JantzManagement

Responsible Quantitative Value Investing™

January 21, 2020

Hon. Jay Clayton, Chairman
Hon. Robert J. Jackson Jr., Commissioner
Hon. Allison Herren Lee, Commissioner
Hon. Hester M. Peirce, Commissioner
Hon. Elad L. Roisman, Commissioner
Vanessa A. Countryman, Secretary
US Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549

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

Dear Chairman Clayton and Commissioners Jackson, Lee, Peirce and Roisman,

Jantz Management LLC is an investment management company founded on Responsible Quantitative Value Investing™. Jantz Management creates and implements separately managed equity portfolios for institutions and individual investors.

We examined the implications of the SEC's pending rulemaking that intends to elevate filing thresholds and holding periods, as well as resubmission thresholds for filing shareholder resolutions, and we are very concerned that the Commission is unaware of unintended consequences.

Firstly, we believe that the proposed more stringent filing criteria would create a new and unprecedented wealth benefit for the wealthiest Americans – significantly and meaningfully creating inequities in the value of common stock ownership based solely on the wealth of the owner and her ability to hold vast quantities of equity securities for extended periods.

Secondly, because women's wealth continues to trail that of men,[1] and because a significant racial wealth gap persists,[2] we contend that the proposed rulemaking is inherently gender- and race-biased and will have the unintended effect of reducing participation by women and people of color in corporate democracy.

And thirdly, we turn to the 2010 Supreme Court case *Citizens United v. Federal Election Commission* that stated that shareholders would be able to address investor concerns about electioneering contributions

[1] https://www.credit-suisse.com/about-us-news/en/articles/news-and-expertise/global-wealth-report-2018-women-hold-40-percent-of-global-wealth-201810.html
[2] https://www.forbes.com/sites/brianthompson1/2018/02/18/the-racial-wealth-gap-addressing-americas-most-pressing-epidemic/#27703c5c7a48

"through the procedures of corporate democracy." We argue that the proposed rulemaking impinges on the right of free speech as it would *prevent the vast majority of citizens from participating in corporate democracy based solely on their lack of wealth*.

Overall, we believe that the proposed rulemaking is unnecessary and that it is so onerous that it could negatively affect the rights of shareholders to weigh in on matters ranging from corporate political contributions to climate change to corporate governance and social concerns.[3]

Numerous studies have shown the benefits to shareholders brought by the inclusion of women and people of color on corporate boards. And in 2018, California became the first state to require female board members.[4] Why then would the SEC purposefully enhance wealth-based criteria that unfairly impinge upon the capacity of women and minorities to weigh in effectively, engaging with fellow shareholders about corporate policies through the proxy process?

The proposed change in ownership benefits is not trivial. As of Q4/2017, according to Federal Reserve Board estimates compiled by Goldman Sachs (see Supplemental Reference section below), households (individuals) owned 36% of domestic stocks. And, in fact, household equity ownership has increased somewhat since the Great Recession of 2008, suggesting that shareholder filing rights are more important to individuals, not less. At the beginning of 2018, with the domestic stock market worth $30 trillion,[5] individuals directly owned over $10 trillion in stock securities.

The pending rulemaking on Rule 14a-8 proposes raises thresholds as follows; if the shareholder has continuously held at least

- $25,000 of the company's securities entitled to vote on the proposal for at least one year [where this change is **more than an order of magnitude, that is, a factor of 12.5 times the dollar amount from $2,000 to $25,000**];
- $15,000 of the company's securities entitled to vote on the proposal for at least two years; [where this change is **a factor of 7.5 times the dollar amount from $2,000 to $15,000 and doubles the holding period from one year to two years[6]**]; or
- $2,000 of the company's securities entitled to vote on the proposal for at least three years; [where this change **triples the holding period from one year to three years[6]**].

Examination of the highest dollar requirement shows that forcing a shareholder to maintain $25,000 in her portfolio concentrated on a single company intensely increases inequity in the proxy process. Based

[3] https://www.supremecourt.gov/opinions/09pdf/08-205.pdf
[4] https://www.marketwatch.com/story/something-amazing-happens-when-you-have-3-or-more-women-on-a-company-board-2018-03-08
[5] https://www.barrons.com/articles/the-u-s-stock-market-is-now-worth-30-trillion-1516285704
[6] "Tax law in the US already declares a year of holding as long-term investing; it makes no sense for the SEC to be [two or] three times as conservative in this standard." https://www.sec.gov/comments/s7-23-19/s72319-6562349-200995.pdf

on wealth, the top 10% with half a million or more in savings[7] are the only individual investors with the means to hold a minimum diversified portfolio of at least 20 equities meeting the Commission's new dollar threshold. And, as we explained in an article on this subject ("Filing Thresholds and Main Street Investors"[8]), even for existing thresholds, given 50% or greater drops in stock prices in severe recessions, and given the requirement of holding the minimum threshold dollar amount of stock for at least a year, a 100% buffer is needed in order to ensure meeting any filing threshold. For the proposed filing threshold increase to $25,000, an individual investor would need a million dollar portfolio of 20 stocks in order to have *both* a diversified portfolio and still meet the SEC's $25,000 threshold over a one year period. Only 1% of American households would meet both of these requirements. **Thus, the SEC's elevated filing threshold effectively creates a new wealth benefit for the top one percent.** The other 99% will be forced to take an unacceptably high level of personal risk with their assets in order to bring a shareholder resolution to the proxy—creating a wealth-based shareholder class of second class citizenship. And as discussed above, because women and minorities have less wealth than white men, this requirement is inherently gender- and race-biased.

