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May 29, 2018

CONFIDENTIAL

VIA EMAIL

U.S. Securities and Exchange Commission
Division of Corporation Finance
100 F Street, N.E.
Washington, D.C. 20549-7553
Attention: Michele Anderson, Associate Director of Corporation Finance
(andersonmi@sec.gov)
Larry Spirgel, Assistant Director of Corporation Finance
(lspirgel@sec.gov)

Re: CBS Corporation – Preliminary Information Statement on Schedule 14C, filed May 25, 2018.

Dear Ms. Anderson and Mr. Spirgel:

We write on behalf of our client, National Amusements, Inc. ("NAI"), to call the Staff's attention to certain issues raised by, and potential material misstatements in and omissions from, the Preliminary Information Statement (the "Information Statement") on Schedule 14C filed by CBS Corporation ("CBS") on May 25, 2018. The Information Statement relates to certain amendments to the CBS bylaws (the "Bylaw Amendments") adopted by written consent on May 16, 2018 by NAI and its wholly owned subsidiary, NAI Entertainment Holdings LLC ("NAIEH").

In its Information Statement, CBS asserts that the Bylaw Amendments "will not be effective under Rule 14c-2 until twenty (20) days after this Information Statement shall have been first sent or given to [CBS's] stockholders." In addition, by virtue of the filing of the Information Statement itself, CBS asserts that adoption of the Bylaw Amendments is subject to

Section 14(c) ("Section 14(c)") of the Securities and Exchange Act of 1934, as amended (the "'34 Act"), and Rule 14c-2 promulgated thereunder ("Rule 14c-2").

Because these actions and statements cause the Schedule 14C to be materially misleading to CBS's stockholders, we respectfully request that the Staff take appropriate action to ensure that corrective disclosures are made and that CBS cease from making additional misstatements and errors in its future filings and communications.

As we have discussed and for the reasons enumerated below, we believe that CBS's statements that adoption of the Bylaw Amendments is subject to Section 14(c) and that the Bylaw Amendments did not become effective at the time of their delivery on May 16, 2018 are false and materially misleading.

***Key Background Facts***

NAI and NAIEH together hold a majority of the shares of the Class A (voting) common stock in each of CBS and Viacom Inc. ("Viacom"). Each of CBS and Viacom also have outstanding shares of Class B (nonvoting) common stock, which are identical to the Class A shares except for the absence of voting rights.

On February 1, 2018, CBS and Viacom announced that CBS and Viacom had each established special committees of independent directors to evaluate a potential combination of the two companies. Despite continued discussions between the companies in the months that followed, over the weekend of May 11 to 13, 2018, CBS's special committee (the "Special Committee"):

- determined that a combination of CBS and Viacom was not in the best interests of CBS and its stockholders;

- recommended that CBS's board of directors (the "Board") convene a special meeting to consider and vote on the issuance of a dividend of Class A voting stock for each share of the CBS's Class A common stock and Class B common stock for the express purpose of diluting NAI's voting interest from approximately 80% to approximately 17%;

- requested that CBS notice a special board meeting to be held on May 17, 2018 (the "Special Board Meeting") to consider and vote on the proposed dilutive dividend; and

- commenced litigation against NAI and NAIEH and moved for a temporary restraining order to block NAI and NAIEH from taking certain steps as stockholders, including any actions that would interfere with the proposed dilutive dividend.

Prior to the Special Board Meeting, on May 16, 2018, NAI and NAIEH acted by written consent pursuant to Section 228 of the Delaware General Corporation Law to adopt the Bylaw Amendments, which (a) imposed a 90% supermajority voting requirement and procedural requirements that the Board must follow to declare a dividend, (b) imposed a similar supermajority voting requirement and procedural requirements applicable to Board-adopted bylaw amendments and (c) broadened the scope of the existing forum selection bylaw.

On May 17, 2018, the Board met and, in violation of CBS's bylaws (as so amended by the Bylaw Amendments), purported to approve a dilutive stock dividend of 0.5687 shares of Class A voting stock for each share of Class A common stock and Class B common stock,[1] which is conditioned on Delaware court approval.

***Section 14(c) and Rule 14c-2 apply only to "corporate action" in which the registrant is involved in the action being taken***

CBS's assertion that adoption of the Bylaw Amendments is subject to Section 14(c) and its failure to acknowledge the effectiveness of the Bylaw Amendments on the basis that a written information statement must be filed and a 20-day waiting period must expire prior to the amendments' effectiveness are contrary to the plain language of Section 14(c) and Rule 14c-2.

