



DIVISION OF
CORPORATION FINANCE

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

January 9, 2023

Kristina V. Fink
American Express Company

Re: American Express Company (the "Company")
Incoming letter dated January 6, 2023

Dear Kristina V. Fink:

This letter is in regard to your correspondence concerning the shareholder proposal (the "Proposal") submitted to the Company by the New York City Retirement Systems (the "Proponent") for inclusion in the Company's proxy materials for its upcoming annual meeting of security holders. Your letter indicates that the Proponent has withdrawn the Proposal and that the Company therefore withdraws its December 24, 2022 request for a no-action letter from the Division. Because the matter is now moot, we will have no further comment.

Copies of all of the correspondence related to this matter 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: Michael Garland
City of New York Office of the Comptroller

December 24, 2022

Via Electronic Mail to shareholderproposals@sec.gov

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

Re: Shareholder Proposal Submitted by the Comptroller of the City of New York

Dear Sir or Madam:

In accordance with Rule 14a-8(j) under the Securities Exchange Act of 1934, as amended (the “Exchange Act”), American Express Company, a New York corporation (the “Company” or “American Express”), hereby gives notice of the Company’s intention to omit from its proxy statement for its 2023 annual meeting of shareholders (the “2023 Proxy Statement”) a shareholder proposal (the “Proposal”) submitted by the Comptroller of the City of New York, Brad Lander, on behalf of the New York City Employees’ Retirement System, The New York City Teachers’ Retirement System and the New York City Board of Education Retirement System (collectively, the “Proponent”) under cover of letter dated August 26, 2022. A copy of the Proposal, together with the supporting statement included in the Proposal (the “Supporting Statement”), is attached hereto as Exhibit A.

The Company requests confirmation that the staff of the Division of Corporation Finance (the “Staff”) of the Securities and Exchange Commission (the “Commission”) will not recommend any enforcement action if the Company omits the Proposal from the 2023 Proxy Statement pursuant to Rule 14a-8(i)(10) under the Exchange Act because the Company has substantially implemented the Proposal and pursuant to Rule 14a-8(i)(7) under the Exchange Act because the Proposal deals with matters relating to the Company’s ordinary business operations and seeks to micromanage the Company.

In accordance with Rule 14a-8(j), we are submitting this letter to the Commission no later than 80 calendar days before the Company expects to file its definitive 2023 Proxy Statement with the Commission. Pursuant to Staff Legal Bulletin No. 14D (CF), Shareholder Proposals (November 7, 2008), Question C, we have submitted this letter and the related correspondence from the Proponent to the Commission via email to shareholderproposals@sec.gov. In accordance with Rule 14a-8(j), a copy of this submission is being forwarded simultaneously to the Proponent. This letter constitutes the Company’s statement of the reasons it deems the omission of the Proposal from the 2023 Proxy Statement to be proper.

THE PROPOSAL

The proposed resolution included in the Proposal provides as follows:

Resolved: Shareholders request the American Express Company Board of Directors issue a public report, omitting proprietary and privileged information, concerning its oversight of management’s decision-making regarding any application to the International Standards Organization (ISO) to establish a merchant category code (MCC) for standalone gun and ammunition stores. This report should cover American Express’ governance of MCC standards, as well as disclose and explain the justification for its position on any applications to create an MCC for gun and ammunition stores.

BASIS FOR EXCLUSION

In accordance with Rule 14a-8, the Company hereby respectfully requests that the Staff concur with the Company’s view that the Proposal may be excluded from the 2023 Proxy Statement for the following reasons:

- A. The Proposal may be omitted pursuant to Rule 14a-8(i)(10) under the Exchange Act, because the Company has substantially implemented the Proposal; and
- B. The Proposal may be omitted pursuant to Rule 14a-8(i)(7) under the Exchange Act, because the Proposal deals with matters relating to the Company’s ordinary business operations and seeks to micromanage the Company.

