 5723, the Proposal seeks a level of detail and granularity that is too complex for shareholder input. By requesting that a report include a discussion of the consideration of the risk associated with the potential use of MCC 5723, the Proposal attempts to micromanage the Company by substituting shareholder judgment for that of management with respect to complex day-to-day business operations and legal compliance that are beyond the expertise and experience of shareholders. The Staff has reaffirmed its position that proposals that reference or touch on topics that might raise significant social policy issues—but that do not focus on or have only tangential implications for such issues—are not transformed from an otherwise ordinary business proposal into one that transcends ordinary business after the publication of SLB No. 14L with its decisions in *Deere & Company* (Jan. 3, 2022) and *American Express Company* (Mar. 11, 2022), in both of which the Staff agreed that proposals seeking the publication of the company’s employee training materials did not transcend ordinary business matters despite their concern with anti-racism and racial equity issues. Here, although the Proposal touches on issues related to firearms, its main request focuses primarily on the ordinary business matter of the Company’s operation of its payment systems as well as its general legal compliance function. Accordingly, the Proposal is excludable under Rule 14a-8(i)(7).



## CONCLUSION

For the foregoing reasons, the Company respectfully requests that the Staff confirm that it will not recommend enforcement action if the Company omits the Proposal from its 2024 Proxy Statement.

If you have any questions or require any additional information, please do not hesitate to contact Kristina V. Fink at (212) 640-2000 or [corporatesecretarysoffice@aexp.com](mailto:corporatesecretarysoffice@aexp.com). If the Staff is unable to agree with our conclusions without additional information or discussions, we respectfully request the opportunity to confer with members of the Staff prior to issuance of any written response to this letter.

Sincerely,

*Kristina Fink*

Kristina V. Fink  
Corporate Secretary and Chief Governance Officer

Enclosure

cc: Scott Shepard, via email at [REDACTED]  
Stefan Padfield, via email at [REDACTED]  
Francesca L. Odell, Cleary Gottlieb Steen & Hamilton LLP  
Lillian Tsu, Cleary Gottlieb Steen & Hamilton LLP

**Exhibit A**

The Proposal

See attached.



November 16, 2023

Kristina V. Fink  
Corporate Secretary and Chief Governance Officer  
American Express Company  
200 Vesey Street  
New York, New York 10285

Dear CGO Fink,

I hereby submit the enclosed shareholder proposal (“Proposal”) for inclusion in the American Express Company (the “Company”) proxy statement to be circulated to Company shareholders in conjunction with the next annual meeting of shareholders. The Proposal is submitted under Rule 14(a)-8 (Proposals of Security Holders) of the United States Securities and Exchange Commission’s proxy regulations.

I submit the Proposal as an Associate of the Free Enterprise Project of the National Center for Public Policy Research, which has continuously owned Company stock with a value exceeding \$2,000 for at least 3 years prior to and including the date of this Proposal and which intends to hold these shares through the date of the Company’s 2024 annual meeting of shareholders. A proof of ownership letter is forthcoming.

Pursuant to interpretations of Rule 14(a)-8 by the Securities & Exchange Commission staff, I initially propose as a time for a telephone conference to discuss this proposal December 8, 2023, or December 11, 2023 from 1-4 p.m. eastern. If that proves inconvenient, I hope you will suggest some other times to talk. Please feel free to contact me at [REDACTED] so that we can determine the mode and method of that discussion.

Copies of correspondence or a request for a “no-action” letter should be sent to me at the

Sincerely,

A handwritten signature in black ink, consisting of a stylized 'S' followed by a vertical line, a horizontal line, and a large loop, ending in a horizontal stroke.

Stefan Padfield

cc: Scott Shepard, FEP Director  
Enclosures: Shareholder Proposal

## Report on Company's Policy on Merchant Category Codes

**Supporting Statement:** In an effort to appease anti-Second Amendment advocates, the Company previously considered tracking firearms purchases through the use of merchant category codes (though it paused that project in early 2023).<sup>1</sup> To do so, the Company would have separately categorized sales at firearms stores, which were previously labeled as “general merchandise” sales.<sup>2</sup>

Broadly categorizing sales at firearms stores, however, unduly targets those who seek to obtain firearms in a lawful manner and does nothing to address violence by those who obtain firearms through illicit means. Indeed, a University of Pittsburgh study found that lawful gun owners commit less than a fifth of all gun crimes.<sup>3</sup>

