



January 31, 2020

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

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

Via e-mail [rule-comments@sec.gov](mailto:rule-comments@sec.gov)

Dear Ms. Countryman:

I am Executive Director of Open MIC (the Open Media and Information Companies Initiative), a non-profit organization that works to hold companies in the technology and media sectors accountable for the products and services they provide to billions of people all around the world. Shareholder engagement is our principal tool.

**Open MIC strongly opposes the rules proposed by the Securities and Exchange Commission (SEC), referenced above, which will severely limit the rights of shareholders to engage with corporations using the shareholder resolution process over issues with a distinct impact on long-term value.**

Since its founding in 2007, Open MIC has collaborated with numerous investors who operate from the organizing principle that responsible corporate behavior is better business. While Open MIC does not own or control shares, our organization has assisted investors to engage with and file shareholder resolutions at many of the world's largest tech and media companies – including Alphabet, Amazon, Apple, AT&T, CenturyLink, Comcast, Facebook, Microsoft, Sprint, Twitter, TimeWarner and Verizon.

These companies are large and complex global enterprises with enormous market capitalizations, in some cases in excess of one trillion dollars. In Open MIC's experience, none of these companies have been weighed down or harmed financially by the shareholder resolution process as currently constituted. In fact, the record demonstrates that the shareholder resolution process has driven value-enhancing corporate governance, policy and disclosure changes within the tech and media sectors.

**In the past decade, shareholder resolutions at leading tech and media companies have encouraged companies to improve corporate policies and practices in service of long-term business sustainability and financial health.**

Open MIC has worked with investors on shareholder resolutions that expose and seek to address the risks posed by weak cybersecurity - a subject that Chairman Clayton has written about extensively - as well as privacy and data security concerns; disinformation, hate speech and harassment on social media platforms; racial and gender bias built into artificial intelligence (AI) systems; civil and human rights risks presented by facial recognition technology; and insufficient corporate governance at leading tech companies.

The positive impact of some of these shareholder resolutions has been widely recognized. For example, Theresa May, then Prime Minister of the United Kingdom, used her featured speech at the 2018 World Economic Forum in Davos, Switzerland, to highlight the critical role shareholder engagement could play at social media companies. She specifically cited shareholder proposals that had been filed by U.S. investors at Facebook and Twitter, saying, “Investors can make a big difference here by ensuring trust and safety issues are being properly considered. And I urge them to do so.” The Prime Minister’s speech attracted global media attention.

Comments like this illustrate how critically important the shareholder resolution process is to bringing issues of general public concern and regulatory inquiry to the attention of the broader investment community. Making it more difficult for resolutions to be filed, while also raising the thresholds for resubmission of resolutions, would mean that many emerging risks in the tech sector – which can be highly technical and difficult to identify – would be raised for shareholder consideration only after significant damage has been done. In the parlance of the tech industry, bringing new technology to market despite threats posed to public welfare and consumer trust has been called a “break-then-fix” approach. Such an approach is anathema to millions of shareholders with long-term, sustainable, investment horizons.

**Contrary to one of the governing assumptions of the proposed Rules change—that success requires majority shareholder voting support—Open MIC has found that companies oftentimes adapt corporate policies and practices that address long-term risks following votes that did not reach majority support. Shareholder resolutions have registered important impact even at tech companies with “dual-class” shareholding structures that provide their founders with more voting power and provide for majority control of the company.**

For example, in 2018 a resolution filed by Trillium Asset Management and the Park Foundation, and developed with support from Open MIC, called for Facebook’s board of

directors to appoint a Risk Oversight Committee to address a growing list of risks and concerns confronting the company. Facebook publicly opposed the proposal in its proxy statement; the resolution nonetheless attracted support of more than 45% of the company's independent shares (i.e., those not controlled by CEO Mark Zuckerberg).

While the resolution did not win majority support, two weeks after the 2018 annual meeting the company's Board of Directors quietly adopted important and substantial changes to the charter of its Audit Committee, renaming it the "Audit and Risk Oversight Committee" and broadening its mission to include oversight of issues that have placed the social media platform at the center of global controversy, including privacy, data use, community safety and cybersecurity. The changes were not otherwise announced publicly by Facebook, but they closely matched those recommended in the shareholder resolution opposed by the company only weeks earlier.

In 2019, shareholders of Amazon pressed the company regarding the potential civil and human rights risks involved in its sales of a facial recognition product ("Rekognition") to law enforcement agencies. At the time, Amazon argued in no-action filings that two shareholder proposals "raise only conjecture and speculation about possible risks that might arise." The proposals proceeded to a shareholder vote, however, with one filed by Harrington Investments winning 28 percent support at the May 2019 annual meeting. Only months later, in September 2019, Amazon CEO Jeff Bezos publicly called for government regulation that could apply broadly to all facial recognition services, acknowledging that "there's lots of potential for abuses with that kind of technology, and so you do want regulations." While that position remains unacceptably vague, the concerns expressed by shareholders played an important part in Amazon's public recognition of potential corporate risk.

It's important to note that at companies with "dual-class" shareholder structures, which are not uncommon in the tech industry, the proposed changes regarding resubmission of resolutions would make shareholder engagement particularly difficult unless there were new and separate thresholds established for those companies with dual-class structures.

Policy reforms are also often adopted in response to the withdrawal of shareholder resolutions.

For example, in response to a 2013 shareholder proposal filed by Trillium Asset Management and Zevin Asset Management, Apple amended its Board's Audit and Finance Committee charter to include responsibility for privacy and data security risks that confront the company.

Apple's amended charter required its Audit and Finance committee to maintain board oversight of the "legal and regulatory, and reputational risks" of privacy and data security and to review with management "the Corporation's privacy and data security risk exposures; the potential impact of those exposures on the Corporation's business, operations and reputation; the steps management has taken to monitor and mitigate such exposures; the Corporation's information governance policies and programs; and major legislative and regulatory developments that could materially impact the Corporation's privacy and data security risk exposure."

The shareholders withdrew their proposal following dialogue with Apple management. Open MIC believes that by incorporating privacy into its committee charter, Apple's board of directors acted in the best interests of the company, its shareholders and society. The positive dialogue between Apple and its shareholders is a great example of how active investors can benefit a company and its stakeholders.

**The current 14a-8 rule has worked well for decades, and there is no need to revise it.**

Given Open MIC's experience in the tech and media sectors, we believe those who have lobbied for the proposed changes are exaggerating the cost of the process to companies in order to avoid accountability to the public interest on a range of social issues, as well as to avoid accountability to their shareholders. Many of the companies that we engage with understand that this engagement enables them to mitigate reputational, legal, and financial risks, and build value. The filing of shareholders resolutions by investors big and small is a crucial part of the engagement process.

We strongly urge the SEC to reconsider the proposed rule changes. Thank you for your careful consideration of these important matters.

Sincerely,

A handwritten signature in black ink that reads "Michael Connor". The signature is written in a cursive, flowing style.

Michael Connor  
Executive Director  
Open MIC (Open Media and Information Companies Initiative)