Rule 14c-2(a)(i) states that:

> "In connection with every annual or other meeting of [the holders of a class of registered securities], including the taking of *corporate action* by the written authorization or consent of security holders, the registrant shall transmit to every security holder of the class that is entitled to vote or give an authorization or consent in regard to any matter to be acted upon and from whom proxy authorization or consent *is not solicited on behalf of the registrant*[2] pursuant to Section 14(a) of the ['34 Act]...[a] written information statement containing the information specified in Schedule 14C...." (emphasis added)

In turn, Rule 14c-2(b) then provides:

> "The information statement shall be sent or given at least 20 calendar days prior to the meeting date or, in the case of *corporate action* taken pursuant to the consents or authorizations of security holders, at least 20 calendar days prior to the earliest date on which the corporate action may be taken." (emphasis added)

From the plain text of Section 14(c) and Rule 14c-2, it is clear that the requirement to file an Information Statement on Schedule 14C and the obligation to wait 20 days for effectiveness are limited to "corporate action." Action taken by stockholders with no involvement or encouragement by the issuer does not qualify as "corporate action." In the present case, CBS had no involvement in the adoption of the Bylaw Amendments; indeed, it was not aware of such actions until the underlying written consents were received and CBS has asserted in litigation

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[1] At the stated exchange ratio, the purported dilutive stock dividend would dilute NAI's voting interest from approximately 80% down to approximately 20% (as opposed to the initially announced 17%).

[2] The role of the issuer or registrant is further emphasized in Section 14(c), which states:

> "Unless proxies, consents, or authorizations in respect of a [registered security] are solicited *by or on behalf of the management of the issuer* [in accordance with the 14-a proxy rules], such issuer shall, in accordance with rules and regulations prescribed by the Commission, file...and transmit to all holders...of such security information substantially equivalent to the information which would be required to be transmitted *if a solicitation were made....*"(emphasis added)

that the Bylaw Amendments are invalid. The Bylaw Amendments were the result of stockholder, and not "corporate," action.

The Commission itself tellingly distinguished stockholder action from corporate action in Exchange Act Release No. 34-52926, dated as of December 8, 2005, when it stated that under the then-current proxy rules, "[s]oliciting persons other than the issuer are not subject to the requirements of Section 14(c) . . . . unlike the issuer, they have no obligation to furnish an information statement to persons from whom no proxy authority is sought."[3]

***Section 14(c) and Rule 14c-2 are not intended to give registrants the ability or discretion to quash unilateral stockholder action by failing to file written information statements at all or in a timely manner***

As neither Section 14(c) nor Rule 14c-2 imposes any obligation on a registrant to file or disseminate an information statement within any particular time, the practical effect of CBS's interpretation proves its absurdity; registrants could use Section 14(c) and Rule 14c-2 to delay or frustrate entirely stockholder action by simply failing to file or disseminate a written information statement in a timely manner. Had Congress or the Commission intended to abrogate stockholder rights in such a significant manner, they would have clearly stated their intent in the text of Section 14(c) or Rule 14c-2 itself.

***CBS's interpretation of Section 14(c) and Rule 14c-2 is inconsistent with previous no-action letters from (and correspondence with) the Commission***

The Staff has long taken the view that Section 14(c) and Rule 14c-2 are inapplicable to actions by written consent of stockholders in which the registrant is not involved. For example, in a letter with respect to Burlington Northern, Inc. (publicly available on February 3, 1983), the Staff granted no-action relief when Burlington Northern, Inc.'s wholly owned subsidiary, R-H Holdings Corporation ("R-H") requested confirmation that R-H could act by written consent at the conclusion of its hostile tender offer for El Paso Co. to elect R-H's nominees as directors of El Paso Co. without any need for R-H to comply with Section 14(c).

