December 17, 2019

Hon. Jay Clayton, Chairman
U.S. Securities and Exchange Commission
100 F Street, NE Washington, D.C. 20549
United States of America

Re: File No. S7-23-19: Procedural Requirements and Resubmission Thresholds under Exchange Act Rule 14a-8

Dear Chairman Clayton,

I am a so-called "small investor" writing in regards to the proposed rule amendments to the SEC shareholder proposal rule, 14a-8, which you currently have out for comment. I have never made a shareholder proposal myself but have reviewed your proposed changes with great interest.

The more I've learned of these changes the more I'm mystified by the proposal. The stated purpose of these rules is to strike an appropriate balance between the ability of shareholders to make proposals and the burdens of corporations to include such proposals. On learning that the rule change increases the thresholds for proposal eligibility, I expected the data to tell a story of proposal abuse that needed reining in.

Digging into the data, I found that the case seems to be rather the opposite. Based on the analysis *in the amendment proposal itself*, the number of shareholder proposals in the last twenty years is shown to have no statistical trend overall, while average proposals received per company are low and have decreased across the board since 2004[1]. In this same time average voting support has either remained stable or shown increases in all categories. Finally, there is a significant downward trend in the number of individual proponents[2] making submissions. The proposal includes additional analysis about a variety of subcategories of proposal or proposer type increasing or decreasing[3], but the above facts are the essentials that frame this story.

And this is a story that does seem to merit change; in balancing the burdens of proposals with the ability to make proposals, fewer individuals making proposals[4] should raise concern that this process is too difficult, and thresholds need to be lowered. At the same time, companies receiving fewer proposals on average can give us confidence that there is leeway for a lowering of the standards without undue additional burden on companies.

In light of this, the proposed rule changes seem like a fundamental misreading of the data in the proposal itself, representing a solution to a problem that doesn't exist while exacerbating one that does.

[1] Fewer than 2/year for Fortune 500 companies, 0.28 in 2018 for Russell 3000 companies, and decreasing in both populations as noted on Proposal page 74 – Proposal available at https://www.sec.gov/rules/proposed/2019/34-87458.pdf

[2] It has been noted in both the proposal and the related roundtable discussions that the proposal approach is not the primary tool of institutional investors. For them it is a tool of last resort, as they have the clout to start

I've broken my subsequent comments into hyperlinked categories:

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Repeat and "Zombie" Proposals

The amendments proposal evaluated historical shareholder proposals based on their support level, particularly on whether they achieved majority support. The roundtable meeting on this topic included discussions of so-called "zombie" proposals that linger for years or decades without dying. In both cases the implied view was that proposals are only useful when they achieve high levels of support and/or are implemented.

This assumption is faulty, or at the very least misses part of the value of repeat proposals, including those that never achieve a majority[5]. As Adam Kanzer noted in a 2017 article on this topic, shareholder proposals are "the only mechanism that provides companies with insight into the concerns of its entire shareholder base, without committing the company to action…consultants charge companies hundreds of thousands of dollars for the kind of detailed guidance on policy development and public reporting

discussions with the companies without needing proposals (referred to as an "engagement first" approach by Blackrock representatives). It is thus individual investors that are primarily impacted by this rule, and it is their participation that should be most carefully weighed against the costs of proposals.

[3] In particular, there is a long discussion of how fewer proposals are receiving majority support. Refer to the later section on *Repeat and "Zombie" Proposals* for a discussion of this. See also footnote 4:

[4] It is also noted that these individuals are, on average, making more proposals. Refer to the later section on *Limit of Proposal Count, Representative Usage, Share Aggregation* for a discussion of this.

[5] In addition to the discussion of the fault in this logic here, note the additional discussion of problems with evaluating proposals via their support levels in the section on *Additional Concerns about Shareholder Voting*

that is provided free of charge by shareholder proponents due to [their] long-term interest in the company."[6]

Similarly, for an individual investor such proposals are the only mechanism by which we can see the perspectives of other shareholders and their evaluation of the degree to which an issue merits deeper consideration now. There are myriad issues that can seem potentially relevant for consideration, and evaluating when a board is missing an important one can be difficult. Having the broader shareholder base affirm the view of a company is thus useful information for shareholders. This is particularly true on topics that seem likely to merit a change of some sort in the future; in such cases a low support level serves as validation for shareholders and the board that even if this issue is relevant, it is not so in a way that currently merits action. For this purpose, a 10% support result on a proposal might be every bit as useful information as 90%.

This argues strongly against raising the standards for repeat proposals, which should stay where they are or might even merit lowering. The current rules limit proposals to those which concern at least one in ten shareholders; this seems perhaps a bit high but is still a reasonable threshold for exclusion.

The proposed amended rules introduce the possibility that proposals with 20% support (or higher if they drop 10%) could be excluded. Does anyone truly believe that excluding concerns shared by one in five, or more, shareholders fairly represents shareholder interests?

