



DIVISION OF  
CORPORATION FINANCE

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

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 V. Niles:

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

We are unable to concur in your view that the Company may exclude the Proposal under Rules 14a-8(b) and 14a-8(f). We note that the Proponent appears to have supplied documentary support sufficiently evidencing the Proponent's eligibility to submit the Proposal.

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: John Chevedden

WACHTELL, LIPTON, ROSEN & KATZ

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CYNTHIA FERNANDEZ  
LUMERMANN  
CHRISTINA C. MA  
NOAH B. YAVITZ

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 John Chevedden on Behalf of Kenneth Steiner*

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 John Chevedden on behalf of Kenneth Steiner (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 our board take each step necessary so that each voting requirement in our charter and bylaws (that is explicit or implicit due to default to state law) that calls for a greater than simple majority vote be replaced by a requirement for a majority of the votes cast for and against applicable proposals, or a simple majority in compliance with applicable laws. If necessary this means the closest standard to a majority of the votes cast for and against such proposals consistent with applicable laws.

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) because the Proponent failed

to provide the requisite proof of continuous share ownership in response to the Company's proper request for that information.

## **BACKGROUND**

### *The Proposal*

The Proponent submitted the Proposal via email on November 4, 2022. (See Exhibit B). In the Proposal letter, the Proponent stated that the Proponent "will meet Rule 14a-8 requirements including the continuous ownership of the required stock value until after the date of the respective shareholder meeting" but did not otherwise provide any evidence of the Proponent's ownership of Company shares (the "Ownership Deficiency"). In addition, the Company's stock records do not reflect the Proponent as a registered holder of Company shares.

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 9, 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). FedEx records confirm the delivery of the Deficiency Notice at 2:07 p.m., local time, on November 10, 2022. (See Exhibit D).

Subsequently, on November 10, 2022, Mr. Chevedden transmitted to the Company a broker letter from TD Ameritrade, Inc. (the "TD Ameritrade Letter," attached hereto as Exhibit E), which stated that as of the start of business on November 10, 2022, there were at least 500 Company shares each held continuously since at least April 11, 2022 in the Proponent's TD Ameritrade account. The TD Ameritrade Letter further indicated that the Proponent had received shares of the Company as a result of "a corporate action involving AT&T (T) & Discover Inc (DISCK)" and that from October 1, 2019 to April 11, 2022, the Proponent had continuously held at least 500 shares of Discovery capital stock.<sup>1</sup>

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 23, 2022, based on the November 9, 2022 delivery date of the Deficiency Notice via email to the Proponent. As of the date of this letter, the Company has not received any 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.

### *Discovery, Inc's Merger with AT&T's WarnerMedia Business*

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

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<sup>1</sup> We note that shares of Discovery capital stock held by the Proponent were non-voting securities and the Staff has previously granted no-action relief on the basis that such shares were not eligible securities for purposes of Rule 14a-8. See *Discovery, Inc.* (Apr. 2, 2021).

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.

## ANALYSIS

### **I. The Proposal May Be Excluded Under Rule 14a-8(b) Because the Proponent Acquired Company Shares Within Less Than One Year of Submitting the Proposal and Has Failed to Meet the Requisite Ownership Requirements.**

The Company may exclude the Proposal under Rule 14a-8(b) 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 D*).

In the context of proposals submitted to companies that recently completed merger transactions, 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. The rationale for such position is that the acquisition of voting securities of a company in connection with a plan of merger constitutes a separate sale and purchase of securities for 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 similar situations where the merger occurred within a year of the submission date of the shareholder proposal. *See Baker Hughes Incorporated* (Feb. 4, 1999); *Sempra Energy* (Feb. 8, 1999); *Applied Power* (Oct. 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).

