SHAREHOLDER RIGHTS GROUP

July 16, 2019

Brent J. Fields
Secretary
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549

Re: Staff Roundtable on the Proxy Process – File 4-725

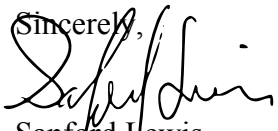
I am writing on behalf of the Shareholder Rights Group with further comments in response to the Proxy Process Roundtable. The enclosed letter, submitted in follow-up to the Staff's annual Rule 14a-8 stakeholder meeting, is equally relevant to the Roundtable docket.

The letter includes analysis of the proxy voting outcomes of the 2019 proxy season. We believe those outcomes demonstrate a dearth of evidence to support any rulemaking regarding shareholder proposal filing or resubmission thresholds. As has often been stated, proposals for the SEC to undertake a rulemaking on the shareholder proposal filing or resubmission thresholds seems to be an unnecessary *"solution in search of a problem."*

In addition, our letter highlights our continuing concerns about the Staff's latest interpretation of micromanagement. Thus, we view the new micromanagement perspective articulated by Staff as a significant setback for investors who wish to engage in active management of material risks to their portfolios posed by climate change and other ESG issues. Therefore, we continue to urge the Staff to reverse course, and to return to the prior practice of limiting exclusions grounded in micromanagement to instances in which a proposal seeks to prescribe a regulatory level of detail.

We also note our concerns about potential changes to the no action process, an idea surfaced by Director Hinman in the June 21, 2019 Rule 14a-8 stakeholder meeting, under which the staff would be "selective" about issuing even its informal letters in no action requests. We believe such an approach may threaten the transparency and accountability of the current process, could undermine shareholder engagement, and increase costs and uncertainties for all parties to the shareholder proposal process.

Sincerely,



Sanford Lewis
Director
Shareholder Rights Group

Shareholder Rights Group

July 11, 2019

Via electronic mail

Mr. William Hinman
Director, Division of Corporation Finance
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549

Subject: Follow-up from June 21, 2019 Rule 14a-8 Stakeholder Meeting

Dear Director Hinman,

Thank you for the opportunity to participate in the annual Rule 14a-8 stakeholder meeting on June 21, 2019. This letter will serve as follow up on a number of issues raised in the meeting.

Potential changes to the no action process

At the outset of the meeting, you mentioned a potential change in which some no action requests would not receive a written decision. This has raised significant questions and concerns for proponents:

- Since a Rule 14a-8 no action request normally involves parties on both sides of the issue, the 14a-8 process seems distinct from the no action requests submitted by companies in other issue areas that are not normally briefed by an opposing party. Although we recognize the informal nature of the existing process, the process nevertheless serves as an established means of recourse for proponents and issuers alike. Any instances of informally *granting* a no action request without written justification would lack the safeguards of transparency and accountability provided by a written no action process, and deny all parties the benefits of the staff's deliberative process and thinking.

-Decisions to issue a perfunctory *denial* of a no action request, while potentially supportive of proponent interests, would similarly lack transparency in the absence of a published record. If a perfunctory denial of a no action request is rendered based on prior staff decisions and precedents, wouldn't it be appropriate to at least issue a short letter referencing the relevant precedents and rule sections that relate to the denial?

- The notion that the Staff might decline to rule on some proposals or issues where the Staff lacks expertise poses the question of whether the staff would later recommend enforcement action if the proposal is excluded by the company. If the staff was unable to form an opinion at the time of submission of a request, does that mean in effect that the Staff would not recommend enforcement action if the company excludes the proposal? Or would it mean that the staff is deferring the research or analytical process needed to decide on enforcement referral? Wouldn't this undermine incentives for engagement?

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- In the absence of a written record of no action decisions, wouldn't there be a "good government" concern regarding the lack of consistency or transparency of the Staff's decisions?

- In 1976, the Commission published in the Federal Register its explanation of the no action process. 41 FR 29989, July 20, 1976. If the intent is to alter the process, will the Commission be similarly involved in deliberations regarding such changes?

As you can see, significant questions about this idea are likely to arise among proponents and issuers alike.

