



2/8/21

Mr. Ruairi Regan
U.S. Securities and Exchange Commission
Division of Corporation Finance
Office of Real Estate and Construction
100 F Street, NE
Washington, DC 20549

cc: John Coates, Acting Division Director

RE: Strengthening margin loan disclosures at firms like Red Rock Resorts, Inc.

Dear Mr. Regan,

We write to request your division consider strengthening disclosure obligations for publicly traded companies with controlling owners who have pledged company shares to secure a margin loan. We believe a logical extension of the 2006 SEC final rule on Executive Compensation and Related Person Disclosure would be to require controlled companies to explicitly state whether or not a margin loan secured against the company benefits its investors.

The case of Red Rock Resorts, Inc. (NASDAQ: RRR), a controlled company whose principal owners have pledged a substantial number of company shares, highlights the opportunities for greater disclosure that could help investors better evaluate pledged shares.

Your division set out in 2006 to determine what constituted adequate disclosure of personal benefits and beneficial ownership,¹ and in the process considered whether margins loans should be “treated differently under the proposal to disclose management pledges of beneficially owned securities.”² While we agree with the Final Rule determining that “securities pledges could be material to shareholders,” we believe disclosure requirements on pledged shares should continue to evolve toward a simple disclosure of the purpose behind margin debt exposure of controlling owners.³

As you may be aware, pledging shares is “particularly common at founder-led firms,” according to *Bloomberg*.⁴ And banks lending against the collateralized shares of rich clients make clear that this is a growth area, with UBS AG, for example, reportedly setting a goal in October 2018 of increasing lending penetration by 40 per cent.⁵

Pledging by Principal Owners of Red Rock shares to UBS AG

Investors are in the dark as to the purpose of pledged shares at Red Rock, a large casino-lodging company headquartered in Las Vegas and controlled by Frank Fertitta III and Lorenzo Fertitta.

The Fertittas pledged six million or 13% of Class B Red Rock shares to UBS AG in September 2018 for a margin loan worth up to an estimated \$155 million.⁶ Red Rock’s securities pledging policy, a summary of

which was first disclosed in its DEF14A filing on April 22, 2020, does not appear to cap pledging even though it requires certain insiders to “pre-clear” transactions in company securities.⁷

It is not clear which persons would review and approve such “pre-clearances.” And Red Rock has not disclosed whether the 2018 margin loan transaction was subject to the current policy.⁸

In February 2019, Red Rock disclosed the termination of a \$50 million UBS commitment that had been identified as in effect in its Form 10-Q for the quarter ending September 30, 2017.⁹ In February 2020, it disclosed the termination of an \$18.5 UBS commitment that had been identified as in effect in an amended credit agreement dated February 8, 2019.¹⁰ Red Rock has not explained what prompted the changed relationship with UBS.

Why did UBS end up by lending to the Fertittas personally but not to the public-traded company they controlled? Does the margin loan benefit Red Rock’s public shareholders?

Investors deserve to know if a company stands to gain from insiders using company shares as loan collateral, and if so, how.

Investors Deserve Answers to Questions Raised by Pledges

Why the Fertittas secured liquidity through a margin loan is also of potential interest to public shareholders given the Fertitta’s control of Red Rock.

On one hand there appears to be cash, lots of it. The Fertittas reportedly cleared \$870 million each in the 2016 sale of the Ultimate Fighting Championship,¹¹ and in August 2020 spent \$74 million to purchase five million Red Rock shares.¹²

On the other hand, they have borrowed money—\$64 million from a related party to buy Red Rock shares in August 2019¹³—and, between one or the other of them, they have acquired a number of luxury assets: two superyachts, a support yacht, and a penthouse near Manhattan’s Central Park.¹⁴

Two Fertitta yachts have been delivered since 2018, with a third on its way: the 285-foot Lonian (\$160 million estimated¹⁵); the 217-foot Hodor support yacht (\$55 million estimated¹⁶); and the 308-foot Viva (due in 2021¹⁷).