ANALYSIS

A. Under Rule 14a-8(i)(10), the Proposal may be omitted because the Company has substantially implemented the Proposal.

1) Rule 14a-8(i)(10) background

Pursuant to Rule 14a-8(i)(10), a company is permitted to exclude a shareholder proposal if the company has already substantially implemented the proposal. The purpose of this rule, as set forth by the Commission, is to “avoid the possibility of shareholders having to consider matters which already have been favorably acted upon by the management.” *See* Exchange Act Release No. 34-20091 (Aug. 15, 1983) (the “1983 Release”); Exchange Act Release No. 34-12598 (July 1976) (the “1976 Release”). The Commission has clarified that the proposal’s requested actions do not need to be “fully effected” or implemented exactly as presented for a company to exclude the proposal under Rule 14a-8(i)(10); instead, the actions called for by the proposal need only be “substantially implemented.” *See* 1983 Release. Whether a proposal has been “substantially implemented” by a company “depends on whether its particular policies, practices and procedures compare favorably with the guidelines of the proposal.” *Texaco, Inc.* (Mar. 28, 1991).

The Staff has consistently allowed for the exclusion of proposals under Rule 14a-8(i)(10) where a company’s actions have substantially addressed the “essential objective” and

underlying concerns of the proposal, even if the specific actions may not be exactly as requested or required by the proposal. For example, the Staff in *Visa Inc.* (Oct. 11, 2019) concurred that the exclusion of a proposal requesting the company's compensation committee reform its executive compensation program to include social factors was substantially implemented because the company's philosophy was tied to its seven strategic pillars, which included social issues. Additionally, in *Walgreen Co.* (Sept. 26, 2013) the Staff agreed that exclusion of a proposal that requested to amend the company's articles of incorporation to eliminate certain supermajority voting requirements was permissible, since the company had already eliminated all of its supermajority provisions. *See also, e.g., Invesco Ltd.* (Mar. 8, 2019); *Eli Lilly & Co.* (Feb. 22, 2019); *PepsiCo, Inc.* (Feb. 14, 2019); *State Street Corporation* (Mar. 15, 2018); *The Goodyear Tire & Rubber Company* (Jan. 19, 2018); *Mattel, Inc.* (Feb. 3, 2017); *AbbVie, Inc.* (Dec. 22, 2016); *The Wendy's Co.* (Mar. 2, 2016); *Starbucks Corp.* (Dec. 1, 2011); *Exxon Mobil Corp.* (Mar. 23, 2009); *Chevron Corp.* (Feb. 19, 2008); *Johnson & Johnson* (Feb. 17, 2006).

In addition, the Staff has concurred that, when substantially implementing a shareholder proposal, companies can address aspects of implementation in ways that may differ from the manner in which the shareholder proponent would implement the proposal. For example, the Staff has previously taken the position that a shareholder proposal requesting that a company's board of directors prepare a report pertaining to environmental, social or governance issues may be excluded when the company has provided information about the initiative in various public disclosures. *See PPG Industries, Inc.* (Congregation of the Sisters of St. Joseph of Peace) (Jan. 16, 2020) (concurring with the exclusion of a proposal requesting that the board of directors prepare a report on the company's processes for "implementing human rights commitments within company-owned operations and through business relationships" where the requested information was already disclosed in the company's global code of ethics, global supplier code of conduct, supplier sustainability policy, and sustainability report, and other disclosures that addressed the requested information); *Apple Inc.* (Dec. 11, 2014) (concurring in the exclusion of a proposal that requested the establishment of a Public Policy Committee where the company had existing systems and controls, including an audit and finance committee, designed to oversee the matters listed in the proposal); *Entergy Corporation* (Feb. 14, 2012) (concurring in the exclusion of a proposal that requested establishment of a committee to conduct a special review of certain nuclear matters when the company had an existing nuclear committee responsible for the proposed matters); *International Business Machines Corp.* (Jan. 4, 2010) (concurring in the exclusion of a proposal that requested periodic reports of the Company's "Smarter Planet" initiative where the Company had already reported on those initiatives using a variety of different media, including the Company's "Smarter Planet" web portal).

