

Via email to rule-comments@sec.gov

January 30, 2020

Vanessa A. Countryman, Secretary

Securities and Exchange Commission 100 F Street NE Washington, DC 20549-1090

RE: Proposed Rule on Procedural Requirements and Resubmission Thresholds under Exchange Act Rule 14a-8; File Number S7-23-19

Dear Ms. Countryman:

Hello, and thanks in advance for your considerations of this letter. I am Cary Krosinsky, and am a leading teacher, writer and advisor on sustainable finance, innovation and energy.

The proposed changes to Rule 14a-8 would take the US an important step further away from the necessary checks and balances that can otherwise help enable the most efficient and effective functioning possible of US markets. As such, any such changes can easily be seen globally as part of the US becoming less competitive on a global basis especially as the SEC only has jurisdiction over what happens here.

Does the SEC want to take a step that makes the US less competitive?

Consider that the current system, less biased as it is against smaller shareholders, creates competition for good ideas, some of which may urge US companies to take steps that make them more globally competitive, not less competitive. US companies understandably have many priorities to juggle, hence benefit from these interactions, which are rarely a real problem. Such shareholder engagements often end up developing positive interactions and idea sharing which will otherwise go dormant if the SEC moves forward with its proposed changes.

Also, the SEC and the US do not operate with global power, nor in a vacuum in this regard, and so should be mindful of not making US investors less competitive as European rivals may well find their competitiveness improved by this rule – if capital starts to see other markets as more trustworthy than the US, this may cause even a small shift of allocations away from the US.

Not sure this aspect of the proposed rule and its implications were considered, it doesn't seem so anyway.

Separately, among my many activities includes having built an academically rigorous methodology on impact, which this rule would very clearly take away from investors ability to have influence upon favoring large investors, which would reduce liquidity in US equity markets.

Consider, if passive investing moved to 100% the lack of liquidity would cease to allow markets to function properly, seeking appropriate share prices through purchases and sales. Therefore, there is an ideal percentage of active/passive, which this proposal also moves markets away from.

Why is the SEC taking a step which harms small businesses in favor of the largest players? Here too an ideal balance is clearly best.

We agree with Commissioner Pierce and her astute analysis of ESG data being literally all over the place as we wrote here https://medium.com/@cary_krosinsky/the-failure-of-fund-sustainability-ratings-bea95c0b370f and the WEF's recent alignment on metrics is helpful http://www3.weforum.org/docs/WEF_IBC_ESG_Metrics_Discussion_Paper.pdf, but criticism is one thing and clarifying/joining with the likes of EY, Deloitte, KPMG and PwC is another, so we also encourage the SEC to not implement these proposed changes to allow fund managers more generally continue to refine and define what is material for these companies, which while a moving target and an unhappy experience for companies receiving hundreds of requests, do contain material requests which we encourage the SEC to also consider.

In addition, the shareholder proposal process is one of the most visible and verifiable ways in which investors can practice responsible ownership. This proposed rule, by changing submission and resubmission thresholds, among multiple other alterations, will make it significantly more difficult for investors to get critical issues on the meeting agendas of publicly traded companies.

These proposals, particularly the momentum rule and the prohibition of share aggregation, also increase the complexity of this process. Investors—including the “main street individual investor” that the SEC has said is a priority—have a multi-decade history of raising critical issues at American companies. Such issues have included board diversity, executive compensation and implementation of nondiscrimination policies. These proposals help companies look at concerns before they become crises that erode shareholder value, increase reputational risk and harm communities.

The proposal transfers power to management at the expense of their shareholders. Investors have not sought these changes. Corporate trade associations and some issuers are advocating for these changes even though, on average, only 13 percent of Russell 3000 companies received a shareholder proposal in any one year between 2004 and 2017. In other words, the average Russell 3000 company can expect to receive a proposal once every 7.7 years.

With thanks,

Cary Krosinsky

