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February 3, 2020

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

**RE: 1. Proposed Procedural Requirements and Resubmission Thresholds Under Exchange Act Rule 14a-8 (File Number S7-23-19)
2. Amendments to Exemptions from the Proxy Rules for Proxy Voting Advice (File Number S7-22-19)**

On behalf of more than 500,000 members and supporters of Public Citizen, we offer the following comments on a pair of proposed regulations from the Securities and Exchange Commission (SEC, Agency) regarding shareholder resolutions and the recommendations institutional shareholders receive about them from professional advisory services

In brief, we believe these proposals advance the interests of corporations rather than investors. We believe they subtract from the interests of investors who wish to hold corporate management accountable to shareholder interests. We also believe some of the specific metrics in the rules are cynically crafted to benefit a few corporate interest groups, notably the U.S. Chamber of Commerce, where shareholder activism has threatened to shed light on its corporate funders.

Our cynicism finds firm footing in the remarks SEC Chair Jay Clayton delivered when he explained how he came to support these proposals.¹ Specifically, he cited the letters of seven individuals who claimed that shareholder activism undermined their interests and that proxy advisory firms required bridling. Chair Clayton did not cite any other letters, which numbered in the hundreds and which generally opposed proposals that would reduce shareholder activism.

It turns out those seven letters were fabricated. An investigation by Bloomberg shows that those letters were “the product of a misleading -- and laughably clumsy -- public relations campaign by corporate

¹ Chairman Jay Clayton. *Statement of Chairman Jay Clayton on Proposals to Enhance the Accuracy, Transparency and Effectiveness of Our Proxy Voting System*, U.S. SECURITIES AND EXCHANGE COMMISSION, (Nov. 5, 2019) <https://www.sec.gov/news/public-statement/statement-clayton-2019-11-05-open-meeting>

interests.”²In his comments during the SEC’s open meeting, Chair Clayton explained, “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.” Bloomberg then contacted these commenters: “That retired teacher? Pauline Yee said she never wrote the letter, although the signature was hers. Those military vets? It turns out they’re the brother and cousin of the chairman of the [lobby group] paid by corporate supporters of the SEC initiative. . . That retired couple? Their son-in-law runs [the lobby group].”³

The lobby group is known as 60 Plus, and is an affiliate of Main Street Investors Coalition, which is funded by the National Association of Manufacturers. 60Plus is funded by the Koch Brothers.⁴

Public Citizen wrote the SEC’s Inspector General asking for an investigation of this issue. We asked the IG to probe:

- Why did Chairman Clayton exclusively cite those letters fabricated by the industry lobby? Did this industry lobby help prepare Chairman Clayton’s statement? What communications took place between the Chairman and this lobby, including those by his staff?
- Are there any genuine letters that bolster Clayton’s position?
- Why has Chairman Clayton failed to acknowledge the preponderance of letters that oppose restrictions on shareholder resolutions? Was he made aware of these letters?⁵

Subsequently, Chair Clayton testified before the Senate Banking Committee where several senators, including Sen. Chris Van Hollen (D-Md.) took special exception to Clayton’s reliance on these fabricated letters. “What troubled me even more was you did try to present this as sort of a concern of Main Street investors when you rolled this out. You attempted to create the impression that this was something a lot of Main Street investors care about. You got duped.”⁶

Because of this issue, (as well as our substantive concerns about the rule proposals themselves), we believe this rulemaking process should be terminated at once. Chair Clayton’s stated basis for supporting these changes was based on a fabrication, which corrupts the resulting proposal. There is no shareholder demand that shareholder rights be curbed. This demand comes only from corporations who find accountability annoying.

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

³Zachary Mider and Ben Elgin, *SEC Chairman Cites Fishy Letters in Support of Policy Change*, BLOOMBERG (Nov. 19, 2019) <https://www.bloomberg.com/news/articles/2019-11-19/sec-chairman-cites-fishy-letters-in-support-of-policy-change>

⁴ Skocpol, Theda; Hertel-Fernandez, Alexander (2016). *"The Koch Network and Republican Party Extremism"*. PERSPECTIVES ON POLITICS. **14** (3): 681–699. doi:10.1017/S1537592716001122. ISSN 1537-5927.