- 2) *The Proposal has been substantially implemented by the Company's publicly announced commitment to adopting the new Merchant Category Code ("MCC") for standalone gun and ammunition stores.*

The Proposal asks for a public report that covers the Company's governance of MCC standards, as well as disclosing and explaining the justification for the Company's position on any applications to create an MCC for gun and ammunition stores. Given that the Proposal's underlying concern is adopting a new MCC for gun and ammunition stores and understanding the Company's position regarding such adoption, the Company has substantially implemented the

Proposal through its publicly announced commitment to adopting the MCC for gun and ammunition stores that was created by the International Organization for Standardization (the “ISO”) in September 2022.

The ISO is a Geneva-based nonprofit responsible for setting standards for the payments industry. Its responsibilities include approving the creation of new MCCs, which are codes assigned to merchants based on their primary business and which have been used by financial services companies for nearly two decades. There are hundreds of MCCs currently in effect that are assigned to millions of merchants where the Company’s products may be used for transactions. On September 9, 2022, the ISO approved the creation of a new MCC for gun retailers. The Company publicly announced that it would adopt the new code on the same day. This is consistent with the Company’s historical approach, which has been to work with its third-party partners to implement new codes once approved and published.

While the Company has not issued a public report concerning management’s decision-making with respect to applications to the ISO, it is clear that it has satisfied the Proposal’s essential objective of adopting a new MCC specific to gun and ammunition stores. The Company has also satisfied the Proposal’s objective of understanding the Company’s position with respect to the adoption of a new MCC for gun retailers. Although the Proposal purports to be interested in the Company’s governance of MCC standards broadly, its specific concern with the adoption of a new MCC for gun and ammunition stores is clear from its Supporting Statement, which explains that a new MCC for such stores “would allow banks to comply with their regulatory obligations to report suspicious purchasing activity associated with illegal activity.” Information on the Company’s use of MCCs is publicly available in resources published online, including the Company’s October 2022 Merchant Operating Guide and October 2022 Merchant Regulations. Accordingly, the Company has already addressed the essential elements of the Proposal with its public commitment to adopting the new MCC.

Given that the new MCC for gun and ammunition stores has been issued by the ISO on September 9, 2022, and that the Company has publicly committed to implementing it in the same way it has implemented hundreds of previous MCCs, the Company has substantially implemented the Proposal by satisfying its essential objective. Accordingly, the Proposal may be omitted under Rule 14a-8(i)(10).

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

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

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

In the 1998 Release, the Commission explained that the underlying policy of the ordinary business exclusion is “to confine the resolution of ordinary business problems to management and the board of directors, since it is impracticable for shareholders to decide how to solve such problems at an annual shareholders meeting,” and identified two central considerations that underlie this policy. The first is that “[c]ertain tasks are so fundamental to management’s ability to run a company on a day-to-day basis that they could not, as a practical matter, be subject to direct shareholder oversight.” The second consideration relates to “the degree to which the proposal seeks to ‘micro-manage’ the company by probing too deeply into matters of a complex nature upon which shareholders, as a group, would not be in a position to make an informed judgment.”

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

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

- 2) *The Proposal may be excluded because it relates to particular products and services offered by the Company.*

The Staff has repeatedly concurred that proposals related to a company’s decision to sell or distribute specific products or services are generally excludable under Rule 14a-8(i)(7), even if such products or services are deemed controversial. In *Wal-Mart Stores, Inc.* (Mar. 20, 2014), *aff’d* and cited in *Trinity Wall Street v. Wal-Mart Stores, Inc.* 792 F.3d 323 (3d Cir. 2015), the Staff permitted the exclusion of a proposal requesting board oversight to determine whether the company should sell certain products, namely guns equipped with high-capacity magazines, noting that “[p]roposals concerning the sale of particular products and services are generally excludable under [R]ule 14a-8(i)(7).” In *Kroger* (Apr. 7, 2016), the Staff provided the same rationale in permitting exclusion of a proposal requesting a board policy to ban the sale of semi-automatic firearms and accessories at all company owned and operated stores. See also *The Home Depot, Inc.* (Mar. 21, 2018) (proposal requesting the company stop selling glue traps because of their harm to mice and danger to other wildlife and human health); *Walgreens Boots Alliance, Inc.* (Nov. 7, 2016, recon. denied November 22, 2016) (proposal requesting that the board prepare a report assessing the financial risk