Two helicopters share the initials of Frank and Lorenzo Fertitta and the Las Vegas area code (N702FF and N702LF) and are owned by entities that share the superyacht names (Viva Eagle LLC and Lonian Raven LLC).¹⁸

Hodor Holdings Limited is named as a secured party in an August 2017 financing statement related to the construction of an “equipped submersible” by Seamagine Hydroscape Corporation.¹⁹ Hodor Holdings, Ltd.’s address is identified as the same Las Vegas address as Fertittas Enterprises, Inc.²⁰

UBS promotes its securities-backed loans as useful for purchasing yachts, among other things.²¹ But as it stands, Red Rock investors have no basis to know what the loan proceeds were used for.

Merely disclosing the existence of pledged shares as required by the 2006 SEC final rule does not provide sufficiently detailed information for investors adequately to understand such pledges. Other questions investors in this case may ask are:

What caused the Fertittas to take on the margin loan? What is the process for preclearing loans, and who is involved in the preclearance? What factors are considered in preclearing a loan? Are there considerations beyond the company's Code of Ethics that would cause a proposed loan not to be precleared? Investors deserve answers to these and related questions.

We urge you to take a closer look at the securities pledging by the Fertittas at Red Rock and consider requiring greater disclosures regarding insiders' securities pledging activities at controlled companies.

Sincerely,

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¹ SEC, Proposed Rule, Executive Compensation and Related Party Disclosure, January 27, 2006 (<https://www.sec.gov/rules/proposed/33-8655.pdf>). See also John W. White, Director, SEC Division of Corporation Finance, Speech by SEC Staff, "The Need to Know," Remarks Before the Rock Center for Corporate Governance at Stanford University Executive Compensation Conference, Washington, DC, April 3, 2006 (<https://www.sec.gov/news/speech/2006/spch040306jww.htm>).

² SEC, Proposed Rule, Executive Compensation and Related Party Disclosure, January 27, 2006, p. 115 (<https://www.sec.gov/rules/proposed/33-8655.pdf>).

³ SEC, Final Rule, Executive Compensation and Related Party Disclosure, p. 145: "As proposed, we are amending Item 403(b) by adding a requirement for footnote disclosure of the number of shares pledged as security by named executive officers, directors and director nominees. To the extent that shares beneficially owned by named executive officers, directors and director nominees are used as collateral, these shares may be subject to material risk or contingencies that do not apply to other shares beneficially owned by these persons. These circumstances have the potential to influence management's performance and decisions. As a result, we believe that the existence of these securities pledges could be material to shareholders. Because significant shareholders who are not members of management are in a different relationship with other shareholders and have different obligations to them, the amendments do not require disclosure of their pledges pursuant to Item 403(a), other than pledges that may result in a change of control currently required to be disclosed. The amendments also specifically require disclosure of beneficial ownership of directors' qualifying shares, which was not required prior to these amendments, because we believe the beneficial ownership disclosure should include a complete tally of the securities beneficially owned by directors" (<https://www.sec.gov/rules/final/2006/33-8732a.pdf>).

⁴ Tom Metcalf, Marion Halftermeyer, "Implosion of High-Flying Billionaire Trio Shows Pledging Risks," *Bloomberg*, July 1, 2020: "ISS has identified 307 companies among the Russell 3000 Index with at least one executive or director pledging shares, [Brett] Miller [head of data solutions for ISS ESG] said. It's particularly common at founder-led firms" (<https://www.bloomberg.com/news/articles/2020-07-02/implosion-of-high-flying-billionaire-trio-shows-pledging-risks>).

⁵ *Ibid*, "Lombard lending, which typically involves providing a loan collateralized by a broader pool of assets than a single stock, has become a favored tool among wealth managers because of the fees it generates to structure the loans, which also pay out interest. Moreover, it helps get rid of idle cash deposits that are now costlier than ever to hold in a world of low -- and even negative -- interest rates. Such lending made up more than half of Credit Suisse's credit volume in the division for the first nine months of 2019, according to a December investor presentation. Cross-town rival UBS set a target of achieving \$20 billion to \$30 billion in net new loans a year and increase lending penetration by 40%, according to its last strategic update to investors in October 2018. A revamp of the unit in January sought to give managers more autonomy in granting loans to rich clients and accelerating approvals."

