

Filed Electronically:

Vanessa A. Countryman, Secretary
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549

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

Dear Ms. Countryman:

Thank you for the opportunity to provide comment on the proposed change to Rule 14a-8.

I am a consulting economist with twenty years experience in public policy and a background in law and economics. I have Bachelors of Economics and Bachelors of Laws qualifications from the Australian National University and a Masters in Economics from Johns Hopkins University. I have held the position of Chief Economist at the Australian Chamber of Commerce & Industry and have experience working in government, financial markets and the energy sector.

The low threshold to submit a proposal for shareholder consideration allows activist shareholders to use corporate governance mechanisms to pursue political agendas at the expense of other shareholders. I have written on the topic of activist shareholders and the implications of their behaviour and invite the Commission to consider those views as outlined below.

High on the list of priorities that need to be addressed in the financial sector is alleviating the operation of the increasingly onerous shareholder proposal rule. Initially envisaged as a mechanism to encourage retail investors to make constructive contributions to the management of corporations, activist shareholders have since moved to exploit the system to push pet policy issues at the expense of the silent majority of shareholders solely concerned about the returns to their investment.

A root cause of the problem is the low threshold to submit a proposal for shareholders to consider. Introduced in the 1950s, the SEC's shareholder proposal rule allows an investor to force a proposal onto a company's proxy statement if they have owned \$2,000 of stock for at least one year. Keeping the bar at this level has allowed activist shareholders to hijack corporate decision-making processes to advance issues that have a tenuous connection with the underlying business of the company. While most of these efforts are overwhelmingly rejected by shareholders, some have begun winning proposals that force a company to take a more concerted action with regard to climate change, which may be a worthy public policy goal but has no business being administered on an ad hoc basis by large publicly-traded corporations.

The 2017 proxy season is a case in point. In 2017, only 5 percent of shareholder proposals at Fortune 250 companies received majority support from shareholders. More than half of all proposals related to social or policy matters that had little relationship to shareholder value or corporate governance. The extent to which the current system can be easily manipulated is

demonstrated by the fact that just three individuals and their family members generated 25 percent of all shareholder proposals at these companies.

Activist shareholders range from corporate gadflies and social justice warriors to major institutional shareholders, such as union and government pension funds. These activists are not entirely of one political persuasion; fully one-quarter of proposals from 2008 to 2010 came from religious groups and their pension funds.

The shareholder proposal rule allows an activist with an economically insignificant interest in the company to impose the cost of considering their proposal on all other shareholders, which then forces the company to incur expenses associated with assessing the proposal's legitimacy and challenging it, if it fails to meet SEC requirements. There is also a cost arising from diverting the attention of management to consideration of an issue they have most likely already determined is not in the interests of shareholders.

These rules have broader ramifications that adversely affect the operation of investment markets. Regulation and the costs arising from public listing have contributed to the economy-wide reduction in the number of listed companies. The simplest structural defense to the threat of being targeted by activist shareholders is simply not to list publicly.

America is unique amongst advanced economies in having a shrinking universe of listed companies. Stock market listings fell by around 50 percent over the two decades leading up to 2016, and there are fewer stocks listed now than in 1976, in spite of the economy being three times larger.

The smaller universe of investable companies limits the ability of investors to directly gain exposure to the complete US equity market. As a result, smaller investors miss out on the opportunities to share in the returns generated by companies that aren't listed. Accredited investor rules constrain the ability of the public to invest in private equity, an avenue that might otherwise alleviate the constraint imposed by a company not being listed.

The Financial CHOICE Act--which passed the House of Representatives-- would have lifted the ownership threshold for submission of shareholder proposals from the current \$2,000 worth of stock held for one year to 1 percent of all outstanding stock held for three years. Changing the threshold would ensure that only those investors with a material stake in an enterprise have the ability to submit proposals in the company's proxy statement. The result would be the elimination of a wide range of largely vexatious or irrelevant proposals. If activists believe they have a proposal that is in the interests of shareholders, they still have the option of convincing them using their own resources rather than those of the company.

Shareholder proposal rules no longer function in the best interests of investors. Activists have outflanked the system, maneuvering to elevate their interests above those of main street shareholders. Updating the proposal threshold would restore the balance and will reduce the cost of public listing.

America may have the deepest and most liquid capital markets in the world but lifting unnecessary regulatory burdens is crucial to ensuring its markets remain accessible to the investing public.

I welcome the opportunity to provide comment on the proposed rule change and am available to answer any queries in relation to this submission.

Yours Sincerely,

A handwritten signature in black ink, appearing to read 'B.S.W.' followed by a long horizontal flourish.

Burchell Wilson

Consulting Economist
Freshwater Economics