Micromanagement

Articulation of what *micromanagement* now means to the Staff, as stated during the meeting, implied that a proposal may be considered by the Staff to micromanage if it requests that the company add goals or performance measures in alignment with public policy, on the grounds that the proposal would be seeking to prescribe management strategies that are the exclusive purview of management. Proponents are clear, and beyond doubt, that this is inconsistent with long-standing Commission articulation of the acceptable role of advisory proposals as not without interfering with the ability of managers and boards to manage and oversee their companies. [1]

To cite the most prevalent example of micromanagement exclusions in the recent season, the Staff has repeatedly disallowed proposals, previously permissible, that ask companies to set goals for greenhouse gas reduction aligned with world scientific and policy consensus regarding the need for such reductions as articulated in the Paris Agreement.

The climate change issue has ripened at many companies. There is also a growing consensus in the investment community that climate change will cause trillions of dollars' worth of damage over this century, and much of that damage will affect companies and their investors. Moody's Analytics issued a report in June of this year noting that climate change is likely to inflict $69 trillion in damages, in the absence of effective mitigation measures. It is reasonable to ask companies to report on such aligned mitigation goals to investors concerned with the performance of their portfolios under these conditions.

[1] As the Commission noted in the 1976 Release. "[P]roposals by security holders that mandate or direct the board to take certain action may constitute an unlawful intrusion on the board's discretionary authority under the typical statute. On the other hand, however, proposals that merely recommend or request that the board take certain action would not appear to be contrary to the typical state statute, since such proposals are merely advisory in nature and would not be binding on the board even if adopted by a majority of the security holders." Adoption of Amendments Relating to Proposals by Security Holders, SEC Release Nos. 34-12999, 19771, 34012999, 35019771, 1976 WL 160347, at *7 (November 22, 1976).

While prior proposals have sought disclosure of the companies' risks analyses or options for improving climate action, these are no longer apt topics for proposals at companies that have conducted studies, issued reports, and yet maintained a commitment to conducting business in clear conflict with those global goals. For such companies, we believe that proposals constrained by the newly articulated micromanagement doctrine will lead to proposals that are either unnecessarily vague or unnecessarily "absolute" - in either instance, to the detriment of investors' interests and risk management strategies. Thus, we view the new micromanagement perspective articulated by Staff as a significant setback for investors who wish to engage in active management of material risks to their portfolios posed by climate change and other ESG issues. Therefore, we continue to urge the Staff to reverse course, and to return to the prior practice of limiting exclusions grounded in micromanagement to instances in which a proposal seeks to prescribe a regulatory level of detail.

Co-filers and Lead Filers

In the meeting, the co-filing of proposals was discussed, including the designation of lead filers. As we discussed, proponents have generally designated a lead filer and delegated authority for withdrawal of the proposal in their co-filing letters. This process works reasonably well. However, there are various circumstances in which several investors serve in a team capacity as co-leads and may say so in their filing letters.

2019 Voting Records

We appreciate the annual report by Staff regarding the no action outcomes during the proxy season. As we mentioned in the stakeholder meeting, we believe that Staff's annual reflections should also consider the voting outcomes in the proxy season, because these bear on the decisions made as well as the arguments being made for so-called "reforms" of Rule 14a-8.

Data from the 2019 proxy season demonstrates that when the Staff denied exclusions and allowed proposals onto the proxy, investors proved fully capable of considering complex proposals. A rise in favorable votes on ESG proposals, as well as some votes in which proposals that were resoundingly rejected, demonstrates the capacity and interest of investors in consideration of proposals based on the existing rules and thresholds. [2]

According to data compiled by the Sustainable Investments Institute, 176 resolutions on social and environmental topics came to a vote at US companies in the spring of 2019. Many of these were filed by investors with relatively small stakes consistent with the existing filing thresholds. The proposals received on average of 25.5 % support (about the same as the average of 25.4%

[2] The SEC has announced a potential rulemaking in its regulatory agenda on the thresholds related to the shareholder resolution process. The scope of the notice implies that both the ownership threshold for resolution filing (Rule 14a-8(b) and resubmission thresholds of Rule 14a-8(i)(12) may be under consideration.
https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=201904&RIN=3235-AM49

for resolutions of this kind in 2018, and 21% in 2017). These numbers demonstrate that proposals of interest to a large portion of a company's shareholder base can and do originate with smaller individual and institutional investors.

