



January 31, 2020

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

Submitted via electronic mail: rule-comments@sec.gov

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

S7-22-19 Amendments to Exemptions from the Proxy Rules for Proxy Voting Advice

Dear Secretary Countryman,

Mercy Investment Services, Inc. ("Mercy Investments") appreciates the opportunity to provide comments to the Securities and Exchange Commission ("SEC" or the "Commission") on the November 2019 proposed changes to procedural requirements/resubmissions and amendments to exemptions from the proxy rules (S7-23-19/ S7-22-19 and individually referred to as the "Release").

Background

Mercy Investments is the asset management program for the collective investment and professional management of endowment, operating and other funds of the Sisters of Mercy of the Americas (the "Sisters of Mercy") and participating ministries. The Sisters of Mercy seek a just world for people who are poor, sick and uneducated, and includes more than 2,500 women who have a tradition of serving communities throughout the United States and beyond. Today, Mercy Investments is also the asset management program for 47 of the Sisters of Mercy's ministries, which are tax-exempt organizations engaged in religious and charitable activities, including education, social services and health care. The majority of these participating organizations each have investment assets less than \$5 million.

The mission of Mercy Investments is to enhance their investments through responsible financial stewardship which includes actively engaging companies in our portfolios on environmental, social and governance ("ESG") issues. We take this approach to responsible investing both because we believe that these issues can significantly impact the long-term value of our investment portfolio, and because we are called to promote the common good as reflected in the values and principles of the Sisters of Mercy. Our engagements with companies over the past three decades have included a focus on access to health care both in the United States and globally; protection of human rights of the vulnerable and disenfranchised; effective corporate

governance practices including board diversity and reasonable executive compensation; and protection of the earth through care for the environment and water sustainability. Throughout this time, our primary approach has been through dialogue with companies; however, we have learned that companies, management and boards approach shareholder engagement differently, and that shareholder proposals are an essential tool to ensure that issues of importance to companies and their shareholders can be brought to the attention of company management and boards.

As long-term investors, we believe that the proposed rules are unnecessary and will undermine a corporate engagement process that has been of great value to both companies and investors, small and big. The proposed regulations, if adopted, would severely limit the rights of shareholders to engage with corporations using the shareholder proposal process over issues with a significant impact on companies. Mercy Investments is a member of the Interfaith Center on Corporate Responsibility (“ICCR”), a group of more than 300 organizations that include faith-based organizations, foundations, asset managers, pensions and other long-term investors. In addition to our own comments in this letter, we write in support of the letter from ICCR to the SEC dated January 27, 2020.¹

For decades, the shareholder proposal process has served as an efficient, effective and beneficial way for corporate management and boards to gain a better understanding of shareholder concerns, particularly those of shareholders concerned about the long-term value of the companies that they own. Engagement by these shareholders has served as a crucial “early warning system” for companies to identify emerging risks, and there are numerous examples of companies changing their policies and practices in light of productive engagement with shareholders. The shareholder proposal process has contributed in a meaningful way to constructive dialogues with companies and their responsiveness to key issues that can impact the legal, financial and reputational risks of companies. The proposed rule changes will make companies far less accountable to shareholders, stakeholders, and the public at-large.

Changing Landscape of Investor Expectations of Companies

The Commission’s effort to curtail shareholder rights runs directly counter to broader trends in the business and investor communities toward greater accountability to stakeholders and investor reliance on ESG performance in investment and stewardship decisions. In August 2019, the Business Roundtable (the “BRT”) issued a “Statement on the Purpose of the Corporation” articulating a “fundamental commitment” to all stakeholders, including respecting “people in our communities” and protecting the environment.² Nearly 200 CEOs of large U.S. companies signed the BRT statement. In addition, investment strategies that incorporate ESG issues are surging. In January 2020, BlackRock, the largest asset management firm investing funds for investors both large and small, recently announced that the company would undertake several

¹ <https://www.sec.gov/comments/s7-23-19/s72319-6702907-206070.pdf>.

² Business Roundtable, “Statement on the Purpose of a Corporation” (2019) (<https://opportunity.businessroundtable.org/wp-content/uploads/2019/12/BRT-Statement-on-the-Purpose-of-a-Corporation-with-Signatures.pdf>)

initiatives to “place sustainability at the center of [its] investment approach,” noting that “climate change is almost invariably the top issue that clients around the world raise with BlackRock.”³ In part, the letter stated:

As your fiduciary, BlackRock is committed to helping you navigate this transition and build more resilient portfolios, including striving for more stable and higher long-term returns. Because sustainable investment options have the potential to offer clients better outcomes, we are making sustainability integral to the way BlackRock manages risk, constructs portfolios, designs products, and engages with companies. **We believe that sustainability should be our new standard for investing.**

Shareholder Resolutions Led Companies to Address Key Risk Issues

While there are hundreds of shareholder proposals that have led to constructive engagement and improvement in company practices, examples of resolutions that have led to measurable improvements include:

- Engagement began in 2017 with more than 20 pharmaceutical and distributor companies to address the opioid epidemic, a public health crisis that communities across the country were struggling to handle: engagements began with letters and shareholder proposals were filed at many companies. Twelve companies published reports addressing the associated legal, reputational, and financial risks related to the opioid crisis following receipt of shareholder proposals from Mercy Investments and other participants in Investors for Opioid Accountability.⁴
- Engagement with 13 major trucking firms on the issue of human trafficking to develop and implement a trafficking awareness training program with truck drivers as a matter of human rights protections and that would minimize legal and reputational risks of these trucking companies when confronted with human trafficking victims. Engagement began with an outreach letter to the trucking companies. While some companies did respond and agree to address these risks of human trafficking in their operations, resolutions were filed with 10 trucking companies, all of which were withdrawn based upon commitments to implement training and human rights policies, and support the efforts of organizations like Truckers Against Trafficking (TAT). When this work began, fewer than 1,000 TAT-certified drivers existed; following engagements, TAT’s reach has grown to training more than 845,000 drivers and helping more than 1,230 human trafficking victims.⁵
- As long-term investors in companies, Mercy Investments and other investors for numerous years have been concerned about the legal, regulatory and physical risks posed to company operations - and to the financial markets as a whole - by climate change. As a result of shareholder proposals, climate risk reporting has become

³ <https://www.blackrock.com/corporate/investor-relations/blackrock-client-letter>.

⁴ Investors for Opioid Accountability, *Two-Year Progress Report*, at 12. (https://www.iccr.org/sites/default/files/page_attachments/iaa_two_year_summary_report.pdf).

⁵ <https://truckersagainsttrafficking.org/>

widespread in high-risk industries including oil and gas and electric utilities; large investors such as BlackRock are now looking to the guidelines produced by the Task Force on Climate-related Financial Disclosures and the Sustainable Accounting Standards Board to evaluate the long-term viability of companies across sectors in their portfolios.⁶ Amazon employees who are also company shareholders filed a proposal in 2019 asking their company to report on how it was preparing for business disruptions posed by climate change; the proposal received a vote of 31% at the company's annual meeting. Amazon issued its first assessment of its overall greenhouse gas emissions at the end of 2019⁷ and has pledged to cut delivery emissions by acquiring 100,000 electric vans beginning in 2021 and to source 100% of its energy from renewable sources by 2030, up from a current level of 40%.⁸

Comments on Specific Regulatory Proposals

Ownership Threshold Requirements

In the Release, the Commission proposed changes to the ownership filing thresholds that would require shareholders to own \$2,000 worth of company stock for a minimum of three years (up from one year) before they can submit a shareholder resolution. In addition, shareholders who own stock for only one or two years must own \$25,000 and \$15,000 worth of shares, respectively, to be eligible to file.

The proposed increase in ownership thresholds will make it difficult for smaller investors to voice important concerns and raise issues of risk to the companies they own. The current ownership threshold of \$2,000 ensures that a diversity of voices are heard, not just the biggest investors. Small investors have contributed a multitude of now commonplace company best practices. According to data compiled by the Sustainable Investments Institute, 187 proposals on environmental, social and sustainability topics came to a vote at U.S. companies in 2019. Many of these were filed by investors with relatively small stakes consistent with the existing filing thresholds. The proposals received an average of 25.7% support in 2019 (average of 25.4% in 2018, and 21.4% in 2017).⁹ The Proposed Rule itself shows that the total number of shareholder proposals is declining.¹⁰

The Commission supports this change by conclusively asserting that “holding \$2,000 worth of stock for a single year does not demonstrate enough of a meaningful economic stake or investment interest in a company to warrant the inclusion of a shareholder’s proposal in the

⁶ <https://www.blackrock.com/corporate/literature/publication/blk-commentary-tcfd-sasb-aligned-reporting.pdf>

⁷ <https://sustainability.aboutamazon.com/carbon-footprint>

⁸ <https://www.cbsnews.com/news/amazon-promises-to-go-carbon-neutral-by-2040-and-go-all-renewables-in-a-decade/>

⁹Si2 ‘FACT SHEET: Social & Environmental Proposals at US Companies, January 2020
https://siinstitute.org/special_report.cgi?id=80.