[6] The Dangerous "Promise of Market Reform": No Shareholder Proposals, Adam M. Kanzer, Domini Impact Investments LLC, https://corpgov.law.harvard.edu/2017/06/15/the-dangerous-promise-of-market-reform-no-shareholder-proposals/

Social/Environmental Proposals and their Value

Often seen as related to the topic of "zombie" proposals, participants in the roundtable discussion decried the use of proposals to advocate social change[7] in particular. To some degree I share this frustration; there are a percentage of proposals that appear to be thinly veiled efforts to promote a political or social agenda without any real concern for long-term company value.

At the same time, social/environmental proposals can be one of the most effective ways for exogenous factors to be brought to the attention of companies; they serve as a form of early warning system. In the era of internet outrage, it is profoundly important to ensure a company does not err on these issues; there are myriad examples of companies suffering from missteps here. Generally classified under the category of "reputational risk", attempts to quantify such risk often show it can have an extremely large impact[8]. One analysis of disasters in the marine industry[9] showed reputational losses actually *exceeded* other losses, indicating reputational risk merits a great deal of focus and consideration. As "social responsibility" becomes a bigger consideration in the marketplace companies can't afford to ignore such factors.

As such, the occasional annoyance of a proposal that seems politically motivated or that is vague as to long-term value creation is a small cost to pay for the broader ability to get early warnings or raised awareness on factors that may, in fact, be critical to company success.

In light of all these facts, I question the wisdom of seeking to restrict such proposals en masse in a time when proposals per company are already declining and potential added value to companies, in the era of social media, is increasing massively. The proposal document notes[10] that environmental and social issues in particular will likely experience a greater reduction from the rule change; this would be a true loss to both shareholders and companies.

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[7] See Transcript of the Roundtable on the Proxy Process (Nov. 15, 2018) ("Roundtable Transcript"), available at https://www.sec.gov/files/proxy-round-table-transcript-111518.pdf, comments of Dannette Smith, Secretary to the Board of Directors and Senior Deputy General Counsel, UnitedHealth Group 148; and Tom Quaadman, Executive Vice President, U.S. Chamber of Commerce Center for Capital Markets Competitiveness 137.

[8] Ramy Farha, Evan Sekeris, and Daniel Hermansson, *The Hidden Cost of Reputational Risk: An Approach to Quantifying Reputational Risk Losses*, https://www.oliverwyman.com/content/dam/oliver-wyman/v2/publications/2017/jul/Reputational%20Risk.pdf

[9] Way, Brent & Khan, Faisal & Veitch, B.. (2013). Is Reputational Risk Quantifiable?. https://www.researchgate.net/publication/304024865_Is_Reputational_Risk_Quantifiable

[10] Proposal page 132 – proposal available at https://www.sec.gov/rules/proposed/2019/34-87458.pdf

Holding requirements for Proposal Eligibility

Regarding the aspects of the rule change on proposal eligibility holding requirements: While the decision not to increase the $2,000 ownership threshold would have been well grounded,[11] the plan to increase it by a factor of up to 12 and introduce new ownership time limits is not. Tax law in the US already declares a year of holding as long-term investing; it makes no sense for the SEC to be three times as conservative in this standard. It is perhaps a reflection of the degree to which small investors are not the focus of consideration here that this aspect of the proposal came to be; for most of us an investment of $2,000 for a full year is no light decision. In the world of finance such figures and timeframes may seem like small change, but on main street America this shift seems like a patent effort to exclude small investors.

That last sentence may sound hyperbolic, but a careful reading of the proposal document shows that it is literally true. The proposal itself notes that shareholders with longer ownership durations are often following a passive investment strategy and are thus “less likely to engage with management or other shareholders. We hypothesize that these types of shareholders would be less likely to submit shareholder proposals.”[12]

In light of this analysis, **a tripling of the time limit and/or up to a twelvefold investment requirement increase appears to be a targeted attempt to exclude exactly those small investors that might actually make proposals.**

The website biography of SEC Chairman Jay Clayton declares that “Furthering the interest of America’s Main Street investors”[13] is “a priority of the SEC staff.” I would respectfully submit that the increased investment and time limits shown in this aspect of the proposed change, particularly in light of the SEC staff analysis above, could not have been more effectively designed to do exactly the opposite; reducing access of main street investors and discouraging involvement. This is a mistake.

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[11] A consideration was mentioned of increasing the threshold to $3000 as an adjustment for inflation, but the original increase from $1000 to $2000 already included a future inflationary adjustment as noted on page 15, footnote 36, of the proposal. As such, an actual current inflation adjustment, removing the future adjustment of the previous change, would result in a $2521.6 threshold. An adjustment to $3000 now would thus account for *more* future inflation than the previous adjustment did.
Further analysis of a potential inflation adjustment via the Russell 3000 index only makes sense for investors who have been in the market during this entire time; new entrants to the market would not have benefitted from market growth and as such the Russell Index comparison simply doesn’t make sense unless one wishes to exclude any new market entrants of the past two decades.

