

January 31, 2020

Vanessa A. Countryman

Secretary

U.S. Securities and Exchange Commission

100 F Street NE, Washington, DC 20549-1090

Re: S7-23-19 Procedural Requirements & Resubmission Thresholds under Exchange Act Rule 14a-8

Dear Ms. Countryman,

As 501c3 foundations, we are bound by law and policy to hold our assets in the public trust. One way we preserve and protect that trust is as shareholders. Indeed, shareholder proposals allow foundations to highlight and catalyze the resolution of environmental and social issues that impact both shareholder value and the achievement of our charitable missions. As such, the undersigned foundations, which represent approximately \$406 million in annual charitable giving and \$7.4 billion in owned assets, are deeply concerned about the proposed rule changes introduced by the Securities and Exchange Commission (SEC) on November 5, 2019.

In particular, we are concerned about the proposed changes to ownership requirements and resubmission thresholds, which we believe will stifle productive shareholder engagement on a range of environmental, social and governance (ESG) issues with implications for long-term shareholder value.

The existing system allows all investors an important, and appropriate, mechanism to bring environmental, social and governance issues to the attention of the boards and managements of the companies they own. In altering the ownership requirements for submitting a shareholder proposal, Proposal S7-23-19 moves the ability to use this critical tool beyond the reasonable ownership levels of an ordinary person.

Currently, anyone wanting to submit a shareholder proposal must hold at least \$2,000 worth of a corporation's shares continuously for at least one year prior to submitting the proposal. Under the proposed rules, smaller shareholders would be required to hold shares for three years prior to filing while larger investors with at least \$25,000 of a corporation's shares would be eligible to submit proposals after only one year. This creates an unequal system that unfairly penalizes small investors who are often among the first to use the shareholder proposal process to raise important issues ranging from gun safety to climate change to corporate governance.

For instance, small investors are responsible for a significant percentage of filings pushing companies to adopt corporate governance measures that are widely accepted as best practice, including issues like the separation of corporations' Chair & CEO positions, annual director elections and majority vote standards for director elections. As Investopedia [notes](#), these small shareholders add, "value for other shareholders by vocalizing [their] concerns and inciting action." And action on many of the issues small shareholders have raised has been shown to be good for all investors. Corporations with combined Chairs and CEOs, for example, have been found to provide lower returns to investors over time. In fact, [research from GMI Ratings](#) found that five-year shareholder returns were nearly 28 percent higher at companies where the roles of Chairman and CEO were held by separate people.

With respect to resubmission thresholds, Rule 14a-8 currently requires that proposals receive at least 10% of the vote to be resubmitted more than 3 times in a row in a five-year period. Proposal S7-23-19's increase in resubmission thresholds would require very high votes in favor of proposals to be achieved within just three years, regardless of the extent of insider ownership at any given corporation, and would have a chilling effect on essential ongoing discourse among corporate management, shareholders and other stakeholders.

Also problematic is the proposed provision pertaining to proposals that reach the 25-50 percent range after three years. If such a proposal's support decreases by 10 percent from the previous year's vote, a company can omit it from the proxy. As US SIF has pointed out, "This sets up a bizarre scenario where a proposal that loses support from 49 percent to 44 percent in the fourth year (a 10 percent decline from 49 percent) can be omitted, but a proposal that remains steady at 27 percent on the fourth year's vote can be resubmitted. This would imply that vote of 44 percent is a weaker outcome than a vote of 27 percent." This proposed revision makes no sense and could serve to cut short the momentum of multi-year campaigns supported by a significant portion of a corporation's shareholders.

Should Proposal S7-23-19 be adopted, foundations – along with other investors – will lose the ability to build support for environmental, social and governance (ESG) proposals from other investors over multiple years. This would negatively impact efforts to drive improvements in corporate responses to environmental and social issues because multiple years are often necessary for investors to evaluate the potential business implications of new topics and move to support proposals on those topics. For example, the first resolution explicitly focused on climate risk at ExxonMobil (then just Exxon) was filed in 1999. It received the support of just 5.3% of votes cast. In 2017, a climate-oriented proposal at ExxonMobil received the support of 62.1% of votes cast. The materiality of climate change itself, and the necessity for ExxonMobil to strategically manage it, did not shift over time. Rather a number of years were required for investors and the business community to become aware of the serious risks to long-term shareholder value posed by climate change.