It is also unclear to what extent the merchant category code information from firearm store sales would be shared with law enforcement or other governmental entities. For instance, banks and other card issuers already block card purchases considered risky or prone to fraud and act as agents of the government in monitoring payments for suspicious activity, including transactions that could finance terrorism.<sup>4</sup>

As such, included in this risk evaluation should be a consideration of whether the best choice is not to track these lawful and constitutionally protected purchases in any way, as well as the dangers associated with sharing any information gathered with government representatives whose use of the information can only be to surveil and harass those who exercise their lawful right to keep and bear Arms.<sup>5</sup>

About 40% of Americans say they or someone in their household owns a gun, and 22% of individuals (about 72 million people) report owning a gun.<sup>6</sup> And given valid concerns over the privacy of gun ownership – case in point, the tracking of purchases from firearms stores by financial institutions – it is very likely those numbers are even higher. The Company should therefore carefully evaluate the potential risks to its bottom-line and its customers before it further embraces the agenda of the anti-Second Amendment lobby.

Given that the original initiative to track gun and ammunition purchases was paused, shareholders would benefit from transparency regarding the issue of how the Board of Directors

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<sup>1</sup> <https://www.reuters.com/business/finance/mastercard-pause-work-new-payments-code-firearms-sellers-2023-03-09/>

<sup>2</sup> <https://www.foxbusiness.com/economy/visa-mastercard-amex-categorize-gun-store-sales-separately>

<sup>3</sup> <https://www.upmc.com/media/news/fabio-firearms> ;

<https://www.washingtonpost.com/news/wonk/wp/2016/07/27/new-evidence-confirms-what-gun-rights-advocates-have-been-saying-for-a-long-time-about-crime/> ;

<https://www.heritage.org/firearms/commentary/eight-stubborn-facts-gun-violence-america>

<sup>4</sup> <https://www.wsj.com/articles/visa-mastercard-amex-to-track-gun-shops-with-new-merchant-code-11662915056>

<sup>5</sup>

[https://www.law.cornell.edu/wex/second\\_amendment#:~:text=The%20Second%20Amendment%20of%20the,reg ar](https://www.law.cornell.edu/wex/second_amendment#:~:text=The%20Second%20Amendment%20of%20the,reg ar)

<sup>6</sup> <https://wamu.org/story/20/09/18/how-many-people-in-the-u-s-own-guns/>

of American Express is overseeing any final position taken on any MCC application for standalone gun and ammunition stores, and whether American Express is appropriately considering the risks inherent in its oversight of this matter. Failure to do so may expose the Company to regulatory, reputational, and litigation risks that may threaten long-term shareholder value.

**Resolved:** Shareholders request that the American Express Company (the Company) Board of Directors issue a public report, omitting proprietary and privileged information, concerning its oversight of management's decision-making regarding the potential use of a merchant category code (MCC) for standalone gun and ammunition stores. This report should cover the Company's governance of MCC standards, as well as disclose and explain the justification for its position on an MCC for gun and ammunition stores, and the risk associated with its position.

**Exhibit B**

Deficiency Letter and Related Correspondence

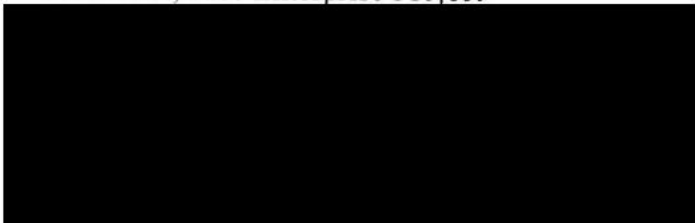
See attached.

**AMERICAN EXPRESS**

November 21, 2023

*Via email and overnight mail to:*

Stefan Padfield  
Associate, Free Enterprise Project



**Re: Shareholder Proposal Regarding Report on  
Company's Policy on Merchant Category Codes**

Dear Mr. Padfield:

On behalf of American Express Company (the "Company"), we formally acknowledge receipt, on November 16, 2023, of the shareholder proposal by the National Center for Public Policy Research ("NCPPR") relating to the request for the Board of Directors to issue a public report regarding the Company's policy on the potential use of a merchant category code for standalone gun and ammunition stores for inclusion in the Company's proxy statement for the 2024 annual meeting of shareholders (the "Submission").

