



National Conference on
Public Employee Retirement Systems

The Voice for Public Pensions

February 3, 2020

Chairman Jay Clayton
Securities and Exchange Commission
100 F Street NE
Washington, D.C. 20549-1090

RE: File No. S7-23-19, Procedural Requirements and Resubmission Thresholds
Under Exchange Act Rule 14a-8

Chairman Clayton:

Thank you for the opportunity to comment on the Securities and Exchange Commission's (SEC) proposed rule entitled "Procedural Requirements and Resubmission Thresholds Under Exchange Act Rule 14-8." The National Conference on Public Employee Retirement Systems (NCPERS) is the largest national, nonprofit public pension advocate, representing more than 500 funds that manage more than \$3 trillion in pension assets. We are concerned the SEC's proposed changes to the shareholder proposal process will have a negative impact on pension plans and their beneficiaries. Below is a summary of our concerns.

Eligibility Requirements

The SEC proposes adjusting the eligibility threshold for shareholder proposal for inclusion in a company's proxy statement. The SEC is concerned the current threshold of holding \$2,000 worth of stock for a single year does not strike the right balance between allowing shareholders to engage with a company and burden on the company to respond. However, the SEC fails to provide any evidence in its analysis demonstrating increasing abuse of the shareholder proposal process. In fact, the data included in the proposal shows requests have decreased over the past several years.

The SEC proposes to create three tiers based on dollar value of holding and length of time held. The justification for this change is a concern a person may buy the smallest stake in a company possible in order to abuse the Rule 14a-8 process. In its economic analysis, the SEC acknowledges it lacks meaningful data on the length of holding for submitted shareholder proposals or evidence short holding times have led to an increase in frivolous proposals. These tiers could have a significant impact on pension funds which have large, diversified portfolios and may not have large holdings with every company. Investments may also change frequently to ensure the health of the fund and availability for beneficiaries. Funds should not be at a disadvantage because of the nature of their investments. The SEC has provided no evidence justifying these new standards.

One-Proposal Limit

In the proposal, the SEC would limit the number of proposals submitted by a shareholder or representative to one per proxy statement for each company. What is unclear from this proposal is how the limit will impact shareholders who rely on a representative. Pension plan administrators frequently employ investment and proxy advisors to assist with the management of funds and help ensure compliance with processes like shareholder proposals. Plan administrators may also rely on their representative to submit the proposals on their behalf.

It is unclear how this proposal would affect this arrangement. There is no explanation of the process for a representative who may represent multiple shareholders who want to submit proposals to a proxy statement. These shareholders should not be disadvantaged merely because they choose to use an expert to assist them. While shareholders could still receive assistance on the drafting of their proposals, they will incur additional costs. The SEC also fails to specify if the one representative limitation will apply to the entire firm or to solely the individual representative that submits the proposal.

Resubmissions

The limits on resubmissions are intended to prevent abuse of the shareholder proposal process and ensure consideration of proposals important to all shareholders. The current limits already prohibit resubmission of proposals that are gaining no traction with shareholders and fail to increase the level of shareholder support on subsequent submissions. Though this purpose is understandable, it is important to note resubmissions are also an important way to increase shareholder awareness and bolster support over time. Increasing the thresholds will limit shareholders' rights without meaningfully reducing administrative burdens for corporations.

As more investors become concerned with environmental, social, and governance (ESG) criteria when investing, shareholder proposals will become an important tool to generate change. In fact, organizations may even be directed to make these considerations based on state laws or investment requirements. Environmental and social issues may especially take multiple attempts as norms are often slow to change. This does not make these proposals less valid or important to their proponents. Research has also shown increased thresholds would have resulted in the exclusion of proposals that ultimately did receive substantially higher support.¹

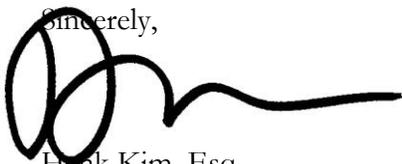
Resubmissions are an important tool for companies to receive feedback from shareholders. Repeated submissions, especially by different shareholders, can help identify emerging issues the company should address. Future shareholders should not be prohibited from submitting their proposal because a past shareholder or representative failed to garner enough support. These increased thresholds will only stifle shareholders' rights without providing any measurable savings to corporations.

¹ Whitehill, Brandon. Clearing the Bar: Shareholder Proposals and Resubmission Thresholds, *CII Research and Education Fund* (Nov. 2018).

All shareholders benefit from a company controlling its expenses thereby boosting the profits and the value of shares; however, these savings should not come at the expense of shareholders exercising their right to submit proposals. The SEC fails to provide a financial justification in its rule that shows any savings that may be generated by limiting the number of proposals submitted to a proxy statement. It also fails to provide the necessary data on the current level of abusive behavior it addresses or the consequences for shareholders.

We ask the SEC reconsider its proposal to change the Rule 14a-8 requirements. It will have a serious negative impact on shareholders, such as state and local governmental pension plans. We thank you for the opportunity to comment and please contact us if you have any questions.

Sincerely,

A handwritten signature in black ink, consisting of a large, stylized 'H' followed by a series of loops and a long horizontal tail.

Hank Kim, Esq.
Executive Director & Counsel