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

DIVISION OF
CORPORATION FINANCE

February 22, 2023

Sabastian V. Niles
Wachtell, Lipton, Rosen & Katz

Re: Warner Bros. Discovery, Inc. (the "Company")
Incoming letter dated December 5, 2022

Dear Sabastian Niles:

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 (the "Proponent") for inclusion in the Company's proxy materials for its upcoming annual meeting of security holders.

There appears to be some basis for your view that the Company may exclude the Proposal under Rule 14a-8(f) because the Proponent did not comply with Rule 14a-8(b)(1)(i). 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(b)(1)(i) and (f). In reaching this position, we have not found it necessary to address the alternative bases 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/2022-2023-shareholder-proposals-no-action.

Sincerely,

Rule 14a-8 Review Team

cc: Sarah Rehberg
National Center for Public Policy Research

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December 5, 2022

VIA EMAIL (SHAREHOLDERPROPOSALS@SEC.GOV)

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

Re: *Warner Bros. Discovery, Inc.*
Shareholder Proposal Submitted by the National Center for Public Policy Research

Ladies and Gentlemen:

This letter is submitted on behalf of Warner Bros. Discovery, Inc. (the "Company") to confirm to the Staff of the Division of Corporation Finance (the "Staff") of the Securities and Exchange Commission (the "Commission") that the Company intends to exclude from its proxy statement and form of proxy for its 2023 annual meeting of shareholders (collectively, the "2023 Proxy Materials") a shareholder proposal (the "Proposal") and statements in support thereof received from the National Center for Public Policy Research (the "Proponent").

For the reasons outlined below, we hereby respectfully request that the Staff concur in our view that the Proposal may be properly excluded from the 2023 Proxy Materials.

Pursuant to Staff Legal Bulletin No. 14D (Nov. 7, 2008), the Company is submitting this letter and its attachments to the Commission by email. In accordance with Rule 14a-8(j) of the Securities Exchange Act of 1934, this letter is being filed with the Commission no later than eighty (80) calendar days before the Company intends to file its definitive 2023 Proxy Materials with the Commission, and we are contemporaneously sending a copy of this letter and its attachments to the Proponent.

Rule 14a-8(k) and Staff Legal Bulletin No. 14D (Nov. 7, 2008) 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. Accordingly, we are taking this opportunity to inform the Proponent that 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 Staff Legal Bulletin No. 14D (Nov. 7, 2008).

SUMMARY OF THE PROPOSAL

The Proposal sets forth the following proposed resolution for the vote of the Company's shareholders at its 2023 annual meeting of shareholders:

> RESOLVED: Shareholders request that the Board of Directors create a board corporate sustainability committee to oversee and review the impact of the Company's policy positions and advocacy on matters relating to the Company's financial sustainability. The Company should issue a public report on the committee's findings by the end of 2023.

A full copy of the Proposal and statements in support thereof is attached to this letter as Exhibit A hereto.

BASIS FOR EXCLUSION

The Company respectfully requests that the Staff concur in its view that the Proposal may be excluded from the 2023 Proxy Materials pursuant to:

- Rule 14a-8(b) and Rule 14a-8(f)(1) because the Proponent failed to provide the requisite proof of continuous share ownership in response to the Company's proper request for that information;

- Rule 14a-8(i)(3) because the Proposal is inherently vague and indefinite, and subject to multiple interpretations, such that the Company and its shareholders voting on the Proposal would not know with any reasonable certainty exactly what actions or measures the Proposal requires; and

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

BACKGROUND

The Proponent submitted the Proposal via courier on November 4, 2022, which the Company received on November 8, 2022. (*See* Exhibit B). In the Proposal letter, the Proponent stated that it had "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 attached the October 2022 account statement of the Proponent from UBS Financial Services Inc. (the "October Account Statement"). The October Account Statement contained a procedural deficiency as it did not provide verification that the Proponent satisfied one of the ownership requirements set forth in Rule 14a-8(b) for annual meetings to be held after January 1, 2023. Specifically, the October Account Statement failed to verify the Proponent's ownership of Company shares for the requisite period of time up to and including the submission date of the Proposal on November 4, 2022 (the "Ownership Deficiency"). In addition, the Company's stock records do not reflect the Proponent as a registered holder.

Accordingly, the Company properly sought documentary evidence of the Proponent's ownership of Company shares, and in accordance with Staff Legal Bulletin No. 14L (Nov. 3, 2021), the Company delivered to the Proponent via email and FedEx a letter dated November 8, 2022 (the "Deficiency Notice", attached hereto as Exhibit C), identifying the Ownership Deficiency, notifying the Proponent of the requirements of Rule 14a-8(b) and explaining how the Proponent could cure the Ownership Deficiency identified in the Deficiency Notice. The Deficiency Notice also attached copies of Rule 14a-8, Staff Legal Bulletin Nos. 14F (Oct. 18, 2011) and 14G (Oct. 16, 2012).

On November 8, 2022, the Proponent's representative, Sarah Rehberg, responded via email confirming receipt of the Deficiency Notice, stating that the Proponent was "notifying UBS of the issue and will work to obtain the appropriate documentation." (*See* Exhibit D). In addition, FedEx records confirm the delivery of the Deficiency Notice at 10:57 a.m., local time on November 10, 2022. (*See* Exhibit E).

Subsequently, on November 17, 2022, the Proponent transmitted to the Company a proof of ownership letter from UBS Financial Services Inc. dated November 17, 2022 (the "UBS Letter") which stated that "as of 11/17/2022, The National Center for Public Policy Research holds, and has held continuously for at least three years, more than $2000 of Warner Bros. Discovery Inc. common stock." (*See* Exhibit F). The UBS Letter contained the same deficiency as the October Account Statement in that it did not specify that the Proponent had continuously held Company shares for three years up to and including the submission date of the Proposal on November 4, 2022.

Pursuant to Rule 14a-8(f)(1), the Proponent's response to the Deficiency Notice to cure the Ownership Deficiency was required to be postmarked or transmitted to the Company by November 22, 2022, based on the November 8, 2022 delivery date of the Deficiency Notice via email to the Proponent. As of the date of this letter, the Company has not received further correspondence from or any documentation from the Proponent relating to proof of its ownership of Company shares and the Company's stock records do not reflect the Proponent as a registered holder.

ANALYSIS

I. The Proposal May Be Excluded Under Rule 14a-8(b) and Rule 14a-8(f)(1) Because the Proponent Failed to Establish the Requisite Eligibility to Submit the Proposal.

The Company may exclude the Proposal under Rule 14a-8(b) and Rule 14a-8(f)(1) because the Proponent failed to substantiate its eligibility to submit the Proposal in compliance with Rule 14a-8. Under Rule 14a-8(b), to be eligible to submit a proposal for a company's annual meeting that is scheduled to be held on or after January 1, 2023, a proponent must have continuously held: (i) at least $2,000 in market value of the company's securities entitled to vote on the proposal for at least three years; (ii) at least $15,000 in market value of the company's securities entitled to vote on the proposal for at least two years; or (iii) at least $25,000 in market value of the company's securities entitled to vote on the proposal for at least one year, in each case, as of the submission date of the proposal.

Under Rule 14a-8(b)(2), if a proponent is not a registered shareholder of a company and has not made a filing with the Commission detailing the proponent's beneficial ownership of shares in the company (as described in Rule 14a-8(b)(2)(ii)(B)), the proponent has the burden of proving that it has met the beneficial ownership requirements of Rule 14a-8(b)(1) by submitting to the company a written statement from the "record" holder of the company securities held by the proponent verifying that, at the time the proponent submitted its proposal, the proponent 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 including the proponent's own written statement that it intends to continue to hold the requisite amount of company securities through the date of the shareholders' meeting for which the proposal is submitted. If the proponent fails to provide such proof of ownership, the company may exclude the proposal, but only if the company notifies the proponent in writing of such deficiency within 14 calendar days of receiving the proposal and the proponent fails to adequately correct it. A proponent's response to such notice of deficiency must be postmarked or transmitted electronically to the company no later than 14 days from the date the proponent receives the notice of deficiency.

The Company satisfied its obligation under Rule 14a-8(f)(1) to notify the Proponent of the Ownership Deficiency in the Proposal by providing the Deficiency Notice within the time frame required by Rule 14a-8(f)(1), identifying the Ownership Deficiency, notifying the Proponent of the requirements of Rule 14a-8(b) and explaining how the Proponent could cure the Ownership Deficiency identified in the Deficiency Notice. The Company also provided copies of Rule 14a-8, Staff Legal Bulletin No. 14F (Oct. 18, 2011) and Staff Legal Bulletin No. 14G (Oct. 16, 2012) to the Proponent for reference and assistance in curing the Ownership Deficiency. (*See* Exhibits C and E).

The Proponent, however, failed to provide satisfactory documentary evidence of its ownership of Company securities necessary to cure the Ownership Deficiency: neither the October Account Statement nor the UBS Letter provided sufficient evidence that the Proponent held Company securities entitled to vote on the Proposal with a value exceeding $2,000 for at least three years prior to and including the date of Proposal, as stated by the Proponent in its Proposal letter. The October Account Statement provided evidence of the Proponent's ownership of Company shares as of October 31, 2022, without indicating whether such Company shares were held as of the

submission date of the proposal on November 4, 2022, or whether such shares had been held continuously by the Proponent. The UBS Letter provided evidence of the Proponent's continuous ownership of Company shares for "at least three years" as of November 17, 2022, but failed to confirm whether the Proponent had held such shares for three years prior to and including the submission date of the proposal on November 4, 2022. We further note that the Proponent is clearly aware of the requisite share ownership thresholds and procedures required to submit a shareholder proposal under Rule 14a-8 having previously submitted proposals under Rule 14a-8 to various companies, including the Company, for which it supplied the requisite proof of share ownership.

The Staff has consistently permitted exclusion of shareholder proposals under Rule 14a-8(f)(1) where a proponent has failed to provide proof of the requisite stock ownership for the applicable holding period preceding and as of the submission date of a shareholder proposal. *See, e.g., Amazon.com, Inc.* (Apr. 2, 2021) (permitting exclusion of a proposal where the proponent's proof established continuous ownership of company securities for the 13 months preceding November 30, 2020, but the proponent submitted the proposal on December 17, 2020); *Exxon Mobil Corp.* (Feb. 26, 2021) (permitting exclusion of a proposal where the proponent supplied evidence of ownership of company securities for the 12 months preceding November 30, 2020, but the proponent submitted the proposal on December 1, 2020); *JetBlue Airways Corp.* (Jan. 4, 2017) (permitting exclusion of a proposal where the proponent supplied evidence of ownership from December 17, 2015, to November 29, 2016, but the proponent submitted the proposal on October 20, 2016); *Starbucks Corp.* (Dec. 11, 2014) (permitting exclusion of a proposal where the proponent's proof established continuous ownership of company securities for one year as of September 26, 2014, but the proponent submitted the proposal on September 24, 2014); *Bank of America Corp.* (Jan. 16, 2013, recon. denied Feb. 26, 2013) (permitting exclusion of a proposal where the proponent supplied evidence of ownership from November 30, 2011, to December 7, 2012, but the proponent submitted the proposal on November 19, 2012); and *Comcast Corp.* (Mar. 26, 2012) (permitting exclusion of a proposal where the proponent supplied evidence of ownership for one year as of November 23, 2011, but the proponent submitted the proposal on November 30, 2011).

