



January 31, 2020

Vaness A. Countryman
Secretary
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549

RE: Comments on Proposed *Procedural Requirements and Resubmission Thresholds Under Exchange Act Rule 14a-8* (File Number S7-23-19) and *Amendments to Exemptions from the Proxy Rules for Proxy Voting Advice* (File Number S7-22-19)

Dear Secretary Countryman,

Trinity Health appreciates the opportunity to respond to the U.S. Securities and Exchange Commission's ("SEC") proposed rules *Procedural Requirements and Resubmission Thresholds Under Exchange Act Rule 14a-8* (File Number S7-23-19) and *Amendments to Exemptions from the Proxy Rules for Proxy Voting Advice* (File Number S7-22-19). Our comments and recommendations reflect a strong interest in advancing the SEC's stated mission, "to protect investors, maintain fair, orderly, and efficient markets, and facilitate capital formation."

Trinity Health is one of the largest multi-institutional Catholic health care delivery systems in the nation, serving diverse communities that include more than 30 million people across 22 states. Trinity Health includes 94 hospitals as well as 109 continuing care locations that include PACE, senior living facilities, and home care and hospice services. We employ approximately 133,000 colleagues, including more than 7,800 employed physicians and clinicians. As of June 30, 2019, Trinity Health had total assets of \$27.0 billion, including unrestricted cash and investments of \$9.0 billion.

Trinity Health is a member of the Interfaith Center on Corporate Responsibility ("ICCR"), a group of 300 like-minded organizations comprise faith communities, asset managers, unions, pensions, NGOs and other investors, with more than \$500 Billion of invested capital. Trinity Health is also a member of Ceres Investor Network on Climate Risk and Sustainability ("INCRS"), which is comprised of 170 members collectively managing \$29 Trillion in assets. We fully support the comments¹ offered by [ICCR](#) to the SEC, and Trinity Health was a co-signer in support of the comments offered by INCRS on the proposed regulatory changes.

We strongly oppose the rules proposed by the SEC on November 5th, 2019 and urge the SEC not to adopt the Proposed Amendments in their current form. These proposed regulatory changes will undermine the existing shareholder resolution process with a significantly negative impact on long-term value for the market and all shareholders, which is not included in the economic

¹ See <https://www.sec.gov/comments/s7-23-19/s72319-6702907-206070.pdf>

analysis put forth by the SEC. These proposed regulatory changes would neither protect investors nor promote capital formation. We encourage SEC to reject these proposals in their entirety and continue using existing rules regarding procedural requirements, resubmissions, and proxy rules.

Background/Proposed Regulatory Changes

On November 5, the Securities and Exchange Commission advanced regulatory changes that would severely impair investors' access to the corporate proxy. The changes would require that shareholders own \$2,000 worth of company stock for a minimum of three years (up from one year) before they can submit a shareholder resolution. In addition, shareowners who own stock for only one or two years must own \$25,000 and \$15,000 worth of shares, respectively, to be eligible to file. Third, the SEC is proposing raising re-submission vote thresholds to 5%, 15% and 25% (up from 3%, 6% and 10%) and to allow exclusion of a proposal that has been voted on three or more times in the past five years and achieved at least 25% (but not majority) vote if support the last time it was voted on dropped by more than 10% compared to the immediately preceding vote.

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 corporate management and boards can hear a diversity of voices, not only the biggest players. Excluding small shareholders disadvantages corporate management and boards and raises serious questions about the equity of the proposal process that leaves smaller investors who can make valuable contributions without access to the proxy.

The proposed increase in resubmission thresholds threatens to unnecessarily exclude important proposals that gain traction over time and will ultimately stifle key reforms. There are many examples through the years of 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.

In addition to the Rule 14a-8 proposals, SEC also approved changes regarding proxy advisory firms. We believe these modifications 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 and would greatly impede the ability of institutional investors to get independent advice and information about how to vote on director elections 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.

Proxy advisory firms are a cost-effective part of the shareholder voting process. Giving companies a mandated right to review their recommendations would threaten their independence and increase costs, without any benefit. If the clients of proxy advisory firms were dissatisfied, they would be pressing for reform or discontinuing use of them. Proxy firms merely offer advisory recommendations, no institutional investor is required to follow them.

As long-term investors who engage with companies on critical environmental, social, and governance issues (“ESG”), 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. These proposed rule changes seem to run contrary to the SEC’s stated mission, “to protect investors; maintain fair, orderly, and efficient markets; and facilitate capital formation. The SEC strives to promote a market environment that is worthy of the public's trust.”

We strongly encourage SEC to reject these proposals (S7-23-19/ S7-22-19) in their entirety and continue using existing rules regarding procedural requirements, resubmissions, and proxy rules.

