

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

FEB 09 1976

Mr. H. B. Miller
Executive Vice President and Secretary
American Express Company
65 Broadway
New York, New York 10005

Re: American Express Company

Dear Mr. Miller:

This is in regard to your letters dated January 8, and 19, 1976, which were received by the Commission on January 12, and 19, 1976, respectively, concerning a request made of American Express Company (the "Company") by Mrs. Evelyn Y. Davis to include a shareholder proposal in the Company's proxy soliciting material for the 1976 annual meeting of security holders. Pursuant to Rule 14a-8(d) under the Securities Exchange Act of 1934, your letters indicated the management's intention to exclude the proposal from the Company's proxy material. Subsequently, we received letters dated January 15 and 26, 1976, from the proponent, Mrs. Davis, suggesting that the management's determination to omit the proposal was erroneous. In addition, we received a letter dated January 26, 1976 from Mr. Lewis D. Gilbert on the matter.

The proposal submitted by the proponent reads as follows:

RESOLVED: "That the stockholders of General Electric assembled in annual meeting in person and by proxy ask the Board of Directors that the Corporation provide to any shareholder upon request and upon payment of reasonable costs a complete list of all law firms employed by the Corporation during the preceding fiscal year (or calendar year) together with the fees paid to each such firm and to give FULL disclosure as to any elected, or appointed public official whether Democrat or Republican who is a partner of any such law firm, provided that information directly affecting the competitive position of the company may be omitted."

In your letter you have expressed the opinion that the proposal is excludable from the Company's proxy material under (c)(3) of Rule 14a-8, and certain reasons are cited in support of that opinion. Mrs. Davis, however, has indicated that, for the reasons stated in her letter on the matter, she does not agree with your position.

There appears to be some basis for your opinion that the proposal may be omitted from the company's proxy material under Rule 14a-8(c)(3). As you noted, that rule provides that the management may omit a proposal and any statement in support thereof from its proxy statement and form of proxy if the management has, at the security holder's request, included a proposal in its proxy statement and form of proxy relating to either of the last two annual meetings of security holders and such security holder failed without "good cause" to present the proposal, in person or by proxy, for action at the meeting.

Your letter of January 12, 1976 indicates that for the past three years the management has included Mrs. Davis' proposals in the company's proxy materials. Furthermore, it appears that in 1973, 1974 and 1975, Mrs. Davis failed to present her proposals or to cause them to be presented by her proxy on her behalf at the company's annual meeting. In this connection, Mr. Lewis Gilbert indicated in his letter of January 26, 1976 on the matter that his representative did present Mrs. Davis' proposal at one of the meetings to which you refer, but that "my representative was instructed to say he was not representing her." Moreover, Mrs. Davis has offered as her reason for not attending the 1975 meeting the fact that she had a conflict with another company's annual meeting and chose to attend the other meeting. This Division does not believe a conflict with another meeting constitutes "good cause" for not appearing, at least by proxy, to present one's proposal. Under the circumstances, this Division will not recommend any enforcement action to the Commission if the management omits the subject proposal from the company's proxy material.

As you may be aware, this Division believes its responsibility with respect to matters arising under Rule 14a-8, as with other matters under the proxy rules, is to aid those who must comply with these requirements by offering informal advice and suggestions and to determine, initially, whether it may be appropriate in a particular matter to recommend enforcement action to the Commission. In this context, we have reviewed the materials which you have furnished to us as well as the letters from the proponent and Mr. Gilbert on the matter. While Rule 14a-8(d) does not provide for any communications from shareholders to the Commission's staff, the staff, of course, will always consider information concerning alleged violations of the statutes administered by the Commission and this may include argument as to why it is believed that activities proposed to be taken would be violative of the statute or rule involved. The receipt of such information or argument, however, should not be construed as changing the staff's informal procedures and proxy review into a formal or adversary procedure. The enforcement judgment the staff has reached does not and cannot purport to "adjudicate" the merits of the company's posture in this matter. Only a district court can decide whether the company is obligated to

include the instant proposal in its proxy materials. Accordingly, our discretionary determination not to recommend enforcement action to the Commission does not preclude the proponent, or any shareholder of the company, from pursuing any rights she may have against the company in a district court, should the management omit this proposal from the company's proxy material.

Sincerely,

Peter J. Romeo
Special Counsel

cc: Mrs. Evelyn Y. Davis, Editor
Highlights and Lowlights
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