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LIQUID AUDIO INC
Form DFAN14A
September 05, 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:
- (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 previously. Identify the previous filing by registration statement number, or

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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 September 4, 2002, MM Companies, Inc. issued the following press release:

Court Grants MM Companies, Inc. Motion for Expedited Proceeding

NEW YORK, Sept. 4 /PRNewswire-FirstCall/ -- MM Companies, Inc. (OTC Bulletin Board: MMCO) believes that the August 29, 2002 press release by Liquid Audio, Inc.'s management incorrectly describes action taken by the Delaware court in MM Companies' pending litigation, and is misleading to shareholders.

On August 26, 2002, MM Companies went to Delaware court to protect the franchise of Liquid Audio, Inc.'s public shareholders by challenging management's attempt to expand the size of the board of directors on the eve of the long-delayed annual shareholders meeting. MM Companies believes that management's last-minute attempt to add two new directors, who will not be subject to a shareholder vote at the meeting, is a further effort to disadvantage MM Companies' proxy contest and impede shareholder democracy, and MM Companies has sued to invalidate management's actions.

Management's August 29 press release inaccurately suggested that the court had denied a motion by MM Companies for a hearing in this matter. That is not the case.

In fact, the court granted MM Companies' request for an expedited hearing in MM Companies' lawsuit. And, while the court's schedule did not permit a hearing to occur prior to the September 26, 2002 meeting date, the court indicated that there is a question as to the legality of management's conduct, and scheduled a trial to be held on October 21, 2002 (the earliest date that the court had available) to determine whether management's purported expansion of the size of the board of directors should be invalidated.

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