According to the TD Ameritrade Letter, the Proponent appears to have received shares of Company stock as a result of Discovery’s merger with AT&T’s WarnerMedia Business which was completed on April 8, 2022. Pursuant to the Merger, shares of non-voting Discovery capital stock, including the non-voting shares of Discovery Series C Common Stock held by the Proponent, were reclassified and converted into shares of voting Company common stock. In addition, to the extent the Proponent may have received shares of Spinco common stock by virtue of his ownership interest in AT&T, such shares were converted into shares of Company common stock pursuant to the Merger. We further note that the Staff has previously granted no-action relief with respect to a proposal submitted by the Proponent to Discovery on the basis that the non-voting Discovery Series C Common Stock were not eligible securities for purposes of Rule 14a-8. *See Discovery, Inc.* (Apr. 2, 2021). Subsequently, the earliest date on which the Proponent’s holding period of shares of Company common stock could have commenced was

the effective date of the Merger (i.e., April 8, 2022). Therefore, the Proponent has held shares of Company stock for less than a year as of November 4, 2022, the date on which the Proposal was submitted.

The Proponent does not otherwise appear in the Company's records as a stockholder, and the Company has received no further correspondence from the Proponent regarding his ownership of Company shares. Because the effective time of the merger of Discovery and the WarnerMedia Business of AT&T occurred within a year of the date of the Proposal's submission, the Proponent has not and cannot 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.

### **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 send your response to this letter by email to [SVNiles@wlrk.com](mailto:SVNiles@wlrk.com).

Very truly yours,

/s/ Sabastian V. Niles

Sabastian V. Niles

Enclosures

cc: Tara Smith, Warner Bros. Discovery, Inc.  
John Chevedden

**EXHIBIT A**

**Proponent's Proposal and Supporting Statements**



Kenneth Steiner

Ms. Tara L. Smith  
Warner Bros. Discovery, Inc. (WBD)

Dear Ms. Smith,

I purchased stock in our company because I believed our company had potential for improved performance. My attached Rule 14a-8 proposal is submitted in support of the long-term performance of our company. This Rule 14a-8 proposal is submitted as a low-cost method to improve company performance.

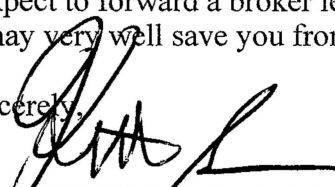
My proposal is for the next annual shareholder meeting. I will meet Rule 14a-8 requirements including the continuous ownership of the required stock value until after the date of the respective shareholder meeting. My submitted format, with the shareholder-supplied emphasis, is intended to be used for definitive proxy publication.

This is my proxy for John Chevedden and/or his designee to forward this Rule 14a-8 proposal to the company and to act on my behalf regarding this Rule 14a-8 proposal, and/or modification of it, for the forthcoming shareholder meeting before, during and after the forthcoming shareholder meeting. Please direct all future communications regarding my rule 14a-8 proposal to John Chevedden

to facilitate prompt and verifiable communications.  
Please identify this proposal as my proposal exclusively.

I expect to forward a broker letter soon so if you acknowledge this proposal in an email message it may very well save you from requesting a broker letter from me.

Sincerely,

  
\_\_\_\_\_  
Kenneth Steiner

  
\_\_\_\_\_  
Date

[WBD: Rule 14a-8 Proposal, November 4, 2022]  
[This line and any line above it – *Not* for publication.]

**Proposal 4 – Simple Majority Vote**

RESOLVED, Shareholders request that our board take each step necessary so that each voting requirement in our charter and bylaws (that is explicit or implicit due to default to state law) that calls for a greater than simple majority vote be replaced by a requirement for a majority of the votes cast for and against applicable proposals, or a simple majority in compliance with applicable laws. If necessary this means the closest standard to a majority of the votes cast for and against such proposals consistent with applicable laws.

Shareholders are willing to pay a premium for shares of companies that have excellent corporate governance. Supermajority voting requirements have been found to be one of 6 entrenching mechanisms that are negatively related to company performance according to “What Matters in Corporate Governance” by Lucien Bebchuk, Alma Cohen and Allen Ferrell of the Harvard Law School. Supermajority requirements are used to block initiatives supported by most shareowners but opposed by a status quo management.