More recently, on April 30, 2013 MatlinPatterson FA Acquisition LLC ("MatlinPatterson"), a stockholder in Gleacher & Company ("Gleacher"), amended Gleacher's bylaws by delivering written consents executed by holders of a majority of Gleacher's outstanding shares of common stock. When commenting on a proxy statement that MatlinPatterson subsequently filed, the Staff asked, in a letter dated May 3, 2013, counsel to MatlinPatterson to explain why adoption of the bylaw amendments was effective as of their date of delivery, noting that Gleacher had not delivered an information statement pursuant to Rule 14c-2. Counsel responded that the provisions of Rule 14c-2 were inapplicable when the registrant had no involvement with the action and noted a number of prior instances in which stockholder action by written consent was effective immediately and without compliance with Rule 14c-2. Although the Staff continued to comment on MatlinPatterson's filings, including its

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[3] In Exchange Act Release No. 34-23789, dated as of November 10, 1986, the Commission also noted that an amendment to Rule 14c-2 was intended to "make clear that *if the registrant solicits consents* from a few security holders who have enough shares to approve the transaction, *the registrant must* furnish information statements to the remaining security holders as required by Rule 14c-2." (emphasis added)

amended proxy statement, the Staff did not raise any further questions concerning the applicability of Rule 14c-2.[4]

***CBS's interpretation of Rule 14c-2 is inconsistent with the principles underlying Section 14(a) of the '34 Act***

Under Section 14(a) of the '34 Act and the related rules, solicitations by a registrant are clearly distinguished from solicitations by a stockholder. For example, Rule 14a-2(b)(2) permits solicitations of stockholders without having to comply with specified proxy rules when solicitations are "made otherwise than on behalf of the registrant" and when "the total number of persons solicited is not more than ten."

In adopting Section 14(c) in 1964 and the rules promulgated thereunder in 1965, the legislative history establishes that Congress and the Commission acted to ensure that registrants could not circumvent the proxy solicitation rules by seeking stockholder approval by written consent rather than by solicitation of proxies.[5] There was no intention to disadvantage consent solicitations relative to proxy solicitations and, in fact, the Commission has expressed a desire to "provide similar treatment for proxy material and information statements."[6]

The Commission's acknowledgement that a person other than the registrant should be able to solicit a limited number of proxies without complying with the '34 Act's proxy rules suggests that Section 14(c) should be similarly interpreted and, at a minimum, accommodate consents delivered, as in this case, by stockholders without solicitation and without involvement

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[4] On May 17, 2013, Gleacher filed an information statement with respect to the April 30, 2013 bylaw amendments but its information statement did not contest the effectiveness of the amendments. Rather, Gleacher acknowledged that it did not participate in the consent solicitation that resulted in adoption of those amendments and that it was furnishing an information statement to "comply with the technical requirements of Regulation 14C [under the '34 Act]." In fact, Gleacher had earlier filed a Form 8-K on May 6, 2013 stating that the bylaw amendments were effective when delivered on April 30, 2013.

[5] In adopting Section 14(c), Congress stated:

> "*This would empower the Commission* to adopt rules and regulations *to require issuers that do not solicit proxies* in connection with an annual or other meeting of shareholders to file with the Commission and *to transmit to record holders of its registered securities information substantially equivalent to that which would be required to be transmitted if a solicitation were made.* The information would be distributed to shareholders prior to the annual or other meeting of shareholders and would pertain to all matters to be voted upon at such meeting as to which disclosure would be required in solicitation materials under the proxy rules." H.R. REP. NO. 1418, 88th Cong., 2d Sess. 19 (1964) (emphasis added).

Furthermore, in Exchange Act Release No. 34-8521, dated as of February 7, 1969, the Commission wrote:

> "Recent changes in the corporate codes of certain states permit the taking of certain corporate action by securing the written authorization or consent of the requisite percentage of the holders of securities of the class entitled to vote. This has made it necessary to amend Rule 14c-2 to make clear that it requires the furnishing of an information statement to all security holders from whom the authorization or consent is not to be solicited to the same extent as if the matter were to be acted upon at a formal meeting of security holders."

[6] Exchange Act Release No. 34-17115, dated as of September 2, 1980.

or encouragement of the issuer. The implication of CBS's theory would be that a stockholder could solicit proxies from up to ten other stockholders pursuant to Rule 14a-2(b)(2) without a proxy statement being sent to stockholders, provided the issuer was not involved with the stockholder's activities, yet that very stockholder could not solicit consents (regardless of the number of stockholders it solicited and even if no other stockholders were solicited) without the need for the issuer to prepare and mail an information statement and then start a 20-day waiting period, even though the issuer was similarly not involved in the stockholder's activities.