While Staff Legal Bulletin No. 14L (Nov. 3, 2021) suggests that there may be situations where the Staff considers it appropriate for a company to provide a second deficiency notice, the language of bulletin indicates that this situation is limited to if and when a company "sen[ds] a deficiency notice prior to receiving the proponent's proof of ownership if such deficiency notice did not identify the specific defect(s)." Here, the Company received the October Account Statement, evaluated it for defects and only after such evaluation, sent to the Proponent the Deficiency Notice, which identified the specific defects in the October Account Statement and explained how the Proponent could cure the Ownership Deficiency identified in the Deficiency Notice.

Accordingly, we ask that the Staff concur that the Company may exclude the Proposal from its 2023 Proxy Materials under Rule 14a-8(b) and Rule 14a-8(f)(1).

II. The Proposal May Be Excluded Under Rule 14a-8(b) Because the Proponent Acquired Company Shares Within One Year of Submitting the Proposal.

On April 8, 2022 (the "Closing Date"), the Company, formerly known as Discovery, Inc. ("Discovery"), and AT&T Inc. ("AT&T") completed previously disclosed transactions contemplated by (1) that certain Agreement and Plan of Merger, dated as of May 17, 2021 (as amended, the "Merger Agreement"), by and among Discovery, Drake Subsidiary, Inc., a Delaware corporation and a direct, wholly owned subsidiary of Discovery ("Merger Sub"), AT&T and Magallanes, Inc., a Delaware corporation and formerly a wholly owned subsidiary of AT&T ("Spinco"), (2) that certain Separation and Distribution Agreement, dated as of May 17, 2021 (as amended, the "Separation Agreement"), by and among Discovery, AT&T and Spinco, and (3) certain other agreements in connection with the transactions contemplated by the Merger Agreement and the Separation Agreement. Specifically, (1) AT&T transferred the business, operations and activities that constitute the WarnerMedia segment of AT&T (the "WarnerMedia Business"), subject to certain exceptions as set forth in the Separation Agreement, to Spinco (the "Separation"), (2) thereafter, on the Closing Date, AT&T distributed to its stockholders all of the shares of common stock, par value $0.01 per share, of Spinco ("Spinco common stock") held by AT&T by way of a pro rata dividend such that each holder of shares of common stock, par value $1.00 per share, of AT&T ("AT&T common stock") was entitled to receive one share of Spinco common stock for each share of AT&T common stock held as of the record date, April 5, 2022 (the "Distribution"), and (3) following the Distribution, Merger Sub merged with and into Spinco, with Spinco surviving as a wholly owned subsidiary of the Company (the "Merger" and together with the Separation and the Distribution, the "Transactions"). Pursuant to the Merger Agreement, at the effective time of the Merger, each issued and outstanding share of Spinco common stock on the Closing Date was automatically converted into the right to receive 0.241917 shares of Series A common stock, par value $0.01 per share, of the Company. In connection with the completion of the Transactions, on the Closing Date and prior to the effective time of the Merger, the Company amended and restated its restated certificate of incorporation, as amended, to, among other things, (1) change its name to Warner Bros. Discovery, Inc. and (2) automatically reclassify and convert each share of Discovery's Series A common stock, par value $0.01 per share, Discovery's Series B common stock, par value $0.01 per share, Discovery's Series C common stock, par value $0.01 per share, Discovery's Series A-1 convertible participating preferred stock, par value $0.01 per share, and Discovery's Series C-1 convertible participating preferred stock, par value $0.01 per share, into such number of shares of Company common stock as set forth in the Merger Agreement.

The Staff has repeatedly taken the position that when a proponent acquires shares of voting securities in connection with a plan of merger, the transaction constitutes a separate sale and purchase of securities for the purposes of the federal securities laws. Therefore, ownership in the acquiring company's stock does not commence for purposes of Rule 14a-8 until the effective time of the merger. The Staff has consistently granted no-action relief in situations where the merger occurred within a year of the submission date of the shareholder proposal. *See Applied Power* (Oct. 4, 1999); *Sempra Energy* (Feb. 8, 1999); *Baker Hughes Incorporated* (Feb. 4, 1999); *Exelon Corporation* (Mar. 15, 2001); *Dow Chemical Company* (Feb. 26, 2002); *AT&T Corp.* (Jan. 18, 2007); *Green Bankshares, Inc.* (Feb. 13, 2008); *Merck & Co., Inc.* (Mar. 16, 2011); and *AECOM* (Nov. 18, 2015).

In this situation, the Proponent acquired shares of Company common stock either as a holder of Spinco common stock or as a holder of Discovery capital stock. Because the effective time of the merger of Discovery and the WarnerMedia Business of AT&T occurred on April 8, 2022, within a year of the date of the Proposal's submission, the Proponent has not satisfied and is unable to satisfy any of the requisite holding periods required by Rule 14a-8(b) and, as such, is not eligible to submit the Proposal to the Company under Rule 14a-8 for inclusion in its 2023 Proxy Materials.

Accordingly, we ask that the Staff concur that the Company may exclude the Proposal from its 2023 Proxy Materials under Rule 14a-8(b).

III. The Proposal May Be Excluded Under Rule 14a-8(i)(3) Because It Is So Impermissibly Vague, Indefinite and Susceptible to Various Interpretations So As To Be Inherently Misleading in Violation of the Proxy Rules.

Pursuant to Rule 14a-8(i)(3), the Company may exclude a shareholder proposal from its proxy materials "if the proposal or supporting statement is contrary to any of the Commission's proxy rules […] which prohibits materially false or misleading statements in proxy soliciting materials." The Staff has interpreted Rule 14a-8(i)(3) to include shareholder proposals that are vague and indefinite, and the Staff has consistently concurred with exclusion of shareholder proposals on the basis that "neither the stockholders voting on the proposal, nor the company in implementing the proposal (if adopted), would be able to determine with any reasonable certainty exactly what actions or measures the proposal requires." Staff Legal Bulletin No. 14B (Sept. 15, 2004). In addition, the Staff has noted that a proposal may be excludable when the "meaning and application of terms and conditions…in the proposal would have to be made without guidance from the proposal and would be subject to differing interpretations" such that "any action ultimately taken by the company upon implementation [of the proposal] could be significantly different from the actions envisioned by the shareholders voting on the proposal." *See Fuqua Industries, Inc.* (Mar. 12, 1991).

The Staff has also noted that a proposal may be excludable under Rule 14a-8(i)(3) to the extent that the proposal fails to define key terms. *See, e.g., The Boeing Company* (Feb. 23, 2021) (permitting exclusion of a proposal requiring that 60% of the company's directors "must have an aerospace/aviation/engineering executive background" where such phrase was undefined); *Apple Inc.* (Dec. 6, 2019) (permitting exclusion of a proposal seeking to "improve guiding principles of executive compensation" that did not provide an explanation or definition of the key term "executive compensation"); *eBay Inc.* (Apr. 10, 2019) (permitting exclusion of a proposal requesting that the company "reform the company's executive compensation committee" because "neither shareholders nor the Company would be able to determine with any reasonable certainty the nature of the 'reform' the [p]roposal is requesting," and that, therefore, "the proposal, taken as a whole, is so vague and indefinite that it is rendered materially misleading"); *Cisco Systems, Inc.* (Oct. 7, 2016) (permitting exclusion under Rule 14a-8(i)(3) of a proposal requesting that the board "not take any action whose primary purpose is to prevent the effectiveness of shareholder vote without a compelling justification for such action," where it was unclear what board actions would "prevent the effectiveness of [a] shareholder vote" and how the essential terms "primary purpose" and "compelling justification" would apply to board actions); and *AT&T Inc.* (Feb. 21, 2014) (permitting exclusion of a proposal requesting a review of policies and procedures related to the

"directors' moral, ethical and legal fiduciary duties and opportunities," where such phrase was undefined).

The Proposal requests the Company "create a board corporate sustainability committee" to oversee and review "the impact of the Company's policy positions and advocacy" on "matters relating to the Company's financial sustainability." The Proposal is inherently vague and misleading as it fails to define several key terms, rendering it likely impossible for shareholders and the Company to reach a consensus as towhat the Proposal seeks to accomplish. For example, the Proposal focuses on "matters relating to the Company's financial sustainability"—a term which is inherently vague and confusing and could be interpreted by shareholders and the Company in any number of ways, including to cover matters ranging from the Company's environmental sustainability and energy transition pathway and outlook to the Company's financial performance and strategy over the near-, medium-, or long-term. The Proposal also asks the Company to form a "board corporate sustainability committee" which, too, can be interpreted by shareholders and the Company in a number of ways to encompass Board oversight of a wide range of distinct and unrelated matters. The Proposal adds a further layer of confusion by asking the Board to "oversee and review the impact of the Company's policy positions and advocacy" on the matters referenced in the Proposal, a task which first requires clarity as to exactly the kinds of matters or issues the Proposal relates to. And adding further to the confusion are the supporting statements accompanying the Proposal which chastise the Company for having "embraced a partisan line-up of hosts that parroted liberal talking points" and calling on the Company to "purge itself of bias." Such supporting statements only further add to the myriad of ways the Proposal could be interpreted by shareholders and the Company.

Accordingly, we ask that the Staff concur that the Company may exclude the Proposal from its 2023 Proxy Materials under Rule 14a-8(i)(3) on the basis that the Proposal is inherently vague and indefinite, in violation of Rule 14a-9.

IV. The Proposal May Be Excluded Under Rule 14a-8(i)(7) Because It Deals With Matters Relating to the Company's Ordinary Business Operations.

Under Rule 14a-8(i)(7), a shareholder proposal may be excluded from a company's proxy materials if the proposal "deals with matters relating to the company's ordinary business operations." In Exchange Act Release No. 34-40018 (May 21, 1998), the Commission stated that the policy underlying the ordinary business exclusion rests on two central considerations. The first recognizes that certain 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 (Nov. 3, 2021), the Staff stated that it will look to whether the policy issue raised in a shareholder proposal may have broad societal impact such that it transcends the ordinary business of the company, regardless of nexus between the issue and the company's business. The Staff also 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.

The Proposal, if interpreted to concern the content and programming of the Company's various media businesses as suggested by the Proposal's supporting statements, relates to a fundamental element of the day-to-day management of the Company's business. The decisions relating to the selection of content to license and produce, as well as the selection of presenters for the Company's various programs is the responsibility of numerous individuals within the Company, who consider a wide range of factors while employing specialized business judgment in making such decisions. Given the global viewer base of the Company's programs, these decisions are made against the backdrop of wide ranging and diverse consumer tastes, sensitivities and preferences and shareholders, would not, as a practical matter, be in a position to make an informed judgement with respect to such complex and varied matters.

The Commission has stated that when a proposal requests the preparation of a report, the relevant inquiry is whether the subject matter of the report relates to the Company's ordinary business. *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)."). As such, the Staff has permitted the exclusion of proposals that relate to a Company's programming and content decisions. *See, e.g., Netflix, Inc.* (Mar. 14, 2016) (permitting exclusion 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").

We further note that the fact a proposal may touch upon a significant policy issue, however, does not preclude exclusion under Rule 14a-8(i)(7). The Staff has consistently permitted exclusion of shareholder proposals where the proposal focused on ordinary business matters, even though it also related to a potential significant policy issue. *See PetSmart, Inc.* (Mar. 24, 2011) (permitting exclusion when, although the proposal addressed the significant policy matter of the humane treatment of animals, it also requested that the company's board require suppliers to provide certain certifications, an ordinary business matter); *CIGNA Corp.* (Feb. 23, 2011) (permitting exclusion under Rule 14a-8(i)(7) when, although the proposal addressed the potential significant policy issue of access to affordable health care, it also asked CIGNA to report on expense management, an ordinary business matter); and *Capital One Financial Corp.* (Feb. 3, 2005) (permitting exclusion when, although the proposal addressed the significant policy issue of outsourcing, it also asked the company to disclose information about how it manages its workforce, an ordinary business matter).