⁵ Attached at end of this letter

⁶ Rita Raagas De Ramos, *Senators Call Out SEC’s Clayton: You Were Duped in Proxy Initiative*, FINANCIAL ADVISOR IQ, (Dec. 11, 2019) https://www.financialadvisoriq.com/c/2596973/299793/senators_call_clayton_were_duped_proxy_initiative

With that backdrop, we will now share the following analysis based on our experience with regulators who operate outside normal parameters of good faith.

Proposed Procedural Requirements and Resubmission Thresholds Under Exchange Act Rule 14a-8 (File Number S7-23-19)

Background

Shareholder proposals provided under SEC Rule 14a serve as one of the handful of tools for corporate accountability. To hold corporations accountable for their actions, Congress can approve laws, such as those laws preventing pollution, or the manufacture of unsafe products. Government and citizens can use those laws to sue violators in courts. Auditors form another path for accountability, as they to help validate the integrity of a corporations financial reporting, and whistleblowers are yet another key accountability source, exposing misconduct from the front lines.

But a final form of accountability is undoubtedly shareholders, who play a key role through their use of shareholder resolutions as the owners of the company. Investors have chosen to become owners presumably because they believe their investment will pay returns, that they support the product or services the corporate produces, and that they endorse management. Filing a shareholder resolution, while remaining an owner, means the resolution proponent hopes to improve a circumstance he or she already largely endorses.

When this system of shareholder rights works well, corporate managers often engage in a dialogue with the shareholder proponent. This discussion might lead to an accommodation where the management agrees to some reform, such as a study on the subject at issue, or a pledge to implement a reform over time. Public Citizen agents as investors have filed shareholder resolutions and we have enjoyed fruitful dialogue on many occasions.

Shareholder resolutions promote reform. At the beginning of the millennium, more than 60 percent of S&P 500 companies maintained a board structure whereby directors served staggered three-year terms, meaning shareholders could only elect a third of the board at a time. Today, less than 20 percent of S&P 500 companies have classified boards in large part due to the submission of shareholder proposals urging annual director elections.⁷

Shareholder resolution advocates stand on the vanguard of environmental reporting. These resolutions have been filed for decades, and now win sizeable votes. Many corporations now openly embrace these reforms.

Following a shareholder resolution, Wells Fargo adopted a compensation claw back policy whereby payments to a senior executive could be clawed back where it was found that the manager had engaged in

⁷ Lucian Bebchuk et. al, *Towards the Declassification of S&P 500 Boards*, HARVARD BUSINESS LAW REVIEW, Vol. 3, No. 1, pp.157-184 (2013) https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2400652

misconduct. Because of this, more Wells Fargo clawed back more than \$50 million from executives associated with a fake account scandal. That's clear, measurable value to shareholders.^{8 9}

As of 2019, 316 companies in the influential S&P 500 reported to the CPA- Zicklin Index that they disclose some or all their election-related spending or that they prohibit such spending.¹⁰

Additionally, investors have filed nearly 400 shareholder proposals on lobbying disclosure since 2011, which have resulted in more than 75 agreements that provide greater transparency around corporate lobbying activity.¹¹

Finally, the captains of industry agree with the thrust of many shareholder resolutions, that firms should be better run, enlightened, sensitive to the many constituents a corporation touches. In 2019, the 181 CEOs who are members of the Business Roundtable issued a statement declaring that companies need to address a range of stakeholders needs and not just the narrow financial interests of stockholders, understanding these issues often have a distinct impact on the bottom line.¹² To those business advocates who may claim that shareholder advocates distract from the bottom line, read your own declarations.

While the motivation to file a shareholder resolution may seem relatively friendly, as compared to other tools for corporate accountability such as litigation, it is cumbersome to file one. A proponent must hold \$2000 worth of a firm's stock continuously for year. If the stock price dips even one day to a level during the previous year below the \$2,000, then the clock begins anew on how long the shareholder must retain that level of stock. Once so qualified, the shareholder is restricted in what can be sought in a resolution. It cannot relate to ordinary business, such as what products or services the corporate offers. It cannot relate to a board candidate. The resolutions largely must be advisory; that is, they cannot demand that the board implement a certain policy, only urge such implementation. A shareholder must present the resolution in person at the annual meeting, and must finance his or her own travel, lodging and food. Even if a resolution is approved, the board need do nothing.