***Rule 14a-8(b)(1): Proof of Ownership***

Since the Company's records do not indicate that NCPPR is a registered holder of the Company's stock, you are required to submit to the Company a written statement from the record holder of NCPPR's shares verifying NCPPR's eligibility pursuant to Rule 14a-8(b)(1) of the Securities Exchange Act of 1934. A copy of the Rule 14a-8(b)(1) is enclosed.<sup>1</sup> Rule 14a-8(b)(1) requires that shareholder proponents continuously hold the company's shares, constituting at least (i) \$2,000 in market value for at least three years, (ii) \$15,000 in market value for at least two years, or (iii) \$25,000 in market value for at least one year, in each case preceding and including the date the proposal was submitted to the company.

Since the Company's records do not indicate that NCPPR is a registered holder, you are required by Rule 14a-8(b)(1) to submit to the Company a written statement from the record holder of NCPPR's shares of the Company's common stock (usually a broker or bank, such as

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<sup>1</sup> An electronic version of Rule 14a-8 is available at: [https://www.ecfr.gov/cgi-bin/text-idx?SID=eda72c517290a19689f72f6355af8d66&node=se17.4.240\\_114a\\_68&rgn=div8#](https://www.ecfr.gov/cgi-bin/text-idx?SID=eda72c517290a19689f72f6355af8d66&node=se17.4.240_114a_68&rgn=div8#).



UBS) verifying that at the time the proposal was submitted, NCPPR had continuously held the requisite number of shares.

The Securities and Exchange Commission (“SEC”) Staff published Staff Legal Bulletins No. 14F (“SLB 14F”)<sup>2</sup> and No. 14G (“SLB 14G”)<sup>3</sup> to provide guidance in helping shareholders comply with the requirement to prove ownership by providing a written statement from the “record” holder of the securities. In SLB 14F, the SEC Staff stated that only brokers or banks that are Depository Trust Company (“DTC”) participants (clarified in SLB 14G to include affiliates thereof) will be viewed as “record” holders for purposes of Rule 14a-8. You can confirm whether NCPPR’s 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/client-center/dtc-directories>. If NCPPR’s shares are held through a broker or bank that is *not* a DTC participant, you will need to obtain proof of ownership from the DTC participant through which the bank or broker holds NCPPR’s Company shares. You should be able to find out the name of the DTC participant(s) by asking NCPPR’s broker or bank.

If the DTC participant that holds NCPPR’s shares knows its broker or bank’s holdings, but does not know NCPPR’s holdings, you may satisfy the proof of ownership requirements by submitting two proof-of-ownership statements: one from NCPPR’s broker or bank confirming NCPPR’s ownership and the other from the DTC participant confirming the broker or bank’s ownership.

The SEC Staff previously issued Staff Legal Bulletin 14L (“SLB 14L”),<sup>4</sup> which provides the following as a suggested format for a broker or bank statement providing the required proof of ownership as of the date of the proposal’s submission for purposes of Rule 14a-8(b):

“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].”

Alternatively, if applicable, you may provide us with a copy of a Schedule 13D, Schedule 13G, Form 3, Form 4 and/or Form 5 filed with the SEC, or amendments to those documents or updated forms, reflecting NCPPR’s ownership of the required amount of Company shares as of the date on which the one-year eligibility period begins, along with a written statement that NCPPR continuously held the required number or amount of shares for the requisite period as of the date of the statement.

To date, the Company has not received sufficient proof that NCPPR has satisfied Rule 14a-8’s ownership requirements as of the date of the Submission.

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<sup>2</sup> An electronic version of SLB 14F is available at: <https://www.sec.gov/corpfin/staff-legal-bulletin-14f-shareholder-proposals>.

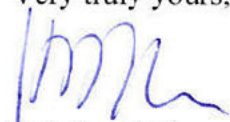
<sup>3</sup> An electronic version of SLB 14G is available at: <https://www.sec.gov/corpfin/staff-legal-bulletin-14g-shareholder-proposals>.

<sup>4</sup> An electronic version of SLB 14L is available at: <https://www.sec.gov/corpfin/staff-legal-bulletin-14l-shareholder-proposals>.

The SEC's rules require you to remedy the procedural deficiency described above in a response that is either postmarked or transmitted electronically to the Company no later than 14 days from the date you receive this letter. If you do not remedy the procedural defect discussed in this letter within 14 days of receipt of this letter, the Company may be allowed to exclude the proposal from consideration at the 2024 annual meeting of shareholders and from the Company's proxy statement for the 2024 annual meeting of shareholders.