In this instance, even if the Proposal were to touch on a potential significant policy issue, the Proposal could be interpreted to concern the content and programming of the Company's various

media operations, an ordinary business matter. Accordingly, we ask that the Staff concur that the Company may exclude the Proposal from its 2023 Proxy Materials under Rule 14a-8(i)(7) as relating to its ordinary business operations.

CONCLUSION

Based on the foregoing analyses, the Company respectfully requests the Staff's concurrence with the Company's view or, alternatively, that the Staff confirm that it will not recommend any enforcement action if the Company excludes the Proposal from the 2023 Proxy Materials.

If we can be of any further assistance in this matter, please do not hesitate to call me at (212) 403-1366. If the Staff is unable to concur with the Company's conclusions without additional information or discussions, the Company respectfully requests the opportunity to confer with members of the Staff prior to the issuance of any written response to this letter. In accordance with Staff Legal Bulletin No. 14F, Part F (Oct. 18, 2011), please kindly send your response to this letter by email to SVNiles@wlrk.com.

Very truly yours,

/s/ Sabastian V. Niles

Sabastian V. Niles

Enclosures

cc: Tara Smith, Warner Bros. Discovery, Inc.
Sarah Rehberg, National Center for Public Policy Research

EXHIBIT A

Proponent's Proposal and Supporting Statements

November 4, 2022

Via FedEx to

Corporate Secretary
Discovery, Inc.
230 Park Avenue South
New York, NY 10003

Dear Ms. Smith,

I hereby submit the enclosed shareholder proposal ("Proposal") for inclusion in the Warner Bros. Discovery (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 the Coordinator 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 2023 annual meeting of shareholders. Proof of ownership documents are enclosed.

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 November 29, 2022 from 2-5 p.m. eastern or November 30, 2022 from 2-5 p.m. eastern. If that proves inconvenient, I hope you will suggest some other times to talk. Please feel free to contact me at srehberg@nationalcenter.org 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 National Center for Public Policy Research, 2005 Massachusetts Ave. NW, Washington, DC 20036 and emailed to srehberg@nationalcenter.org.

Sincerely,

Sarah Rehberg

cc: Scott Shepard, FEP Director
Enclosures: Shareholder Proposal
Proof of Ownership Letter

Corporate Financial Sustainability Proposal

Resolved: Shareholders request that the Board of Directors create a board corporate sustainability committee to oversee and review the impact of the Company's policy positions and advocacy on matters relating to the Company's financial sustainability. The Company should issue a public report on the committee's findings by the end of 2023.

Supporting Statement: August 2022 reports showed plummeting profits for CNN. Per S&P Global Market Intelligence projections, CNN's profits will fall below $1 billion for the first time since 2016.[1]

CNN's ratings have also tanked.[2] Its average audience in February 2022 was just 534,000, a 68% decline from 2021.[3] In the week of June 13, CNN averaged just 480,000 viewers, 13% down from May,[4] and its lowest daytime audience since November 2015.[5]

And in April 2022, the Company axed the CNN+ streaming service barely one month after its launch on abysmal ratings.[6] Less than 10,000 people tuned into CNN+ each day in its first two weeks.[7]

The Board must stop and ask itself: "How did the network lose so many viewers and so much money?"

The answer is simple. Rather than sticking to unbiased reporting, CNN embraced a partisan line-up of hosts that parroted liberal talking points.[8] In doing so, the network alienated viewers and damaged its brand. In 2014, Pew found that one-third of people who identify or lean Republican said they distrusted CNN as a source for political news.[9] By 2019, that number had increased to 58% -- higher distrust than *The New York Times*, *The Washington Post* or MSNBC.[10]

Reigning in the network's liberal bias by removing polarizing hosts like Brian Stelter and John Harwood is an important step,[11] but it will do nothing to regain trust in the network if it

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[1] https://www.nytimes.com/2022/08/02/business/media/cnn-profit-chris-licht.html#:~:text=The%20network%20is%20on%20a,steep%20declines%20in%20TV%20viewership; https://nypost.com/2022/08/04/cnns-ratings-in-freefall-profits-slump-report/; https://www.foxnews.com/media/cnn-experienced-ratings-plummet-profits-slump-report

[2] https://www.forbes.com/sites/markjoyella/2022/02/21/cnns-ratings-collapse-prime-time-down-nearly-70-in-key-demo/?sh=706f79166dda

[3] *Id.*

[4] https://nypost.com/2022/07/01/cnn-ratings-tank-in-first-weeks-under-new-boss-chris-licht/

[5] *Id.*

[6] https://www.cnbc.com/2022/04/21/cnn-is-shutting-down-effective-april-30-sources-say.html

[7] https://www.cnbc.com/2022/04/12/cnn-plus-low-viewership-numbers-warner-bros-discovery.html

[8] https://www.foxnews.com/media/cnn-politico-indicate-go-woke-go-broke-applies-news-organizations; https://apnews.com/article/new-york-brian-stelter-4ad9041d8f31028f13e107cb8e32a19d

[9] https://apnews.com/article/new-york-brian-stelter-4ad9041d8f31028f13e107cb8e32a19d

[10] *Id.*

[11] https://nypost.com/2022/08/23/cnn-blowing-up-its-morning-show-next-after-brian-stelter-firing-report/; https://www.axios.com/2022/02/26/cnn-chris-licht-liberal-partisanship; https://www.washingtonexaminer.com/news/washington-secrets/liberal-media-scream-lefty-bias-finally-catches-up-with-cnns-harwood

continues to blow big stories like the BYU racism hoax because of continuing leftwing bias[12] and covering for egregious visual gaffes by leftist administrations.[13]

And the biased, liberal culture that is damaging the Company's brand extends beyond CNN. Its movie business has also suffered. The Company cancelled its $70+ million "Batgirl" film because its "woke" version was "irredeemable," ranking as one of the most expensive movie cancellations ever.[14] But cancelling "Batgirl" will likely be in vain if it releases another DC film, "The Flash," which is mired in controversy thanks to reported erratic behavior by star Ezra Miller, who goes by the pronoun they/them and has been accused of grooming, preying on minors, choking fans and engaging in violence.[15] It's time to put stability and merit above surface-diversity worship, and to make non-partisan high-quality fare rather than bowdlerizing classics.[16]

The Company must look across the enterprise to determine where its vulnerabilities lie and be prepared to purge itself of bias. Reflecting upon its policy and advocacy decisions – and assessing how they impact its bottom-line – is a good place to start.

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[12] https://www.mediaite.com/sports/cnns-john-avlon-acknowledges-widespread-media-failure-on-byu-racist-heckling-allegations-there-was-a-rush-to-judgment/

[13] https://www.zerohedge.com/political/watch-cnn-caught-color-shifting-bidens-hell-red-rant-mid-speech

[14] https://nypost.com/2022/08/02/batgirl-movie-gets-shelved-by-warner-bros-source/; https://thepostmillennial.com/batgirl-movie-cancelled-for-being-so-woke-that-it-was-irredeemable

[15] https://www.latimes.com/entertainment-arts/story/2022-06-14/who-is-ezra-miller-tokata-iron-eyes; https://www.indiewire.com/2022/06/ezra-miller-choking-victim-speaks-out-1234738093/; https://www.vanityfair.com/hollywood/2022/08/ezra-miller-has-now-been-accused-of-grooming-minors-and-leading-a-cult; https://www.tmz.com/2022/06/08/ezra-miller-protection-court-groom-daughter-tokata-iron-eyes/; https://observer.com/2022/08/ezra-miller-is-seeking-treatment-but-will-it-be-enough-to-save-warner-discoverys-flash-movie/

[16] https://www.breitbart.com/entertainment/2022/09/19/nolte-woke-gestapo-at-hbo-max-erase-cigarettes-from-iconic-movie-posters/

UBS Financial Services Inc.
1000 Harbor Boulevard, 3rd Floor
Weehawken, NJ 07086

National Center for Public Policy Research
2005 Massachusetts Ave NW
Washington , DC 20036-1030

November 3rd, 2022

Confirmation: Information regarding the account of National Center for Public Policy Research

Verification
National Center for Public Policy Research has authorized UBS Financial Services Inc. to provide the attached October 2022 account statement for the following account: National Center for Public Policy Research. It is our policy to provide a copy of the most recent monthly account statement in lieu of completing specific verification forms, as our clients' account statements represent the official record of their UBS accounts as of a specific date or time period.

Disclosure
Please be aware this account is a securities account, not a "bank" account. Securities, mutual funds and other non-deposit investment products are not FDIC-insured or bank guaranteed and are subject to market fluctuation. The assets in the account, including cash balances may also be subject to the risk of withdrawal and transfer. The attached account statement may reflect the value of assets not held at UBS.

Questions
If you have any questions about this information, please contact the Wealth Advice Center at (877) 827-7870.

UBS Financial Services is a member firm of the Securities Investor Protection Corporation (SIPC).

cc:
Scott A. Shepard
David Almasi
David Ridenour

UBS

UBS Financial Services Inc.
UBS Wealth Advice Center
1000 Harbor Boulevard
Weehawken NJ 07086

CPZ6003324895 1022 1F 0

Business Services Account

October 2022

Your Financial Advisor:
UBS WEALTH ADVICE CENTER
Phone: 201-352-0178/877-827-7870

Visit our website:
www.ubs.com/financialservices

Account name: NATIONAL CENTER FOR PUBLIC POLICY RESEARCH
Account number: [redacted]

Your investment objectives:

You have identified the following investment objectives for this account. If you have questions about these objectives, disagree with them, or wish to change them, please contact your Financial Advisor or Branch Manager. You can find a full description of the alternative investment objectives in *Important information about your statement* at the end of this document.

Your return objective:
Current income & capital appreciation
Your risk profile:
Primary - Moderate
Investment eligibility consideration - None selected

Value of your account

	on September 30 ($)	on October 31 ($)
Your assets	[redacted]	0.00
Your liabilities	0.00	0.00
Value of your account	[redacted]	**$0.00**

Your account instructions

- Your account cost basis default closing method is FIFO, First In, First Out.