Misleading Arguments/Evidence Used to Support Rulemaking

There have been several news stories that have identified letters mistakenly cited by Chairman Clayton at the November 5, 2019 rollout of the regulations as fake. In a Bloomberg article written by Zachary Mider and Ben Elgin, they noted, “when Securities and Exchange Commission Chairman Jay Clayton handed a policy win to corporate executives [in November 2019], he pointed to a surprising source of support: a mailbag full of encouragement from ordinary Americans.”²

The article is referencing the moment when Commission Chairman Clayton announced the new regulations at a committee meeting saying, “Some of the letters that struck me the most came from long-term Main Street investors, including an Army veteran and a Marine veteran, a police officer, a retired teacher, a public servant, a single mom, a couple of retirees who saved for retirement.”³

However, the Bloomberg article points that that letters referenced by Clayton and more than twenty other letters sent to the SEC have been connected to “60 Plus Association, a Virginia-based advocacy group paid by corporate supporters of the SEC initiative.”⁴

This mischaracterization of support should serve as sufficient reason for the proposed changes to be dropped. According to the SEC website, “The mission of the SEC is to protect investors; maintain fair, orderly, and efficient markets; and facilitate capital formation. The SEC strives to promote a market environment that is worthy of the public's trust.”⁵ **It would seem that advancing rules promulgated on the basis of such fraudulent evidence, even if mistakenly, runs counter to the spirit of promoting a, “market environment that is worthy of the public’s trust,”**⁶ **Trinity Health recommends that the SEC take no action on the proposed rules.**

² Zachary Mider & Ben Elgin, SEC Chairman Cites Fishy Letters in Support of Policy Change, Bloomberg, (November 19, 2019) (<https://www.bloomberg.com/news/articles/2019-11-19/sec-chairman-cites-fishy-letters-in-support-of-policy-change>)

³Statement of Chairman Jay Clayton on Proposals to Enhance the Accuracy, Transparency and Effectiveness of Our Proxy Voting System” (Nov. 5, 2019) (<https://www.sec.gov/news/public-statement/statement-clayton-2019-11-05-open-meeting>)

⁴Zachary Mider & Ben Elgin, SEC Chairman Cites Fishy Letters in Support of Policy Change, Bloomberg, (November 19, 2019) (<https://www.bloomberg.com/news/articles/2019-11-19/sec-chairman-cites-fishy-letters-in-support-of-policy-change>)

⁵ See <https://www.sec.gov/about.shtml>

⁶ See <https://www.sec.gov/about.shtml>

Existing Shareholder Process is Supporting Efficient Markets

The proposed rules, which will curtail shareholders rights, runs counter to broader trends in the business and investor communities toward greater accountability to stakeholders and investor reliance on environmental, social and governance (“ESG”) performance in investment and stewardship decisions. Investors are increasingly drawn to ESG approaches, and Morningstar data shows that new flows into sustainable funds are triple those in 2018.⁷ Other research supports solid reasons for this surge in ESG investment noting that, “firms with a better ESG record than their peers produced higher three-year returns, were more likely to become high-quality stocks, were less likely to have large price declines, and were less likely to go bankrupt.”⁸

Example of shareholder proposal process adding value – Investors for Opioid Accountability

The ability of shareholder advocacy to address emerging ESG risks is well demonstrated by the work of the Investors for Opioid Accountability (“IOA”), established in July 2017 out of heightened concern that the opioid crisis impacts the economy at a systemic level and poses risks to companies in the supply chain that impact long-term shareholder value. The IOA focused on three key parts of the opioid supply chain: manufacturers, distributors, and retail pharmacies. The IOA is co-led by Mercy Investment Services (MIS) and the UAW Retiree Medical Benefits Trust (UAW Trust) and Trinity Health is an IOA member.

The IOA determined that the opioid supply chain faced business, legal, and market risks that will impact the long-term value of their stock holdings. The IOA used the current proxy process successfully to push companies to adopt clawback policies to 1) recover incentive compensation in the event of a violation of a company policy relating to noncompliance with a law or regulation that causes significant financial or reputational harm to a company, including supervisory failures, and 2) require disclosure to shareholders in the proxy statement about such recoveries. AmerisourceBergen, CVS Health, Pfizer and Teva are among the companies that reached agreement with investors who filed shareholder proposals, and adopted clawback policy provisions that include disclosure of the use of the clawback. Independent analyses have shown that clawback provisions tend to add value to the average firm.⁹

In the two years of activity, the IOA:

- Engaged with 20 companies;
- Filed 52 shareholder resolutions and proposed four through dialogue;
- Settled 26 of the 52 resolutions before going to vote and three after the vote; and
- Achieved 52 percent settlement rate.¹⁰

⁷ Leslie P. Norton, “Sustainable Funds Set to See a ‘Tsunami’ of New Capital,” *Barron’s* (Nov. 19, 2019) (http://www.barrons.com/articles/sustainable-funds-set-to-see-a-tsunami-of-new-capital-51574254801?mod=article_inline)

