



The Honorable Jay Clayton, Chairman

c/o Securities and Exchange Commission (SEC)
100 F Street, NE
Washington, DC 20549
United States

By email: rule-comments@sec.gov

4 December 2019

Re: SEC proposed amendments to Exchange Act Rule 14a-8

Dear Commissioner Clayton,

The International Corporate Governance Network (ICGN) is a global investor-led body based in London whose mission is to promote effective standards of corporate governance and investor stewardship to advance efficient markets and sustainable economies world-wide.

ICGN was established in 1995, and today our network of governance professionals span over 45 countries and includes investors representing assets under management in excess of US\$34 trillion. As such, ICGN offers an important investor perspective on corporate governance to help inform public policy development and the encouragement of good practices by capital market participants.¹

Our policy positions are guided by the ICGN Global Governance Principles² and Global Stewardship Principles³, both of which have been developed in consultation with ICGN Members and as part of a wider peer review. One of ICGN's policy priorities relates to shareholder responsibilities, including those related to the exercise of shareholder rights such as proxy voting.

With this letter we would like to express our views with regard to the proposed amendments to Exchange Act Rule 14a-8 relating to shareholder proposals.

ICGN members strongly believe that shareholder proposals and the rules enabling them have been critical in strengthening corporate governance and corporate sustainability performance in the US, and the proposed changes will have a detrimental effect on both. We also note that the number of shareholder proposals in the US has remained consistent over years while the level of support for shareholder proposals has increased, demonstrating growing recognition of the importance of the matters raised by such proposals among a broader spectrum of investors. We are not aware of any 'abuses' of the existing rules by shareholders.

¹ For more information on ICGN, please visit www.icgn.org

² <https://www.icgn.org/policy/global-governance-principles>

³ <https://www.icgn.org/sites/default/files/ICGNGlobalStewardshipPrinciples.pdf>



Increase in submission thresholds

ICGN believes that the increase(s) to the thresholds to submit a shareholder proposal would have a significant negative impact on small shareholders, particularly as they would no longer be able to aggregate their holdings. In the experience of our members, the quality and relevance of a proposal does not correlate with the size of the proponent's holdings, or with the length of the period of holding. We note that many proposals seeking positive changes to governance structures of US companies (e.g. requiring an independent chair, or declassifying a staggered board) and shareholder rights (e.g. establishing a right to call a shareholder meeting or nominate a director) have been filed by small shareholders but supported by large institutional investors, gaining significant support at shareholder meetings and eventually resulting in improvements of governance profiles and mitigation of governance risks at major US corporations. It is, therefore, ICGN's view that the proposed increases in submission thresholds would have a negative impact on both shareholder rights and corporate governance of US companies.

Using a representative for the purpose of submitting a shareholder proposal

ICGN is concerned that the proposals concerning the use of a representative for the purpose of submitting a shareholder proposal are too vague, and may be interpreted as applying to all fiduciaries of assets (e.g. an institutional investor managing money and providing asset stewardship for multiple clients). We strongly encourage the SEC to clarify what a representative means and what kind of assurance will be required.

Limitation on ability to file multiple proposals

ICGN also believes that the limitation on the number of proposals each shareholder can submit to one proposal per shareholder meeting would further reduce shareholder ability to draw the attention of companies, corporate boards and other shareholders to important issues and risks facing the businesses they invest in. For example, a shareholder (large or small) with concerns over corporate governance, environmental or social risks and practices at the same company would have to make difficult choices, thus hindering the timely consideration of relevant risks and issues at the company by its management and other shareholders.

In addition, the application of the one-proposal rule effectively means that a representative would not be permitted to submit more than one proposal to be considered at the same meeting, even if the representative would be submitting each proposal on behalf of different shareholders. In our view, this can seriously undermine fiduciary responsibilities of representatives, where such apply (please see our comment above).

Requirement for a discussion between the shareholder-proponent and the company

ICGN agrees that shareholder-proponents should be available to discuss submitted proposals with the company. ICGN's institutional investor members are open to a dialogue with their investee companies and typically would not file a shareholder proposal without seeking such a dialogue in the first place. In fact, many shareholder proposals are a direct result of the unwillingness of companies to engage in dialogue on pertinent governance, environmental and social issues and are filed as a last resort to draw the Board's and management's attention to these issues.