In the case where the board does not adopt a resolution, even one that receives a majority vote, a shareholder may resubmit the resolution. But the resolution must meet a certain minimum vote each year,

⁸ Broc Romanek, *The Wells Fargo Clawback: Innovative - & Wave of the Future?* THE CORPORATE COUNSEL, (SEP. 29, 2016) <https://www.thecorporatecounsel.net/blog/2016/09/the-wells-fargo-clawback-innovative-wave-of-the-future.html>

⁹ Commissioner Jackson submitted an analysis showing important shareholder returns associated with shareholder resolution activism. Office Commissioner Robert J. Jackson, Jr., *Data Appendix on Proposals to Restrict Shareholder Voting*, U.S. SECURITIES AND EXCHANGE COMMISSION, (Nov. 7, 2019) <https://www.sec.gov/news/statements/2019/jackson-data-appendix-on-proposals-to-restrict-shareholder-voting.pdf>

¹⁰ *2019 CPA-Zicklin Index of Corporate Political Disclosure and Accountability*, CENTER FOR POLITICAL ACCOUNTABILITY, (2019) <https://politicalaccountability.net/hifi/files/2019-CPA-Zicklin-Index-Report.pdf>

¹¹ Institutional Investors Continue to Press Companies for Disclosure in Lobbying, AFSCME (Feb 27, 2019) <https://www.afscme.org/news/press-room/press-releases/2019/institutional-investors-continue-to-press-companies-for-disclosure-of-lobbying-in-2019>

¹² *Business Roundtable Redefines the Purpose of a Corporation to Promote 'An Economy That Serves All Americans'*, BUSINESS ROUNDTABLE; CORPORATE GOVERNANCE, (Aug. 19, 2019) <https://www.businessroundtable.org/business-roundtable-redefines-the-purpose-of-a-corporation-to-promote-an-economy-that-serves-all-americans>

a level that rises with each submission. Resubmission is barred if the matter was voted on at least once in the last three years and did not receive: 3 percent of the vote if previously voted on once; 6 percent of the vote if previously voted on twice; or 10 percent of the vote if previously voted on three or more times. can take many years for consensus to emerge in the marketplace about a governance reform. For example, shareholder support for proposals urging annual director elections took decades to reach majority vote status.¹³

In short, it's currently difficult to file a shareholder resolution, difficult to fashion a resolution that achieves what's important to shareholders, difficult to overcome the company's vote solicitors and even difficult to secure reform after a winning a majority

Because of these requirements, very few shareholders submit resolutions. There are millions of Americans who own shares in public companies, roughly half of all American households (either directly or through mutual funds).¹⁴ There are more than 3,000 publicly traded companies in the United States¹⁵, yet only one in six receive any shareholder resolution in a given year.¹⁶ Less than 50 individuals file resolutions in a given year.

The SEC should make shareholder resolutions more accessible. They should reduce the qualifications for submitting them. They should widen the subject areas upon which shareholder resolutions may be filed.

Instead, the SEC commission voted 3-2 to sharply restrict this arena.

Submission threshold

Currently, shareholders must hold \$2,000 worth of a company, held continuously for one year, before the owner can advance a shareholder proposal. A person cannot simply hold one share purchased one day and file a resolution the next. This threshold and holding period ostensibly eliminate nuisance proposals from those with transitory concerns about a company. The \$2,000 threshold also means the investor must hold a reasonable number of shares. Since many Americans own no stocks, and many have little savings whatsoever, this threshold already discriminates against people of modest means. At the same time, a \$2,000 threshold also opens the door for relatively small shareholders to enter the arena of corporate accountability.

The SEC proposes to increase this threshold to \$25,000. That's a breathtaking 1000 percent increase with no foundation in policy. If the threshold were tied to inflation from when the \$2,000 floor was set, the level would be no more than about \$4,000. This new level means that only shareholders of substantial

¹³ Noam Noked, *Activism and the Move toward Annual Director Elections*, HARVARD LAW SCHOOL FORUM ON CORPORATE GOVERNANCE AND FINANCIAL REGULATION, (Jan. 15, 2012) <https://corpgov.law.harvard.edu/2012/01/15/activism-and-the-move-toward-annual-director-elections/>.