[12] Proposal page 125

[13] https://www.sec.gov/biography/jay-clayton

Ridiculous Costs

One aspect of the proposal's discussion merits particular focus; namely claims about the costs of a proposal to a company. Page 117 of the proposal notes costs that range from $50,000 per proposal up to $150,000.

These claims are mystifying. I have been unable to track any of these numbers back to an actual study; a Harvard Law blog article discusses the $87k and $50k numbers and critiques these claims effectively[14], and my own attempts to track the $150k number show it originating as a comment in a US House of Representatives Report on a proposal advocating that the SEC make exactly these changes to shareholder proposal rules[15] without any further source or attribution.

I do not understand how the evaluation of a statement *shorter than a middle school book report* costs up to $150,000. It is perhaps worth reiterated that proposals are limited to 500 words, the company can respond at any length, and the final result is non-binding even if it achieves 100%. The costs to the company should thus include the addition of 1-3 pages of text to preexisting documents/tabulation processes, most of which occur digitally, plus any analysis/evaluation of the proposal itself and any costs from opposing proposals[16].

Why exactly does this cost several multiples of the average US annual salary? I would be very interested in an example that shares data on these costs and an explanation of why they were necessary.[17] In fact, I'd very much like a *list* of companies who expend this much on proposals; I can't think of a better example of bad governance and I'd like to know if I own their stock.

The only reasonable instances in which a company might require this level of expenditure in evaluating a proposal is if the proposal has merit. In cases where a proposal raises an issue with weight it might in fact necessitate this level of analysis and evaluation. This is, however, evidence of the proposal being *worthwhile*. Any company that requires this degree of effort to evaluate a worthless proposal is one badly in need of better governance, indicating that company itself may be among those most in need of more shareholder proposals.

As such, I would submit that the costs cited in the analysis as evidence of a problem with shareholder proposals are, to the extent that they're accurate, actually evidence of their necessity. **Any company that spends $50,000-$150,000 on a proposal either has deemed the topic complex enough to merit that level of evaluation or badly needs better governance.**

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[14] https://corpgov.law.harvard.edu/2017/06/15/the-dangerous-promise-of-market-reform-no-shareholder-proposals/

[15] H. Rept. 115-904 - To require the Securities and Exchange Commission to adjust certain resubmission thresholds for shareholder proposals: https://www.congress.gov/congressional-report/115th-congress/house-report/904/1

[16] Proposal Page 97 footnote 192 notes that less than one third of proposals in 2018 were opposed.

[17] Proposal Page 163 notes some examples, but these included 47 hours of work costing over $47,784 ($1,016/hour) or the printing and mailing of the proposal and response costing $18,982 ($37/word). As noted in the article in footnote 14, these evaluations simply make no sense.

I focus particularly on the ridiculousness of the cost evaluation here because the justification of the rule changes was *heavily* driven by the resultant estimates of cost savings. The evaluation of the change trumpets the potential savings of "up to $70.6 million per year" [18], an additional savings of "$8.9 million per year"[19], reducing the "costs associated with processing a shareholder proposal"[20], the avoidance of "disproportionate costs"[21], and increasing the "annual cost savings"[22]. In evaluating these, the highest number of $150,000/proposal seems to have been used, despite it having no apparent foundation in data.

Also of note, the evaluation of the costs of the rule change made no corresponding effort to evaluate the costs of worse governance policies, reduced shareholder involvement, a diminished ability to learn of relevant issues early (see *Social/Environmental Proposals and their Value* section), and the loss of new ideas or perspectives shareholder proposals bring. Any efforts at quantifying the economic benefits of shareholder proposals was completely lacking[23] (the section *Evaluation of Value-Add of Proposals* has an evaluation of this).

In summary: **the "savings", which are the seeming linchpin in the argument for the rule changes, appear to be a house of cards built on numbers that have no basis and are interpreted incorrectly. This argument is, furthermore, never actually weighed against any losses the proposed amendments would cause; an analysis which is, quite simply, not done.**[24]

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[18] Proposal page 138 at the top and footnote 272 discussing savings related to proposed amendments to Rule 14a-8(b) and Rule 14a-8(c).
[19] Proposal Page 140, savings from amendments to Rule 14a-8(i)(12)
[20] Page 138 in a discussion of why the ownership threshold increase would impose more costs on proponents.
[21] Proposal Page 139, in a discussion of why proposals should be limited to one per person.
[22] Proposal Page 140, discussion of the benefits of the Momentum Requirement
[23] Page 112 of the Proposal notes this fact outright: "**Our economic analysis does not speak to whether any particular shareholder proposal or type of proposals are value enhancing, whether the proposed amendments would exclude value enhancing proposals, or whether the proposed amendments would have a disproportionate effect on proposals that are more or less value enhancing.**"
[24] See supra note 23**Error! Bookmark not defined.**. Also, there is some discussion of literature on "value enhancement" based on stock price reaction. (starting on page 113). Given that the stated concern of proposals is their impact on long-term value, a comparison to stock price reaction the day of the vote seems a rather curious metric of very limited relevance. There is no evaluation of long-term impact or added value, which would be the relevant metric.