***Section 14(c) and Rule 14c-2 are not intended to preempt fundamental rights under state law***

Under Section 228 of the Delaware General Corporation Law, CBS stockholders may take action by written consent and such action is effective immediately upon delivery to the company. Long-standing Delaware jurisprudence emphasizes that this franchise is a fundamental right under Delaware corporate law.[7]

Under CBS's interpretation, Section 14(c) and Rule 14c-2 would effectively override this fundamental aspect of state law by making stockholder action legally ineffective until after the registrant has taken action to prepare, file, clear Commission comments and disseminate an information statement and the 20-day period has elapsed. If Congress or the Commission truly intended for Regulation 14C of the '34 Act to supersede a fundamental state law right by preventing stockholders from taking immediate action by written consent, one or both of Congress and the Commission would have clearly stated its intent to preempt state law. No such indication is evident here.

***CBS's argument about Section 14(c) and Rule 14c-2's application with respect to NAI's settlement agreement with Viacom ignores the registrant's involvement in such action***

CBS contends that NAI has previously acknowledged the application of Section 14(c) and Rule 14c-2 to actions by written consent because in late 2016, it used its supermajority voting power to approve and adopt by written consent certain amendments to Viacom's certificate of incorporation (the "Viacom Charter Amendment"), and in that instance, Viacom issued Information Statements on September 1, 2016 and September 12, 2016 stating that pursuant to Rule 14c-2, the Viacom Charter Amendment would not take effect until 20 days after the first mailing or delivery of such Information Statement.

CBS conveniently ignores the fact that, by the time the relevant Information Statements on Schedule 14C were filed, the registrant *was* involved with the underlying action by written

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[7] *See, e.g., Allen v. Prime Computer, Inc.*, 540 A.2d 417, 419-20 (Del. 1988) (holding that "the exercise of the right to act immediately by majority written consent" is so fundamental that it "may be modified or eliminated only by the certificate of incorporation" and a bylaw purporting to "effectively abrogate" the right is invalid); *Datapoint Corp. v. Plaza Sec. Co.*, 496 A.2d 1031, 1036 (Del. 1985) (describing stockholder right to act by written consent under Section 228 of the General Corporation Law as a "fundamental stockholder right[] guaranteed by statute," and holding that the right cannot be abrogated by a bylaw that purports to impose arbitrary delay on stockholder action by written consent until period of time after stockholders provided notice of intent to act by written consent); *Frantz Mfg. Co. v. EAC Indus.*, 501 A.2d 401 (Del. 1985) (holding that majority stockholder may act by written consent to amend a corporation's bylaws to modify board quorum requirement and require unanimous approval for board action where the action by written consent was taken to avoid disenfranchisement of the majority stockholder).

consent. In that situation, on June 6, 2016 and June 16, 2016, NAI and NAIEH delivered written consents amending Viacom's bylaws requiring unanimous director approval of any transaction involving Paramount and removing certain directors from the Viacom board and replacing those directors with NAI and NAIEH-elected directors (the "June Viacom Actions"). Immediately thereafter, litigation was commenced in the Delaware Court of Chancery concerning the validity of the June Viacom Actions. As part of that litigation, Viacom and NAI entered into a customary "status quo" order pursuant to which the effectiveness of the June Viacom Actions was delayed pending resolution of the litigation. During the pendency of the status quo order, Viacom also issued Information Statements on June 17, 2016, July 7, 2016 and July 18, 2016 regarding the June Viacom Actions, but the question of whether such Information Statements were required or had the effect of delaying the June Viacom Actions never needed to be addressed in light of the fact that the status quo order was in effect.

That litigation was ultimately resolved pursuant to a settlement agreement, dated as of August 18, 2016, by and among Viacom, certain members of Viacom's board of directors (the "Viacom Board") and certain other parties. The settlement provided that Viacom would not challenge the effectiveness of the June Viacom Actions and that NAI and NAIEH would adopt the Viacom Charter Amendment. Unlike the June Viacom Actions (which were purely actions by stockholders to amend the bylaws and to remove and replace directors), the Viacom Charter Amendment required prior authorization of the Viacom Board of Directors and therefore involved "corporate," as opposed to purely stockholder, action. As a result, Viacom prepared and filed the Information Statements on Schedule 14C at issue with respect to the Viacom Charter Amendment.

* * *

We appreciate the Staff's willingness to consider our comments. Should you have any questions, please feel free to contact Victor I. Lewkow at (212) 225-2370, Christopher E. Austin at (212) 225-2434 or me at (212) 225-2495.

Sincerely,

Paul M. Tiger

cc: Thaddeus Jankowski, National Amusements, Inc.
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