¹⁴ Rob Wile, *The Richest 10% of Americans Now Own 84% of All Stocks*, MONEY: INVESTING: STOCK MARKET, (Dec. 19, 2017) (<https://money.com/stock-ownership-10-percent-richest/>)

¹⁵ Jason M. Thomas, *Where Have All the Public Companies Gone?*, WALL STREET JOURNAL OPINION, (Nov. 16, 2017) <https://www.wsj.com/articles/where-have-all-the-public-companies-gone-1510869125>

¹⁶ Office Commissioner Robert J. Jackson, Jr., *Data Appendix on Proposals to Restrict Shareholder Voting*, U.S. SECURITIES AND EXCHANGE COMMISSION, (Nov. 7, 2019) <https://www.sec.gov/news/statements/2019/jackson-data-appendix-on-proposals-to-restrict-shareholder-voting.pdf>

means can advance proposals. The average retail investor portfolio is \$27,700. Further, it would be unlikely for a person with a total of \$27,700 in her portfolio to invest \$25,000 of this in a single stock.

The SEC does permit shareholders who hold \$2,000 worth of a company's stock held for three years continuously to file a resolution. That means a small shareholder in Boeing, concerned that governance failings may have contributed to the 737 MAX disasters, would need to wait until the year 2022 to advance a reform proposal. It means a shareholder in Wells Fargo concerned that management compensation structures led to sales quotas that sparked millions of fake accounts for customers would need to wait three years to respond with a reform proposal. It means that small shareholders of pharmaceutical makers newly informed that the firm funded fraudulent science would need to wait years before advancing a resolution.

We oppose these new thresholds. The SEC should reduce threshold and holding periods. There is no evidence that the current requirements lead to abuse of the system.

Resubmission thresholds.

Once a shareholder qualifies and a resolution is voted on, if the company fails to implement the policy, the proponent may resubmit the following year. However, current rules require that the shareholder receive a certain, escalating level of support each year. If the proponent fails to win 3 percent support in the first year, and 6 percent the second time, and 10 percent the third time, the proponent may not resubmit this proposal.

These figures make some sense given the structure and nature of voters. Most shares are held by institutional shareholders, including pension funds, mutual funds, and other asset managers. Most mutual funds reflexively vote as management advises. We believe that this stems from a conflict of interest, as many institutional investors, such as mutual funds, engage in business with the very companies whose shares they're voting on for their retail customers.^{17 18} Mutual funds do not poll their customers on their views on common issues that come up in proposals, such as political spending, environmental reporting, executive compensation, or board governance. One reason that CEO pay has escalated from 25 times that of the median paid employee in 1970, to 300 times today, is that institutional investors have little incentive to bridle the pay of managers who may retain them to manage the firm's own retirement accounts.

What this means in voting, then, is that shares that a mutual fund customer might want cast in support of a measure, such as political spending disclosure, are voted against this measure. In the end, winning 10 percent of the vote constitutes an impressive result. Winning greater than that, arguably, is winning a majority of what could fairly be called "independent" voters.

In addition to these conflicts, many issues require an educational incubation period. Explained Commissioner Robert Jackson, 'Because investor interest in a subject takes time to coalesce, the Commission has long recognized that short-run voting results are not the only factor in determining a

¹⁷ Jackie Cook, John Keenan and Beth Young, *Tipping the Balance? Large Mutual Funds' Influence Upon Executive Compensation*, THE AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES, AFL-CIO, (2011) <https://www.afscme.org/news/press-room/press-releases/2011/body/2011-AFSCME-Mutual-Fund-Report.pdf>

¹⁸ David McLaughlin and Annie Massa, *The Hidden Dangers of the Great Index Fund Takeover*, BLOOMBERG BUSINESSWEEK, (Jan. 9, 2020) <https://www.bloomberg.com/news/features/2020-01-09/the-hidden-dangers-of-the-great-index-fund-takeover>

proposal's merits"¹⁹ Noted above is the incubation period for annual director election resolution, which required decades of proposals and a slow shift via private ordering before this governance structure became the accepted norm.

Even as shareholders attempt to educate investors, they must sail into the headwinds of management-directed proxy campaigns. Management can deploy millions of shareholder dollars to mail, call and meet with large investors in the hopes of winning their support for management's position. Shareholders cannot spend shareholder money in support of their proposal; only their own personal funds.