⁶ Red Rock Resorts Inc., SEC Form DEF 14A (Proxy statement), 4/22/2020: "FBM Sub 1 LLC is owned and controlled by Fertitta Business Management, LLC. The 6,000,000 shares of Class B Common Stock and associated LLC Units owned by FBM Sub 1 LLC are pledged as collateral in connection with a margin loan" (<https://www.sec.gov/Archives/edgar/data/0001653653/000119312520115167/d900455ddef14a.htm>). See the UCC

for the UBS AG margin loan to FBM Sub LLC at <https://www.rrripodissected.org/wp-content/uploads/UBS-AG-loan.pdf>. We estimate the loan was up to \$155 million, assuming the ability to borrow 95% of the pledged share value and that the Class B shares were valued the same as Class A shares. At the time of loan's filing on September 27, 2018, RRR's Class A shares traded at about \$27.21. See Wells Fargo, Security Based Borrowing: "Some of the advantages of securities-based borrowing include: Access to cash when you need it, potentially avoiding capital gains taxes from selling securities; Typically lower rates than other forms of credit; No set-up, non-use, or cancellation fees; Ability to borrow between 50% to 95% of your eligible assets, depending on the collateral and type of credit you receive (<https://www.wellsfargoadvisors.com/why-wells-fargo/products-services/lending/securities-based.htm>). Red Rock Resorts Inc. historical share price data available at: <https://www.nasdaq.com/market-activity/stocks/rrr/historical>.

⁷ Red Rock Resorts Inc., SEC Form DEF 14A (Proxy statement), 4/22/2020, "Hedging and Pledging Policy: The Company's Securities Trading Policy (together with any supplements, the "Policy"), among other things, prohibits directors, officers and employees of the Company and its subsidiaries from (i) entering into a sale of securities not owned by the seller ("short sales") of Company Securities and (ii) investing in Company-based derivative securities, including, but not limited to, buying or selling options, straddles, warrants, stock appreciation rights and the like. Furthermore, certain pre-clearance insiders (which consist of directors, certain officers and key employees as determined by the Company, and their related persons) must pre-clear all transactions in Company Securities, including any monetization, hedging transaction or other non-standard transaction involving Company Securities (whether equity or debt). For purposes of this section "Company Securities" means the following: any stock, bond (including convertible notes), debentures, options, warrants or other marketable equity or debt security issued by the Company or its controlled subsidiaries; and any security or other instrument issued by an unrelated third party and based on any equity or debt security (including exchange-traded options and credit default swaps) of the Company or its controlled subsidiaries. Furthermore, the Company's Code of Ethics (as defined above), prohibits any circumstance that would cast doubt on the ability of a director, member, officer and employee of the Company to act with total objectivity with regard to the Company's interests. Each such person is expected to avoid any action or involvement which would in any way compromise his or her actions on behalf of the Company. The foregoing summary of the terms of the Policy is not complete and is qualified in its entirety by reference to the text of the Policy, which may be obtained from the Company upon request" (<https://www.sec.gov/Archives/edgar/data/0001653653/000119312520115167/d900455ddef14a.htm>).

⁸ *Ibid.*

⁹ Red Rock Resorts Inc., SEC Form 10-K, 2/26/2019, Exhibit 10.20 (<https://www.sec.gov/Archives/edgar/data/0001653653/000165365319000005/rrr12312018-ex1020.htm>). And see Red Rock Resorts Inc., SEC Form 10-Q EX-10.1, 11/9/17, [reporting for 9/30/17] (<https://www.sec.gov/Archives/edgar/data/0001653653/000165365317000017/rrr-09302017xex101.htm>).

¹⁰ Red Rock Resorts Inc. SEC Form 8-K, 2/7/20, Exhibit 10.1 (<https://www.sec.gov/Archives/edgar/data/0001653653/000119312520027698/d881673dex101.htm>). Red Rock Resorts Inc., SEC Form 10-K, 2/26/2019, Exhibit 10.20, "Incremental Joinder Agreement No. 5 and Fifth Amendment to Credit Agreement, dated as of February 8, 2019" (<https://www.sec.gov/Archives/edgar/data/0001653653/000165365319000005/rrr12312018-ex1020.htm>).see).

¹¹ Noah Kirsch, "UFC Sale Officially Closes For \$4 Billion, Fertitta Brothers Earn Huge Payday," *Forbes*, 8/22/16 (<https://www.forbes.com/sites/noahkirsch/2016/08/22/ufc-sale-officially-closes-for-4-billion-fertitta-brothers-earn-huge-payday>).