Please direct all correspondence to Kristina V. Fink, Vice President, Corporate Secretary and Chief Governance Officer, American Express. [REDACTED]

Very truly yours,



Kristina Fink

Vice President, Corporate Secretary and Chief Governance Officer

Enclosure

## **§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.

November 21, 2023

RE: Verification of Assets for Account Number ending in [REDACTED] PII

To Whom It May Concern:

In connection with your recent request regarding the verification of certain information about your investment account relationship with Wells Fargo Clearing Services, LLC ("Wells Fargo Advisors"), we are providing this letter as confirmation that:

(i) You maintain a Brokerage Cash Service account with Wells Fargo Advisors, number ending in [REDACTED] PII, established on 08/04/2023.

(ii) As of November 21, 2023, the National Center for Public Policy Research holds, and has held continuously since November 15, 2020 more than \$2,000 of American Express common stock.

This letter is provided for informational purposes and does not represent future Account value, if this said Account will remain with Wells Fargo Advisors in the future, any purposes not mentioned in this letter, or the creditworthiness of the person(s) referenced within. Wells Fargo Advisors will have no liability with any party's reliance on this letter or the information within. This report is not the official record of your account. However, it has been prepared to assist you with your investment planning and is for informational purposes only. Your Wells Fargo Advisors Client Statement is the official record of your account. Therefore, if there are any discrepancies between this report and your Client Statement, you should rely on the Client Statement and call your local Sales Location Manager with any questions. Cost data and acquisition dates provided by you are not verified by Wells Fargo Advisors. Transactions requiring tax consideration should be reviewed carefully with your accountant or tax advisor. Unless otherwise indicated, market prices/values are the most recent closing prices available at the time of this report and are subject to change. Prices may not reflect the value at which securities could be sold. Past performance does not guarantee future results.

Sincerely,



David A. Bos  
Senior Vice President - Investments  
Branch Manager – Private Client Group  
Direct: 571-341-1125 | Fax: 703-827-7643  
[David.bos@wfadvisors.com](mailto:David.bos@wfadvisors.com)

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January 17, 2024

**Via Online Shareholder Proposal Form**

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

**Re: No-Action Request from American Express Regarding Shareholder Proposal by the National Center for Public Policy Research**

Ladies and Gentlemen:

This correspondence is in response to the letter of Kristina V. Fink on behalf of American Express Company (the "Company" or "American Express") dated December 20, 2023, requesting that your office (the "Commission" or "Staff") take no action if the Company omits our shareholder proposal (the "Proposal") from its 2024 proxy materials for its 2024 annual shareholder meeting.

**RESPONSE TO THE COMPANY'S CLAIMS**

Our Proposal asks the Company to:

[I]ssue a public report, omitting proprietary and privileged information, concerning its oversight of management's decision-making regarding the potential use of a merchant category code (MCC) for standalone gun and ammunition stores. This report should cover the Company's governance of MCC standards, as well as disclose and explain the justification for its position on an MCC for gun and ammunition stores, and the risk associated with its position.

The Company seeks to exclude the Proposal from the 2024 Proxy Materials pursuant to Rule 14a-8(i)(7) because it claims the subject matter of the Proposal directly concerns the Company's ordinary business operations.

Under Rule 14a-8(g), the Company bears the burden of persuading the Staff that it may omit our Proposal. The Company has failed to meet that burden.

Rule 14a-8(k) and Section E of Staff Legal Bulletin No. 14D (Nov. 7, 2008) provide that companies are required to send proponents a copy of any correspondence that they elect to submit to the Commission

or the Staff. Accordingly, we remind the Company that if it were to submit correspondence to the Commission or the Staff or individual members thereof with respect to our Proposal or this proceeding, a copy of that correspondence should concurrently be furnished to us.

**I. Our Proposal presents an issue that the Staff has repeatedly determined presents a matter of significant social policy concern that prohibits omission, in a way wholly indistinguishable from the proposals presented in those determinations except with regard to our viewpoint about the issue, and therefore is also non-omissible.**

Our proposal requests in relevant part that the American Express Board of Directors issue a public report “concerning its oversight of management’s decision-making regarding the potential use of a merchant category code (MCC) for standalone gun and ammunition stores.” Prior no-action letters appear to be directly on point. Unfortunately, they also appear to point in opposite directions.

