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KURT FREEMAN
PRESIDENT

January 31, 3020

Via e-mail: rule-comments@sec.gov

Vanessa A. Countryman
Secretary
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

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

Dear Ms. Countryman:

On behalf of The Graphics Communications Conference of the International Brotherhood of Teamsters ("GCC"), I am writing in response to the SEC's Proposed Rules regarding the "Procedural Requirements and Resubmission Thresholds" for filing 14a-8 shareholder proposals, dated Nov. 5, 2019. The GCC is strongly opposed to the proposals and believes that the Commission's supporting analysis fails to make the case that investors stand to benefit from the rule changes. Rather, we think there are serious risks to the rights of investors, and ultimately the stewardship of long-term shareholder value, from the Commission's proposals.

The GCC has a combined $2.6 billion in assets under management invested in the capital markets. The GCC sponsored benefit funds are long-term investors committed to protecting the retirement security of plan participants, and to this end, files Rule 14a-8 shareholders proposals to improve corporate governance and promote responsible corporate behavior to mitigate risk in its equity portfolio companies.

If something is not broke, do not fix it

We believe the Securities and Exchange Commission must ensure that Rule 14a-8 is a fair and workable standard for shareowners and companies. To this end, we are confident that the existing system achieves this by providing institutional and retail investors with an orderly and cost-effective means to communicate important policy issues to shareholders, corporate boards of directors, and corporate executives. In fact, we strongly believe that corporate governance practices among many U.S. companies would not have changed for the better without the current shareholder proposal process -- including the adoption of majority voting standards, the widespread move to annual director elections, and the implementation of proxy access provisions, to name but a few. Moreover, the Commission categorically fails to demonstrate that the existing proposal process is failing to ensure that it is "not excessively or inappropriately used" even as it presses ahead with reforms that, by the Commission's own analysis, has at its core the premise that fewer proposals is better.

New requirements appear arbitrary

Even if one were to believe that the current system needs reforming – which we categorically do not – the actual changes in eligibility requirements being put forward appear out of left-field. For instance, despite making much of inflation and index growth since the holding requirement was last revised, the Commission's proposed $25,000 one-year ownership requirement is three times what bench-making against index growth would suggest and eight times an inflation-adjusted level. In fact, having championed the retail investor, it is astonishing that the Commission is proposing a reform that would require a diversified investor (i.e. one holding the Russell 3000) to hold up to $75 million in total assets to be able to file shareholder resolutions at any given holding.[1] It also threatens to disadvantage employees who receive equity compensation, as the awards – typically relatively small -- are often already subject to lengthy vesting requirements before becoming common stock (and thus beginning to count towards the SEC's holding requirement). Under the Commission's proposals, assuming a four-year vesting period, a worker-owner may have to wait up to seven years to file a shareholder resolution.

Similarly, we find the proposed hikes in the resubmission thresholds, lacking any solid justification, bear the clear desire to reduce the number of resolutions that can be filed. Considering, for example, that a 20 to 25 percent vote against a management proposal is increasingly considered a significant level of opposition that demands addressing,[2] it is unclear to us why a shareholder proposal garnering a similar vote against management's recommendation could be considered a moot issue, warranting a 'cooling-off' period. The new rules are particularly ill-considered given that support for many proposals varies on company-specific facts that can change from year to year, such as performance, director performance, and the occurrence of a major corporate event, such as a crisis or scandal. The idea that a proposal can be adjudged whether or not to be on a '"sustainable path toward achieving" majority support appears particularly naïve in this regard.

More poorly thought out than arbitrary, is the momentum rule that would require only a 10 percent decline in support once a proposal has been submitted three or more times to be successfully omitted in subsequent years. Support levels for all proposals can be expected to 'bounce' around year to year without indicating a major long-term shift in investor concerns. (In arriving at the 10 percent momentum rule, did the Commission consider this background volatility?) In perhaps the most perverse case, a 10 percent decline in support could be more or less accounted for by the dilution of public shareholdings from the vesting of executive equity awards.[3]

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[1] I.e. 3,000 multiplied by $25,000.

[2] For example, Glass Lewis, based on investor feedback, recently expanded its expectations for how companies ought to respond to a 20% or more oppositional vote against "Say on Pay".

[3] According to a New York Times analysis, the average dilution among S&P 500 companies from executive pay was 2.5 percent of a company's shares outstanding. Moreover, efforts to offset that dilution (on an EPS basis) through a share buyback would, assuming that insiders do not sell into the repurchase, have the impact of further concentrating the holdings of insiders.

The resubmission threshold changes, more generally, appear to ignore the fact that the investor base is not static, but changes from year to year (particularly the case when a stock enters or leaves an index). Preventing current shareholders from voting on a proposal because last year's investor base failed to show a given level of support unfairly ties the hands of new investors.

Economic analysis fails to make the case

It is reasonable to think that accurately weighing up the costs and benefits of the current system alongside those of the proposed reforms would be a prerequisite to moving ahead with the new rules. And yet, the Commission's analysis is sorely lacking in its data, analysis and ultimately its conclusions in this regard.

Critically, in neither its initial justification for putting forward its proposals nor its assessment of the economic impacts of the proposed changes, does the SEC adequately seek to quantify the impact of limiting the ability to put forward such self-evidently beneficial and value-enhancing reforms. In fact, the Commission explicitly states that its "economic analysis does not speak to whether any particular shareholder proposal or type of proposals are value enhancing, whether the proposed amendments would exclude value-enhancing proposals, or whether the proposed amendments would have a disproportionate effect on proposals that are more or less value enhancing" -- an astonishing admission given what the Commission is proposing.[4] Rather the bulk of the discussion and analysis (though see below) is tilted to the "burden" the existing system places on companies. To us, it is decidedly unclear how the Commission could put forward its proposals, and perform a robust cost benefit analysis of the changes, without thoroughly assessing the other side of the ledger – the benefits to shareholders (and ultimately issuers) from the existing system.

The failure to thoroughly assess the costs of the reforms – the benefits of the existing system – is all the more troubling given the hard numbers the SEC provides in support of the reforms. Notwithstanding the word "burden" appearing 78 times in the proposed rules, the Commission struggles to credibly quantify the cost burdens the current system imposes on companies or the potential cost savings from its proposals.

The Commission, ultimately, relies on just a handful of disparate estimates of the costs associated with receiving a shareholder resolution, while simultaneously asking companies to provide more accurate information – a survey that should surely have been conducted before proposing its reforms. But be that as it may, the results of the economic analysis into the potential cost savings of the proposed changes are striking in their insignificance. Even using the highest cost estimate associated with receiving a proposal, the proposed rules would save Russell 3000 companies, collectively, just $70.6 million – that's 0.006 percent of aggregate profits. Or to put an even finer point on it, that's 0.5. percent of the median CEO pay for the Russell 3000 universe. Using the lower bound cost estimate, the proposed rule changes would save, again in the aggregate, just $1.4 million. The shortcomings of this analysis make clear that the

[4] Rather, the Commission limits itself to a brief two-page review of some of the existing literature on the topic, although even here the research cited would appear to affirm the value-enhancing potential of shareholder proposals.

Commission is railroading investors with a solution that is desperately searching for an actual problem.

We believe this is truly a case of "if something is not broke, do not fix it."

We thank you for your consideration of our concerns on this matter. If you have any questions or concerns, please contact Louis Malizia, Assistant Director, Capital Strategies Department, at [redacted] or by phone [redacted].

Sincerely,

Kurt Freeman
President
Graphic Communications Conference of the
International Brotherhood of Teamsters