We believe, however, that the proposals need to be re-drafted to prevent inappropriate no-action challenges from companies. In particular, it is not clear how many calendar slots the



shareholder-proponent has to offer the company to comply with the rule, and what happens should these prove inconvenient to the company. Furthermore, we believe that a similar requirement for shareholder engagement should be introduced for companies, and that companies should not be permitted to submit no-action requests to the SEC unless they can demonstrate that they have made credible efforts to engage with the proponent, in good faith.

Resubmission thresholds

ICGN is concerned that the proposed higher approval thresholds for resubmitting the same (or substantially the same) proposal in subsequent years will lead to the exclusion of a meaningful number of shareholder proposals (between 14% and 27% by the SEC's own estimates).

We note that shareholder proposals seeking to address emerging risks (e.g. environmental and social risks, such as climate change or human rights) are more likely to need time to build understanding and support among a broad shareholder base. There are many examples of companies acting upon matters raised in the shareholder proposal after observing increasing shareholder support over a number of years. We believe that the current resubmission thresholds of 3%, 6% and 10% are conducive to constructive engagement between companies and their shareholders, and any increase would be counterproductive for shareholder engagement and better long-term management of emerging risks.

The proposed "momentum requirement" would exacerbate the negative impact outlined above. A support of 25% and above is very significant given dispersed shareholder base of many US companies, and should send a strong signal to the board that a large proportion of shareholder base is concerned about the issues raised in the proposal-- and expects the board to take an appropriate action. Given the non-binding nature of shareholder proposals under rule 14a-8, it is not the majority support, but the strength of the signal that matters. From a shareholder perspective, all proposals receiving what can reasonably be considered significant support are worth repeated consideration.

The proposals would also be very problematic at companies with dual class shares and high concentration of voting rights in the hands of a controlling owner. While minority shareholder proposals can gain greater support in consecutive years (e.g. a recurring proposal at Alphabet to eliminate the dual class structure), they may never reach the proposed higher thresholds due entirely to the voting power of insiders with super-voting rights. Even with a loud message from minority shareholders, the higher resubmission threshold could allow the company to exclude such proposals thus reducing the pressure on the board and management to improve corporate governance standards and enhance minority shareholder rights. This could become even more pronounced with the "momentum requirement" that would allow exclusion for a small drop in support from one year to the next. Therefore, should resubmission thresholds be raised, ICGN members would like to see insider shares and any shares with differential voting rights not available to independent shareholders to be excluded from the calculation. Only 'independent' shares should be counted in meeting the resubmission thresholds to prevent controlled companies from "immunising" themselves from shareholder proposals.

Investor members of ICGN are mostly global investors based in different markets all over the world. From an international perspective, it is undeniable that US companies face the largest number of shareholder proposals overall, which cannot be explained simply by the size of the US market, the number of listed companies, and reasonably low thresholds for submitting shareholder proposals. In fact, we note that the thresholds for submitting shareholder proposals in some markets are much lower (as an example, a holder of one share can put a



proposal to the shareholder meeting agenda in Sweden, and it will be carried on the company's ballot), but this does not result in a high number of shareholder proposals or high associated burden for companies.

The key difference between the US and other markets may lie in the willingness of listed companies to engage in a constructive and meaningful dialogue with their shareholders, large and small, and be open to review corporate practices and disclosures related to issues raised during shareholder engagements.

Regrettably, we still have many cases in the US where companies are reluctant to engage, and filing a shareholder proposal is seen as the only way of starting a discussion. ICGN members believe that should US companies be more open to greater transparency and a dialogue/engagement with their investors on a broad range of issues, including corporate governance, environmental and social considerations, there would be less need for filing shareholder proposals.

We hope our comments are useful for your deliberations. Should you wish to discuss this matter further, please contact me or George Dallas, ICGN's Policy Director, by email at

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Yours faithfully,

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