Evaluation of Value-Add of Proposals

In light of the previous discussion of *Ridiculous Costs*, it is perhaps worth including at least a cursory estimate of the added value provided by shareholder proposals:

According to a recent report, the average market cap of the Russell 3000 is $225.737B[25], and the median is $1.6B. The proposal document notes that 59% of proposals analyzed regarded governance issues, 11% environmental issues, and 30% social issues.[26] Absent evidence to determine what proposals are more or less likely to add value, we can analyze them with a probabilistic approach assuming that all proposals have an equal probability of having an impact on value or savings. Also, as the voting and company approval process already involves an extensive vetting of proposals by both the company and the shareholders, I assume that proposals with a negative impact will not be implemented.[27]

Environmental and social proposals: The previously mentioned study of reputational risk[28] found a range of 5%-25% potential value/losses due to reputational risk (as a percentage of corporate value). If we assume that only one out of every hundred shareholder proposals is approved and actually generates a 5% savings or value, one can estimate an average savings or benefit of 0.05% company value per proposal. On the other extreme if one assumes that one out of every hundred proposals save 25% one can calculate an average savings/value of 0.25% per social/environmental proposal.[29]

Governance proposals: Governance value is somewhat harder to estimate. One attempt to evaluate the impact of better governance in Italian companies found a one-point improvement in the Corporate Governance index produced a value increase of 0.016[30,31]. An earlier evaluation of US companies found an 11.4% difference in firm value potentially caused by individual governance provisions, although it noted that it was difficult to determine how much of this, if any, was "caused" by said governance provisions[32]. In light of the above a reasonable conservative estimate here might be that an improvement in governance has a 1.0% difference in company value. Again, assuming that a governance

[25] FTSE Russell Fact Sheet from October 31, 2019:
https://research.ftserussell.com/Analytics/FactSheets/temp/000df031-35c5-44a2-b5eb-9ba08fc112a9.pdf

[26] See Proposal page 76 of the proposal.

[27] One might argue that this isn't always the case, but proposals which are "bad" have at least two levels of defense against them, between shareholders and the company management itself. For a discussion of improving this defense further see *Additional Concerns about Shareholder Voting*.

[28] See supra note 8.

[29] $225.737 * 5% savings * 1% chance of savings in the first case, $225.737 * 25% savings * 1% chance of savings in the second.

[30] Bubbico, Rossana and Giorgini, Marco and Monda, Barbara, The Impact of Corporate Governance on the Market Value of Financial Institutions - Empirical Evidences from Italy, May 2012 https://mpra.ub.uni-muenchen.de/45419/1/MPRA_paper_45419.pdf

[31] The increase is actually in Tobin's Q, though this is a proxy of value.

[32] Gompers, Paul A. and Ishii, Joy L. and Metrick, Andrew, Corporate Governance and Equity Prices. Quarterly Journal of Economics, Vol. 118, No. 1, pp. 107-155, February 2003. Available at SSRN: https://ssrn.com/abstract=278920 or http://dx.doi.org/10.2139/ssrn.278920

proposal has only a 1.0% chance of getting approved and actually having this impact, there is then a 0.01% savings/value per governance proposal on average.[33]

All Proposals: Combining the above numbers[34] one gets an average savings/value ranging from 0.03% per proposal to 0.11% per proposal across all proposal types. For clarity sake, these numbers are repeated in tabular form here:

Conservative Estimate				
	Proposals by Type	Probability of Proposal Resulting in Savings	Savings/Value when Proposal Generates Savings	Probability of Savings
Governance:	59%	1.0%	1.0%	0.006%
Env./Social:	41%	1.0%	5.0%	0.021%
			(Sum Rule for Mutually Exclusive Probabilities) Sum:	0.03%

More Optimistic Estimate (differences italicized)				
	Proposals by Type	Probability of Proposal Resulting in Savings	Savings/Value when Proposal Generates Savings	Probability of Savings
Governance:	59%	1.0%	1.0%	0.006%
Env./Social:	41%	1.0%	*25.0%*	*0.103%*
			(Sum Rule for Mutually Exclusive Probabilities) Sum:	*0.11%*

Multiplying these probabilities by the average and median market cap values of the Russell 3000 one gets an average savings per proposal of:

Avg. Savings/Value Per Proposal	Conservative Est.	Optimistic Est.
Savings/Vale using Avg. Cap Rate:	$59.6M	$244.7M
Savings using Median Cap Rate:	$0.4M	$1.7M

Multiplying these numbers by the 530 excludable proposals[35] gives a range of:

[33] It could be reasonably argued that there is a maximum governance quality that a company can reach, indicating that there could be a "saturation" effect from governance proposals in which companies that already have high quality governance do not benefit from further governance proposals. We can reasonably assume however that any such reduction in need for governance improvements is matched by a corresponding reduction in governance-related proposals being made. This means that those governance-related proposals which *are* actually put forward are targeted at instances where they can still provide value.

