ROBECO

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

Re: File No: S7-23-19/ S7-22-19
Rotterdam, 16 January 2020

Dear Chairman Clayton,

This letter is respectfully submitted in response to the current consultation on the rules proposed by the Securities and Exchange Commission (SEC) on 5 November 2019. Our comments relate to the SEC's request for feedback to Rule 14a-8 of the Securities Exchange Act, and to the proposal entitled "Amendments to Exemptions from the Proxy Rules for Proxy Voting Advice". Robeco is a global asset manager with USD 223 billion under management, with a strong focus on sustainability investing. As a long-term active investor and proponent of good stewardship, we make active use of our voting rights to promote strong governance practices, address material environmental, social, and governance (ESG) issues, and to protect and enhance long-term shareholder value creation.

We appreciate that the SEC enables shareholders to provide preliminary comments on these proposed amendments. Having reviewed the proposed changes in the draft regulation carefully, we believe that some of the suggested amendments will potentially create more focus and accountability towards the stewardship process in the United States, although others could restrict shareholders' rights and as a result may not be in the long-term interest of minority shareholders.

Preliminary comments related to "Procedural Requirements and Resubmission Thresholds under Exchange Act Rule 14a-8"

Shareholder resolutions serve as a useful tool to inform corporate management and boards of shareholder priorities and concerns. This has been a strong mechanism in the United States, creating management accountability and facilitating engagement dialogue between investors and companies over the last decade, whilst enabling the achievement of considerable changes in corporate conduct. Shareholder proposals vary in their quality and merit, but we strongly value the ability of shareholders to vote on these issues. Our preference is to maintain this robust mechanism of accountability through which shareholders can table meaningful resolutions at general meetings to be voted collectively, as opposed to what is contained in the rule proposal which we believe will likely make the filing process more complex.

- We acknowledge the constructive role played by the SEC in determining whether a shareholder proposal may appear on a corporation's annual proxy statement upon a company's appeal. This process provides additional checks and balances as to the quality of a shareholder proposal and ensures that meaningful shareholder proposals filed within the legal requirements are voted on at shareholder meetings. Therefore, we encourage the SEC to continue to review appeals to shareholder proposals with the best interest of all shareholders in mind.

- Accountability for this process can be further enhanced by company disclosures on how many proposals were withdrawn and therefore not included in the proxy statement, specifying how many were excluded pursuant to a no-action request. This would further add to the transparency and understanding of which topics have been under engagement during the filing process.
- We support the SEC's proposal to allow shareholders to file only one resolution. This requires shareholders to prioritize their concerns with listed companies and is likely to funnel the most meaningful resolutions to a shareholder's agenda. It also prevents a single shareholder from dominating a corporation's annual proxy statement.
- We are concerned that the increased resubmission thresholds in order to re-file a similar resolution might have unintended consequences. Especially, the phrasing to increase filing requirements for 'proposals with substantially the same subject matter' is reason for concern. Shareholder resolutions are likely to change in nature and quality from year to year despite covering the same topic. Institutional investors may support shareholder resolutions on the same issue if the content of the proposal itself has improved. Furthermore, the 'Momentum Requirement' might be heavily dependent on the company's ownership structure and any shifts in ownership. We therefore suggest to maintain the re-submission thresholds in-line with the current regulation.
- We do not favor the restriction to aggregate securities with other shareholders to meet the applicable minimum ownership thresholds to submit a shareholder proposal. Shareholders that file resolutions together with other investors are more likely to have tested the merits and implications of a resolution carefully.
- The suggested proposal to restrict representatives to file proposals on behalf of other persons or organizations is likely difficult to facilitate in practice. Many organizations invest and advise on behalf of other organizations in the investment chain, and these structures might be complex with multiple investors making use of single or structured investment vehicles. We believe that agreements on delegation should be an arrangement between the parties involved. If requested, organizations filing resolutions should be able to prove their eligibility to file.
- We appreciate the SEC's emphasis for engagement between corporations and shareholders. Often shareholders use resolutions after constructive engagement has failed. If a shareholder can prove they have already addressed the topic with a company without company response, the requirement for a meeting under strict timelines is unlikely to be productive and should be waved. A positive side-effect is that listed companies might be more receptive to engagement in the future.

Preliminary comments related to "Amendments to Exemptions from the Proxy Rules for Proxy Voting Advice"

For many investors, especially those holding large sets of stocks in their portfolios, the use of proxy advisors is a practical and logical starting point for their analysis when exercising their voting rights. We are aware that these agents might have significant effect on voting outcomes.

Therefor shareholders should diligently review their own use of proxy advisors, maintain responsibility for their own voting policy and hold proxy agents accountable for the quality of the service they provide.

- We support the SEC's proposal to require proxy advisors to disclose any conflicts of interests. This would provide additional information to shareholders regarding a proxy provider's relation to a company and potential issues with the objectivity of the research provided.
- We believe that the proposed requirement for proxy advisors to share draft reports with issuers before these are available to investors will have adverse consequences to shareholders. A company's involvement in a research paper about their own organization could influence the objectivity of the material. Comparatively, the FINRA Rule 224 approved by the SEC seeks to minimize the influence of companies on the analysis provided by stock analysts by prohibiting them from sharing draft reports and research rating with target companies. An independent third party or an independent appeal system is more likely to enhance quality than allowing subject companies to influence the research. Should companies oppose a proxy agent's voting advise or aim to clear out misunderstanding in the markets, it is more effective for them to communicate publicly, rather than imposing this responsibility on proxy voting advisors.
- Shareholder meetings take place during a concentrated period in the year. The proposed rule suggests that proxy advisors must share the preliminary research with companies prior to publishing it to their clients. Shortening the timeframes between the publication of voting advice and the shareholder meeting will as a result reduce the time that shareholders spend undertaking their own reviews on each proxy vote. An unintended consequence might be that shareholders are even more likely to vote in-line with proxy advisors. Therefore, we believe that the regulation might have the opposite outcome of its intended effect.

For the above reasons, we respectfully ask the SEC to reconsider the proposed rule changes in order to sufficiently protect the rights of shareholders.

Yours faithfully,

Peter Ferket
Chief Investment Officer
Weena 850, 3014 DA Rotterdam, The Netherlands

For any queries please contact:

Michiel van Esch, Senior *Engagement Specialist* [redacted])
Laura Bosch Ferreté, *Engagement Analyst* [redacted]