This proposal topic won from 74% to 88% support at Weyerhaeuser, Alcoa, Waste Management, Goldman Sachs, FirstEnergy, McGraw-Hill and Macy’s. These votes would have been higher than 74% to 88% if more shareholders had access to independent proxy voting advice. This proposal topic also received overwhelming 99%-support at the 2019 Fortive annual meeting.

With simple majority vote it will be less difficult to adopt improvements to the governance of Warner Bros. Discovery. Simple majority vote is a win for the Board, management and shareholders.

Please vote yes:

**Simple Majority Vote – Proposal 4**  
[The above line – *Is* for publication.]

Notes:

"Proposal 4" stands in for the final proposal number that management will assign.

This proposal is believed to conform with Staff Legal Bulletin No. 14B (CF), September 15, 2004 including (emphasis added):

Accordingly, going forward, we believe that it would not be appropriate for companies to exclude supporting statement language and/or an entire proposal in reliance on rule 14a-8(l)(3) in the following circumstances:

- the company objects to factual assertions because they are not supported;
- the company objects to factual assertions that, while not materially false or misleading, may be disputed or countered;
- the company objects to factual assertions because those assertions may be interpreted by shareholders in a manner that is unfavorable to the company, its directors, or its officers; and/or
- the company objects to statements because they represent the opinion of the shareholder proponent or a referenced source, but the statements are not identified specifically as such.

**We believe that it is appropriate under rule 14a-8 for companies to address these objections in their statements of opposition.**

See also: Sun Microsystems, Inc. (July 21, 2005).

The stock supporting this proposal will be held until after the annual meeting and the proposal will be presented at the annual meeting. Please acknowledge this proposal promptly by email

The color version of the below graphic is to be published immediately after the bold title line of the proposal at the **beginning** of the proposal and be **center justified**.

This proposal is not intended to be more than 500 words. Should it exceed 500 words after notification to the proponent then the words that exceed 500 words shall be taken out of the proposal starting with the last full sentence of the proposal and moving upwards as needed to omit full sentences.

Please use the title of the proposal in bold in all references to the proposal in the proxy and on the ballot.

If there is objection to the title please negotiate or seek no action relief.

Please do not insert any management words between the top line of the proposal and the concluding line of the proposal.



FOR

**Shareholder  
Rights**

**EXHIBIT B**

**Proposal Email**



Tara Smith &lt;[REDACTED]&gt;

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**Re: Rule 14a-8 Proposal (WBD)**

1 message

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**Corporate Secretary** <[REDACTED]>

Mon, Nov 7, 2022 at 4:42 PM

To: John Chevedden &lt;[REDACTED]&gt;

Cc: Tara Smith &lt;[REDACTED]&gt;

Mr. Chevedden,

I am in receipt of your proposal. This is the correct email address. You can also contact me at  
[REDACTED]Regards,  
Tara Smith

On Fri, Nov 4, 2022 at 11:38 PM John Chevedden &lt;[REDACTED]&gt; wrote:

**Rule 14a-8 Proposal (WBD)**

Dear Ms. Smith,

Please see the attached rule 14a-8 proposal.

Please confirm that this is the correct email address for rule 14a-8 proposals.

John Chevedden

**EXHIBIT C**

**Company's Deficiency Notice**

**From:** [Tara Smith](#)  
**To:** [REDACTED]  
**Cc:** [Sims, Savalle \(Discovery, Inc.\)](#); [Haley Park](#); [Corporate Secretary](#)  
**Subject:** Warner Bros. Discovery, Inc. Notice of Deficiency - Rule 14a-8 Proposal  
**Date:** Wednesday, November 9, 2022 11:54:06 AM  
**Attachments:** [Chevedden November 9 2022.pdf](#)  
[Rule 14a-8 \(1\).pdf](#)  
[SLB 14F \(1\).pdf](#)  
[SLB 14G \(1\).pdf](#)