Change in the value of your account

	October 2022 ($)	Year to date ($)
Opening account value	[redacted]	[redacted]
Withdrawals and fees, including investments transferred out	[redacted]	[redacted]
Dividend and interest income	[redacted]	[redacted]
Change in market value	[redacted]	[redacted]
Closing account value	**$0.00**	**$0.00**

Your assets › **Equities** › **Common stock** (continued)

Holding	Trade date	Number of shares	Purchase price/ Average price per share ($)	Cost basis ($)	Price per share on Oct 31 ($)	Value on Oct 31 ($)	Unrealized gain or loss ($)	Holding period
VF CORP								
Symbol: VFC Exchange: NYSE								
EAI: $114 Current yield: 7.21%	Aug 12, 11	27.000	26.234	708.34	28.250	762.75	54.41	LT
	Aug 12, 11	15.000	26.234	393.52	28.250	423.75	30.23	LT
	Nov 9, 20	14.000	84.101	1,177.42	28.250	395.50	-781.92	LT
Security total		56.000	40.701	2,279.28		1,582.00	-697.28	
VIATRIS INC								
Symbol: VTRS Exchange: OTC								
EAI: $6 Current yield: 4.56%	Oct 29, 09	9.278	7.499	69.58	10.130	93.98	24.40	LT
	Nov 9, 20	3.722	17.330	64.51	10.130	37.71	-26.80	LT
Security total		13.000	10.315	134.09		131.69	-2.40	
VICTORIAS SECRET & CO								
Symbol: VSCO Exchange: NYSE	Feb 5, 13	1.000	34.690	34.69	37.600	37.60	2.91	LT
VISA INC CL A								
Symbol: V Exchange: NYSE								
EAI: $54 Current yield: 0.87%	May 22, 18	30.000	136.089	4,082.69	207.160	6,214.80	2,132.11	LT
VMWARE INC CL A								
Symbol: VMW Exchange: NYSE	May 22, 18	39.000	52.683	2,054.67	112.530	4,388.67	2,334.00	LT
WABTEC INC								
Symbol: WAB Exchange: NYSE	Feb 26, 19	1.000	78.060	78.06	93.280	93.28	15.22	LT
WALGREENS BOOTS ALLIANCE INC								
Symbol: WBA Exchange: OTC								
EAI: $213 Current yield: 5.26%	Oct 5, 12	81.000	37.173	3,011.08	36.500	2,956.50	-54.58	LT
	Nov 9, 20	30.000	40.883	1,226.50	36.500	1,095.00	-131.50	LT
Security total		111.000	38.176	4,237.58		4,051.50	-186.08	
WALMART INC								
Symbol: WMT Exchange: NYSE								
EAI: $92 Current yield: 1.58%	May 4, 12	41.000	60.679	2,487.85	142.330	5,835.53	3,347.68	LT
WALT DISNEY CO (HOLDING CO) DISNEY COM								
Symbol: DIS Exchange: NYSE	Oct 29, 09	40.000	28.756	1,150.26	106.540	4,261.60	3,111.34	LT
WARNER BROS DISCOVERY INC								
Symbol: WBD Exchange: OTC	Nov 9, 17	192.067	17.901	3,438.29	13.000	2,496.87	-941.42	LT

continued next page

Your assets › **Equities** › **Common stock** (continued)

Holding	Trade date	Number of shares	Purchase price/ Average price per share ($)	Cost basis ($)	Price per share on Oct 31 ($)	Value on Oct 31 ($)	Unrealized gain or loss ($)	Holding period
	Nov 9, 17	2.903	31.584	91.69	13.000	37.74	-53.95	LT
	May 22, 18	29.030	32.782	951.67	13.000	377.39	-574.28	LT
Security total		224.000	20.007	4,481.65		2,912.00	-1,569.65	
WELLS FARGO & CO NEW								
Symbol: WFC Exchange: NYSE								
EAI: $199 Current yield: 2.61%	Nov 9, 17	62.000	55.672	3,451.69	45.990	2,851.38	-600.31	LT
	Nov 9, 20	104.000	25.167	2,617.43	45.990	4,782.96	2,165.53	LT
Security total		166.000	36.561	6,069.12		7,634.34	1,565.22	
WHIRLPOOL CORP								
Symbol: WHR Exchange: NYSE								
EAI: $7 Current yield: 5.06%	Nov 9, 17	1.000	174.870	174.87	138.240	138.24	-36.63	LT
WILLIAMS SONOMA INC								
Symbol: WSM Exchange: NYSE								
EAI: $3 Current yield: 2.42%	Nov 9, 17	1.000	56.530	56.53	123.830	123.83	67.30	LT
YUM! BRANDS INC								
Symbol: YUM Exchange: NYSE								
EAI: $103 Current yield: 1.94%	Apr 25, 12	45.000	52.460	2,360.71	118.250	5,321.25	2,960.54	LT
Total				[redacted]		[redacted]	[redacted]	

Total estimated annual income: [redacted]

Mutual funds

Total reinvested is the total of all reinvested dividends. It does not include any cash dividends. It is not a tax lot for the purposes of determining holding periods or cost basis. The shares you receive each time you reinvest dividends become a separate tax lot.

Cost basis is the total purchase cost of the security, including reinvested dividends. The cost basis may need to be adjusted for return of capital payments in order to determine the adjusted cost basis for tax reporting purposes.

Unrealized (tax) gain or loss is the difference between the current value and the cost basis and would generally be your taxable gain or loss if the security was sold on this date. The unrealized (tax) gain or loss may need to be adjusted for return of capital payments in order to determine the realized gain or loss for tax reporting purposes.

Investment return is the current value minus the amount you invested. It does not include shares that are not reflected on your statement, including shares that have been realized as either a gain or a loss. It also does not include cash dividends that were not reinvested.

Holding	Number of shares	Purchase price/ Average price per share ($)	Client investment ($)	Cost basis ($)	Price per share on Oct 31 ($)	Value on Oct 31 ($)	Unrealized (tax) gain or loss ($)	Investment return ($)	Holding period
AB DISCOVERY GROWTH									
FUND CLASS A									
Symbol: CHCLX									
	600.000		---This information was unavailable---		8.650	5,190.00			
Total reinvested	671.828	11.419		7,672.08	8.650	5,811.31	-1,860.77		

continued next page

EXHIBIT B

Proposal Receipt

(https://www.fedex.com/en-us/home.html)

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11/8/2022 at 10:29 am

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EXHIBIT C

Company's Deficiency Notice

From:	Tara Smith
To:	Sarah Rehberg
Cc:	Scott Shepard; Sims, Savalle (Discovery, Inc.); Haley Park; Corporate Secretary
Subject:	Warner Bros. Discovery, Inc. Notice of Deficiency - Rule 14a-8 Proposal
Date:	Tuesday, November 8, 2022 6:45:09 PM
Attachments:	NCPPR November 8 2022.pdf Rule 14a-8 (1).pdf SLB 14F (1).pdf SLB 14G (1).pdf

Dear Ms. Rehberg,

Please see the attached notice of deficiency relating to the Rule 14a-8 proposal that was submitted for the Warner Bros. Discovery, Inc. 2023 annual meeting.

Regards,

Tara

Tara Smith
Senior Vice President, Securities & Executive Compensation and
Corporate Secretary
[redacted]

VIA EMAIL AND FEDEX

November 8, 2022

Sarah Rehberg
National Center for Public Policy Research
2005 Massachusetts Ave. NW
Washington, DC 20036

Re: Shareholder Proposal Submitted by the National Center for Public Policy Research for Warner Bros. Discovery, Inc.'s 2023 Annual Shareholder Meeting

Ms. Rehberg:

Warner Bros. Discovery, Inc. (the "Company") is in receipt of the letter (the "Proposal Letter") postmarked November 4, 2022 (the "Submission Date") from the National Center for Public Policy Research (the "Proponent") which it received on November 8, 2022 with respect to a shareholder proposal (the "Proposal") for inclusion in the Company's proxy statement for its 2023 annual meeting of shareholders (the "Annual Meeting"). The Proposal Letter requested that all communications regarding the Proposal be directed to you.

The Company hereby notifies you of certain eligibility and procedural deficiencies relating to the Proposal. Rule 14a-8(b) under the Securities and Exchange Act of 1934, as amended (the "Exchange Act"), provides that the Proponent must submit sufficient proof of its continuous ownership of Company shares. Thus, with respect to the Proposal, Rule 14a-8 requires that, for proposals submitted to the Company for a shareholder meeting after January 1, 2023, the Proponent demonstrate that it continuously owned at least:

1. $2,000 in market value of the Company's shares entitled to vote on the Proposal for at least three years preceding and including the Submission Date;

2. $15,000 in market value of the Company's shares entitled to vote on the Proposal for at least two years preceding and including the Submission Date; or

3. $25,000 in market value of the Company's shares entitled to vote on the Proposal for at least one year preceding and including the Submission Date (each, an "Ownership Requirement" and, collectively, the "Ownership Requirements").

The Company's stock records do not indicate that you are the record owner of sufficient shares to satisfy any of the Ownership Requirements. In addition, to date, we have not received adequate proof that you have satisfied any of the Ownership Requirements. The letter dated November 3, 2022 from UBS Financial Services Inc. is insufficient because it does not verify continuous ownership of Company shares for the three-year period preceding and including the Submission Date.

To remedy this defect, you must obtain a new proof of ownership letter verifying that you have satisfied at least one of the Ownership Requirements. As explained in Rule 14a-8(b) and in staff guidance issued by the U.S. Securities and Exchange Commission (the "SEC"), sufficient proof must be in the form of either:

1. a written statement from the "record" holder of your shares (usually a broker or a bank) verifying that, at the time you submitted the Proposal (the Submission Date), you continuously held the requisite amount of Company shares to satisfy at least one of the Ownership Requirements above; or

2. if you were required to and have filed with the SEC a Schedule 13D, Schedule 13G, Form 3, Form 4 or Form 5, or amendments to those documents or updated forms, demonstrating that you met at least one of the Ownership Requirements above, a copy of the schedule and/or form, and any subsequent amendments reporting a change in the ownership level and a written statement that you continuously held the requisite amount of Company shares to satisfy at least one of the Ownership Requirements above.

If you intend to demonstrate ownership by submitting a written statement from the "record" holder of your shares as set forth in (1) above, please note that most large U.S. brokers and banks deposit their customers' securities with, and hold those securities through, the Depository Trust Company ("DTC"), a registered clearing agency that acts as a securities depository (DTC is also known through the account name of Cede & Co.). Under SEC Staff Legal Bulletin No. 14F, only DTC participants are viewed as record holders of securities that are deposited at DTC. You can confirm whether your broker or bank is a DTC participant by asking your broker or bank or by checking DTC's participant list, which is available at http://www.dtcc.com/~/media/Files/Downloads/client-center/DTC/alpha.ashx. In these situations, stockholders need to obtain proof of ownership from the DTC participant through which the securities are held, as follows:

1. if your broker or bank is a DTC participant, then you need to submit a written statement from your broker or bank verifying that you continuously held the requisite amount of Company shares to satisfy at least one of the Ownership Requirements above; and

2. if your broker or bank is not a DTC participant, then you need to submit proof of ownership from the DTC participant through which the shares are held verifying that you continuously held the requisite amount of Company shares to satisfy at least one of the Ownership Requirements above. You should be able to find out the identity of the DTC participant by asking your broker or bank. If your broker is an introducing broker, you may also be able to learn the identity and telephone number of the DTC participant through your account statements, because the clearing broker identified on your account statements will generally be a DTC participant. If the DTC participant that holds your

shares is not able to confirm your individual holdings but is able to confirm the holdings of your broker or bank, then you need to satisfy the proof of ownership requirements by obtaining and submitting two proof of ownership statements verifying that you continuously held Company shares satisfying at least one of the Ownership Requirements above: (i) one from your broker or bank confirming your ownership, and (ii) the other from the DTC participant confirming the broker or bank's ownership.

Pursuant to Rule 14a-8(f) of the Exchange Act, the Company hereby notifies you that if the Proponent fails to respond to and correct the aforementioned deficiencies within 14 days from the date that you receive this notice (and the Proponent's response must be postmarked, or transmitted electronically, no later than 14 days from the date you receive this notice), the Company intends to exclude the Proposal from its proxy statement for the Annual Meeting.

Please be advised that even if the eligibility and procedural deficiencies identified herein are corrected, the Company reserves its rights to seek to exclude or otherwise object in any other appropriate manner to the Proposal, including with respect to other deficiencies relating to the Proposal that the Company may identify.

For your reference I enclose a copy of Rule 14a-8, Staff Legal Bulletin No. 14F and Staff Legal Bulletin No. 14G.

