

112-8

MEMORANDUM

FEB 24 1976

*[Handwritten signature]*  
*J. Heerighan*  
*Peter Romeo*

TO: The Commission

FROM: The Division of Corporation Finance

RE: American Express Company

RECOMMENDATION: Pursuant to 17 CFR 202.1(d), the Commission should deny the request by Mrs. Evelyn Y. Davis that it conduct a hearing to review the Division's position, set forth in a letter to the American Express Company dated February 9, 1976, concerning a shareholder proposal submitted to the Company by Mrs. Davis.

OTHER DIVISIONS AND OFFICES CONSULTED: None

ACTION REQUESTED BY: Regular Calendar

NOVEL, UNIQUE OR COMPLEX ISSUES: None

BACKGROUND

Pursuant to Rule 14a-8 of the proxy rules, Mrs. Evelyn Y. Davis submitted a shareholder proposal to the American Express Company (the "Company") for inclusion in the company's proxy material for the 1976 annual meeting of security holders. The management of the company indicated to the Division in a letter dated January 8, 1976 that it intended to omit the proposal from the company's proxy material.

In a letter dated February 9, 1976, the Division stated that it would not recommend any enforcement action to the Commission if the management omitted the subject proposal from the company's proxy material in reliance upon Rule 14a-8(c)(3).<sup>1/</sup> Subsequently, Mrs. Davis submitted a letter to the Division dated February 17, 1976 requesting that the Commission hold a public hearing to review the Division's position concerning the applicability of the above rule to the subject proposal.

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<sup>1/</sup> That rule permits the omission of a proposal if management has at the security holder's request included a proposal in its proxy material relating to either of the two previous annual meetings and such security holder has failed without good cause to present the proposal, in person or by proxy, for action at the meeting.

THE PROPOSALS

The full text of the proposal is set forth in a letter dated November 15, 1975 from Mrs. Davis to the company, a copy of which is attached hereto.

THE DIVISION'S VIEW

The Division's view concerning the subject proposal is set forth in its letter of February 9, 1976 (copy attached).

RECOMMENDATION

The Division recommends that, pursuant to 17 CFR 202.1(d), the Commission deny Mrs. Davis' request that it conduct a hearing to review the Division's position concerning the subject proposal. In our view, particularly in light of the decision by the Commission in the General Motors shareholder proposal matter in 1970 <sup>2/</sup> and judicial developments generally (see the Medical Committee <sup>3/</sup> and Kixmiller <sup>4/</sup> cases), the proposal does not involve any matters of substantial importance or any novel or highly complex issues that warrant the holding of a hearing by the Commission to review the Division's position.

Due to the fact that the attached documents fully set forth the views of the proponent, the management and the Division, respectively, we have not prepared a detailed memorandum on the matter. In the event, however, the Commission should determine to review the matter, the Division would like to be heard.

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<sup>2/</sup> Commission minute dated March 18, 1970.

<sup>3/</sup> Medical Committee for Human Rights v. SEC, 432 F.2d 659 (1970),

<sup>4/</sup> Kixmiller v. SEC, 492 F.2d 641 (1974).

ATTACHMENTS:

1. Division letter dated February 9, 1976.
2. Letter (with attachments) dated January 8, 1976 from company management.
3. Letter dated January 15, 1976 from Mrs. Davis.
4. Letter (with attachment) dated January 19, 1976 from company management.
5. Letter (with attachment) dated January 26, 1976 from Mrs. Davis.
6. Letter dated January 26, 1976 from Mr. Lewis D. Gilbert.
7. Letter dated February 17, 1976 from Mrs. Davis requesting a hearing and review by the Commission.

PERSONS TO CONTACT

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