\*\*\* EXTERNAL EMAIL \*\*\*

**Dear Mr. Chevedden,**

**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





# WARNER BROS. DISCOVERY

VIA EMAIL AND FEDEX

November 9, 2022

John Chevedden  
[REDACTED]

Re: Shareholder Proposal Submitted  
by Kenneth Steiner for  
Warner Bros. Discovery, Inc.'s  
2023 Annual Shareholder Meeting

Mr. Chevedden:

Warner Bros. Discovery, Inc. (the "Company") is in receipt of the letter (the "Proposal Letter") delivered via email on November 4, 2022 (the "Submission Date") from Kenneth Steiner (the "Proponent") 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 the Proponent is the record owner of sufficient shares to satisfy any of the Ownership Requirements. In addition, to date, we have not received adequate proof that the Proponent has satisfied any of the Ownership Requirements.

To remedy this defect, the Proponent must obtain a proof of ownership letter verifying that the Proponent has 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 the Proponent's shares (usually a broker or a bank) verifying that, at the time the Proponent submitted the Proposal (the Submission Date), the Proponent continuously held the requisite amount of Company shares to satisfy at least one of the Ownership Requirements above; or
2. if the Proponent 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 the Proponent 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 the Proponent continuously held the requisite amount of Company shares to satisfy at least one of the Ownership Requirements above.

If the Proponent intends to demonstrate ownership by submitting a written statement from the "record" holder of the Proponent's 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. The Proponent can confirm whether the Proponent's broker or bank is a DTC participant by asking the 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, shareholders need to obtain proof of ownership from the DTC participant through which the securities are held, as follows:

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

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

In addition, under Rule 14a-8(b)(1)(ii) of the Exchange Act, the Proponent must provide the Company with a written statement of the Proponent's intent to continue to hold through the date of the Annual Meeting the requisite amount of Company shares used to satisfy at least one of the Ownership Requirements above. The Proponent's statement in this regard is insufficient. As we have not yet received adequate proof of ownership from the Proponent, and therefore do not know with certainty which of the Ownership Requirements above will be satisfied, we believe that the Proponent's written statement in the Proposal Letter that the Proponent "will meet Rule 14a-8 requirements including the continuous ownership of required stock value until after the date of the respective shareholder meeting" may not be adequate to confirm that the Proponent intends to hold the required amount of the Company's shares through the date of the Annual Meeting because we do not know with certainty which of the Ownership Requirements above the Proponent intends to satisfy. To remedy this defect, the Proponent must submit a written statement that the Proponent intends to continue holding the same required amount of Company shares through the date of Annual Meeting as will be documented in the Proponent's ownership proof.

Finally, Rule 14a-8(b)(1)(iii) of the Exchange Act requires a shareholder to provide the company with a written statement that it is able to meet with the company in person or via teleconference no less than 10 calendar days, nor more than 30 calendar days, after submission of the shareholder proposal, including the shareholder's contact information and the business days and specific times during the company's regular business hours that such shareholder is available to discuss the proposal with the company. We note that the Proponent has not provided such a statement to the Company. Accordingly, to remedy this defect, the Proponent must provide such a statement to the Company and include the Proponent's contact information as well as business days and specific times between 10 and 30 calendar days after the Submission Date that the Proponent is available to discuss the Proposal with the Company. As explained in Rule 14a-8(b)(1)(iii), the Proponent must also identify times that are within the regular business hours of the Company's principal executive office (i.e., between 9 a.m. and 5:30 p.m. Eastern Time).

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,

A handwritten signature in cursive script that reads "Tara Smith".