[34] Using the sum rule for mutually exclusive probabilities, 59% governance proposals * 0.01% average savings + 41% other proposals * either 0.05% or 0.25% savings.

[35] See Proposal page 140 footnote 273 of the proposal for 59 proposals excluded by the proposed amendments to 14a-8(i)(12) and page 138 footnote 272 for the 471 proposals excluded by the proposed amendments to 14a-8(b) and 14a-8(c).

Total Savings/Value	Conservative Est.	Optimistic Est.
Savings/Vale using Avg. Cap Rate:	$31.6B	$129.7B
Savings using Median Cap Rate:	$223.9M	$919.2M

This is then the average and median lost value that would result from the proposed rule amendments.[36]

It should be noted that this analysis conservatively assumes a very unequal distribution of proposal value in which any particularly proposal has a 99% chance of providing no value or savings whatsoever. The 1% of proposals that do make a difference however do so on a scale that dwarfs the potential costs involved. A reasonable observer might well claim that proposals work at a much higher rate than one out of a hundred, indicating the real values may be substantially, even more than an order of magnitude, higher.

Using this estimate we see that shareholder proposal value to companies and shareholders is substantial, making it more than worth the minor annoyance of an occasional proposal that doesn't add value to keep the door open for those that do. Even in the unlikely case in which 99 of 100 proposals are a waste of time, the net value of proposals overall is still *massively* positive.

Even using the likely extremely overestimated costs (see *Ridiculous Costs*) of the amendment proposal's evaluation,[37,38] the above estimate of the benefit of proposals show an added value that ranged from nearly three times these costs (conservative median cap estimate) up to just over 1,631 times (optimistic average cap estimate). By this metric, **the proposed rule amendments will, on net, *cost* shareholders and companies somewhere between $144M/year and $129.6B/year even *after* accounting for (inflated estimates of) savings.**

It would be fair to note that the analysis here is extremely simplistic. It is, however, more grounded in data than the corresponding analysis of savings in the proposal, in which those savings seem to be the primary driver of proposed rule amendments. Ideally a comprehensive analysis based on data across the board would be performed, for which both costs and benefits of proposals to companies and shareholders would be evaluated.[39] In the absence of such an analysis, however, it makes sense that a cursory analysis of costs at least include a cursory analysis of the benefits too. This section is thus the complement to the analysis begun in the proposal and shows that, on net, the proposed amendments are extremely costly to companies and shareholders.

[36] Proposal page 145 notes that the proposed rule amendments could disproportionately affect smaller companies, which would argue for the estimates using the median. At the same time, page 128 footnote 254 notes that smaller companies receive proposals less frequently and thus the proposed amendments might actually primarily affect larger companies, arguing more for the estimates using the average here.
[37] $70.6M/year for Rule 14a-8(b) and Rule 14a-8(c), as per Page 138 of Proposal
[38] $8.9M/year for Rule 14a-8(i)(12) as per Page 140 of Proposal
[39] While not evaluating the impact of the proposed amendments here, a version of such an analysis has been done and is referenced in footnote 50. The results of this are discussed and lead to a new proposed change in the section *Additional Concerns about Shareholder Voting*.

Note on Capital Formation

It was claimed in the roundtable discussion that shareholder proposals are at times a factor that dissuades companies from going public[40] and that capital formation is thus negatively impacted by this. The analysis above should show that any company which actually evaluates the possibility in depth will see it as a source of new and useful ideas from which they could benefit greatly if they are among the few companies that actually get a proposal. Basic familiarity with the academic literature on cognitive diversity shows how much added diversity of this type can improve outcomes, and the analysis here shows that the benefits offset many times over the expenses such proposals might bring, even using inflated estimates of those expenses. As such, increasing shareholder proposals should be seen as an *added value* for capital formation.

Remote Proposal Possibilities

One point not discussed in the proposals is the requirement that proposers or their representative attend a meeting in person to make the proposal. In practice this often can occur remotely, but the rules as written still require meeting attendance, presumably even when telepresence isn't an option. The cost and effort of doing this already includes an inflationary effect not discussed in the proposed changes or evaluation of costs to the proposer, and this out of date requirement fails to take into account modern realities. The proposal notes that nearly 3%[41] of withdrawn proposals were withdrawn because the proponent did not appear to present them at the meeting.