Using the same analysis of the $15,000 dollar threshold held over two years, with a 100% buffer for stock price declines and holding a minimum diversified portfolio of 20 stocks would still omit over 90% of all households from participating in the proxy process.[9] Furthermore, because no justification is provided for extending the holding period from one year to a longer period based on investment considerations; and because no historical basis is provided for extending the holding period; we conclude that the only rationale for extending the holding period from one year to a longer period in any case is to make it more difficult for a shareholder holding a stock position smaller than the proposed highest level ($25,000) to meet filing thresholds. Thus extending the threshold period from one to two years introduces yet another bias against the less wealthy—and is therefore gender- and race-biased.

And finally, the result of keeping the current dollar threshold but extending the period to three years is just one more way to discriminate against the least wealthy – women and minorities.

Is it the Commission's position that only the wealthiest Americans and institutions should be allowed to engage with companies through the proxy process? We do not believe that the richest one percent of Americans and corporations will adequately represent the interests of the other 99%. Furthermore, we are concerned about the inherent discrimination against women and minorities introduced by the pending rulemaking. Ownership without representation does not allow diverse shareholders to weigh in on important issues.

Shareholders engage with companies for a variety of reasons, and the current system functions exceptionally well at allowing shareholder proposals on reasonable and important issues that matter to shareholders at large proceed while also screening out irrelevant topics.

[7] Source: Federal Reserve, FDIC, and MagnifyMoney estimates, June 2019. Cohorts with median balance of $0 indicate more than 50% of these households have no savings. https://www.cnbc.com/2018/09/27/heres-how-much-money-americans-have-in-savings-at-every-income-level.html
[8] https://corpgov.law.harvard.edu/2019/10/21/filing-thresholds-and-main-street-investors/
[9] https://www.cnbc.com/2018/09/27/heres-how-much-money-americans-have-in-savings-at-every-income-level.html

On May 8, 2019, SEC Chairman Jay Clayton testified to the Senate that "[o]ur first goal, which has been a priority of mine since I became Chairman, is focusing on the interests of our long-term Main Street investors." He went on to say that "the question we ask ourselves every day: how does our work benefit the Main Street investor? Each proposal or action we take is guided by that principle." Given Chairman Clayton's stated focus on Main Street investors, it is unfathomable that the SEC would increase the filing threshold for shareholder proposals as it would conflict with the goal of ensuring that Main Street shareholders seeking active engagement also maintain a diversified portfolio.

The Rule should not become more stringent; if anything, our examination illustrates that if the SEC seeks to support and encourage Main Street investor participation in the public markets, then the filing threshold should be relaxed to allow greater participation of the [less wealthy] Main Street investor.[10]

We therefore urge you to fully reject the pending and proposed rulemaking proposals related to shareholder proposals (rule 14a-8).

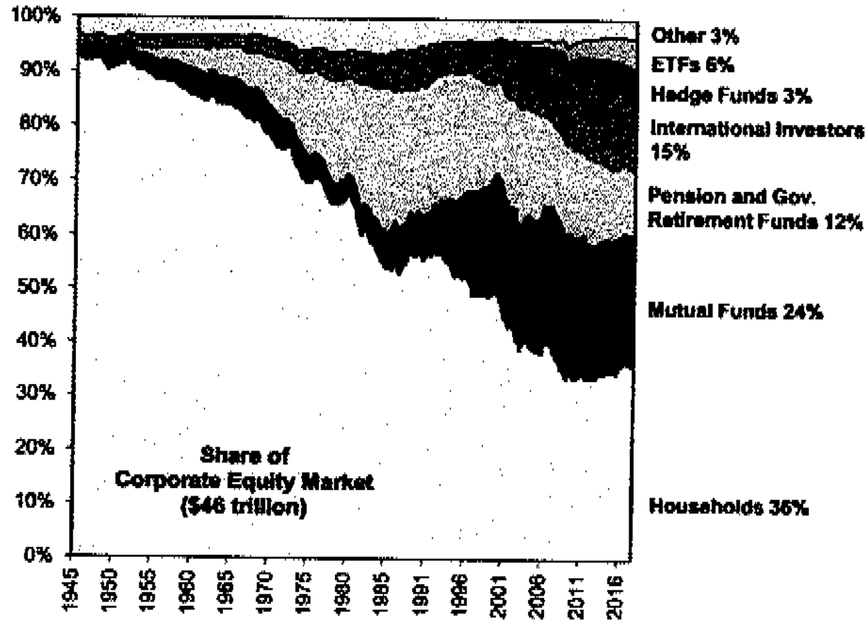
Sincerely,

Christine Jantz, CFA
CEO
Jantz Management LLC

[10] https://corpgov.law.harvard.edu/2019/10/21/filing-thresholds-and-main-street-investors/

Supplementary Reference

Exhibit 2: Households directly own 36% of US equity market
as of 4Q 2017



Source: Federal Reserve Board, Goldman Sachs Global Investment Research