Consider the case of a shareholder resolution filed for the 2013 annual meeting sponsored by AFSCME, Hermes Fund Managers, New York City Pension Funds and Connecticut Retirement Plans and Trust Funds to provide that JP Morgan maintain a chair of the board who is not also the CEO of the firm. As the proponents argued, the board of directors of any firm are elected by shareholders to watch over management. The most important of these directors is the chair. The most important manager to oversee is the chair. It is an inherent conflict if that chair is also the very manager he oversees. A chair independent of the CEO is good corporate governance, endorsed not only by shareholder groups, but also by federal bank regulators. These institutional investors had advanced the same advisory resolution in 2012, and secured 40 percent of the vote

In response, JP Morgan spent a reported \$5 million in a campaign to defend the status quo at JP Morgan, where Jamie Dimon serves as both CEO and chair.²⁰ The resolution won 32.2 percent of the vote following this full-court press.²¹

The SEC proposes that resubmission thresholds be raised from 3 percent, 6 percent, 10 percent; to 5 percent, 15 percent and 25 percent respectively.

How did the SEC settle on these thresholds? The SEC explains that the new thresholds are "intended to provide a better indicator of proposals that are more likely to ultimately obtain majority support than the current thresholds"²² The SEC provides some data that describes the history of resubmitted proposals over time, and notes that under the proposed rubric, a certain percentage would no longer qualify. But the SEC provides no justification other than it's stated "belief" that it is culling those unlikely to win a majority. We object to such reasoning. It is a belief and not a clear policy principle grounded in data. It also seems to assume that winning a majority results in reform, when, as noted above, company management can and does often ignore advisory resolutions even if successful. And most importantly, it ignores the uneven playing field for voting, where management can deploy shareholder money to fight for votes and when

¹⁹ Commissioner Robert J. Jackson, Jr., *Statement on Proposals to Restrict Shareholder Voting*, U.S. SECURITIES AND EXCHANGE COMMISSION, (Nov. 5, 2019) <https://www.sec.gov/news/public-statement/statement-jackson-2019-11-05-open-meeting>

²⁰ Bartlett Naylor and Taylor Lincoln, *Looking for Conflict in All the Wrong Places*, CITIZEN VOX, (June 4, 2013) <https://citizenvox.org/2013/06/04/looking-for-conflict-in-all-the-wrong-places/>

²¹ Jessica Silver-Greenberg and Susan Craig, *Strong Lobbying Helps Dimon Thwart a Shareholder Challenge*, THE NEW YORK TIMES, (May 21, 2013) <https://dealbook.nytimes.com/2013/05/21/jpmorgan-seen-to-defeat-effort-to-split-top-2-jobs-at-bank/>

²² *Procedural Requirements and Resubmission Thresholds Under Exchange Act Rule 14a-8*, U.S. SECURITIES AND EXCHANGE COMMISSION: FEDERAL REGISTER, (Dec. 4, 2019) <https://www.govinfo.gov/content/pkg/FR-2019-12-04/pdf/2019-24476.pdf>

mutual funds are conflicted. In other words, the SEC fails to recognize that a 10 percent vote represents a sizeable share of support.

Analysis of which shareholder proposals this new resubmission threshold most threatens offers another theory of why the SEC chose this level. This level would have blocked 614 shareholder resolution from resubmission since 2010, according to one analysis, a decline of about 30 percent.²³ Of these, the resolution most damaged involves the ask for corporate political disclosure. Of the 614 nullified resubmissions, political transparency resolutions represent 183 of these, more than triple the next one most damaged, which involves human rights reporting. A political spending disclosure resolution asks firms to detail all their spending. This includes not only that which is spent on lobbyists and in campaign contributions, but also spending on surrogates, such as the U.S. Chamber of Commerce. The position of the Chamber on this issue is clear: they argue loudly and repeatedly that shareholder resolutions waste management's time. They have produced letters,²⁴ what they call studies²⁵ and surveys and in testimony calling on policy makers to gut shareholder resolutions and related corporate accountability tools.²⁶ In fact, this very rulemaking responds to a petition filed by the Chamber.²⁷

We cannot discard the theory that these resubmission thresholds are chosen precisely to maximize damage to political spending resolutions. These resolutions ask companies for a greater accounting, including contributions they may make to the U.S. Chamber of Commerce. The Chamber claims to lobby on behalf of small business, but its efforts in Congress more often address the concerns of coal companies, mega-banks and other firms that may wish to speak in disguise through a surrogate such as the Chamber. Public Citizen has published numerous reports documenting concerns about the Chamber shielding themselves in their veneer of small business advocates only to promote the postures of the largest businesses, often as a front for unpopular policy positions.²⁸ Naturally, the Chamber hopes to keep its funding sources secret. Companies that lobby through the Chamber do so because they seek a policy outcome that their known sponsorship thereof would harm the chance of approval. Sponsorship by the Chamber, the self-proclaimed champion of small business, raises the chance for securing that policy