⁸ Robert G. Eccles & Svetlana Klimenko, “The Investor Revolution,” *Harvard Business Review*, May-June 2019 (<http://hbr.org/2019/05/the-investor-revolution>)

⁹ Tor-Erik Bakke, Hamed Mahmudi & Aazam Virani, “The Value Implications of Mandatory Clawback Provisions,” (June 28, 2018) (https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2890578)

¹⁰ Investors for Opioid Accountability, Two-Year Progress Report, at 12 (https://www.iccr.org/sites/default/files/page_attachments/ioa_two_year_summary_report.pdf)

If implemented, the proposed regulatory changes by the SEC could have negatively affected the described effectiveness of the IOA's use of the shareholder advocacy process in the following ways:

- Required significant increases in stock ownership for shares held only one year (which can affect the speed to which a shareholder can respond with action);
- Disallowed share aggregation such that investors could not have combined their holdings to meet ownership threshold;
- Required higher percentages of shares voting in support to allow the proposal to be resubmitted in subsequent years; and
- Impaired ability of proxy advisors to opine on the shareholder proposal.

Example of shareholder proposal process adding value – Eli Lilly

We have submitted a shareholder proposal in the current year to Eli Lilly requesting that its clawback policy also require disclosure of any recouped incentive compensation in the event of misconduct causing significant harm to the company. Given that the company is under multiple investigations related to insulin pricing, we believe improved disclosure is timely. Such disclosure would allow shareholders to evaluate the Compensation Committee's use of those provisions and reinforce behavioral expectations amongst Eli Lilly executives. Independent analyses have shown that clawback provisions tend to add value to the average firm.¹¹

Example of shareholder proposal process adding value – Hormel Foods

In 2016, the World Bank issued a report entitled: "Drug Resistant Infections: A Threat to Our Economic Future" which stated by 2050, global GDP and world trade could shrink between 1.1% and 3.8% ,while the impact on global animal production could lead to a decline of between 2.6 and 7.5% per year. In the United States, over 70% of medically important antibiotics are sold for livestock use.¹² As the Farm Animal Risk and Return Initiative has noted, "The integration of antimicrobial resistance into investment decision making across asset classes is essential to risk mitigation and long-term value creation."¹³

Trinity Health, as an investor in Hormel Foods, joined other Hormel shareholders to use the proxy process in 2016 to request adoption of company policy to use only antibiotics – particularly those important for human health – when animals are sick, and to disclose the policy. The shareholder proposal was withdrawn when the company agreed to develop an antibiotic stewardship program, published on the company's website. Because of the proxy process, shareholders now have more information as to how Hormel is addressing antimicrobial resistance in its supply chain. Changed corporate behavior and additional transparency by Hormel will have a long-term impact on drug resistant infections, which in turn reduces the potential damage noted in the World Bank and Farm Animal Risk and Return articles cited above. A favorable impact of this change in antibiotic use will have ripple effects on the global economy. When the economic analysis for the SEC rulemaking was completed by the SEC, it estimated \$70.6 million a year in savings for Russell 3000 companies, but it did not include broader, more significant effects associated with the value associated with shareholder proposals like the one described with Hormel.

¹¹ Tor-Erik Bakke, Hamed Mahmudi & Aazam Virani, "The Value Implications of Mandatory Clawback Provisions," (June 28, 2018) (https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2890578)

¹² See (<https://www.worldbank.org/en/news/press-release/2016/09/18/by-2050-drug-resistant-infections-could-cause-global-economic-damage-on-par-with-2008-financial-crisis>)

¹³ See (<https://www.fairr.org/article/improving-antibiotics-stewardship-in-livestock-supply-chains/>)

A similar shareholder proposal regarding the overuse of antibiotics was initially filed in 2003. That year, Hormel was successful in blocking it by filing a “no-action” letter with the SEC using the justification that their use of antibiotics was “ordinary business.” That 2003 resolution was re-worked 12 years later --- and instead of challenging it Hormel agreed to develop a policy and program. Again, another example of shareholders identifying early warning signs and using the process to bring long-term business risks to the attention of the company. In 2003, Hormel used the options in the existing process for shareholder proposals and the proposal was not included in the proxy.

Trinity Health recommends that the SEC take no action on the proposed rules. The economic assessment of the proposal fails to address the “value” associated with the shareholder advocacy process. All of the proposed changes will reduce the current effectiveness of the shareholder process. These proposed regulatory changes would neither protect investors nor promote capital formation. We encourage SEC to reject these proposals in their entirety and continue using existing rules regarding procedural requirements, resubmissions, and proxy rules.

Thank you for the opportunity to respond to this proposed rule. If you have questions on our comments, please feel free to contact me at [REDACTED] or [REDACTED].

Sincerely,



Tonya K. Wells
VP, Social Impact Investing & Community Development
Trinity Health