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

Cc: Kenneth Steiner

Enclosures

**EXHIBIT D**

**FedEx Receipt of Company's Deficiency Notice**

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**EXHIBIT E**

**TD Ameritrade Letter**



[REDACTED]

---

**To:** Tara Smith  
**Subject:** RE: Rule 14a-8 Broker Letter (WBD)

**From:** John Chevedden <[REDACTED]>  
**Date:** Thu, Nov 10, 2022 at 5:27 PM  
**Subject:** Rule 14a-8 Broker Letter (WBD)  
**To:** Tara Smith <[REDACTED]>, Corporate Secretary <[REDACTED]>

Rule 14a-8 Broker Letter (WBD)



11/10/2022

Kenneth Steiner  
[REDACTED]

Re: Your TD Ameritrade account ending in [REDACTED]

Dear Kenneth Steiner,

Thank you for allowing me to assist you today. As you requested, this letter is to confirm that as of the start of business on November 10, 2022, there were at least 500 shares each held continuously since at least October 1, 2019, in your TD Ameritrade account ending in [REDACTED] of:

- Triumph Group Inc (TGI)
- Anavex Life Science (AVXL)
- NASDAQ Inc (NDAQ)
- PepsiCo Inc (PEP)
- Telephone & Data Systems Inc (TDS)
- HF Sinclair Corp (DINO). HF Sinclair Corp (DINO) was previously Hollyfrontier Corp (HFC) prior to a name and symbol change on March 15, 2022.

In addition, as of the start of business on November 10, 2022, there were at least 500 shares each held continuously since at least April 24, 2020, in your TD Ameritrade account ending in [REDACTED] of:

- Invesco LTD (IVZ)
- Astronics Corp (ATRO).

In addition, as of the start of business on November 10, 2022, there were at least 500 shares each held continuously since at least December 5, 2019, in your TD Ameritrade account ending in [REDACTED] of:

- Paramount Global (PARA). Paramount Global (PARA) was previously ViacomCBS Inc Cl B (VIAC) prior to a name and symbol change on February 16, 2022.

In addition, as of the start of business on November 10, 2022, there were at least 500 shares each held continuously since at least April 11, 2022, in your TD Ameritrade account ending in [REDACTED] of:

- Warner Bros Discovery Inc (WBD). Our records indicate that on April 11, 2022, your TD Ameritrade account ending in [REDACTED] received shares of Warner Bros Discovery Inc (WBD) as the result of a corporate action involving AT&T Inc (T) & Discover Inc (DISCK). As of the start of business on November 10, 2022, there were at least 500 shares of AT&T Inc (T) held continuously since at least October 1, 2019, in your TD Ameritrade account ending in [REDACTED]. There were also at least 500 shares of Discovery Inc (DISCK) held continuously from October 1, 2019, to April 11, 2022, in your TD Ameritrade account ending in [REDACTED].

TD Ameritrade Clearing's DTC broker number is 0188.

If we can be of any further assistance, please let us know. Just log in to your account and go to Client



Services > Message Center to write us. You can also call Client Services at 800-669-3900. We're available 24 hours a day, seven days a week.

Sincerely,

A handwritten signature in black ink that reads 'Cameron Fearn'.

Cameron Fearn  
Resource Specialist  
TD Ameritrade

This information is furnished as part of a general information service and TD Ameritrade shall not be liable for any damages arising out of any inaccuracy in the information. Because this information may differ from your TD Ameritrade monthly statement, you should rely only on the TD Ameritrade monthly statement as the official record of your TD Ameritrade account.

Market volatility, volume, and system availability may delay account access and trade executions.

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TDA 101516 02/21

JOHN CHEVEDDEN

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December 11, 2022

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

**# 1 Rule 14a-8 Proposal**  
**Warner Bros. Discovery, Inc. (WBD)**  
**Simple Majority Vote**  
**Kenneth Steiner**

Ladies and Gentlemen:

This is in regard to the woefully incomplete December 5, 2022 no-action request.

According to the attached page from the 2022 company annual meeting proxy, accessed via Warner Bros. Discovery, Inc. CIK#: 0001437107, rule 14a-8 proposals can qualify for publication in the 2023 annual meeting proxy.

However the thin no action request seems to now say that it would be impossible for any rule 14a-8 proposal to be included in the 2023 proxy.

