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LIQUID AUDIO INC
Form DFAN14A
August 28, 2002

SCHEDULE 14A
(Rule 14a-101)

INFORMATION REQUIRED IN PROXY STATEMENT
SCHEDULE 14A INFORMATION

Proxy Statement Pursuant to Section 14(a) of the Securities Exchange Act of 1934

Filed by the registrant []

Filed by a party other than the registrant [X]

Check the appropriate box:

- [] Preliminary Proxy Statement.
- [] Confidential, for Use of the Commission Only (as permitted by Rule 14a-6(e)(2)).
- [] Definitive Proxy Statement
- [] Definitive Additional Materials
- [X] Soliciting Material Under Rule 14a-12.

LIQUID AUDIO, INC.
(Name of Registrant as Specified in Its Charter)

MM COMPANIES, INC.,
JEWELCOR MANAGEMENT, INC., BARINGTON COMPANIES EQUITY PARTNERS, L.P., RAMIUS
SECURITIES, LLC, DOMROSE SONS PARTNERSHIP,
JAMES A. MITAROTONDA and SEYMOUR HOLTZMAN
(Name of Person(s) Filing Proxy Statement if Other Than the Registrant)

Payment of Filing Fee (Check the appropriate box):

- [X] No fee required.
- [] Fee computed on table below per Exchange Act Rules 14a-6(i)(1) and 0-11.
- (1) Title of each class of securities to which transaction applies:
- (2) Aggregate number of securities to which transaction applies:
- (3) Per unit price or other underlying value of transaction computed pursuant to Exchange Act Rule 0-11 (set forth the amount on which the filing fee is calculated and state how it was determined):
- (4) Proposed maximum aggregate value of transaction:
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- [] Fee paid previously with preliminary materials.
- [] Check box if any part of the fee is offset as provided by Exchange Act Rule 0-11(a)(2) and identify the filing for which the offsetting fee was paid

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previously. Identify the previous filing by registration statement number, or the form or schedule and the date of its filing.

- (1) Amount Previously Paid:
- (2) Form, Schedule or Registration Statement No.:
- (3) Filing Party:
- (4) Date Filed:

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On August 27, 2002, MM Companies, Inc. sent the following letter to the Board of Directors and the Secretary of Liquid Audio, Inc.:

MM Companies, Inc.
888 Seventh Avenue
17th Floor
New York, New York 10019

August 27, 2002

Liquid Audio, Inc.
800 Chesapeake Drive
Redwood City, California 94063
Attention: Members of the Board and Secretary

Gentlemen and Ladies:

We were outraged to learn that, on the eve of the long-delayed 2002 annual meeting of Liquid Audio shareholders, the board of directors of the Company has purported to expand the size of the board from five to seven directors and to appoint two new directors for terms expiring in 2003 and 2004.

This further attempt by management to manipulate the corporate machinery to its own advantage is an insult to the shareholders, who will finally have a choice in the future of their company at next month's meeting. The Company's board has consisted of five members for at least ten months. Last year, our group's request for two seats on the Company's board was summarily rejected. Under the management-supported Alliance Entertainment merger--which we continue to oppose--Liquid Audio's representation on the surviving company board would be reduced to three directors. Why the sudden rush to expand the board now, with directors who under management's plan for the Company would serve only six weeks?

We think the answer is self-evident. The purpose of expanding the board at this time, behind closed doors and without shareholder consent, can only be to entrench management, disadvantage our group's proxy contest and further compromise the rights of shareholders to elect representatives of their choice to direct the destiny of their company.

Accordingly, we believe the board's action has no legitimate corporate purpose and flies in the face of settled principles of Delaware law. We have commenced a challenge to the board's action in Delaware court, which we intend to vigorously pursue.

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We are confident in our position that the court should invalidate management's unconscionable board expansion gambit. However, if the action of the board is for any reason not rescinded or invalidated, we inform the Company that we are making a conforming change in our long-standing proposal to expand the size of the board, for presentation to shareholders at the upcoming annual meeting. Our proposal will be to increase the size of the board by four directors in addition to the directors in office at the time of the meeting. If the Company persists in maintaining that the number of incumbent directors is now seven, our proposal is to increase the size of the board to 11. If the size of the board reverts, as it should, to five, our proposal will revert to increasing the size of the board to 9. In all other respects, our proposals for the

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upcoming annual meeting remain unchanged, including the number and identity of our nominees for election as director.

Finally, we indignantly note the continuing waste of corporate assets resulting from management's "no-holds-barred, fight-at-all-costs" strategy in the pending proxy contest. We demand public disclosure of all costs that management is incurring for these purposes and hold management strictly accountable for the accelerating depletion of the Company's cash.

Very truly yours,

/s/ James Mitarotonda

James Mitarotonda

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