²³ Esther Whieldon, *SEC Proposed Rule Would Have Blocked 614 ESG Resolutions since 2010, Data Shows*, S&P GLOBAL MARKET INTELLIGENCE, (Jan. 6, 2020) <https://www.spglobal.com/marketintelligence/en/news-insights/trending/dgOXuoNIWkBNX2hmo3bHlg2>

²⁴ Chairman Jay Clayton, *Coalition Letter Sent to the SEC in Follow Up to the Roundtable on the Proxy Process*, U.S CHAMBER OF COMMERCE, (Jan. 16, 2020) <https://www.uschamber.com/letters-congress/coalition-letter-sent-the-sec-follow-the-roundtable-the-proxy-process>

²⁵ *Raising the SEC's Resubmission Thresholds: "Zombie" Proposals and the Need To Modernize an Outdated System*, CENTER FOR CAPITAL MARKETS: COMPETITIVENESS, (2018) https://www.centerforcapitalmarkets.com/wp-content/uploads/2018/10/CCMC_ZombieProposal_Digital.pdf

²⁶ *U.S. Chamber: Proxy Advisory Industry and Shareholder Proposal System Need Reform*, U.S CHAMBER OF COMMERCE, (October 9, 2018) <https://www.uschamber.com/press-release/us-chamber-proxy-advisory-industry-and-shareholder-proposal-system-need-reform>

²⁷ Brandon J. Rees, *Letter to Sec. Vanessa A. Countryman at the Securities and Exchange Commission*, THE AMERICAN FEDERATION OF LABOR AND CONGRESS OF INDUSTRIAL ORGANIZATIONS, AFL-CIO, (Nov. 27, 2019) <https://www.sec.gov/comments/s7-22-19/s72219-6487251-199508.pdf>

²⁸ *New Information About U.S Chamber of Commerce Funding Shows Support From Dark Money Groups: Ultra-Rich*, PUBLIC CITIZEN, (Sep. 13, 2017) <https://www.citizen.org/news/new-information-about-u-s-chamber-of-commerce-funding-shows-support-from-dark-money-groups-ultra-rich/>

change. If it becomes clear that the Chamber supports this policy change not for small business, but because of funding from a certain corporation, then that jeopardizes the entire reason for funding the Chamber in the first place. Naturally, the Chamber supports the proposal to reduce shareholder resolutions, especially on the issue of its own funding sources.

Momentum requirement

On top of these new, onerous resubmission thresholds, the SEC proposes a momentum penalty. Specifically, even if a resolution surmounts the 25 percent threshold, it can be omitted in a year where its results fell 10 percent short of the previous year. That means an advisory resolution that gains 90 percent support one year but then 80 percent the next year will be excluded from consideration in a third year.

A resolution that wins 30 percent one year and then 26 percent the next year would also be excluded if filed a third time. This “momentum” provision would also have blocked proponents resubmitting the resolution at JP Morgan to provide for an independent board chair, as the JP Morgan campaign reduced the vote.

To restate, the SEC proposes to increase the submission threshold by 1,000 percent, from \$2,000 to \$25,000. It proposes to double the resubmission thresholds. Each year, an investor must show more than a 100 percent gain in support. But even if an investor surpasses the highest resubmission threshold, even if the proposal wins a majority vote, if a proposal suffers a 10 percent decline in support, it will be eliminated. The SEC clearly stacks the deck against proponents.

Amendments to Exemptions from the Proxy Rules for Proxy Voting Advice (File Number S7-22-19)

As discussed above, the field in shareholder resolutions unevenly advantages corporations. The default position of institutional investors favors management. Management uses shareholder money to campaign against shareholder resolutions. And typically, proxy advisory firms recommend management’s position, and against shareholder resolutions.

Occasionally, these advisory services recommend a vote in favor of the shareholder. That apparently doesn’t sit well with some management. Through the industry surrogate Chamber of Commerce, companies have argued that proxy advisory services need regulation, an amusing irony given that the Chamber reflexively celebrates deregulation. The Chamber has promoted regulating proxy advisory services in Congress, and now satisfies its wish with this proposal.

Under the proposal, if the advisory firm recommends a vote against management’s position, the analysis must be forwarded to management first; further, any management objection to this analysis must be included in the final recommendation.