Sincerely,

  
\_\_\_\_\_  
John Chevedden

cc: Kenneth Steiner

Tara Smith

# Additional Information

## Availability of Annual Report

We filed our 2021 Form 10-K with the SEC on February 24, 2022. The 2021 Form 10-K, including all exhibits, can also be found in the Investor Relations section of our corporate website: [ir.corporate.discovery.com](http://ir.corporate.discovery.com) and can be downloaded free of charge. Paper copies of the 2021 Form 10-K may be obtained without charge, and paper copies of exhibits to the 2021 Form 10-K are available, but a reasonable fee per page will be charged to the requesting stockholder. Stockholders may make requests in writing to the attention of Investor Relations by mail at Discovery, Inc., 230 Park Avenue South, New York, New York 10003, by telephone at (212) 548-5882 (or toll-free at (877) 324-5850), or by email at [investor\\_relations@discovery.com](mailto:investor_relations@discovery.com).

## Submission of Stockholder Proposals for 2023 Annual Meeting

The table below summarizes the requirements for stockholders who wish to submit proposals or director nominations for the 2023 Annual Meeting of Stockholders. Stockholders are encouraged to consult Rule 14a-8 of the Exchange Act and our Bylaws, as appropriate, to see all applicable requirements.

	Proposals for inclusion in 2023 Proxy Statement	Other proposals/nominees to be presented at 2023 Annual Meeting of Stockholders*
<i>Type of Proposal</i>	SEC rules permit stockholders to submit proposals for inclusion in our 2023 Proxy Statement by satisfying the requirements set forth in Rule 14a-8 of the Exchange Act	Stockholders may present proposals or director nominations directly at the 2023 Annual Meeting of Stockholders (and not for inclusion in our proxy materials) by satisfying the requirements set forth in Section 1.6 of our Bylaws**
<i>When proposal must be received by Discovery</i>	No later than November 14, 2022	No earlier than January 9, 2023 and no later than February 7, 2023***
<i>Where to send</i>	<b>By mail:</b> Corporate Secretary, Discovery, Inc. 230 Park Avenue South, New York, NY 10003 <b>By Email:</b> <a href="mailto:CorporateSecretary@discovery.com">CorporateSecretary@discovery.com</a>	
<i>What to include</i>	The information required by Rule 14a-8	The information required by our Bylaws**

\* Any proposal without the required notice will not be considered properly submitted under our Bylaws. Any proposal that is received by us after February 7, 2023, will not be considered filed on a timely basis under Rule 14a-4(c)(1). Proposals that are not properly submitted or timely filed will not be presented at the 2023 Annual Meeting. For proposals that are properly submitted and timely filed, SEC rules permit management to retain discretion to vote proxies we receive, provided that: (1) we include in our proxy statement advice on the nature of the proposal and how we intend to exercise our voting discretion; and (2) the proponent does not issue a proxy statement.

\*\* Our Bylaws are filed as an exhibit to our 2021 Form 10-K and are available in the corporate governance section of our Investor Relations website at [ir.corporate.discovery.com](http://ir.corporate.discovery.com).

\*\*\* Assumes our 2023 Annual Meeting of Stockholders is held between March 9, 2023 and June 7, 2023, as it is expected to be. Please see our Bylaws for additional information regarding the advance notice deadline in the event the 2023 Annual Meeting of Stockholders is not held between March 9, 2023 and June 7, 2023.

JOHN CHEVEDDEN

---

January 2, 2023

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

**# 2 Rule 14a-8 Proposal**  
**Warner Bros. Discovery, Inc. (WBD)**  
**Simple Majority Vote**  
**Kenneth Steiner**

Ladies and Gentlemen:

This is in regard to the woefully incomplete December 5, 2022 no-action request.

It is at least a practice that if one owns stock in a parent company that this stock ownership counts towards the length of stock ownership requirement of the succeeding company.

If management claims that stock ownership of a parent company or parent companies do not count then it is puzzling why a due date for 2023 rule 14a-8 proposals was published in the 2022 proxy.