of continued sales of tobacco products); *Amazon.com, Inc.* (Mar. 27, 2015) (proposal requesting the company disclose reputational and financial risk arising from the sale of products that implicated mistreatment of animals); *Rite Aid Corp.* (Mar. 24, 2015) (proposal requesting board oversight to determine whether the company should sell certain products that may endanger public safety); *Dillard's, Inc.* (Feb. 27, 2012) (proposal requesting the board develop a plan to phase out the sale of fur from raccoon dogs).

Each of the proposals in *Wal-Mart* and *Kroger* requested that a general retailer adopt a policy related to its decision-making process with respect to the sale of particular kinds of guns. For such retail stores that sell hundreds of thousands of products throughout the United States, decisions relating to what products and services to offer for sale are matters central to their ordinary business operations. Similarly, the Proposal requests that the Company prepare a report concerning its oversight of management's decision-making regarding any application to the ISO to establish an MCC for standalone gun and ammunition stores. The underlying subject matter of the Proposal is the Company's operation of its payment processing services relating to the sale and purchase of particular products.

American Express is a globally integrated payments company that offers its products and services worldwide. Processing payments is central to the Company's business, with the Company offering credit card, charge card, banking and other payment and financing products as well as merchant acquisition and processing services. There are many different players and providers who may be involved in transactions, including financial institutions with whom the Company has a direct relationship; merchants with whom the Company does not have a direct relationship; network enablement providers; affiliate or reseller programs; technology partners involved in specific types of activities (e.g., digital wallets); and so forth. Each participant may also have various lines of business and operate across different geographies or show up in the Company's network in multiple ways.

Given the Company's complex payment processing business, decisions around categorizing the types of businesses where its cards and/or electronic payment system services may be used are fundamental to management's ability to run the Company and involve foundational management questions. The Company uses a mix of industry-standard and proprietary MCCs to broadly categorize merchants, manage fraud risk, help set pricing and apply bonus and benefits for its customers, and it has a standard practice for implementing MCCs that have been newly developed by the ISO. The Company views the MCC that was approved by the ISO in 2022 for gun and ammunition stores consistently with the hundreds of MCCs that existed prior to the ISO's approval of this new code and has followed its usual business practices to make the code available to its third-party processors and partners. The Company has not changed its practices with respect to collecting consumer data, and does not believe it would be appropriate to do so. The Company does not and cannot use MCCs to track product-level purchases or individual consumers' personal information, as MCCs only provide information with respect to merchants and do not provide Stock Keeping Unit level data that is associated with specific products. The Proposal relates to the Company's decision-making with regards to processing payments relating to the purchase of items at particular types of merchants. This new MCC is in the process of being implemented and management's assessment of this data and evaluation of associated risks will continue to develop. Accordingly, the implementation and management of a new MCC is the type of topic that the Staff has consistently found to be a matter of ordinary business that cannot, as a practical matter, be subject to shareholder oversight because these tasks are fundamental to management's ability to run the Company on a day-to-day basis. As a result, the

Company believes the Proposal may be properly omitted from the 2023 Proxy Statement pursuant to Rule 14a-8(i)(7).