Examples of such resolutions that received majority support include:

- A human rights reporting proposal filed at private prison operator Geo Group, by the USA West Province of the Society of Jesus, which received 87% support after the company's board of directors withdrew its opposition.

- A proposal for disclosure of governance measures implemented related to opioids filed by Domini Impact Equity Fund and others receiving 60% support.

- Proposals requesting diversity reports filed by Trillium at Newell Brands and Travelers Companies received 56% and 50.9% support, respectively.

The season outcomes also illustrate the continued applicability and viability of the existing resubmission thresholds. Voting outcomes show that there were very few proposals resubmitted when the prior votes were close to the resubmission thresholds and that sometimes the vote outcomes improved markedly. For instance, a resubmitted and refined request to report on the company's prison labor policy received 28.7% this year at Costco, after a proposal on the same topic garnered only 4.8% of the vote in 2018; a similar proposal at TJX Companies received 38% support, up from 7.75% in 2018. Concerns about prison labor in the supply chain is an emerging issue which was first brought to the investment community's attention by a few forward-looking investors, but is now of concern to many. Substantially higher resubmission thresholds for first-year or second-year resolutions might have interrupted consideration and flagging of these issue at those companies' annual meetings.

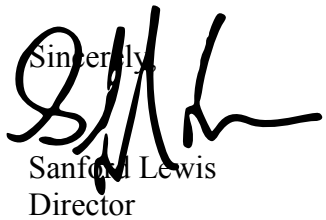
The average of favorable votes for ESG proposals continues to increase as investors recognize the materiality of ESG issues at their companies. However, where the business case is not effectively demonstrated by the proposal and proponents, shareholders are quite able to reject resubmission via the existing resubmission thresholds. For example, shareholders consistently gave less than 3% support to proposals seeking an ideological litmus test for board members at Discovery, Starbucks, Apple, Twitter and Amazon. Shareholders at Exelon similarly rejected a proposal to "burn more coal" with only 1.6 percent support. Investors also rejected a request to report on how Gilead Sciences spent its share of the federal tax cut, a proposal that earned only 2.2%.

The season's voting records also affirmed the Staff's decision-making on other issues. For instance, the issue of facial recognition technology threats to civil liberties represented a major new issue and no action challenge at Amazon.com. The staff rejected claims by the company that the proposal lacked significance to the Company, as well as an assertion that a proposal seeking *disclosure of the risks* was duplicative of a proposal that sought a *ban on sales of the technology*. *Amazon.com, Inc.* (March 28, 2019, reconsideration denied April 3, 2019) The Staff

rejected company claims that that the two proposals were duplicative, agreeing with proponents that investors would readily be able to distinguish between a disclosure proposal and one seeking a prohibition. The voting outcomes at Amazon affirm this staff position. 28% of investors voted in favor of the disclosure proposal (37% if one excludes the insider shares held by Jeff Bezos). In contrast, only 2.5% of investors supported the ban proposal, which means that that proposal cannot be resubmitted in the coming year.

We appreciate the invitation to pursue additional conversations with the Division on these matters. We would like to suggest a further meeting of Staff with concerned investors on these topics.

Sincerely,



Sanford Lewis
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cc:
Jay Clayton
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Allison Lee
Division Staff

Members of Shareholder Rights Group
Arjuna Capital
As You Sow
Boston Common Asset Management, LLC
Clean Yield Asset Management
First Affirmative Financial Network, LLC
Harrington Investments, Inc.
Jantz Management, LLC
John Chevedden
Natural Investments, LLC
Newground Social Investment, SPC
NorthStar Asset Management, Inc.
Pax World Funds
Sustainability Group of Loring, Wolcott & Coolidge, LLC
Trillium Asset Management, LLC
Walden Asset Management