It is also puzzling why management would not inform Mr. Steiner that supposedly no company shares could meet the ownership requirement for a 2023 rule 14a-8 proposal instated of making Mr. Steiner go through the exercise of obtaining a broker letter.

Sincerely,

  
John Chevedden

cc: Kenneth Steiner

Tara Smith

JOHN CHEVEDDEN

---

January 8, 2023

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

**# 3 Rule 14a-8 Proposal**  
**Warner Bros. Discovery, Inc. (WBD)**  
**Simple Majority Vote**  
**Kenneth Steiner**

Ladies and Gentlemen:

This is in regard to the woefully incomplete December 5, 2022 no-action request.

According to the attached EDGAR record of Warner Bros. Discovery, Inc. the Company has made EDGAR filings continuously since 2008 under the same Company.

Management provided no precedent that might uphold that long-term stock ownership in the surviving company (following a merger) supposedly might not meet any rule 14a-8 stock ownership requirement for more than one year after the merger. If so a merger would trigger a one-year holiday for rule 14a-8 proposals for a surviving company

Please note the wording in the attached broker letter. The broker letter was forward to management one day after it was requested. Management did not request or suggest a rewording of the broker letter.

Sincerely,

  
John Chevedden

cc: Kenneth Steiner

Tara Smith



### EDGAR Search Results

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#### Warner Bros. Discovery, Inc. CIK#: 0001437107 (see all company filings)

SIC: 4841 - CABLE & OTHER PAY TELEVISION SERVICES  
State location: NY | State of Inc.: DE | Fiscal Year End: 1231  
formerly: Discovery Communications, Inc. (filings through 2018-03-05)  
formerly: Discovery, Inc. (filings through 2022-04-08)  
(Office of Technology)  
Get insider transactions for this issuer.  
Get insider transactions for this reporting owner.

Business Address: 230 PARK AVENUE SOUTH, NEW YORK NY 10003, 212-548-5555  
Mailing Address: 230 PARK AVENUE SOUTH, NEW YORK NY 10003

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Items 801 - 809 [RSS Feed](#)

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Filings	Format	Description	Filing Date	File/Film Number
CORRESP	Documents	[Cover]Correspondence Acc-no: 0000950134-08-014185 Size: 16 KB	2008-08-05	
S-4/A	Documents	[Amend] [Cover]Registration of securities, business combinations Acc-no: 0000950134-08-013829 (33 Act) Size: 5 MB	2008-08-01	333-151586 08983109
UPLOAD	Documents	[Cover]SEC-generated letter Acc-no: 0000000000-08-037492 Size: 72 KB	2008-07-28	
S-4/A	Documents	[Amend] [Cover]Registration of securities, business combinations Acc-no: 0001035704-08-000315 (33 Act) Size: 5 MB	2008-07-18	333-151586 08960062
UPLOAD	Documents	[Cover]SEC-generated letter Acc-no: 0000000000-08-034252 Size: 122 KB	2008-07-10	
425	Documents	Prospectuses and communications, business combinations Acc-no: 0000950134-08-011674 (34 Act) Size: 9 KB	2008-06-24	333-151586 08913192
425	Documents	Prospectuses and communications, business combinations Acc-no: 0001035704-08-000274 (34 Act) Size: 13 KB	2008-06-11	333-151586 08893622
425	Documents	Prospectuses and communications, business combinations Acc-no: 0001035704-08-000273 (34 Act) Size: 9 KB	2008-06-11	333-151586 08893618
S-4	Documents	[Cover]Registration of securities, business combinations Acc-no: 0001035704-08-000272 (33 Act) Size: 12 MB	2008-06-11	333-151586 08893089

[Previous 100](#)





11/10/2022

Kenneth Steiner  
[REDACTED]  
[REDACTED]

Re: Your TD Ameritrade account ending in [PII]

Dear Kenneth Steiner,

Thank you for allowing me to assist you today. As you requested, this letter is to confirm that as of the start of business on November 10, 2022, there were at least 500 shares each held continuously since at least October 1, 2019, in your TD Ameritrade account ending in [PII] of:

- Triumph Group Inc (TGI)
- Anavex Life Science (AVXL)
- NASDAQ Inc (NDAQ)
- PepsiCo Inc (PEP)
- Telephone & Data Systems Inc (TDS)
- HF Sinclair Corp (DINC). HF Sinclair Corp (DINO) was previously Hollyfrontier Corp (HFC) prior to a name and symbol change on March 15, 2022.