In *Mastercard, Inc.* (Apr. 22, 2022), the Staff concluded that a proposal that requested the board to “conduct an evaluation and issue a report within the next year describing if and how the Company intends to reduce the risk associated with the processing of payments involving its cards and/or its electronic payment system services for the sale and purchase of untraceable firearms” was non-excludable as ordinary business because it transcends ordinary business matters. In *American Express* (Mar. 9, 2023), however, the Staff concluded that a similar proposal, which requested “the Company’s board of directors conduct an evaluation and issue a report within the next year describing if and how the Company intends to reduce the risk associated with tracking, collecting, or sharing information regarding the processing of payments involving its cards and/or electronic payment system services for the sale and purchase of firearms” was excludable because “the Proposal relates to, and does not transcend, ordinary business matters.” Finally, the Staff appeared to reverse course again in *Mastercard, Inc.* (Apr. 25, 2023), when it concluded a proposal that requested that the board “issue a report concerning its oversight of management’s decision-making regarding any application to the International Standards Organization to establish a merchant category code for standalone gun and ammunition stores” because the proposal transcended ordinary business matters.

All three of the foregoing proposals sought reports from credit card companies regarding their treatment of firearm purchases, yet in only two of them did the Staff conclude the issue transcends ordinary business matters. Unfortunately, one troubling explanation for the differential treatment—seemingly the only possible explanation, given the similarity of the proposals in all other regards—is impermissible viewpoint discrimination. Specifically, the two proposals that were deemed non-excludable were submitted by left-leaning proponents (the New York City Retirement Systems and the Employees’ Retirement System of Rhode Island), and their proposals advanced the interests of gun-right restrictionists, while the proposal that was deemed excludable was submitted by the pro-free-market National Center for Public Policy Research, which is also the Proponent for the Proposal under consideration here, and whose proposal sought to protect the interests of lawful, constitutionally protected gun purchasers.

The issue of firearms purchases – specifically credit-card company tracking of them and more broadly the place of arms in the American constitution and society – either is a matter of significant social policy concern or it isn’t. That’s the only legitimate manner, consonant with administrative law and respect for constitutional rights, in which the Staff can frame the question relevant here. In answering the question initially, it was bound to act with regard to similar decisions that it had made in the past and with fidelity

to some truly objective and neutral (rather than partisan) barometer for what puts an issue in that category.

This is not, however, the initial position. Rather, in two proceedings the Staff has determined that the issue of firearms purchases is a matter of significant social policy concern that raises a proposal out of ordinary business considerations so as to disallow omission. Because our Proposal here raises that issue and is otherwise, in structure, format, and detail, materially indistinguishable from other proposals that have presented the issue and been found non-omissible – *except for its viewpoint with regard to the relevant issue* – the Staff may not omit.

The Company attempts to distinguish our Proposal from *Mastercard Inc. (Apr. 25, 2023)*,<sup>1</sup> recognizing that “the Staff did not concur with the exclusion of a seemingly similar proposal requesting that the company prepare a report describing the ‘oversight of management’s decision-making regarding any application to ISO to establish a merchant category code (MCC) for standalone gun and ammunition stores,’” but claiming that the precedent does not pertain because:

[S]ince ISO’s adoption of MCC 5723 in September of 2022 and the Staff’s response to Mastercard Inc. in April 2023, seven states have enacted legislation prohibiting the use of MCC 5723 while one state has enacted legislation that would require payment card networks to assign MCC 5723 to certain firearms merchants. Further, proposed legislation restricting the use of MCC 5723 is pending in several other states. Accordingly, the Proposal is distinguishable from the proposal in Mastercard Inc. because the focus here is not simply on the policies and procedures governing how the Company categorizes firearms merchants. Instead, because of the complex mosaic of state laws that have been enacted and may be enacted in the future related to the implementation of MCC 5723, the Proposal seeks a level of detail and granularity that is too complex for shareholder input. By requesting that a report include a discussion of the consideration of the risk associated with the potential use of MCC 5723, the Proposal attempts to micromanage the Company by substituting shareholder judgment for that of management with respect to complex day-to-day business operations and legal compliance that are beyond the expertise and experience of shareholders.<sup>2</sup>