In the current era the requirement for proposers to either find a representative or travel to the meeting is an undue burden and potentially a substantial increase in costs to the proposer, discouraging shareholders from making proposals. I would thus suggest the rule be changed to explicitly allow a teleconference option for proposal at the meeting. Proposers that can travel, or have a representative travel, to the meeting are free to do so, but those who do not should still be able to submit their proposal, or have their representative submit their proposal, remotely.

[40] See Transcript of the Roundtable on the Proxy Process (Nov. 15, 2018) ("Roundtable Transcript"), available at https://www.sec.gov/files/proxy-round-table-transcript-111518.pdf, comments of Tom Quaadman, Executive Vice President, U.S. Chamber of Commerce Center for Capital Markets Competitiveness page 135.
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[41] Proposal Page 72, footnote 146

Limit of Proposal Count, Representative Usage, Share Aggregation

Much ado was made in the proposal document about the number of people making multiple proposals, noting that the average number of proposals per person has increased. This apparently leads to the proposed amendments limiting proposals by person, as well as prevention of proposals via share aggregation and additional documentation requirements when using a representative.

It was interesting to note that the fact of more people making multiple proposals led directly to attempts to prevent multiple proposals. There was no indication of why multiple or aggregated proposals are currently a problem or whether such proposals are of lower quality. The new rule limitations are framed again as a way to avoid "disproportionate costs" on the company, but this again relies on the ungrounded numbers discussed in the *Ridiculous Costs* section above, and there is again no evaluation of the added value that would be lost.

Share Aggregation

Regarding aggregation of shares; the purpose of the ownership thresholds was to limit proposals to those that have "sufficient economic stake or investment interest"[42] in the company. For this purpose, a single owner with sufficient investment is not functionally different from multiple owners who all have the same concern and together have a sufficient investment; it is still an indication of a certain degree of investment ownership which feels a proposal is necessary. Indeed, considering that an aggregated proposal involves coordination of support between multiple shareholders it seems likely to be *more* worthy of consideration on average than proposals from individuals. Additionally, the proposal notes that only 0.2% of proposals are aggregated, indicating that there is no abuse on the basis of this issue.

The roundtable discussions noted[43] that large shareholders can engage with companies directly and regard proposals as a last resort. Aggregated shareholders on the other hand are the least capable of anyone to get company attention, indicating that this approach may be their only method to be heard at all. This change would thus entirely close communication for the smallest shareholders while leaving the toolset of large shareholders' unaltered. **This form of bias against small shareholders is exactly what previous adjustments to the rules actively sought to prevent, and makes no more sense at this time than in any previous evaluation.**

Representative Usage

Regarding other changes to 14a-8(b)(1); the biggest concern here is that shareholders might not support the proposal made in their name. This seems like a reasonable concern, but it is again a theoretical concern without any evidence of reality. To address this, the proposed amendments take two steps:

1. New documentation requirements in case of representative usage (including a written authorization from the shareholder).
2. A limitation of proposals by person instead of shareholder.

[42] Proposal page 18.

[43] See supra note 2.

The first change is a reasonable, measured response to the concern; even if there is no evidence of abuse this change requires minimal additional effort for proponents and would improve communication, provide clarity, and verify that the proposal being put forward indeed comes from a shareholder.

The second change, on the other hand, is an excessive belt-and-suspenders defense impacting a tiny portion of proposals (only 2%[44]) to address a problem that hasn't been shown to exist. Given that the number of individual proponents has decreased over time, it seems reasonable to expect that this now smaller community would have contact within itself, and that for convenience sake members of this group might serve as representatives for one another at times; particularly in light of the requirement to attend shareholder meetings (see *Remote Proposal Possibilities*). The prevention of this seems a petty attempt to deprive proponents of the time, effort, and/or travel savings they might otherwise have in instances where two people have proposals for one company. This could add substantial burden for proponents under the guise of addressing a very minor risk which the documentation requirements above already effectively address. A proper balance of interests here thus argues against this second change.

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

On the topic of requiring proposers to make themselves available to the company within some window after submission: A previous commenter, Kerrie Waring of the International Corporate Governance Network[45], has already addressed this point as effectively as possible in comments to you. I would add my support for her view that the proposal, while in spirit reasonable, needs to be re-drafted with greater specificity and with a commensurate requirement on the side of the company in cases of no-action requests to the SEC.

[44] Proposal page 122 and page 165.

[45] Dec. 4, 2019 Kerrie Waring, Chief Executive Officer, International Corporate Governance Network: from https://www.sec.gov/comments/s7-23-19/s72319.htm

Additional Concerns about Shareholder Voting

The section on *Repeat and "Zombie" Proposals* noted problems with evaluating shareholder proposals based on shareholder support alone. An additional factor relevant to this, which raises further concerns about the validity of such a metric, is the growing popularity of passive indexing investment strategies. A recent Reuters analysis[46] on the topic expressed concerns that such funds are excessively deferential to management and thus encourage complacency in corporate governance. Another analysis on this topic[47] discussed the growth of this issue as well, noting particularly the fact that managers of such funds often believe themselves obligated to vote while lacking the resources to evaluate the issues. This leads to a high degree of uninformed voting, watering down the impact of informed votes and calling into question the meaningfulness of support levels as an evaluation metric.