The Commission has stated that a proposal requesting the publication of a report may be excludable under Rule 14a-8(i)(7) if the subject matter of the report is within the ordinary business of the company. *See* Exchange Act Release No. 20091 (Aug. 16, 1983). Staff Legal Bulletin No. 14H (Oct. 22, 2015), which was issued by the Staff to clarify its views on the scope and application of Rule 14a-8(i)(7) in light of *Wal-Mart*, re-affirms that the analysis of the ordinary business exception “should focus on the underlying subject matter of a proposal’s request for board or committee review regardless of how the proposal is framed.” Although the Proposal is phrased in terms of preparing a report, this framing does not change the underlying subject matter of the Proposal—the processing of payments relating to the purchase of products and services at particular types of merchants, a matter that is fundamental to the Company’s ordinary business operations.

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

The Proposal may also be excluded under Rule 14a-8(i)(7) because it seeks to micromanage the Company “by probing too deeply into matters of a complex nature upon which shareholders, as a group, would not be in a position to make an informed judgment.” *See* 1998 Release. In SLB No. 14L, the Staff clarified that in evaluating companies’ micromanagement arguments, it will “focus on the level of granularity sought in the proposal and whether and to what extent it inappropriately limits discretion of the board or management.” The Staff further noted that this approach is “consistent with the Commission’s views on the ordinary business exclusion, which is designed to preserve management’s discretion on ordinary business matters but not prevent shareholders from providing *high-level direction on large strategic corporate matters*” (emphasis added).

The Proposal attempts to probe too deeply into the judgment of management and the Company’s Board of Directors (the “Board”) by requesting the Company to “disclose and explain the justification for its position on any applications to create an MCC for gun and ammunition stores.” The Company is currently in the process of working with its third-party partners to implement the MCC for gun and ammunition stores that was approved by the ISO in 2022, consistent with its standard practice. Requiring the Company to issue a report on an MCC for which implementation is already in progress would impermissibly interfere with the fundamental discretion of management to direct the course of such implementation. Furthermore, the implementation process is necessarily a granular and technical one that requires extensive consultation with the processors the Company works with on a regular basis. Disrupting the process while it is still in its initial stages would be unduly disruptive to management’s standard procedures, and shareholders are not in a position to make an informed judgment on such a topic, particularly as it continues to develop. The Staff has permitted the exclusion of shareholder proposals that attempt to micromanage a company by substituting shareholder judgment for that of management with respect to complex day-to-day business operations that are beyond the expertise and experience of shareholders. *See, e.g., The Coca-Cola Company* (Feb. 16, 2022) (permitting exclusion of a proposal because it micromanaged the company by requiring it to submit any proposed political statement to the next shareholder meeting for approval).

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

In the 1998 Release, the Commission stated that proposals relating to ordinary business matters but focusing on sufficiently significant policy issues generally would not be excludable, because the proposals would “transcend the day-to-day business matters and raise policy issues so significant that it would be appropriate for a shareholder vote.” This approach allows shareholders to have the “opportunity to express their views . . . [on] proposals that raise sufficiently significant social policy issues.” See the 1998 Release. The Staff reiterated this guidance in November 2021 and retracted prior guidance with respect to the “nexus requirement,” stating that the “[S]taff will no longer focus on determining the nexus between a policy issue and the company, but will instead focus on the social policy significance of the issue that is the subject of the shareholder proposal. In making this determination, the staff will consider whether the proposal raises issues with a broad societal impact, such that they transcend the ordinary business of the company.” Section B.2. of SLB No. 14L.