Sincerely,

Tara Smith
Senior Vice President, Securities &
Executive Compensation and Corporate
Secretary

Cc: Scott Shepard, FEP Director

Enclosures

EXHIBIT D

Proponent's Response to Company's Deficiency Notice

From:	Tara Smith
To:	Lu, Carmen X. W.
Subject:	Fwd: Warner Bros. Discovery, Inc. Notice of Deficiency - Rule 14a-8 Proposal
Date:	Wednesday, November 9, 2022 9:45:29 AM
Attachments:	NCPPR November 8 2022.pdf Rule 14a-8 (1).pdf SLB 14F (1).pdf SLB 14G (1).pdf

FYI

Tara Smith
Senior Vice President, Securities & Executive Compensation and
Corporate Secretary
[redacted]

[redacted] **Forwarded message ---------**
From: Sarah Rehberg [redacted]
Date: Wed, Nov 9, 2022 at 8:21 AM
Subject: Re: Warner Bros. Discovery, Inc. Notice of Deficiency - Rule 14a-8 Proposal
To: Tara Smith < [redacted] **>**
Cc: Scott Shepard [redacted]**, Savalle Sims <** [redacted] **>, Haley Park <** [redacted] **>, Corporate Secretary <c** [redacted] **>**

Thank you, Tara. We are notifying UBS of the issue and will work to obtain the appropriate documentation.

Best,
Sarah

> **On Nov 8, 2022, at 6:45 PM, Tara Smith <** [redacted] **> wrote:**
>
> **Dear Ms. Rehberg,**

Please see the attached notice of deficiency relating to the Rule 14a-8 proposal that was submitted for the Warner Bros. Discovery, Inc. 2023 annual meeting.

Regards,

Tara

Tara Smith
Senior Vice President, Securities & Executive Compensation and Corporate Secretary
[redacted]

EXHIBIT E

FedEx Receipt of Company's Deficiency Notice

(https://www.fedex.com/en-us/home.html)

FedEx® Tracking

DELIVERED

Thursday

11/10/2022 at 10:57 am

Signature release on file
Package delivered to recipient address

Obtain Proof of delivery

How was your delivery?

DELIVERY STATUS

Delivered

TRACKING ID

770444026028

FROM
NEW YORK, NY US

Label Created
11/9/2022 9:17 AM

PACKAGE RECEIVED BY FEDEX
NEW YORK, NY
11/9/2022 6:09 PM

IN TRANSIT
WASHINGTON, DC
11/10/2022 7:51 AM

OUT FOR DELIVERY
WASHINGTON, DC
11/10/2022 8:49 AM

DELIVERED
WASHINGTON, DC US

DELIVERED
11/10/2022 at 10:57 AM

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(https://www.youtube.com/fedex) (https://www.pinterest.com/FedEx/)

EXHIBIT F

UBS Letter

[redacted]

To: Tara Smith
Subject: RE: Warner Bros. Discovery, Inc. Notice of Deficiency - Rule 14a-8 Proposal

From: **Sarah Rehberg** <[redacted]>
Date: Thu, Nov 17, 2022 at 8:14 PM
Subject: Re: Warner Bros. Discovery, Inc. Notice of Deficiency - Rule 14a-8 Proposal
To: Tara Smith [redacted]
CC: Scott Shepard <[redacted]>, Savalle Sims <[redacted]>, Haley Park [redacted]>, Corporate Secretary <[redacted]>

Tara,

Please see the attached proof of ownership letter from UBS.

Regards,
Sarah

On Wed, Nov 9, 2022 at 8:21 AM Sarah Rehberg [redacted]> wrote:

> Thank you, Tara. We are notifying UBS of the issue and will work to obtain the appropriate documentation.
>
> Best,
> Sarah
>
> On Nov 8, 2022, at 6:45 PM, Tara Smith [redacted]> wrote:
>
> Dear Ms. Rehberg,
>
> Please see the attached notice of deficiency relating to the Rule 14a-8 proposal that was submitted for the Warner Bros. Discovery, Inc. 2023 annual meeting.
>
> Regards,
>
> Tara
>
> **Tara Smith**
> Senior Vice President, Securities & Executive Compensation and Corporate Secretary

[redacted]

--

Tara Smith
Senior Vice President, Securities & Executive Compensation and Corporate Secretary
[redacted]

UBS Financial Services Inc.
1000 Harbor Blvd
3rd Floor
Weehawken, NJ 07086

ubs.com/fs

Confirmation

Office of the Secretary
Warner Bros. Discovery Inc

November 17, 2022

Confirmation: Information regarding the account of The National Center for Public Policy Research

Dear Sir or Madam,

The following client has requested that UBS Financial Services Inc provide you with a letter of reference to confirm it's banking relationship with our firm.

As of 11/17/2022, The National Center for Public Policy Research holds, and has held continuously for at least three years, more than $2000 of Warner Bros. Discovery Inc common stock.

Disclosure
Please be aware this account is a securities account, not a "bank" account. Securities, mutual funds and other non-deposit investment products are not FDIC-insured or bank guaranteed and are subject to market fluctuation. The assets in the account, including cash balances, may also be subject to the risk of withdrawal and transfer.

Questions
If you have any questions about this information, please contact the UBS Wealth Advice Center at 877-827-7870.

UBS Financial Services is a member firm of the Securities Investor Protection Corporation (SIPC).

Sincerely,

Evan Yeaw
Head of Wealth Advice Center Operations
UBS Financial Services

January 4, 2023

Via email: shareholderproposals@sec.gov

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

RE: Stockholder Proposal of the National Center for Public Policy Research, Securities Exchange Act of 1934 – Rule 14a-8

Ladies and Gentlemen,

This correspondence is in response to the letter of Sabastian V. Niles on behalf of Warner Bros. Discovery, Inc. (the "Company") dated December 5, 2022 requesting that your office (the "Commission" or "Staff") take no action if the Company omits our shareholder proposal (the "Proposal") from its 2023 proxy materials for its 2023 annual shareholder meeting.

RESPONSE TO WARNER BROS. DISCOVERY'S CLAIMS

Our Proposal asks the Board of Directors to:

> create a board corporate sustainability committee to oversee and review the impact of the Company's policy positions and advocacy on matters relating to the Company's financial sustainability.

The Company seeks to exclude the Proposal from the 2023 Proxy Materials pursuant to Rule 14a-8(f)(1) regarding the eligibility requirements of Rule 14a-8(b); Rule 14a-8(i)(3), claiming the Proposal is impermissibly vague, indefinite and susceptible to various interpretations so as to be inherently misleading in violation of the proxy rules; and Rule 14a-8(i)(7) regarding matters relating to 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.

Background

On September 30, 2022, we sent an initial proposal pack to the Company. On October 17, 2022, the Company sent us a deficiency letter requesting a written statement from the record holder of our shares, UBS, verifying that we beneficially owned the requisite number of shares of the Company's Class A Common Stock continuously for at least the requisite period preceding and including the date of submission of the Proposal.

We did in fact hold those shares throughout the relevant period and continue to hold them. UBS had as of September 23, 2022 begun to refuse to release proof-of-ownership letters as required of record holders of proponents' shares under *SEC Staff Legal Bulletin No. 14F* (Oct. 18, 2011) and related provisions. UBS' refusal to issue the requisite proof-of-ownership letters turned out to be both willful and malicious, but it continued until UBS executives finally admitted, under significant pressure, that the refusal was improper, and began again to issue proof-of-ownership letters. In the interim UBS first provided nothing whatever, and then provided only a form letter that it advised we attach to our most-recent account statement.

Consequently, given that the submission deadline for proposals at the Company was November 14, 2022, we withdrew our September 30 proposal and resubmitted an identical proposal, the November 4 proposal at hand. At the time of resubmission, we included the inadequate proof-of-ownership documents issued to us by UBS. These documents, however technically inadequate, did provide the company knowledge of the length and size of our holdings.

On November 8, 2022, we received a notice from the Company informing us that the proof of ownership documents provided with our November 4 submission was deficient. On the night of November 16, 2022, after legal intervention, UBS admitted its responsibility to provide ownership letters, and provided one current to November 17 on that date. On November 17, we provided the revised proof-of-ownership letter from UBS to the Company, which stated that we had held for "at least three years, more than $2000 of Warner Bros. Discovery Inc common stock."

We received no indication of further deficiency from the Company upon submitting the November 17 UBS letter, and as a result of the November 17 letter, the Company had ownership letters that showed that we had continuously owned at least $2,000 worth of shares in the Company to cover the necessary period for our shareholder proposal. Nevertheless, on December 5, 2022, it submitted the no-action request at issue.

Analysis

Part I. Rules 14a-8(b) and 14a-8(f)(1).

The Company claims the Proposal should be omitted because under Rule 14a-8(f)(1), we failed to satisfy the eligibility requirements of Rule 14a-8(b). As noted in SLB 14L, "Rule 14a-8(b) provides that a proponent must prove eligibility to submit a proposal by offering proof that it 'continuously held' the required amount of securities for the required amount of time."[1] The Bulletin further highlights the SEC staff's belief that "that companies should identify any specific defects in the proof of ownership letter, even if the company previously sent a deficiency notice prior to receiving the proponent's proof of ownership if such deficiency notice did not identify the specific defect(s)."[2]

A. The Company's arguments for exclusion under Rules 14a-8(b) and 14a-8(f)(1) contravene the letter and spirit of SLB 14L with regard to proof-of-ownership.

On November 8, 2022, we received a notice acknowledging receipt of and deficiency regarding our November 4, 2022 proposal and proof-of-ownership documents. Under SEC rules, we were provided 14 days with which to cure the deficiency. In other words, we had until November 22, 2022 to provide proof of ownership of the requisite stock to submit a shareholder proposal. On November 17, 2022, we transmitted via email a November 17, 2022 letter from our broker, UBS, verifying the National Center held the requisite stock to submit the Proposal "*continuously* for *at least* three years." (emphasis added).

Despite our November 4 submission of proof-of-ownership documents and our November 17 revised proof-of-ownership letter from UBS, the Company seeks to find some sort of lawyerly gap to permit it to exclude our Proposal. Its December 5, 2022 no-action letter complains that, "The UBS Letter provided evidence of the Proponent's continuous ownership of Company shares for 'at least three years' as of November 17, 2022, but failed to confirm whether the Proponent had held such shares for three years prior to and including the submission date of the proposal on November 4, 2022."

This complaint parsing the language of the UBS letter over specific language addressing less than a two-week time period contravenes the letter and spirit of SLB 14L. The November 17 letter clearly stated we continuously held the requisite amount of shares for *at least* three years. If the Company found that confusing or deficient, then it should have sent a second deficiency notice informing us of the perceived discrepancy, *i.e.,* the supposed gap between November 4 and November 17. Instead, the Company filed a no-action request, arguing that its November 8 deficiency letter provided the necessary notice for us to cure the defect. But the November 8 letter fails to "identify the specific defect" – as expressly noted in SLB 14L – and therefore was insufficient to meet the Company's burden of notifying us under SEC rule.

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[1] https://www.sec.gov/corpfin/staff-legal-bulletin-14l-shareholder-proposals
[2] https://www.sec.gov/corpfin/staff-legal-bulletin-14l-shareholder-proposals

To the contrary, this type of "gotcha" behavior is the very type of behavior that SEC staff proclaims to frown upon in 14L. SLB 14L makes clear that companies should send a second deficiency notice to ensure specific defect(s) in shareholder proposals are known. As noted above, SLB 14L reads, "[W]e believe that companies should identify any specific defects in the proof of ownership letter, *even if the company previously sent a deficiency notice prior to receiving the proponent's proof of ownership if such deficiency notice did not identify the specific defect(s)*."[3] (emphasis added) If the Company was concerned that the "at least three years" language of our November 17 proof of ownership letter was deficient as to the 13-day time period between submission of our proposal and our proof of ownership letter, it was obligated under 14L to tell us so. Instead, the Company now tries to circumvent its obligation under SEC rules to provide us with a deficiency notice describing our alleged procedural defects by claiming its initial November 8 notice, coupled by its subsequent silence as to our November 17 letter, was sufficient.