This trend toward passive investing raises broader concerns that the reduction in individual shareholders making proposals may mirror a reduction in shareholders actually evaluating their holdings and votes with any degree of consideration or analysis. There are reasons for broader concern here that the market as a whole may be shifting in a direction that reduces oversight. One could argue that this shift merits a rebalancing of shareholder proposal rules with an eye to encouraging more proposals. Such a shift could be a useful approach to counteract the impacts of reduced market oversight.

The SEC has addressed a part of this issue with Release Nos. IA-5325; IC-33605[48] giving updated guidance that choosing not to vote can in fact be a proper exercise of assumed voting authority. This may improve the issue, but seems unlikely to solve it as the investment advisor is still required to determine that not voting is in the best interest of the client before abstaining. In the absence of resources sufficient to evaluate every vote, advisors seem likely to continue voting by default in instances where they have not had the time to evaluate thoroughly, leading still to many uninformed votes.

The paper cited above[49] notes several possible solutions to this problem which are beyond the scope of this comment. In lieu of those changes having been implemented however, there remains a concern that individual investors' interests are being unfairly disadvantaged by virtue of large-scale uninformed passive votes that follow management recommendations by default; this shift should raise concerns about the protection of investors' interests, which is a core part of the SEC mission. Additionally, an analysis of how the voting process can most effectively weed out harmful shareholder proposals[50] found

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[46] See Reuters article at https://www.reuters.com/article/us-usa-funds-index-specialreports/index-funds-invest-trillions-but-rarely-challenge-management-idUSKBN1WN107

[47] Lund, Dorothy S., The Case Against Passive Shareholder Voting (March 21, 2018). Journal of Corporation Law, Forthcoming ; University of Chicago Coase-Sandor Institute for Law & Economics Research Paper No. 829. Available at SSRN: https://ssrn.com/abstract=2992046

[48] See press release at https://www.sec.gov/news/press-release/2019-158 with interpretation linked there. Guidance itself available at https://www.sec.gov/rules/interp/2019/ia-5325.pdf.

[49] See supra note 47.

[50] Gantchev, Nickolay and Giannetti, Mariassunta, The Costs and Benefits of Shareholder Democracy (November 15, 2019). European Corporate Governance Institute (ECGI) - Finance Working Paper No. 586/2018; Swedish House of Finance Research Paper No. 18-15; SMU Cox School of Business Research Paper No. 18-35. Available at SSRN: https://ssrn.com/abstract=3269378 or http://dx.doi.org/10.2139/ssrn.3269378

that informed voting among other shareholders was quite effective in this. Informed voting can thus be used to balance keeping the value provided by shareholder proposals, particularly vis-à-vis their disciplining of poorly performing companies, while voting down unbeneficial proposals.

Also related to issues of oversight, concerns were noted in the roundtable discussions[51] and in an analysis of shareholder voting[52] that preliminary vote results viewable only by management enable actions on management side that drive support levels down. This too raises concerns about support levels being artificially suppressed, casting *further* doubt on their usefulness as a metric for shareholder proposal quality, and raising issues of concern about trust between shareholders and companies.

In order to address these concerns, I'd like to suggest two further amendments that were not included in the proposal:

1. Require that any preliminary voting results collected in a company be shared with shareholders at the same time they are shared with management.
2. Require companies to report shareholder proposal vote results, on both a count and percentage basis, independently for two separate populations:
    a. The entire shareholder base (this is what is currently reported).
    b. The shareholder population that does not include passively managed investments.

The addition of these two requirements will introduce minimal additional overhead. The first change does not require collection or tabulation of any new voting results but rather makes available to shareholders any information the company already chooses to collect for itself (there is no requirement to collect such results; only to report any that are collected). The second change simply requires the reporting of votes already tabulated with an additional breakdown. These are minimal additional efforts on the part of companies.

The added value is substantial however. The first of these changes will solve concerns that company management may be using privileged information access in order to artificially influence or deflate support for shareholder proposals. Making this information public will increase accountability for the voting process, foster greater trust between shareholders and companies, and give future analyses new data for analysis of shareholder proposals. The second of these changes will enable both the company and other shareholders to see, in addition to what is currently reported with shareholder votes, a breakdown of voting results among those investors most likely to be highly informed. This last point in particular may be the most effective approach available for filtering out bad proposals and giving shareholders insight into the views of the most informed and studied portion of the shareholder population, absent the potentially false signal of uninformed passive votes. It will also provide data for

[51] See Roundtable Transcript, comments of Michael Garland, Assistant Comptroller, Corporate Governance and Responsible Investment, Office of the Comptroller, New York City; page 161

[52] Bach, Laurent and Metzger, Daniel, How Close Are Close Shareholder Votes? (August 1, 2018). Swedish House of Finance Research Paper No. 17-3. Available at SSRN: https://ssrn.com/abstract=2880523, summary of article contents at https://corpgov.law.harvard.edu/2017/01/04/are-shareholder-votes-rigged/

future studies and analyses to evaluate more directly the choices of and impact from passive fund voting, enabling a greater degree of oversight and analysis of this growing dynamic in the market.