This will naturally chill anti-management recommendations, since advisory firms can bypass this review simply by recommending management’s position.

Such forced review runs contrary to basic tenants of free speech, including the hurly burly of discussions on Wall Street. If the SEC really forces review on arcane subjects such as reducing the level of votes required to call a special meeting (which advisory firms tend to support), then it would make sense that it would force review of the comments of the average business television pundit. Such comments often do lead to changes in the stock price. Yet no one proposes to censure this commentary, and the SEC should be embarrassed to propose it for proxy voting advise.

We recognize that proxy advisory services may bring conflicts to their clients. In addition to offering advice to institutional voters, they may also sell advice to the corporations where the institution is voting. Such conflicts should be disclosed. Ideally, a proxy advisory firm would not work both sides of the street. We welcome the SEC’s disclosure requirement in this proposed rule.

Serving Corporate Interests

As noted in the beginning, corporate interests annoyed by accountability generated this effort to reduce accountability. Since that flies in the face of shareholder interests, which are interests that Congress charges the SEC to uphold, these corporate interests have attempted to generate testimonials from average investors. These attacks have included faux groups, as noted at the outset of this letter. One of these was the so-called Main Street Investors Coalition.²⁹ After pilloried as a false front, the group’s website closed. Yet new false fronts are emerging. Recently, a Republican operative began soliciting comment letters on this rulemaking claiming that it’s aimed at stopping left wing champions of illegal immigrants and abortion.³⁰ This video features Holly Turner, who identifies herself as an ordinary citizen. Nowhere does she acknowledge that she’s a former Trump administration official³¹ who served at the U.S. Small Business Administration. Turner now works at Stampede Consulting, which claims to run “Award-winning grassroots campaign.”^{32 33} The firm describes Ms. Turner as “always willing to speak truth and stand firm against the Left.”³⁴

Again, the SEC docket on this rulemaking already features letters claiming to be from Main Street investors who oppose corporate accountability.

²⁹ Nell Minow, *The Main Street Investors Coalition is an Industry-Funded Effort to Cut Off Shareholder Oversight*, HARVARD LAW SCHOOL FORUM ON CORPORATE GOVERNANCE AND FINANCIAL REGULATION, (June 14, 2018) <https://corpgov.law.harvard.edu/2018/06/14/the-main-street-investors-coalition-is-an-industry-funded-effort-to-cut-off-shareholder-oversight/>

³⁰ *Republican Operative Holly Turner Posts Appallingly Deceptive Video in Support of Anti-Shareholder Proposal from the SEC*, VALUE EDGE ADVISORS, (Jan. 10, 2020) <https://valueedgeadvisors.com/2020/01/10/republican-operative-holly-turner-posts-appallingly-deceptive-video-in-support-of-anti-shareholder-proposal-from-the-sec/>

³¹ *Republican Operative Holly Turner Posts Appallingly Deceptive Video in Support of Anti-Shareholder Proposal from the SEC*, VALUE EDGE ADVISORS, (Jan. 10, 2020) <https://valueedgeadvisors.com/2020/01/10/republican-operative-holly-turner-posts-appallingly-deceptive-video-in-support-of-anti-shareholder-proposal-from-the-sec/>

³² *Holly Turner*, AMERICAN ASSOCIATION OF POLITICAL CONSULTANTS, (2019) <https://theaapc.org/awards/40-under-40/inaugural-class-of-2015/holly-turner-2/>

³³ The website explains: Once we have a signed contract, our team will meet with yours to discuss the project goals and establish “what success looks like” for you.

We will then launch Phase 1, during which we will deploy a team to ascertain the lay of the land and actually test messaging, targeting, conversation + conversation rates so that we can measure what it’ll take to operationalize the mission.

Our team will return with a plan to achieve your goals and once discussed and approved, we will guarantee performance **or your money back**.

³⁴ *Our Team*, STAMPEDE CONSULTING, (2019) <http://stampedeconsulting.com/our-team/>

In summary, we protest this rulemaking as a patent effort by corporate interest to avoid accountability, which will clearly disenfranchise shareholders. In addition, we believe it will damage the American economy as rogue managers will feel more at liberty to operate responsibly.

For questions, please contact Bartlett Naylor at [REDACTED], or Rachel Curley at [REDACTED].

Sincerely,

Public Citizen.