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LIQUID AUDIO INC
Form DFAN14A
July 19, 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
- Soliciting Material Under Rule 14a-12.

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

MUSICMAKER.COM, 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):

- 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:
 - (5) Total fee paid:
- 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:

On July 16, 2002, MM Companies, Inc. (formerly known as musicmaker.com, Inc.) sent the following letter to the management and board of directors of Liquid Audio, Inc. Copies maybe delivered to shareholders from time to time thereafter.

MM Companies, Inc.
c/o Barington Capital Group, L.P.
888 Seventh Avenue
17th Floor
New York, New York 10019

VIA FAX AND FEDERAL EXPRESS

July 16, 2002

Gerald W. Kearby, President & Chief
Executive Officer
Robert G. Flynn, Secretary
Members of the Board of Directors
Liquid Audio, Inc.
800 Chesapeake Drive
Redwood City, California 94063

Gentlemen:

Liquid Audio, Inc.'s new proposal of a merger with Alliance Entertainment combined with a self-tender offer to acquire 10 million shares of the Company's stock at \$3.00 per share does not cure our fundamental objections. As I am sure you know, the record business is in a shambles with the likelihood that it will get worse before it gets better. In view of these circumstances, we are categorically opposed to this transaction.

If the Company's management is serious about enhancing shareholder value, we believe the Company should distribute \$3.00 per share to ALL of Liquid Audio's shareholders. Thereafter, a determination can be made with the remaining cash in the corporation to either make a further distribution, or to retain a moderate amount of cash and fold it into a viable business. Furthermore, this is a matter that the shareholders should ultimately decide.

We vigorously protest the Board of Directors' decision to amend the Company's preferred stock rights agreement - the poison pill - to reduce the triggering threshold from beneficial ownership of 15% of Liquid Audio's outstanding shares to beneficial ownership of 10%. The Board's conduct is unconscionable and, in our opinion, may constitute a breach of their fiduciary duties.

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Your immediate response to this letter would be appreciated.

/s/ Seymour Holtzman

Seymour Holtzman
Chairman

/s/ James Mitarotonda

James Mitarotonda
President & CEO