Meanwhile, the Company *did* have exactly the information it claims technically to have lacked, in that we had provided it with our then-most-recent account statement, which established that we had held the qualifying position in its stock long before and continuously through the days November 4-17, 2019. It had all of the proof-of-ownership information it needed all along. So its claim here is that our Proposal should be excluded, not because we didn't provide it complete information, despite its failure to identify the information that it claimed it lacked, but because though we *had* provided it complete information, we had not provided it in a single piece of paper.

It has provided no basis on which it may be concluded that this is a sufficient ground for omission, especially in light of SLB 14L.

Accordingly, our Proposal should not be found omissible under Rule 14a-8(f)(1) and Rule 14a-8(b).

Part II. The Company's merger does not nullify our holding the requisite shares to submit a shareholder proposal.

The Company claims that its April 8, 2022 merger restarted the clock on the amount of stock we hold, thereby nullifying our shares for the purposes of submitting a shareholder proposal for the Company's 2023 proxy season. This assertion, however, is belied by the November 17, 2022 letter from our record holder, UBS. As the letter states, "As of 11/17/2022, the National Center for Public Policy Research *holds, and has held continuously for at least three years*, more than $2000 of Warner Bros. Discovery Inc common stock." (emphasis added). Our record holder, and therefore the only resource that we (or any other shareholder) have for purposes of proving requisite stock ownership, shows that we have continuously held for at least three years the requisite amount of stock—in this instance, $2000—to submit a shareholder proposal.

[3] https://www.sec.gov/corpfin/staff-legal-bulletin-14l-shareholder-proposals

As pointed out by the Company and set forth in Rule 14a-8(b), providing such a letter is the standard for proving ownership in relation to submitting shareholder proposals. Requiring a proof of ownership letter for purposes of 14a-8(b), but then asserting the same letter is unsatisfactory in light of a company's merger, not only contradicts SEC rules, but is completely illogical. The Company cannot have it both ways.

Without any context, the Company cites several proceedings as evidence of its broad assertion that SEC "Staff has consistently granted no-action relief in situations where the merger occurred within a year of the submission date of the shareholder proposal." The most recent of these proceedings that the Company claims as precedent is more than seven years old, and indeed, most are from the late 1990s and early 2000s. This is vital: it means that all of this precedent precedes the change in ownership rules that requires small shareholders to have held a stock for three years and more before their shareholder-proponent rights vest.[4] By ignoring this, the Company attempts, *sub silentio*, to bar smaller shareholders from submitting shareholder proposals for three years following any company's, including the Company's, merger – *i.e.* as a result of a company's unilateral action – and despite the fact that those shareholders have held the relevant assets over the relevant period in the only form available on any given day. If the Staff intends such a result, it will have to reach it *de novo*; these precedent provide no support.

Many of the precedents cited are inapposite in other ways as well. For instance, the Company cites to *Applied Power* (avail. Oct. 4, 1999); however, in that proceeding SEC Staff had already found during the prior year that the proponent had failed to hold the requisite stock. In *Applied Power*, the company had also claimed that the proponent in that proceeding "has not made any claim or submitted any proof" of ownership of requisite stock. That is completely distinct from the Company's acknowledgment in the instant proceeding where our record holder, UBS, has expressly stated that we do, in fact, hold the requisite stock.

In another proceeding cited by the Company, *Merck & Co., Inc.* (avail. Mar. 16, 2011), SEC Staff wrote, "that the proponent appears to have failed to supply, within 14 days of receipt of New Merck's request, documentary support sufficiently evidencing that it satisfied the minimum ownership requirement for the one-year period as of the date that it submitted the original version of the proposal as required by rule 14a-8(b)." In that proceeding, the relevant complaint was that the proponent did not provide proof of ownership at all, "Instead of providing the proof of ownership…presumably because the Proponent did not own Schering-Plough stock prior to the merger, the Proponent did not respond to the request for proof of ownership, choosing instead to revise the Proposal and attempt to suggest that the Revised Proposal was a new proposal." Unlike the proponent in *Merck*, we did provide a proof of ownership letter within the 14-day time period required under SEC rules, making that proceeding inapplicable to this proceeding, providing that we did own the relevant stock in the form in which it was available prior to the merger.

[4] *See* SEC Rule 14a-8(b).

Accordingly, our Proposal should not be found omissible for lack of ownership of the requisite stock.

Part III. The non-omissibility of our Proposal is established by the Staff's decision in Alphabet, Inc. (avail. April 11, 2022).

Our Proposal is substantially indistinguishable, for Staff-review purposes, from the proposal that was found non-omissible in *Alphabet, Inc.* (avail. April 11, 2022). The resolution of our Proposal is based on and is conceptually indistinguishable from the *Alphabet* proposal. As we have noted, the resolution of our Proposal asks the Company's Board of Directors to:

> create a board corporate sustainability committee to oversee and review the impact of the Company's policy positions and advocacy on matters relating to the Company's financial sustainability.

The proposal in *Alphabet* asked the Alphabet Board of Directors to:

> create a board committee on environmental sustainability to oversee and review policies and provide guidance on matters relating to environmental sustainability.

These proposals are effectively identical in nature. Each call on the respective boards to examine how the policies and actions of each company impact key sustainability issues. Our Proposal seeks a review of its public policy positions and actions on the Company's *financial* sustainability, whereas the proposal in *Alphabet* seeks a review of such policies and actions on that company's *environmental* sustainability.

In doing so, each implicates issues of substantial social policy that transcend ordinary business. When a company wades into substantial social and policy issues, that action is by definition not ordinary business but a significant add-on to those ordinary business activities. When a company takes such extraordinary action, it has necessarily implicated the substantial issues it has addressed. The Company can't on one hand claim that it *must* use shareholder assets to stake out controversial positions on these matters or support organizations that have taken such positions, and then on the other hand argue that such stances are simply run-of-the-mill business activities about which shareholders deserve no accounting.

Financial sustainability is *the central issue* about which shareholders have the right to full information. In particular, they have the right to know whether, when the Company spends shareholder funds to take divisive social and political stances, it turns out after reflection that the stance taken has had a negative impact on the Company's business, and therefore represented an error that fiduciary duty requires the Company to correct and to learn from. In this sense, it more completely implicates substantial issues of particular importance to shareholders because while environmental sustainability is at best a tertiary fiduciary concern of interest to only a portion of shareholders, financial sustainability is the central fiduciary concern imputed by law and common sense to all shareholders.

Accordingly, the *Alphabet* proposal having been found non-omissible, so must our Proposal be. Were the Staff to determine otherwise, it would thereby provide grounds upon which companies might in the future exclude all inquiries into the intersections of its policy positions about important public policy issues and the company's continuing sustainability.

Part IV. The Proposal is not impermissibly vague, indefinite and susceptible to various interpretations so as to be inherently misleading.

A. Rule 14a-8(i)(3).

Under Rule 14a-8(i)(3), a company may exclude a shareholder proposal in its entirety "if the language of the proposal or the supporting statement render the proposal so vague and indefinite that neither the stockholders voting on the proposal, nor the company in implementing the proposal (if adopted), would be able to determine with any reasonable certainty exactly what actions or measures the proposal requires."[5] When only portions of a proposal merit exclusion for causing vagueness or other difficulties, companies are only permitted "to exclude portions of the supporting statement, even if the balance of the proposal and the supporting statement may not be excluded."[6]

B. The plain language of the Proposal is unambiguous.

None of the terms used in the Proposal are vague or indefinite on their own or in the aggregate such that, pursuant to Rule 14a-8(i)(3), stakeholders or the Company are unable to determine with reasonable certainty exactly what actions or measures the Proposal requires. While the Company claims confusion over the plain language of the Proposal – and over certain terms in particular – there is nothing about the terminology in the Proposal that appears out of context or in such a way as to render it vague or indefinite.

First, the Company claims it is confused as to what constitutes "matters relating to the Company's financial sustainability." But as a threshold matter, if the Company is truly confused as to what may impact its financial sustainability, then all shareholders should be gravely concerned as to the competence of Company leadership and whether the Company's fiduciary duties to shareholders are being met. To be sure, the Company's number one concern should be its financial sustainability, especially with regard to shareholders. It may also be that the Company is confused as to the use of the term "financial sustainability," not due to any ambiguity on the part of the Proposal, but due to the Company's own bias that has apparently precluded it from interpreting the word "sustainability" in any way other than in an environmental context. In fact, the Company has an entire webpage dedicated to "Sustainability," which is limited to the notion of sustainability in an environmental context, such as climate change.[7] This only serves to underscore the need for our Proposal, which seeks to review the Company's financial, as opposed to environmental, sustainability.

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[5] *See* Staff Legal Bulletin No. 14B (September 15, 2004) ("SLB 14B") (emphasis added).
[6] *Id.*
[7] https://news.warnermediamarketing.com/cnn-experience-sustainability

Moreover, even if the Company claims the Resolution portion of our Proposal is unclear, the Supporting Statement serves to clarify any alleged ambiguities. The very first line of the Supporting Statement focuses on CNN's "plummeting profits." The Supporting Statement then goes on to implore the Board to ponder the questions, "How did the network lose so many viewers and so much money?" The unambiguous focus, therefore, is on the Company's financial sustainability, as clearly stated in the Resolution.

The Company also claims the phrasing "board corporate sustainability committee" is ambiguous. But the operative part of the phrase at issue, is clear: the Board must "create" a board committee to oversee and review certain acts of the Company as it relates to the Company's "financial sustainability." Referring to that committee as a "corporate sustainability committee" is unambiguous, but even if it were not, what the committee is formally or informally titled is immaterial to function of the committee itself as so directed by the Resolution.

Finally, the Company argues the Proposal is confusing because it asks the Board to "oversee and review the impact of the Company's policy positions and advocacy." Again, we take issue with the assertion that the phrase "policy positions and advocacy" is unclear, and direct the Company and the SEC Staff to our Supporting Statement to resolve any alleged ambiguities. The "policy positions and advocacy" of the Company relate to its policy positions and advocacy in furtherance of its "liberal, biased culture" as noted in our Supporting statement. Even the Company's no-action request notes that our Supporting Statement highlights the Company's "partisan line-up of hosts" at CNN who perpetuate "liberal talking points."

Although reasonable minds may differ as to the use of equally appropriate terms or phrases when drafting a shareholder proposal, the applicable standard as previously noted is whether the company implementing the proposal "would be able to *determine with any reasonable certainty* exactly what actions or measures the proposal requires." (emphasis added). Absolute certainty, therefore, is not required. When it comes to the instant Proposal, there is nothing about it that prevents the Company, Board, or shareholders from being able to determine with any reasonable certainty exactly what actions or measures the proposal requires. Feigning confusion as a means to exclusion should not be encouraged. We presume that the Board of Directors – all of whom the Company has assured us are appropriate candidates for re-election this year – are able to understand simple language and basic propositions. They will understand that should shareholders vote for the Proposal, they will have instructed the Board to create a committee to oversee and review the impacts of the Company's actions when it comes to policy and advocacy on the Company's bottom-line. If the Directors cannot understand this intensely simple proposition, then the Company fails in its duty of care by recommending that they be re-elected to their positions.