In addition, as of the start of business on November 10, 2022, there were at least 500 shares each held continuously since at least April 24, 2020, in your TD Ameritrade account ending in [PII] of:

- Invesco LTD (IVZ)
- Astronics Corp (ATRO).

In addition, as of the start of business on November 10, 2022, there were at least 500 shares each held continuously since at least December 5, 2019, in your TD Ameritrade account ending in [PII] of:

- Paramount Global (PARA). Paramount Global (PARA) was previously ViacomCBS Inc Cl B (VIAC) prior to a name and symbol change on February 16, 2022.

In addition, as of the start of business on November 10, 2022, there were at least 500 shares each held continuously since at least April 11, 2022, in your TD Ameritrade account ending in [PII] of:

- Warner Bros Discovery Inc (WBD). Our records indicate that on April 11, 2022, your TD Ameritrade account ending in [PII] received shares of Warner Bros Discovery Inc (WBD) as the result of a corporate action involving AT&T Inc (T) & Discover Inc (DISCK). As of the start of business on November 10, 2022, there were at least 500 shares of AT&T Inc (T) held continuously since at least October 1, 2019, in your TD Ameritrade account ending in [PII]. There were also at least 500 shares of Discovery Inc (DISCK) held continuously from October 1, 2019, to April 11, 2022, in your TD Ameritrade account ending in [PII].

TD Ameritrade Clearing's DTC broker number is 0188.

If we can be of any further assistance, please let us know. Just log in to your account and go to Client



Services > Message Center to write us. You can also call Client Services at 800-669-3900. We're available 24 hours a day, seven days a week.

Sincerely,

A handwritten signature in black ink that reads 'Cameron Fearn'.

Cameron Fearn  
Resource Specialist  
TD Ameritrade

This information is furnished as part of a general information service and TD Ameritrade shall not be liable for any damages arising out of any inaccuracy in the information. Because this information may differ from your TD Ameritrade monthly statement, you should rely only on the TD Ameritrade monthly statement as the official record of your TD Ameritrade account.

Market volatility, volume, and system availability may delay account access and trade executions.

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TDA 101516 02/21

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PETER C. HEIN  
JB KELLY  
MEYER G. KOPLOW  
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RICHARD K. KIM  
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MARK GORDON  
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WAYNE M. CARLIN  
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ERIC M. FEINSTEIN  
ADAM L. GOODMAN

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 John Chevedden on Behalf of Kenneth Steiner*

Ladies and Gentlemen:

This letter is submitted on behalf of Warner Bros. Discovery, Inc. (the "Company") in response to the letters of John Chevedden on behalf of Kenneth Steiner (the "Proponent"), dated December 11, 2022, January 2, 2023 and January 8, 2023, 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").

As noted in the No-Action Letter and evidenced in the broker letter from TD Ameritrade, Inc., dated November 10, 2022, the Proponent received Company shares on April 11, 2022, subsequent to Discovery, Inc.'s merger with AT&T's WarnerMedia business. Prior to April 11, 2022, the Proponent only held non-voting Discovery Series C Common Stock, which were not eligible for purposes of submitting shareholder proposals pursuant to Rule 14a-8, as the Staff has previously stated. *See Discovery, Inc.* (Apr. 2, 2021). As such, the Company believes that the Proponent could not have satisfied any of the requisite holding periods required by Rule 14a-8(b) and, as such, is not eligible to submit its shareholder proposal to the Company under Rule 14a-8 for inclusion in its 2023 Proxy Materials.

Based on the foregoing and other analyses set forth 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 shareholder 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.  
John Chevedden