For foundations, our grantees and our partners in the communities most impacted by corporations' behavior, shareholder proposals are an important tool for addressing issues with implications for our missions and program goals and for protecting the value of our investments. Over the years, shareholder proposals have sparked productive engagements on the very issues the Business Roundtable's "Statement on the Purpose of the Corporation" says are important for long-term success. In August 2019, more than 180 leading corporations committed to address many of the same issues that shareholders have been raising through shareholder proposals for years.

For example, signatories to the Statement commit to "foster diversity and inclusion, dignity and respect." According to Institutional Shareholder Services (ISS), in 2019 alone, shareholders submitted 50 proposals on board diversity, of which more than 70 percent were withdrawn after shareholders and the companies they own reached agreements to address the concerns raised in the proposals. A further 17 proposals were filed in 2019 with a direct focus on workforce diversity. Here too, roughly half of the proposals were withdrawn after they led to agreements between shareholder proponents and the companies they own.

While it has been suggested that investors do not need to resort to filing shareholder proposals in order to meaningfully engage with companies on investment-relevant ESG issues like diversity, equity and inclusion, this is often not the case, particularly for small investors. While letters and phone calls from all but the very largest investors often fail to illicit any sort of meaningful response from companies, shareholder proposals ensure, at the very least, that a corporation's board members review the proposal and, if it proceeds to a vote, offer a written response to it. We believe that if investors are constrained in their ability to file shareholder proposals, we will see a significant decline in the number of meaningful dialogues between investors and the corporations they own on important social and environmental issues with implications for long-term shareholder value.

Signatories of the Business Roundtable Statement also commit to "protect the environment by embracing sustainable practices across our businesses." ISS data also shows that in 2019, shareholders filed 61 proposals on climate change, half of which were withdrawn by proponents, presumably for action by companies to address proponents' concerns about their management of climate risks. In 2019, shareholders also used the current shareholder proposal process to engage companies about issues including air and water pollution, deforestation, toxic chemical use, packaging and manufacturing waste, coal ash ponds and food waste.

It's worth noting that the Business Roundtable "Statement on the Purpose of the Corporation" also commits signatories to effective engagement with shareholders, which is why it's so important for both corporations and shareholders that the current system governing shareholder proposals, which spark a significant percentage of effective corporation/shareholder engagements, be left as is. To place further unnecessary restrictions on the process would run counter not only to our interests as foundations, but to the commitments outlined by so many of this country's most influential public corporations.

For these reasons, we believe that the proposed changes do not align with the SEC’s stated goals of improving the proxy voting system’s accuracy, transparency or effectiveness. As Commissioner Robert Jackson Jr. rightly pointed out in his [dissent](#), “Whatever problems plague corporate America today, too much accountability is not one of them.” We agree and are concerned that these changes may not only reduce corporate accountability but also create economic harm, derail improvements to corporate ESG practices and mute the voices of both smaller shareholders and the stakeholders public corporations are ultimately accountable to.

The current system works and should not be significantly altered. As foundations, we believe that the proposed changes will be harmful to our endowments, to our work as grantmakers and to the US economy.

Sincerely,

444S Foundation

Aid Association for the Blind of the District of Columbia

CS Fund / Warsh-Mott Legacy

George Gund Foundation

Jessie Smith Noyes Foundation

Laird Norton Family Foundation

Mary Reynolds Babcock Foundation

McKinney Family Foundation

McKnight Foundation

Merck Family Fund

Park Foundation

Sierra Club Foundation

Swift Foundation

The California Wellness Foundation

The Educational Foundation of America

The Grove Foundation

The Nathan Cummings Foundation

The Needmor Fund

The Rockefeller Brothers Fund

Wallace Global Fund

William Caspar Graustein Memorial Fund

Woodcock Foundation