The Staff has made clear that the mere mention of an issue with a broad societal impact, or the mere fact that an ordinary business issue might tangentially impact society more broadly, is insufficient to transform a proposal that is otherwise about ordinary business issues into one that pertains to “high-level direction on large strategic corporate matters” that the Staff recently confirmed in SLB No. 14L as deserving shareholder oversight and vote. For example, in *Dominion Resources, Inc.* (avail. Feb. 3, 2011), a proposal requested that the company promote “stewardship of the environment” by initiating a program to provide financing to home and small business owners for installation of rooftop solar or renewable wind power generation. Even though the proposal touched upon environmental matters, the Staff concluded that the subject matter of the proposal actually related to “the products and services offered for sale by the company” and therefore determined that the proposal could be excluded under Rule 14a-8(i)(7). *Id.* See also *Wells Fargo & Co. (Harrington Investments, Inc.)* (avail. Feb. 27, 2019) (concurring with the exclusion of a proposal raising multiple issues that may arguably have been of significance to the company, but failed to focus on any of them, as the “Resolved” clause focused on customer service); *Amazon.com, Inc. (Domini Impact Equity Fund)* (avail. Mar. 28, 2019) (concurring with the exclusion of a proposal that might have touched on significant sustainability concerns, but was so broadly worded the Staff concurred that the proposal did not focus on any single issue that transcended the company’s ordinary business); *Deere & Co.* (avail. Nov. 14, 2014 *recon. denied* Jan. 5, 2016) (concurring with the exclusion of a proposal requesting the implementation and enforcement of a company-wide employee code of conduct that included an anti-discrimination policy where the proposal also related to the company’s “policies concerning its employees,” an ordinary business matter); *The TJX Companies, Inc.* (avail. Mar. 29, 2011) (concurring with the exclusion of a proposal requesting an annual assessment of the risks created by the actions the company takes to avoid or minimize U.S. federal, state and local taxes and a report to shareholders on the assessment as “relating to TJX’s ordinary business operations” because “the proposal relates to decisions concerning the company’s tax expenses and sources of financing”); *Apache Corp.* (avail. Mar. 5, 2008) (concurring with the exclusion of a proposal requesting the implementation of equal employment opportunity policies based on certain principles and noting that “some of the principles relate to Apache’s ordinary business operations”).

The Staff has reaffirmed its position that proposals that reference or touch on topics that might raise significant social policy issues—but that do not focus on or have only tangential implications for such issues—are not transformed from an otherwise ordinary business proposal into one that transcends ordinary business after the publication of SLB No. 14L with its decisions in *Deere & Company* (Jan. 3, 2022) and *American Express Company* (Mar. 11, 2022), in both of which the Staff agreed that proposals seeking the publication of the company’s employee training materials did not transcend ordinary business matters despite their concern with anti-racism and racial equity issues. Here, although the Proposal touches on issues related to firearms and mass shootings, its main request focuses primarily on the ordinary business matter of the Company’s particular products and services. Accordingly, the Proposal is excludable under Rule 14a-8(i)(7).

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CONCLUSION

For the foregoing reasons, the Company respectfully requests that the Staff confirm that it will not recommend enforcement action if the Company omits the Proposal from its 2023 Proxy Statement.

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

Sincerely,

Kristina V. Fink

Kristina V. Fink
Corporate Secretary and Chief Governance Officer

Enclosure

cc: Michael Garland, via email at [REDACTED]
Francesca L. Odell, Cleary Gottlieb Steen & Hamilton LLP
Lillian Tsu, Cleary Gottlieb Steen & Hamilton LLP

Exhibit A

The Proposal

See attached.



CITY OF NEW YORK
OFFICE OF THE COMPTROLLER
BRAD LANDER

Michael Garland
ASSISTANT COMPTROLLER
CORPORATE GOVERNANCE AND
RESPONSIBLE INVESTMENT



August 26, 2022

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

Via email: corporatesecretarysoffice@aexp.com

Dear Ms. Fink:

I write to you on behalf of the Comptroller of the City of New York, Brad Lander. The Comptroller is the custodian and a trustee of the New York City Employees' Retirement System, The New York City Teachers' Retirement System, and the New York City Board of Education Retirement System (individually a "System," collectively the "Systems"). The Systems' boards of trustees have authorized the Comptroller to submit and otherwise act on the Systems' behalf with respect to the enclosed shareholder proposal, and to inform you of the Systems' intention to present the shareholder proposal for the consideration and vote of stockholders at the Company's next annual meeting.