This attempt at distinguishment fails. First, it’s assertions – or, really, implications – that there is any neutral way to distinguish our Proposal from the *Mastercard Inc. (Apr. 25, 2023)* proposal are false. The proposals are not “seemingly similar.” They are functionally identical, and the Company points to nothing in the proposals that permits a contrary conclusion. Instead, it argues that because of changes to the legislative landscape, a proposal that was last year not micromanagement somehow has become micromanagement. This is an odd and ineffective assertion, as we will demonstrate in the next section. Relevant here, though, is that the Company points to nothing in our Proposal that renders it any

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<sup>1</sup> The Company made no reference to *Mastercard, Inc. (Apr. 22, 2022)*, which establishes a non-fluke Staff standard of recognizing the transcending significance of the relevant social policy concern – at least when raised from a viewpoint that Staff members approve of.

<sup>2</sup> American Express No-Action Request Letter (Dec. 20, 2023).

different in any way from that *Mastercard Inc.* proposal – and certainly nothing in our Proposal that renders the concerns raised by it, both general and specific, any different from those raised by the proposal in *Mastercard Inc.*

As the Staff established clearly in Staff Legal Bulletin 14L and has affirmed in dozens of decisions since, if a proposal raises a matter of “significant social policy concern” it is found to have “transcended” ordinary-business matters and cannot be excluded even if it would otherwise have been omitted on ordinary-business matter grounds, including micromanagement. The Staff concluded that the *Mastercard Inc.* (Apr. 25, 2023) proposal, which raised the identical issue as ours in the identical way except as to viewpoint, so transcended. Because that one did, ours must as well.

By raising social and legislative developments since the *Mastercard Inc.* (Apr. 25, 2023) decision in this manner the Company sought to confuse matters and to elide the Staff’s stated policy and consistent practice in this regard. The fact is that the developments that the Company catalogues serve only one purpose: they demonstrate that, if anything, the issue raised by our Proposal has become one of *greater and more general and pronounced* social policy concern since the Staff’s decision last April 25. If the issue – exactly the same in the *Mastercard Inc.* proposal and ours, except as to viewpoint – was of sufficient significant social policy concern last year to transcend ordinary-business considerations, it is of more-than-sufficient social policy concern this year, and so clears the non-omission bar with even more room to spare.

## **II. At all events, our Proposal does not improperly implicate ordinary business matters.**

The Company’s arguments for exclusion on the grounds of ordinary business / micromanagement fail even if one leaves aside the issue of social significance.

The Company argues that decisions “regarding the use or enablement of MCCs involve legal, regulatory and operational considerations of the kind that are fundamental to the Company’s day-to-day operations such that they cannot, as a practical matter, be subject to shareholder oversight.”<sup>3</sup> However, the Proposal does not transfer any relevant decision-making to the shareholders. Rather, it merely requests a report on the board’s oversight of these decisions. While the Company makes much of the relevant industry and regulatory complexity, the requested report could be as straight-forward as announcing a commitment to only track gun purchases to the extent required by law or perhaps at the level required by the most burdensome law.

The foregoing analysis applies equally to the Company’s claim that the Proposal seeks to improperly micromanage the Company. The Company faults the Proposal for requesting that the board “disclose and explain the justification for its position on an MCC for gun and ammunition stores, and the risk associated with its position” because the Company claims this constitutes an improper attempt “to probe too deeply into the judgment of management and the Board.”<sup>4</sup> But this claim is belied by the fact that the best no-action letter the Company can apparently find to support this proposition is *The Coca-Cola Company* (Feb. 16, 2022), which permitted “exclusion of a proposal because it micromanaged the company by requiring it to submit any proposed political statement to the next shareholder meeting for

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<sup>3</sup> American Express No-Action Request Letter (Dec. 20, 2023).

<sup>4</sup> *Id.*

approval.”<sup>5</sup> The chasm between the micromanagement involved in seeking shareholder approval of any proposed political statement and the report requested by the Proposal here is obvious. The Company appears to recognize how far it is stretching here because it further claims the Staff should ignore the plain words of the Proposal and instead focus on what the Company infers is our intent “to oversee and override management’s decision around whether, and under what circumstances, to use or enable a merchant category for firearms retailers.”<sup>6</sup> But the Proposal does none of that. Rather, it simply seeks a report on the board’s oversight, including a rationale for the position guiding that oversight (e.g., the Company will only track gun purchases to the extent permitted by law) and the risks associated therewith.