Accordingly, the Proposal is not impermissibly vague, indefinite and susceptible to various interpretations so as to be inherently misleading in violation of Rule 14a-8(i)(3).

Part V. The Proposal does not relate to the Company's ordinary business operations.

A. Rule 14a-8(i)(7).

The Company seeks to prevent action on our Proposal via Rule 14a-8(i)(7), the ordinary business exception. The exception, in its entirety, permits exclusion of a proposal "[i]f the proposal deals with a matter relating to the company's ordinary business operations."[8]

The initial rule does not flesh out this provision at all. It has, though, been amended. One of those amendments, made in 1998, was restated and explained in a Staff Legal Bulletin (SLB) in 2002. There the Staff explained that:

> [t]he fact that a proposal relates to ordinary business matters does not conclusively establish that a company may exclude the proposal from its proxy materials. …[P]roposals that relate to ordinary business matters but that focus on 'sufficiently significant social policy issues … would not be considered to be excludable because the proposals would transcend the day-to-day business matters.'[9]

As the amendment itself explained, in detail particularly relevant to our considerations here:

> The policy underlying the ordinary business exclusion rests on two central considerations. The first relates to the subject matter of the proposal. Certain 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. Examples include the management of the workforce, such as the hiring, promotion, and termination of employees, decisions on production quality and quantity, and the retention of suppliers. **However, proposals relating to such matters but focusing on sufficiently significant social policy issues (*e.g., significant discrimination matters*) generally would not be considered to 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.[10]**

There matters stood until 2017. That fall, Staff issued a bulletin ("SLB 14I") recognizing that corporate boards would likely have some insight into whether issues raised in shareholder proposals were of sufficiently substantial importance to transcend the category of ordinary

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[8] 17 C.F.R. § 240.14a-8(i)(7).

[9] *Staff Legal Bulletin* No. 14A (July 12, 2002) (quoting *Amendments to Rules on Shareholder Proposals, Exchange Act Release* No. 40018 (May 21, 1998), *available at* https://www.sec.gov/rules/final/34-40018.htm) (last accessed Jan. 3, 2022).

[10] *Amendments to Rules on Shareholder Proposals, Exchange Act Release* No. 40018 (May 21, 1998) (emphasis added), *available at* https://www.sec.gov/rules/final/34-40018.htm (last accessed Jan. 3, 2022).

business operations.[11] It therefore invited corporations, in arguing for an ordinary business exception, to include in support of their claims details of their boards' analyses of the shareholder proposals and the underlying policy significance of those proposals.[12] Staff expanded this guidance further in 2018 ("SLB 14J") and suggested that in demonstrating its board's analysis of the substantiality of an issue, a company should be expansive in its communications with the Staff.[13] In doing so, Staff welcomed details about particulars such whether the company had already addressed the issue in some manner, including the difference – or the delta – between the proposal's specific request and the actions the company has already taken, and an analysis of whether the delta presented a significant policy issue for the company.[14] Additional Staff guidance appeared again in the fall of 2019 ("SLB 14K"), wherein Staff underscored the value of the 2018 "delta analysis."[15]

Then most recently, on November 3, 2021, Staff reverted to the aforementioned 1998 guidance by rescinding SLB 14I, SLB 14J, and SLB 14K following "a review of staff experience applying the guidance in them."[16] Relevantly, of the rescinded bulletins, Staff said an "undue emphasis was placed on evaluating the significance of a policy issue to a particular company at the expense of whether the proposal focuses on a significant social policy…." Staff went on to explain that it was prospectively realigning its "approach for determining whether a proposal relates to 'ordinary business' with the standard the Commission initially articulated in 1976, which provided an exception for certain proposals that raise significant social policy issues, and which the Commission subsequently reaffirmed in the 1998 Release."[17]

B. The Proposal does not relate to a fundamental element of the day-to-day management of the Company's business.

The Company argues that the Proposal should be found omissible because the Proposal relates to a fundamental element of the day-to-day management of the Company's business. But the policy

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[11] *See Staff Legal Bulletin* No. 14I (Nov. 17, 2017), *available at* https;//www.sec.gov/interps/legal/cfslb14i.htm (Feb. 20, 2020) ("A board acting in this capacity and with the knowledge of the company's business and the implications for a particular proposal on that company's business is well situated to analyze, determine and explain whether a particular issue is sufficiently significant because the matter transcends ordinary business and would be appropriate for a shareholder vote.").

[12] *See id.* ("Accordingly, going forward, we would expect a company's no-action request to include a discussion that reflects the board's analysis of the particular policy issue raised and its significance. That explanation would be most helpful if it detailed the specific processes employed by the board to ensure that its conclusions are well-informed and well-reasoned.").

[13] *See Staff Legal Bulletin* No. 14J (Oct. 23, 2018), *available at* https://www.sec.gov/corpfin/staff-legal-bulletin-14j-shareholder-proposals (last accessed Jan. 3, 2022).

[14] *Id.*

[15] *See Staff Legal Bulletin* No. 14K (Oct. 16, 2019), *available at* https://www.sec.gov/corpfin/staff-legal-bulletin-14k-shareholder-proposals (last accessed Jan. 3, 2022).

[16] *See Staff Legal Bulletin* No. 14L (Nov. 3, 2021), *available at* https://www.sec.gov/corpfin/staff-legal-bulletin-14l-shareholder-proposals (last accessed Jan. 3, 2022).

[17] *Id.*

positions and advocacy of a company is by its very nature *outside* of the day-to-day management of its ordinary business. As discussed previously herein, when a company wades into substantial social and policy issues, that action is by definition not ordinary business but a significant add-on to those ordinary business activities. When a company takes such extraordinary action, it has necessarily implicated the substantial issues it has addressed. The Company can't on one hand claim that it *must* use shareholder assets to stake out controversial positions on these matters or support organizations that have taken such positions, and then on the other hand argue that such stances are simply run-of-the-mill business activities about which shareholders deserve no accounting.

This is the case, and is perhaps particularly the case, with major media companies, including companies that have news divisions. Ordinary business decisions would include all sorts of unique questions about directorial and "talent" selection and location and budget-setting and the like, not to mention the more mundane business activities that characterize any corporation. What very distinctly are not "ordinary business decisions," but are instead the foundational, companywide decisions that are easily amenable to useful shareholder consideration are "should the content that we put out aim to entertain or inform without a deep partisan commitment, or should we make a whole-of-company decision to drive a particular worldview?" We believe that it's immutably clear that the Company's directors and executives have chosen the latter, and that this decision has cost the Company mightily. Even if we were somehow wrong in these conclusions, we are well within our shareholder rights, without fear of omission on ordinary-business grounds, to ask the Board to establish a committee to consider and address these vital, top-level questions.

Even if these extracurricular activities constituted the course of normal business, the plain language of the Proposal states that the objective of the board committee is to examine "the *impact* of the Company's policy positions and advocacy." Nothing about the Proposal seeks the management of any specific actions; rather, the Proposal is designed to ensure a review of their effects. Nothing in our Proposal requires the Company to take any action. To the contrary, the Company can draw whatever conclusions from its review and elect to act—or not act—as a result, though certain findings by such a board committee might create certain fiduciary duties for directors.

Consider the oddity of the Company's overall position. It claims that our proposal is just too vague to be understood, but that it *really* seeks to get right into the ordinary, everyday decisions that the Company makes, and must be free to make without shareholder oversight. While in this instance neither of those claims are true, it certainly can't be the case that they both be true, and the Company's attempt to go for either/or illustrates that even the Company recognizes that both claims are empty, and are just trying everything they can think of, however tendentious.

We note that in *Alphabet, Inc.*, SEC Staff found the proposal did not micromanage the company or otherwise render the proposal omissible. SEC Staff did so despite specific reference in that proposal to and suggestions about the types of actions such an environmental committee could potentially take: "The purpose of an environmental sustainability committee could be to initiate,

review, and make policy recommendations regarding topics such as global climate change, resource shortages, biodiversity loss, and political instability due to changing environmental conditions." Our Proposal doesn't even provide that level of granularity; rather, we just underscore the reasons why a board committee to review the effects on company financial sustainability of aggressive and thoroughgoing commitments to highly partisan advocacy.

Finally, the Company asserts that the "fact a proposal may touch upon a significant policy issue, however, does not preclude exclusion under Rule 14a-8(i)(7)." But the proceedings cited by the Company to evidence its broad claim all precede SLB 14L, which made clear that proposals that raise significant policy issues do transcend ordinary business. And as previously noted, our Proposal implicates issues of significant social policy that transcend ordinary business, as it implicates the policy positions and advocacy on a variety of issues of significant social policy by the Company.

For these reasons, the Staff cannot and should not find our Proposal omissible, as the Proposal does not relate to the Company's ordinary business operations and the Company provides no evidence to the contrary.

Conclusion

Proof of ownership was timely submitted to the Company, well within the 14-day period required under SEC rules following deficiency notification, and such ownership is not nullified by the Company's merger. Furthermore, our Proposal seeks only an assessment on the impact of the Company's actions, not in any way the management of the Company, and it does so about issues of significant social policy interest.

The Company has clearly failed to meet its burden that it may exclude our Proposal under Rule 14a-8(g). 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 sshepard@nationalcenter.org and srehberg@nationalcenter.org.

Sincerely,

Scott Shepard
FEP Director

Sarah Rehberg
National Center for Public Policy Research

cc: Sabastian V. Niles, Wachtell, Lipton, Rosen & Katz (SVNiles@wlrk.com)
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January 9, 2023

VIA EMAIL (SHAREHOLDERPROPOSALS@SEC.GOV)

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

Re: *Warner Bros. Discovery, Inc.*
Shareholder Proposal Submitted by the National Center for Public Policy Research

Ladies and Gentlemen:

This letter is submitted on behalf of Warner Bros. Discovery, Inc. (the "Company") in response to the letter of Scott Shepard and Sarah Rehberg on behalf of the National Center for Public Policy Research (the "Proponent"), dated January 4, 2023 (the "Proponent Rebuttal Letter"), submitted in response to the Company's letter, dated December 5, 2022 (the "No-Action Letter") respectfully requesting the Staff of the Division of Corporation Finance (the "Staff") of the Securities and Exchange Commission concur in the Company's view that the Proponent's shareholder proposal

and statements in support thereof may be excluded from the Company's proxy statement and form of proxy for its 2023 annual meeting of shareholders (collectively, the "2023 Proxy Materials").

The Company respectfully seeks to clarify two mischaracterizations set forth in the Proponent Rebuttal Letter, each of which is sufficient to not include the Proponent's proposal:

I. The Proponent Claims That the Company Should Have Delivered A Second Deficiency Notice Identifying the Specific Defect In the Proponent's Proof of Ownership Letter Dated November 17, 2022.

On page 3 of the Proponent Rebuttal Letter, the Proponent states that the Company "should have sent a second deficiency notice informing us of the perceived discrepancy, *i.e.,* the supposed gap between November 4 and November 17."

As set forth in Exhibit C to the No-Action Letter, the Company's initial deficiency notice informed the Proponent that the "letter dated November 3, 2022 from UBS Financial Services Inc. is insufficient because it does not verify the continuous ownership of Company shares for the three-year period preceding and including the Submission Date." The deficiency notice further provided specific instructions on how the Proponent could cure the deficiency and attached copies of Rule 14a-8, Staff Legal Bulletin No. 14F (Oct. 18, 2011) and Staff Legal Bulletin No. 14G (Oct. 16, 2012) for the Proponent's reference.