Therefore, we offer the enclosed proposal for the consideration and vote of shareholders at the Company's next annual meeting. It is submitted to you in full compliance with Rule 14a-8 of the Securities Exchange Act of 1934, and I ask that it be included in the Company's proxy statement.

Each System is the beneficial owner of at least \$25,000 in market value of the Company's securities entitled to vote on the shareholder proposal and have held such stock continuously for at least one year. Furthermore, each System intends to continue to hold at least \$25,000 worth of these securities through the date of the Company's next annual meeting. Proof of continuous ownership for the requisite time period will be sent by the Systems' custodian bank, State Street Bank and Trust Company, under separate cover.

Given our understanding that there may be a vote in September 2022 on a pending application to the ISO to establish a merchant category code for standalone gun and ammunition stores, we welcome the opportunity to discuss the shareholder proposal with you as soon as possible. We are available to meet via teleconference at 10 am ET on September 6, or September 8, 2022, or preferably sooner.

Please note that if the Company believes that the Systems or the enclosed shareholder proposal has failed to meet one or more of the eligibility or procedural requirements set forth in answers to

Questions 1 through 4 of Rule 14a-8, the Company must notify us in writing of any alleged deficiency within 14 calendar days of receiving the proposal and provide us with an opportunity to respond to any alleged deficiency within 14 days of receiving the Company's written notification.

I can be contacted at the phone number or email address set forth above to schedule a meeting with the Company or to address any questions the Company may have about the enclosed proposal.

Sincerely,

A handwritten signature in blue ink, appearing to read "Michael Garland", with a stylized flourish at the end.

Michael Garland
Enclosure

Report on Company's Stance on New Merchant Category Code

Submitted by New York City Comptroller Brad Lander on behalf of certain New York City Retirement Systems

RESOLVED: Shareholders request the American Express Company Board of Directors issue a public report, omitting proprietary and privileged information, concerning its oversight of management's decision-making regarding any application to the International Standards Organization (ISO) to establish a merchant category code (MCC) for standalone gun and ammunition stores. This report should cover American Express' governance of MCC standards, as well as disclose and explain the justification for its position on any applications to create an MCC for gun and ammunition stores.

Supporting Statement

Mass shootings are a significant societal problem. In 2022, there were 432 mass shootings through August 2022.¹

As a financial institution, American Express must ensure its systems are not used for criminal purposes. A new MCC for gun and ammunition stores would allow banks to comply with their regulatory obligation to report suspicious purchasing activity associated with illegal activity², and credit card companies would be able to voluntarily file this information under existing reporting systems. This could be accomplished *without limiting or regulating gun sales or creating any additional burden to internal systems*.

Suspicious activity could include gun sales associated with diversion from legal to illegal markets, and purchasing behavior associated with mass shootings. Failure to act could lead to regulatory and reputational risk, including reputational risk associated with costly litigation.

Suspicious purchasing activity that could constitute reportable suspicious activity might involve the frequency and size of purchases, and the type of retailer. For example, the Aurora, Colorado movie theatre shooter used a Mastercard issued to purchase \$11,000 worth of weapons and military gear in the six weeks, including purchases at two standalone gun stores.¹ One week before the mass shooting at the Pulse Nightclub, in which 49 people were killed and 50 injured, the shooter used an American Express (among others) to purchase more than \$26,000 worth of guns and ammunition, including purchases at a stand-alone gun retailer.²

An application to create an MCC for gun and ammunition stores was twice denied. It has been reported that American Express pushed back on the application and that "credit card industry employees were part of an internal committee within ISO that recommended the application's rejection."³

Shareholders would benefit from transparency on how American Express' Board of Directors is overseeing any final position taken on any MCC application for standalone gun and ammunition stores, and whether American Express is appropriately considering the risks inherent in failing to take action to report suspicious purchasing activity at these retailers.

We believe that failure to do so will result in lost lives, as well as regulatory, reputational, and litigation risks that may threaten long-term shareholder value.

