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LIQUID AUDIO INC  
Form DEFA14A  
September 20, 2002

SCHEDULE 14A INFORMATION

PROXY STATEMENT PURSUANT TO SECTION 14(A) OF THE SECURITIES  
EXCHANGE ACT OF 1934 (AMENDMENT NO. )

Filed by the Registrant  [X]

Filed by a Party other than the Registrant  [ ]

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
- [X] Definitive Additional Materials
- [ ] Soliciting Material Pursuant to Section 240.14a-12

Liquid Audio Inc.

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(Name of Registrant as Specified In Its Charter)

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(Name of Person(s) Filing Proxy Statement, if other than 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:

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(2) Aggregate number of securities to which transaction applies:

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(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):

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(4) Proposed maximum aggregate value of transaction:

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(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

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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 the Form or Schedule and the date of its filing.

(1) Amount Previously Paid:

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(2) Form, Schedule or Registration Statement No.:

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(3) Filing Party:

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(4) Date Filed:

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EXPLANATORY NOTE

Liquid Audio, Inc., a Delaware corporation, is filing the materials contained in this Schedule 14A with the Securities and Exchange Commission on September 20, 2002 with respect to its 2002 annual meeting of stockholders.

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[LIQUID AUDIO LOGO]

FOR IMMEDIATE RELEASE

ISS RECOMMENDS AGAINST TAKEOVER BY MM COMPANIES

LIQUID AUDIO RESPONDS TO MM COMPANIES' PRESS RELEASE, CLARIFIES MISLEADING CHARACTERIZATION OF ISS DECISION

REDWOOD CITY, Calif., Sept. 20 - Liquid Audio, Inc. (Nasdaq: LQID - News) today announced that Institutional Shareholder Services (ISS), which provides proxy advisory services to institutional investors, mutual funds and other fiduciaries, has recommended that its clients vote against the takeover proposals by a group led by MM Companies, Inc. Specifically, ISS has recommended that Liquid Audio stockholders vote against Proposal 3, which would amend the company's by-laws to expand the size of its board of directors; Proposal 4, which would amend the company's by-laws to authorize only stockholders to fill newly created directorships; and Proposal 5, which would elect four nominees of the MM Companies group to fill the new positions on the board of directors, at the company's annual meeting to be held on September 26, 2002. As stated in MM Companies' press release issued earlier today, ISS also recommended that Liquid Audio stockholders vote for the nominees of the MM Companies group to serve as Class III directors for a term of three years.

"We are pleased that ISS, the nation's leading proxy voting advisory service, recommends that stockholders vote against the takeover proposals of the MM Companies group," stated Gerry Kearby, president and CEO of Liquid Audio, Inc. "We believe that it is in the best interests of stockholders to vote against Proposals 3, 4 and 5, in order to prevent MM Companies from taking control of the company and managing its assets and cash in the same way it did for Musicmaker.com."

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Liquid Audio, Inc. is a leading provider of software, infrastructure and services for the secure digital delivery of media over the Internet. The Liquid Audio solution gives content owners, Web sites and companies the ability to publish, syndicate and securely sell digital media online with copy protection and copyright management. Using the Liquid(TM) Player software, available for free download at [www.liquidaudio.com](http://www.liquidaudio.com), consumers can preview and purchase downloadable music from hundreds of affiliate Web sites in the Liquid Music Network(TM).

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### Forward-Looking Statements

All statements made in this release, other than statements of historical fact, are forward-looking statements. The words "anticipate," "believe," "estimate," "expect," "intend," "will," "guidance" and similar expressions typically are used to identify forward-looking statements. Forward-looking statements are based on the then-current expectations, beliefs, assumptions, estimates and forecasts about the businesses of Liquid Audio and Alliance Entertainment Corp. and the industries and markets in which the companies operate. Those statements are not guarantees of future performance and

involve risks, uncertainties and assumptions that will be difficult to predict. Therefore, actual outcomes and results may differ materially from what is expressed or implied by those forward-looking statements. Factors that may affect Liquid Audio's and Alliance Entertainment's businesses, financial condition and operating results include the effects of changes in the economy, consumer spending, the stock market and the industries in which they operate generally, changes affecting the Internet and e-commerce, the ability of the companies to maintain relationships with strategic partners and suppliers, the ability of the companies to timely and successfully develop, maintain and protect their technology and product and service offerings and execute operationally and the ability of the companies to attract and retain qualified personnel. These factors may also include, but are not limited to, general market conditions, our ability to develop new products to meet market demand, our ability to successfully combine two geographically dispersed businesses, our ability to realize synergies of the merger; our ability to maintain cost controls; the mix of products and services our customers require and the effects of natural disasters, international conflicts and other events beyond our control. More information about potential factors that could affect Liquid Audio can be found in its most recent Form 10-K, Form 10-Q and other reports and statements filed by Liquid Audio with the Securities and Exchange Commission ("SEC"). Each of Liquid Audio and Alliance Entertainment expressly disclaims any intent or obligation to update those forward-looking statements, except as otherwise specifically stated by it.

### Additional Information and Where to Find It

Liquid Audio has filed a Registration Statement on SEC Form S-4 in connection with the merger and plans to file a Tender Offer Statement on Schedule TO in connection with the offer. Investors and stockholders of Liquid Audio and Alliance Entertainment are urged to read the Registration Statement and the

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Tender Offer Statement carefully when it is available. The Registration Statement contains important information about the companies, the merger and related matters. Investors and stockholders will be able to obtain free copies of these documents through the web site maintained by the SEC at <http://www.sec.gov>. Free copies of the Registration Statement and these other documents may also be obtained from Liquid Audio by directing a request through the Liquid Audio Web site at <http://www.liquidaudio.com> or by mail to Liquid Audio, Inc., Attention: Investor Relations.

In addition to the Registration Statement and the Tender Offer Statement, Liquid Audio files annual, quarterly and special reports, proxy statements and other information with the SEC. You may read and copy any reports, statements or other information filed by Liquid Audio at the SEC's public reference rooms at 450 Fifth Street, N.W., Washington, D.C. 20549 or at any of the SEC's other public reference rooms in New York and Chicago. Please call the SEC at 1-800-SEC-0330 for further information on the public reference rooms. Liquid Audio's filings with the SEC are also available to the public from commercial document-retrieval services and at the Web site maintained by the SEC at <http://www.sec.gov>.

### Interests of Certain Persons in the Merger

The directors and executive officers of Liquid Audio and Alliance Entertainment have interests in the merger, some of which may differ from, or may be in addition to, those of the stockholders of Liquid Audio and Alliance Entertainment generally. A description of the interests that the directors and executive officers of the companies have in the merger is available in the Registration Statement.

### Solicitation of Proxies

Liquid Audio and Alliance Entertainment, their respective directors, executive officers and certain other members of their management and employees may be soliciting proxies from stockholders of Liquid Audio and Alliance Entertainment in favor of the merger. Information concerning the participants is set forth in the Registration Statement filed with the SEC.