

October 28, 2019

The Honorable Jay Clayton  
Chairman  
US Securities and Exchange Commission  
100 F Street, N.E.  
Washington, D.C. 20549

Reference: file #4-725  
Potential Rulemaking on Shareholder Proposal Filing

Dear Chairman Clayton,

First Affirmative Financial Network, LLC is an SEC registered investment advisor with oversight of more than \$1 billion in assets under management and advisement. We were formed in 1988 to serve individual and institutional investors interested in integrating environmental, social, and governance (ESG) issues into their investment strategy.

Our concerns with regard to proposed changes to shareholder proposal filing thresholds, resubmission thresholds, and other issues related to the proxy process have been clearly represented by comments submitted by the Shareholder Rights Group and USSIF, of which we are members. **Because we are particularly concerned that the potential increase in filing thresholds will disenfranchise many of our clients, we wish to provide these additional comments.**

First Affirmative serves a wide range of clients, from small individual investors saving for life goals such as college and retirement, to much larger foundations and limited liability companies. Regardless of size, our clients expect and deserve:

- A fully diversified portfolio designed to control risk and accomplish long-term financial goals.
- Active engagement with portfolio companies on material issues that impact long-term value.

Our approach to corporate engagement is constructive engagement first, and the filing of shareholder proposals if we believe it is necessary to advance the discussion on material issues of long-term concern such as climate change and diversity. We also, when directed, vote client proxies in accordance with customized, ESG focused, proxy voting guidelines.

Although we often represent clients collectively during our engagements with companies, shareholder proposals must be filed on behalf of individual clients. Many of our clients are satisfied that we actively vote their proxies, while other clients wish to have their shares used to file resolutions on their behalf on priority issues.

This pool of filing clients includes middle class clients whose stock portfolios consist of numerous <\$5,000 holdings to achieve sufficient diversification. Depending on the volatility of the stock, the long-term holding required is substantially higher than \$2000 to ensure the holding is maintained in excess of the threshold. Therefore, we typically file resolutions on behalf of our clients only if a long-term holding exceeds \$4000.

On September 24, 2019 in a House Financial Services Committee oversight hearing, you had this to say regarding the filing threshold:

“What will the new threshold be? We are working on it but in my ideal world it’s a threshold that has access for a long term investors in the company that have a meaningful stake at a personal level but eliminates some of what I would say I – don’t like it that 25 or 30% of the proposals that we see are from a handful of people.”

We fully agree that access must be maintained for long-term investors that have a meaningful stake at a personal level-that aptly describes our clients. However, engaging in a rulemaking that seeks to target a few dedicated investors who take an active interest in governance issues runs counter to the SEC’s mission of investor protection. The method being utilized also eliminates far more than these few investors. **In fact, increasing filing thresholds will be at the expense of many of the clients we serve.**

Specifically, increasing the filing threshold significantly disenfranchises investors, including many of our clients because:

- Increasing the current filing threshold from the current \$2,000 of stock held for at least one year will significantly reduce, and in some cases eliminate our clients’ ability to participate in the shareholder proposal process without compromising diversification. Each client holding may be small when compared to an institutional holding, but that small holding plays a key role in the achievement of long-term financial goals. In other words, each holding is meaningful stake at a personal level.
- Even assuming we did not file resolutions on behalf of our clients, increasing filing thresholds would have adverse impacts on our clients by effectively removing opportunities to vote on shareholder proposals eliminated by increased thresholds. Proxy voting serves as an important signaling device, as even a significant minority vote on a shareholder proposal can alert a company that it has an issue of importance to investors that should be addressed.
- While it is true that many shareholder proposals are filed by a small group of individual investors, the strong support<sup>1</sup> many of their proposals receive is an indication that these so called gadflies are doing the broader investment community a service. They collectively advance good corporate governance practices that have, in many cases, set the standard for best practice. Our firm votes in favor of a substantial number of these proposals.

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<sup>1</sup> For instance, see: <https://www.sec.gov/comments/4-725/4725-6009672-190810.pdf>

- A nuance that seems to be missing from most critiques of the current filing thresholds is that these proposals are precatory. The fact that corporations have no obligation to act on a proposal, even if it achieves a majority vote status, already tips the balance of power very heavily to corporations.
- In 2019, we filed proposals on behalf of 14 clients asking for disclosure concerning issues such as climate change, diversity, and corporate public policy engagement. Six of these proposals led productive discussions with each company and we negotiated withdrawal agreements. Five proposals that went to a vote achieved greater than 30% support. Half of these proposals could not have been filed by the client today assuming a filing threshold of \$5,000. In spite of small holdings, the issues raised were clearly relevant to those companies who responded by providing enhanced disclosures and to those investors who voted in favor of these proposals.

In short, we believe that the consequence of ratcheting up filing thresholds, intended or not, will be to diminish the rights of the Main Street investors that the SEC is tasked with protecting. We urge you to carefully consider the full impact on these investors before implementing any proposed rules.

Sincerely,



Holly A. Testa  
Director, Shareowner Engagement  
First Affirmative Financial Network, LLC

Cc:

Hon. Robert J. Jackson Jr., Commissioner, U.S. Securities and Exchange Commission  
Hon. Hester M. Peirce, Commissioner, U.S. Securities and Exchange Commission  
Hon. Elad L. Roisman, Commissioner, U.S. Securities and Exchange Commission  
Hon. Allison Herren Lee, Commissioner, U.S. Securities and Exchange Commission  
Mr. William Hinman, Director, Division of Corporation Finance, U.S. Securities and Exchange Commission  
Mr. Rick Fleming, Investor Advocate, Office of the Investor Advocate, SEC  
Chairwoman Maxine Waters, House Financial Services Committee  
Doug Lamborn, US Representative, Colorado District 5  
Michael Bennett, US Senator, Colorado  
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