We urge you to vote FOR this proposal.

¹ <https://www.gunviolencearchive.org/>

² <https://www.law.cornell.edu/cfr/text/31/1020.320#:~:text=31%20CFR%20%C2%A7%201020.320%20-%20Reports%20by%20banks,%C2%A7%201020.320%20Reports%20by%20banks%20of%20suspicious%20transactions.>

³ <https://www.cbsnews.com/news/bank-credit-cards-suspect-gun-ammo-sales/>

January 6, 2023

VIA EMAIL (*shareholderproposals@sec.gov*)

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

Re: Withdrawal of No-Action Request Dated December 23, 2022 Relating to Shareholder Proposal Submitted by the Comptroller of the City of New York

Ladies and Gentlemen:

In a letter dated December 23, 2022 (the “No-Action Request Letter”), American Express Company, a New York corporation (the “Company”), requested that the Staff of the Division of Corporation Finance of the U.S. Securities and Exchange Commission (the “Staff”) concur that a shareholder proposal and statement in support thereof (the “Proposal”) submitted by the Comptroller of the City of New York, Brad Lander, on behalf of the New York City Employees’ Retirement System, The New York City Teachers’ Retirement System and the New York City Board of Education Retirement System (collectively, the “Proponent”), may be omitted from the Company’s proxy materials for its 2023 annual meeting of shareholders.

Enclosed as Exhibit A is a correspondence between the Proponent and the Company dated January 5, 2023 (the “Confirmation of Withdrawal”) stating that the Proponent is withdrawing the Shareholder Proposal. In reliance on the Confirmation of Withdrawal, the Company respectfully advises the Staff that it hereby withdraws the No-Action Request Letter.

By copy of this letter, the Company also notifies the Proponent that the Company has received the Confirmation of Withdrawal.

[Remainder of page intentionally left blank.]

If you have any questions concerning any aspect of this matter or require any additional information, please feel free to contact me at (212) 640-2000 or corporatesecretarysoffice@aexp.com.

Sincerely,

Kristina V. Fink

Kristina V. Fink
Corporate Secretary and Chief
Governance Officer
American Express Company

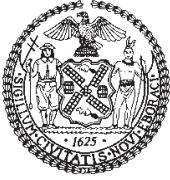
Enclosures

cc:

Michael Garland, via email at [REDACTED]
Francesca L. Odell, Cleary Gottlieb Steen & Hamilton LLP
Lillian Tsu, Cleary Gottlieb Steen & Hamilton LLP

EXHIBIT A
CONFIRMATION OF WITHDRAWAL

[See Attached.]



CITY OF NEW YORK
OFFICE OF THE COMPTROLLER
BRAD LANDER


MUNICIPAL BUILDING
ONE CENTRE STREET, 8TH FLOOR NORTH
NEW YORK, N.Y. 10007-2341

Michael Garland
ASSISTANT COMPTROLLER
CORPORATE GOVERNANCE AND
RESPONSIBLE INVESTMENT



January 5, 2023

Kristina V. Fink
Vice President, Corporate Secretary and Chief Governance Officer
American Express
200 Vesey Street 49-122
New York, NY 10285

Via email: 

Dear Ms. Fink:

Thank you for your email today in which you (i) acknowledge American Express' commitment to adopt the Merchant Category Code (MCC) for gun and ammunition stores that was created by the International Organization for Standardization in September 2022 and (ii) confirm its commitment to schedule a follow up meeting with the New York City Comptroller's Office to provide an update on the Company's adoption of the aforementioned MCC and related compliance efforts in the Fall of 2023.

Therefore, in light of the Company's commitment, and on behalf of the Comptroller of the City of New York, Brad Lander, I hereby withdraw the New York City Retirement Systems' shareholder proposal. Thank you for your engagement and responsiveness.

We look forward to continuing our dialogue.

Sincerely,

A handwritten signature in blue ink, appearing to read "Michael Garland", written over a light blue horizontal line.

Michael Garland