¹² Red Rock Resorts Inc., SEC Forms 13D/A for the following :

8/10/20 (<https://www.sec.gov/Archives/edgar/data/0001674462/000119312520215045/d15812dsc13da.htm>);
8/11/20 (<https://www.sec.gov/Archives/edgar/data/0001674462/000119312520216469/d921914dsc13da.htm>);
8/13/20 (<https://www.sec.gov/Archives/edgar/data/0001674462/000119312520219228/d938389dsc13da.htm>);
8/19/20 (<https://www.sec.gov/Archives/edgar/data/0001674462/000119312520224768/d942286dsc13da.htm>);
8/25/20 (<https://www.sec.gov/Archives/edgar/data/0001674462/000119312520230028/d89182dsc13da.htm>).

¹³ Red Rock Resorts Inc., SEC Forms 13D/A for the following dates:

8/9/19 (<https://www.sec.gov/Archives/edgar/data/1653653/000119312519218439/d791893dsc13da.htm>);
8/16/19 (<https://www.sec.gov/Archives/edgar/data/1653653/000119312519223920/d794325dsc13da.htm>);
8/23/19 (<https://www.sec.gov/Archives/edgar/data/1653653/000119312519228479/d792047dsc13da.htm>).

¹⁴ New York City Department of Finance, Office of the City Register, Document 2018122600512004, Deed, 12/8/18. Buyer listed as PH 56 Holdings, LLC, a Nevada business entity managed by J. Colby Williams, an attorney of the Fertittas. See <http://www.campbellandwilliams.com/index.php/clients/>. The acquisition of the penthouse by Fertitta was first reported by *The New York Post* and *The Real Deal* in August 2017 (see <https://nypost.com/2017/08/16/ufc-billionaire-scores-70m-penthouse-knockout/> and <https://therealdeal.com/2017/08/17/ufc-billionaire-is-mystery-buyer-of-70m-penthouse-at-520-park-avenue/>).

¹⁵ See Lonian here <https://www.superyachtfan.com/yacht-lonian.html>;

¹⁶ See Hodor here <https://www.superyachtfan.com/yacht/hodor/>

¹⁷ See Viva here <https://www.superyachtimes.com/yacht-news/largest-superyacht-launches>.

¹⁸ See <https://www.rripodissected.org/wp-content/uploads/Vival-Eagle-LLC-N702FF-and-Lonian-Raven-LLC-N702LF-FAA-registry.pdf>. Federal Aviation Administration, Aircraft Registry: N702LF (2018 Airbus Helicopter MBB-BK 117 D-2), owner listed as Lonian Raven LLC; N702FF (2019 Airbus Helicopter MBB-BK 117 D-2), owner listed as Viva Eagle LLC. See Raven onboard Lonian here: . The area code for Las Vegas, Nevada, is 702. Lorenzo Fertitta's initials are "LF" and Frank Fertitta's are "FF."

¹⁹ See https://www.rripodissected.org/wp-content/uploads/Hodor-Holdings-Limited-equipped-submersible_CA-UCC.pdf. UCC Financing Statement, Document 63263720002, 8/8/17, Seamagine Hydrospace Corporation (Debtor), Hodor Holdings Limited, filed with California Secretary of State. Collateral described as "the 'Equipped Submersible' and such materials and/or equipment to secure the performance of said 'Equipped Submersible' by Seamagine Hydrospace Corporation, as defined by the Purchase Contract between Seamagine Hydrospace Corporation and Hodor Holdings Limited executed July 10, 2017, which is hereby incorporated by reference herein."

²⁰ *Ibid.* And see Fertitta Enterprises Inc., *Bloomberg*, company profile, address listed as 10801 West Charleston Blvd Suite 600 Las Vegas, NV 89135, see <https://www.bloomberg.com/profile/company/0834245D:US?sref=aIW2Wcddt>.

²¹ UBS Wealth Management USA, Securities-backed lending, "A securities-backed loan may be used for a variety of needs, including real estate investments, bridge loans, personal expenses, business expansion, higher interest debt or loan consolidation and luxury purchases such as yachts or private jets," see <https://www.ubs.com/us/en/wealth-management/our-services/individual-services/banking/sec-lending.html>.