



January 3, 2020

Honorable Jay Clayton
Chairman
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549

Re: S7-23-19 Procedural Requirements and Resubmission Thresholds under Exchange Act Rule 14a-8
S7-22-19 Amendments to Exemptions from the Proxy Rules for Proxy Voting Advice

Dear Chairman Clayton:

We write to strongly oppose the rules proposed by the Securities and Exchange Commission (SEC) on November 5, 2019, which will severely limit the rights of shareholders to engage with corporations using the shareholder resolution process over issues with a distinct impact on long-term value.

Miller/Howard is an employee-owned, research-driven investment boutique with nearly thirty years of experience managing portfolios for major institutions, mutual funds, and individuals in dividend-focused investment strategies. In addition to financial analysis, we perform rigorous research seeking high-quality companies that are contributing to the economy in meaningful ways and have demonstrated a strong commitment to good governance, the environment, and social responsibility.

The proposed rules would create unnecessary risks for all stakeholders.

As long-only investors, we find value for our clients by engaging companies to recognize and mitigate manageable risks – particularly on critical environmental, social, and governance (ESG) issues. We believe that the proposed rules are unnecessary, and will undermine a corporate engagement process that has been of great value to both companies and investors.

For decades, the shareholder proposal process has served to benefit issuers and proponents alike as an effective, efficient, and valuable tool for corporate management and boards to gain a better understanding of shareholder priorities and concerns. The proposed rule changes will make companies far less accountable to shareholders, stakeholders, and the public at large.

The proposed increase in ownership thresholds will make it difficult for smaller investors to voice important concerns and raise issues of risk to the companies they own. The current ownership threshold of \$2,000 ensures that a diversity of voices are heard, not just the biggest players. Small investors have contributed a multitude of now commonplace best practices.

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Resolutions filed by a single owner raise issues of interest to larger groups of investors.

For example, investment managers such as Miller/Howard may file a proposal using the shares of a single client who owns a small position in the company – but we do so while representing the interests of all of our clients invested in that company. This constitutes a much larger group than would be suggested by the position of the single owner whose name is on the filing.

According to data compiled by the Sustainable Investments Institute, 187 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 an average of 25.6% support (about the same as the average of 25.4% for resolutions of this kind in 2018, and 21.4% 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.¹ Excluding this group of shareholders until they have held shares for three continuous years raises serious questions about the equity of the proposal process and leaves smaller investors who can make valuable contributions without access to the proxy.

Miller/Howard has filed many shareholder resolutions over the years and we believe the collaborative effort of engaging company management is an important risk mitigation tool which helps protect shareholder value. Investor engagement work has been instrumental in moving the oil and gas industry forward with best practices and developing standards that go above and beyond regulatory requirements. A brief list of our past proposals and further discussion can be found on our website: http://www.mhinvest.com/esg_resolutions.html and http://mhinvest.com/files/pdf/ESG_Walk_the_Walk_2497.pdf.

The proposed increase in resubmission thresholds threatens to unnecessarily exclude important proposals that gain traction over time, and may ultimately stifle key reforms.

There are a number of instances where resolutions that initially received low votes, but went on to receive significant support or have led to productive engagement, as shareholders came to appreciate the serious risks they presented to companies. Resolutions highlighting human rights risks in global supply chains initially received low votes at companies, but as a result of engagement prompted by the proposals, sector leaders have adopted human rights policies and supplier codes of conduct that help minimize legal, reputational, and financial risks. Clearly these and other votes on critical matters signify that investors appreciate the value of the issues being raised in these resolutions. It can take some time for shareholders to get up to speed on emerging issues. The proposed changes could prevent significant topics, such as climate change, human rights issues, and board governance issues from even being raised and considered, to the detriment of all stakeholders.

In addition to the Rule 14a-8 proposals, changes regarding proxy advisory firms were approved at the SEC’s November 5th meeting. We believe these modifications, if enacted, will undermine the voice of investors and produce more management-friendly votes, unfairly stacking the deck against shareholders and towards corporate management. The proposal would require that proxy advisory firms allow companies to review and provide feedback on proxy voting advice, greatly impeding

¹ Si2 ‘FACT SHEET: Shareholder Proposal Trends’, Sustainable Investments Institute, Oct.17, 2019, https://siinstitute.org/special_report.cgi?id=80



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the ability of institutional investors to get independent advice and information about how to vote on director elections, Say-on-Pay ballot items, and shareholder proposals. The fact that the proposed rule does not give shareholder proposal proponents and shareholders conducting "vote no" campaigns the same right of review further underlines that the rule would provide an unfair advantage to company management to the detriment of shareholders.

The current 14a-8 rule has worked well for decades, and there is no need to revise it.

Trade associations like the Business Roundtable, the U.S. Chamber of Commerce, and the National Association of Manufacturers have lobbied rigorously for the proposed changes by exaggerating the cost of the process to companies, and by misleadingly painting shareholders raising ESG issues as 'activists' imposing a 'social agenda' who are 'uninterested in shareholder value.'

This misinformation and rhetoric feeds a political agenda by the trade associations to limit the ability of shareholders to engage with the companies that they own. We engage on ESG risks as shareholders precisely because we are concerned about the long-term health of the companies in which we are invested. Many of the companies that we engage with understand that this engagement enables them to mitigate reputational, legal, and financial risks, and build value. The filing of shareholders resolutions by investors big and small is a crucial part of the engagement process.

For the above reasons, we strongly urge the SEC to reconsider the proposed rule changes.

Thank you for your consideration of these remarks.

Best,

A handwritten signature in black ink that reads "Luan Jenifer". The signature is written in a cursive style.

Luan Jenifer
President

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