### **III. Issuing relief to the Company would raise serious constitutional and administrative law concerns.**

For the reasons discussed above, our proposal’s merits under Commission and Staff rules, interpretations, guidance, and precedent require that Staff deny the Company’s request for relief. If the Staff elects to issue relief to the Company despite its clear merits, the Staff’s decision would raise a host of constitutional and administrative law issues.

#### **A. The Company is asking the Staff to discriminate on the basis of viewpoint in violation of the First Amendment.**

Our proposal relates to the socially significant issue of the Company’s tracking of gun purchases, which the Staff have previously recognized is not excludable under Rule 14a-8(i)(7). By urging the Staff to issue relief for the Proposal regardless, the Company invites the Staff to itself discriminate based on viewpoint.

It is well-established that the government cannot engage in viewpoint discrimination.<sup>7</sup> This principle prevents governments from regulating speech “because of the speaker’s specific motivating ideology, opinion, or perspective.”<sup>8</sup> And the Supreme Court defines “the term ‘viewpoint’ discrimination in a broad sense.”<sup>9</sup> This is because “[v]iewpoint discrimination is a poison to a free society.”<sup>10</sup>

The rule against viewpoint discrimination prevents allowing speech based on one “political, economic, or social viewpoint” while disallowing other views on those same topics.<sup>11</sup> It also prohibits excluding views that the government deems “unpopular”<sup>12</sup> or because of a perceived hostile reaction to the views expressed.<sup>13</sup>

Here, the Company invites the Staff to engage in viewpoint discrimination by issuing relief on our proposal.

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<sup>5</sup> Id.

<sup>6</sup> Id.

<sup>7</sup> Matal v. Tam, 137 S. Ct. 1744 (2017); Iancu v. Brunetti, 139 S. Ct. 2294 (2019).

<sup>8</sup> Rosenberger v. Rector and Visitors of Univ. of Va., 515 U.S. 819, 820 (1995).

<sup>9</sup> Matal, 137 S. Ct. at 1763.

<sup>10</sup> Iancu, 139 S. Ct. at 2302 (Alito, J., concurring).

<sup>11</sup> Rosenberger, 515 U.S. at 831.

<sup>12</sup> McIntyre v. Ohio Elections Comm’n, 514 U.S. 334, 357 (1995).

<sup>13</sup> Forsyth Cnty., Ga. v. Nationalist Movement, 505 U.S. 123, 134 (1992).

Our proposal addresses the same issue as *Mastercard Inc.* (Apr. 25, 2023)—but from a different viewpoint. So, if the Staff opts to issue relief to exclude our Proposal, one might reasonably conclude that it could only do so because of its opinion of the distinctive political *views* our Proposal expresses.

The Staff—and the Commission—needs a principled basis for such a distinction. The Company proposes none. As the Supreme Court has explained, to avoid viewpoint discrimination the government must have “narrow, objective, and definite” standards to prevent officials from covertly discriminating based on viewpoint through subjective and unclear terms.<sup>14</sup> And here, the Staff has complete discretion to determine what “issues” are significant and do not “micromanage” the Company and even to censor on the same issue when they are presented by speakers with different political views. The Staff should choose not exercise this discretion here by denying the Company’s request for no-action relief.

**B. The Company is asking the Staff to take arbitrary and capricious action under the Administrative Procedure Act.**

If the Staff grants no-action relief to the Company for our proposal, it must explain how our proposal is distinct from prior similar proposals that it has blessed.<sup>15</sup>

Under the Administrative Procedure Act (APA), agency action that is “arbitrary and capricious” may be set aside.<sup>16</sup> The Supreme Court has succinctly explained that “[t]he APA’s arbitrary and capricious standard requires that agency action be reasonable and reasonably explained.”<sup>17</sup> Under this precedent, in order for action to be reasonable and reasonably explained, the agency must at least consider the record before it and rationally explain its decision.<sup>18</sup>

Additionally, where an agency seeks to change its position from a prior regime, it must “display awareness that it is changing position,” “show that there are good reasons for the new policy” and provide an even “more detailed justification” when the “new policy rests upon factual findings that contradict those which underlay its prior policy,” and “take[] into account” “reliance interests” on the prior policy.<sup>19</sup>

Given the Staff’s prior precedent, issuing relief to the Company would arguably be a change in its position. At a bare minimum, the Staff—or the Commission—would have to explain its reasoning for the reversal in position to comply with the APA.