It is perhaps worth noting that while the second of the above suggestions is put forward as an improvement, it may better be regarded as a first step on this issue. The referenced analysis[53] actually created an "Informed ratio" metric to differentiate shareholders who evaluate proposals on a case-by-case basis from those that vote based on generalized issues or recommendations; this distinction is useful in identifying those shareholders who have analyzed a particular issue for a particular company. The ideal situation would involve reporting of shareholder vote results broken down by a metric such as this instead of the above, as active/passive distinctions don't always align exactly with informed/uninformed voting. Where possible the above suggestion would be better replaced with another approach that more closely represented the "Informed ratio" distinction. At this point, however, it is unclear how to accomplish such a result in a way that is effective without introducing substantial overhead. The above change is thus suggested as the most useful first step in this direction, enabling improved shareholder insight and the collection of data on the issue such that appropriate further steps may become clearer.

[53] See supra note 50.

Changes that should be made

In summary, I would suggest that the actual rule amendments that should be made are the following:

1. A change explicitly allowing proponents to make proposals via teleconference at shareholder meetings as discussed in *Remote Proposal Possibilities*.
2. A requirement that proponents (as discussed in 14a-8(b)(1)(iii)) but *also* companies make themselves available to one another for discussion within a window of time after a proposal or a no-action request. This should be made more specific, as discussed in *Requirement for a discussion between the shareholder-proponent and the company*.
3. Require companies to share with shareholders any preliminary shareholder proposal vote results collected at the time at which they are shared with management (for discussion see *Additional Concerns about Shareholder Voting*)
4. Require companies to report shareholder proposal vote results, on both a count and percentage basis, independently for two separate populations: (for discussion see *Additional Concerns about Shareholder Voting*
    a. The entire shareholder base.
    b. The shareholder population that does not include passively managed investments.
5. The proposed amendment to 14a-8(b)(1)(iv) requiring additional written documentation in instances of representative usage should be implemented.
6. No other changes.

These changes are likely to result in either no change or a slight increase[54] in shareholder proposals, an improvement in communication between proponents and companies during the proposal and no-action processes, a reduction in concerns that companies are artificially influencing shareholder proposal support, and an increase in transparency around informed and uninformed voting (enabling more effective filtering of unproductive proposals). In light of the data regarding the current situation these changes strike the appropriate balance of protecting investor interests and enabling shareholders and companies to monitor and differentiate proposals by quality and current relevance.

[54] See supra note 41 noting up to 3% of withdrawn proposals may not be withdrawn, plus any new proposals from proponents that were previously dissuaded by the travel requirement of a proposal.

Conclusion

"The mission of the U.S. Securities and Exchange Commission is to protect investors, maintain fair, orderly, and efficient markets, and facilitate capital formation."[55] This statement, taken from the SEC website as of December 2019, is particularly noteworthy in regards to the line that follows it:

"As more and more first-time investors turn to the markets to help secure their futures, pay for homes, and send children to college, our investor protection mission is more compelling than ever."

These lines are noteworthy because while the phrase "capital formation" occurs eighteen times in the proposal document, including an entire section evaluating the proposed amendments in light of it, the phrase "protect investors" occurs only once: in the title of a footnoted document. In considering the entirety of the proposal this ratio of concern seems to be an accurate reflection of the priorities of the analysis and the proposed amendments as well. The analysis appears to be a misreading of the data, driven particularly by a gross overestimation of proposal costs, which is used to justify rule amendments targeted to prevent small investors from making shareholder proposals.[56]

As shown above, a balanced look at the evidence demonstrates that the real problem is a reduction in investor participation and market oversight, and that the proposed amendments would exacerbate this problem, cost companies a minimum of $144 million per year (likely substantially more), and deprive companies and shareholders of the substantial benefits of a democratic-style proposal process.

As such, I would respectfully request that the proposed amendments as presented be abandoned as proposals that fail in the SEC's mission and that the above changes (see *Changes that should be made*) be made instead as amendments that accurately reflect the balance needed here and better fulfill the mission of the Securities and Exchange Commission.

Thank you for your time and consideration.

Very Respectfully,

Tom Shaffner

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[55] https://www.sec.gov/Article/whatwedo.html

[56] See particularly *Holding requirements for Proposal Eligibility* for a discussion of this.