The Company believes that it has satisfied the Staff's guidance in Staff Legal Bulletin No. 14L (Nov. 3, 2021) because it identified the specific deficiency in the Proponent's initial submission of proof of ownership and such deficiency is the same deficiency contained in the Proponent's subsequent proof of ownership letter dated November 17, 2022, as the subsequent letter again failed to provide sufficient evidence that the Proponent continuously held Company shares for three years as of the submission date of the Proponent's shareholder proposal.

The Company further notes, that Staff Legal Bulletin No. 14F (Oct. 18, 2011), which was provided to the Proponent with the deficiency notice, specifically stated:

> A common error in proof of ownership letters is that they do not verify a proponent's beneficial ownership for the entire one-year period preceding and including the date the proposal was submitted, as required by Rule 14a-8(b)(1) . . . In other cases, the letter speaks as of a date after the date the proposal was submitted but covers a period of only one year, thus failing to verify the proponent's beneficial ownership over the required full one-year period preceding the date of the proposal's submission.

Staff Legal Bulletin No. 14F (Oct. 18, 2011) required companies in their deficiency notices to expressly identify the specific date on which the shareholder proposal was submitted and explain that the proponent must obtain a new proof of ownership letter verifying continuous ownership of the requisite amount of securities for the relevant period preceding and including such date to cure the defect. The Company complied with such requirement in its deficiency notice, while the Proponent failed to follow the Staff's guidance and our express instructions.

II. The Proponent Claims That Its Account Statement Provided Sufficient Proof of Ownership.

The Proponent also incorrectly states that "the Company did have exactly the information it claims technically to have lacked, in that we had provided it with our then-most-recent account statement, which established that we had held the qualifying position in its stock long before and continuously through the days November 4-17, 2019." (Page 4 of Proponent Rebuttal Letter)

The Company notes that the Proponent has only provided a copy of its October 2022 account statement, which does not serve as sufficient evidence of the Proponent's continuous ownership of Company shares over the required period. Staff Legal Bulletin No. 14, Item C(1)(c)(2), expressly provides that account statements, including those that appear to cover the requisite holding period, cannot be used by proponents as proof of ownership:

> **(2) Do a shareholder's monthly, quarterly or other periodic investment statements demonstrate sufficiently continuous ownership of the securities?**
>
> No. A shareholder must submit an affirmative written statement from the record holder of his or her securities that specifically verifies that the shareholder owned the securities continuously for a period of one year as of the time of submitting the proposal.

***

Based on the analyses set forth herein and in the No-Action Letter, the Company respectfully requests the Staff's concurrence with the Company's view or, alternatively, that the Staff confirm that it will not recommend any enforcement action if the Company excludes the Proposal from the 2023 Proxy Materials.

If we can be of any further assistance in this matter, please do not hesitate to call me at (212) 403-1366. If the Staff is unable to concur with the Company's conclusions without additional information or discussions, the Company respectfully requests the opportunity to confer with members of the Staff prior to the issuance of any written response to this letter. In accordance with Staff Legal Bulletin No. 14F, Part F (Oct. 18, 2011), please kindly send your response to this letter by email to SVNiles@wlrk.com.

Very truly yours,

/s/ Sabastian V. Niles

Sabastian V. Niles

Enclosures

cc: Tara Smith, Warner Bros. Discovery, Inc.
Sarah Rehberg, National Center for Public Policy Research
Scott Shepard, National Center for Public Policy Research

January 17, 2023

Via email: shareholderproposals@sec.gov

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

RE: Stockholder Proposal of the National Center for Public Policy Research, Securities Exchange Act of 1934 – Rule 14a-8

Ladies and Gentlemen,

This correspondence is in response to the supplemental letter of Sebastian V. Niles on behalf of Warner Bros. Discovery, Inc. (the "Company") dated January 9, 2023, requesting that your office (the "Commission" or "Staff") take no action if the Company omits our Shareholder Proposal (the "Proposal") from its 2023 proxy materials for its 2023 annual shareholder meeting.

SUPPLEMENTAL RESPONSE TO WARNER BROS. DISCOVERY INC.'S CLAIMS

In its supplemental letter the Company makes two points, but the first misconstrues its obligation of basic good faith, as established by Staff Legal Bulletin 14L, while the second is irrelevant to this proceeding because it misconstrues both SLB No. 14, Item C(1)(c)(2) and misrepresents the breadth of the communications between the parties with regard to amount and duration of our ownership of the Company's stock. As a result, the Company's communication strengthens the case against finding our Proposal to be omissible.

I. ***Especially in the wake of Staff Legal Bulletin 14L, the Company should have sent a second deficiency notice if, given all the information it had been provided, it intended to stand on a claim that we had insufficiently demonstrated our ownership of Company assets for 13 days in 2019.***

The Company argues that it had no obligation to send a second deficiency letter after it determined that our November 17 proof-of-ownership demonstration was insufficient in that it did not in a single document expressly aver ownership for the period from November 3-17, 2019, instead only expressly averring ownership for the three years including and preceding November 17, 2022. It insists that its initial notice of deficiency, to which the November 17 proof-of-ownership letter was a response, was sufficient to its duty.

This analysis ignores significant facts and misconstrues Staff Legal Bulletin 14L.

The first fact the Company's analysis ignores is that our November 17 letter is not the only information about our stock ownership that it had. It *also* had the account statement that we had previously sent, which statement fully established that our ownership position did not change during the 13 days – or in fact much longer – between November 13 and November 17, 2019. These two documents together provided the Company complete actual knowledge of our ownership position over the whole of the relevant three years. For this part of the Company's claim that our proof of ownership was insufficient, it must pretend that it *only* had the November 17, 2022 proof-of-ownership letter, and not the previous ownership documentation. (Likewise, for the next part of its claim, it has to pretend that it had only the account statement.) The claim fails because this premise is false: it had both pieces of information.

The second fact that the Company's analysis ignores is that never at any time does it claim, nor could it claim, that it had any doubt about our ownership over the necessary three years. It knew our ownership qualified. This isn't about actual knowledge; it's about gotcha games.

But SLB 14L directs companies not to play gotcha games, but instead to communicate in good faith with proponents in order to achieve actual knowledge about whether the proponent has and can demonstrate sufficient ownership. As the Staff there explained, "[s]ome companies apply an overly technical reading of proof of ownership letters as a means to exclude a proposal. We generally do not find arguments along these lines to be persuasive." It indicated that it would find for proponents when "the proponent nonetheless had supplied documentary support sufficiently evidencing the requisite minimum ownership requirements."

In order to facilitate the provision of *actual knowledge* of ownership and to eliminate gotcha games, the Staff instructed companies that they "should identify any *specific* defects in the proof of ownership letter, even if the company previously sent a deficiency notice prior to receiving the proponent's proof of ownership if such deficiency notice did not identify the *specific* defect(s)." (emphasis added)

The Company claims that its initial notice-of-deficiency letter provided specific information about the Company's specific objections to the proof-of-ownership letter that was sent in response to that notice-of-deficiency letter, but this is facially incoherent. The proof-of-ownership letter was sent in response to the initial notice-of-deficiency letter, which therefore could not have identified any subsequent Company objections to that proof-of-ownership letter.

The first notice-of-deficiency was a standard, *general* deficiency letter: the standard practice is for proponents to send proposals under cover letters, for companies to send general deficiency letters, and then for proponents to send proof of ownership letters. We did this, responding with a standard proof-of-ownership letter, presuming in good faith that it was sufficient. And it absolutely was sufficient, when combined with the previous (not-by-itself-sufficient) proof-of-ownership demonstration, to provide the Company *actual knowledge* that we had held the requisite ownership position throughout the requisite period.

If, in light of all the information that we had provided, the Company nevertheless wished to make a wholly notional and technical complaint that even though they then had actual knowledge of our sufficient ownership, they as a technical matter wished all of that information to appear on the face of a single piece of paper, and our proper proof-of-ownership letter was insufficient in this regard because of a 13-day gap in 2019, then it was incumbent upon them, under SLB 14B, no longer to reply on the *general* deficiency letter that they had initially sent, and to which we had responded, but instead to have sent a second, *specific* deficiency letter explaining that "although we have actual knowledge from what you have sent us that you have maintained a sufficient ownership position for more than three years, the November 17 proof-of-ownership letter that you sent us does not expressly cover the period from November 3-17, 2019. We will consider you deficient unless you correct this technical concern."

Had the Company sent the letter indicating its specific objection, we would happily have provided the document sought – as the Company knew that we would. So rather than supplementing the initial *general* deficiency letter with a second *specific* deficiency letter responsive to its technical concerns, it remained silent – exactly because it wanted to create a solely technical ground upon which to seek omission of our Proposal.

This violates both the letter and the spirit of SLB 14L. It is acting without good faith and failing to communicate concerns, which in any case are not genuine, in order to create a technical submission problem that has nothing to do with the company's actual knowledge of our ownership position.

II. Contra *Company, we do not claim that our account statement provided sufficient proof of notice, but only that the account statement* along with *the other proof-of-ownership documents that had been provided collectively gave sufficient proof of ownership – or at very least enough to require the Company to have provided a second notice of deficiency if it intended to stand on a wholly technical claim about 13 days of ownership in 2019.*

The Company next asserts that an account statement by itself does not provide sufficient proof of ownership. That's fine, but that's not the only information that the Company had about our ownership position. It also always had the letter from UBS accompanying that account statement and explaining the dilemma that UBS had put us in, and as of November 17, within the 14-day period after its notice-of-deficiency letter, the Company also had a proper proof-of-ownership letter.

The language cited by the Company affirms that such a proper proof-of-ownership letter is required – and we provided it. That language does not say that, such proof having been provided, an account statement can provide no supporting role in correcting any minor technical defects in the proper ownership letter, while 14L clearly indicates that companies should act in good faith and open communication to establish actual knowledge of ownership, or to fully explore any technical objections, not stand on not-specifically-disclosed claims of technical lacunae.

The simple fact here is that the Company had a proper proof-of-ownership letter, had additional documentation that provided it actual knowledge that we met the ownership requirements, actually knew that we met the ownership requirements, knew that if it had communicated to us its wholly technical objection to our proof-of-ownership letter we would promptly have sent a new one, and purposely refrained from sending the second, specific deficiency letter required by SLB 14L exactly because it wanted to create the only-technical ground of complaint on which it now stands.

SLB 14L precludes exactly this course of behavior. And so too do the general rules against arbitrary and capricious decision making. If the rules are applied with technical rigor, then the Company's failure to send the second, specific deficiency letter precludes it from complaining about the technical deficiency in our proper proof-of-ownership letter. But if the rules are applied liberally with the goal of conveying actual knowledge of ownership to the company, then we certainly provided that to the Company in the course of our correspondence with it. The only way the Company can prevail is if the rules are applied liberally to it, forgiving its failure to send the second, specific deficiency letter, but with onerous rigor to us – so strictly in fact as to refuse even to recognize that we provided both a proper proof-of-ownership letter and an account statement that between them provided full actual knowledge of sufficient ownership and that should at least have triggered that obligation to send the second, specific letter. Such variant standards would exemplify arbitrary-and-capricious decision making.

For these reasons, the Staff cannot and should not find our Proposal omissible.

The Company has clearly failed to meet its burden that it may exclude our Proposal under Rule 14a-8(g). 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 I can provide additional materials to address any queries the Commission may have with respect to this letter, please do not hesitate to call me at (202) 507-6398 or email me at sshepard@nationalcenter.org.

Sincerely,

Scott Shepard
Director, Free Enterprise Project

Sarah Rehberg
National Center for Public Policy Research

cc: Sabastian V. Niles, Wachtell, Lipton, Rosen & Katz (SVNiles@wlrk.com)
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