**C. The Company is requesting relief the Staff lacks statutory authority to issue.**

Regardless, the Staff lacks statutory authority to grant the Company no-action relief. The Company has notice that we intend to submit our proposal, which is valid under state law, for consideration at the annual meeting. The Staff may not give the company its blessing to exclude an otherwise valid proposal from its proxy statement.

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<sup>14</sup> *Forsyth Cnty., Ga.*, 505 U.S. at 131.

<sup>15</sup> See generally, *Mastercard Inc.* (Apr. 25, 2023).

<sup>16</sup> 5 U.S.C. § 706(2)(A).

<sup>17</sup> *FCC v. Prometheus Radio Project*, 141 S. Ct. 1150, 1158 (2021); see also *Motor Vehicle Mfs. Ass’n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 50 (1983).

<sup>18</sup> See *FCC*, 141 S. Ct. at 1160.

<sup>19</sup> *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 515 (2009).



Section 14(a) of the Exchange Act prohibits anyone from “solicit[ing] any proxy” “in contravention of such rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors.”<sup>20</sup> While this authority might be read “broadly,” “it is not seriously disputed that Congress’s central concern [in enacting § 14(a)] was with disclosure.”<sup>21</sup> The purpose of Section 14(a) was to ensure that investors had “adequate knowledge” about the “financial condition of the corporation . . . [and] the major questions of policy, which are decided at stockholders’ meetings.”<sup>22</sup>

While Section 14(a) gave the Commission authority to compel investor-useful disclosures, the substantive regulation of stockholder meetings was left to the “firmly established” state-law jurisdiction over corporate governance.<sup>23</sup> Recognizing that state law provides the “confining principle” to Section 14(a)’s otherwise “vague ‘public interest’ standard,” the D.C. Circuit has held that “the Exchange Act cannot be understood to include regulation of” “the substantive allocation” of corporate governance that is “traditionally left to the states.”<sup>24</sup> Under Section 14(a), then, the SEC may compel the disclosure in a company’s proxy materials of items that will be before shareholders at the annual meeting.

Under state law, a shareholder proposal may be presented for consideration at the corporation’s annual meeting if the proposal is a proper subject for action by the corporation’s stockholders.<sup>25</sup> A proposal is a proper subject for action by stockholders if it is within the scope or reach of the stockholders’ power to adopt.<sup>26</sup>

Our proposal is valid under state law. Under Section 14(a), the SEC only has power to compel that the Company disclose our proposal in its proxy materials. The Staff therefore may not then give the Company no-action relief to exclude it.

## Conclusion

The Proposal does not seek to micromanage the Company or otherwise improperly interfere with its ordinary business. Beyond that, the Proposal involves an issue of significant social policy that transcends the Company’s ordinary business. Finally, were the Staff to grant the Company’s no-action request despite the foregoing, serious constitutional and administrative problems would be created.

Accordingly, the Company has failed to meet its burden under Rule 14a-8(g) to exclude our Proposal. Therefore, based upon the analysis set forth above, we respectfully request that the Staff reject the Company’s request for a no-action letter concerning our Proposal.

A copy of this correspondence has been timely provided to the Company. If we can provide additional materials to address any queries the Commission may have with respect to this letter, please do not hesitate to call us at (202) 507-6398 or email us at [REDACTED] and at [REDACTED].

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<sup>20</sup> 15 U.S.C. § 78n(a)(1).

<sup>21</sup> Bus. Roundtable v. SEC, 905 F.2d 406, 410 (D.C. Cir. 1990).

<sup>22</sup> S. Rep. No. 792 at 12 (1934).

<sup>23</sup> Bus. Roundtable, 905 F.2d at 413 (internal citation omitted).

<sup>24</sup> Id.

<sup>25</sup> See CA, Inc. v. AFSCME Emps. Pension Plan, 953 A.2d 227 (Del. 2008).

<sup>26</sup> Id. at 232.

Sincerely,

A handwritten signature in black ink, appearing to read "Scott Shepard". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Scott Shepard  
FEP Director  
National Center for Public Policy Research

A handwritten signature in black ink, appearing to read "Stefan Padfield". The signature is more stylized and abstract, with several loops and a long horizontal stroke at the end.

Stefan Padfield  
FEP Deputy Director  
National Center for Public Policy Research

cc: Kristina V. Fink ( [REDACTED] )