¹⁰ Procedural Requirements and Resubmission Thresholds Under Exchange Act Rule 14a-8,
<https://www.sec.gov/rules/proposed/2019/34-87458.pdf>, (the “Release 34-87458”) at 75.

company proxy statement," in light of inflation and the growth of the markets since the \$2,000 threshold was established in 1998, and further that the proposed new thresholds "more appropriately balance" the interests of shareholders and companies.¹¹ In our view, the proposed 12-fold increase in the ownership threshold is unwarranted and unfair. The current ownership threshold of \$2,000 ensures that corporate management and boards can hear a diversity of voices, not only the biggest investors. It is entirely inconsistent with the Commission's oft-touted focus on protecting smaller investors. Chairman Clayton has stated repeatedly that the "common theme" of the Commission's work is "serving the interests of our long-term Main Street investors."¹² Indeed, the website of the SEC states that:

"The mission of the U.S. Securities and Exchange Commission is to protect investors, maintain fair, orderly, and efficient markets, and facilitate capital formation."¹³

The Commission concedes that the higher ownership thresholds will have a "disproportionate impact" on individual proponents.¹⁴ Given that, it is interesting that there was no justification of that "disproportionate impact" on the ground that individuals or holders of smaller amounts of stock submit less meritorious or successful proposals than investors holding larger amounts of stock. In addition, the Release argues that the proposed ownership threshold changes do not disadvantage smaller investors because the \$2,000 threshold would stay in effect for shareholders holding for three years or longer. However, the Commission does not appear to take into consideration that shareholders periodically change approaches to investments, which can lead to brief periods of disrupting continuous ownership, if even for a few brief days. Examples include change in broker, investment manager and custodian. Holding shares for a year ensures that investors are concerned about the long-term value of the company.

We urge the SEC to maintain the existing share ownership requirements of \$2,000 continuously for one year.

Resubmission Thresholds

The SEC proposes raising resubmission vote thresholds from 3% if the proposal was voted on once, 6% if it was voted on twice, and 10% if it was voted on three times (referred to as "3/6/10%") to 5/15/25%. The proposed increase in resubmission thresholds would unnecessarily exclude important proposals that gain traction over time, and ultimately would stifle key reforms. Through the years, many resolutions that initially received low votes went on to receive significant support or have led to productive engagement, as the marketplace and shareholders are educated on the issue and better understand the serious risks to companies.

¹¹ Release 34-87458, at 19-20.

¹² "Remarks to the Economic Club of New York" (Sept. 9, 2019) (<https://www.sec.gov/news/speech/speech-clayton-2019-09-09>).

¹³ <https://www.sec.gov/Article/whatwedo.html>.

¹⁴ Release 34-87458, at 144.

Examples include:

- Resolutions with oil and gas companies on the risks of climate change that often received below 5% of shareholder support when first introduced beginning in 1998, but which now receive substantial, and even majority, shareholder votes.
- Resolutions highlighting human rights risks in global supply chains initially received low votes at companies, but as a result of engagement prompted by the proposals, sector leaders have adopted human rights policies and supplier codes of conduct that help minimize legal, reputational, and financial risks.

Clearly these signify that investors appreciate the value of the issues being raised in these resolutions.

In addition, according to data compiled by the Sustainable Investments Institute, the number of shareholder proposals on environmental, social and sustainability topics filed in the past three years has declined from 494 in 2017 to 457 in 2019. During that same time period, the average shareholder support for these proposals remaining on the proxy grew from 21.4% in 2017 to 25.7% in 2019.¹⁵ In addition, the Proposed Rule itself shows that the total number of shareholder proposals is declining¹⁶. These data points demonstrate growing support for shareholder proposals and a declining number appearing on proxies, so what is the specific benefit(s) toward protecting investors that the Commission is achieving by increasing resubmission thresholds? What problem is the Commission seeking to address through these proposed changes? We do not see any benefit to the proposed changes other than to companies that are seeking to be less accountable to their shareholders, stakeholders and communities they serve.

We urge the SEC to maintain the existing resubmission thresholds.

Limitations on Submission by a Representative

The Release proposes new limitations on a shareholder's right to use an agent to represent it in part or all of the shareholder proposal process. The Proposed Amendments include a limitation of one proposal per person (including a representative) at a given company and a mandate that the shareholder, not its agent, make itself available to meet with the company about the proposal shortly after its submission. We urge the Commission not to adopt these proposals. Investors, many of whom are institutions and entities of various types, use representatives in the ordinary course of management of their investments, including to serve as representatives for shareholders in the 14a-8 process. Indeed, organizations of various types are not natural persons and require the use of designated agents to represent them in various capacities in the investment and share ownership processes. Mercy Investments is a signatory to a letter signed by various investors and advisors to the SEC outlining our many significant concerns related to these provisions.¹⁷

¹⁵ Si2 'FACT SHEET: Social & Environmental Proposals at US Companies, January 2020
https://siinstitute.org/special_report.cgi?id=80.

¹⁶ Procedural Requirements and Resubmission Thresholds Under Exchange Act Rule 14a-8,
<https://www.sec.gov/rules/proposed/2019/34-87458.pdf>, (the "Release 34-87458") at 75.

¹⁷ <https://www.sec.gov/comments/s7-23-19/s72319-walden-012720.pdf>

In addition to representing Mercy Investments in engaging companies in our investment portfolio, we also represent other faith-based organizations (“partners”) in engaging companies held in their portfolios. In each case, this is pursuant to a written agreement that includes provisions such as each partner approving annual plans that define the issues, related proposals, and companies in the individual partner’s portfolio that will be engaged. Custodial certification letters are provided to companies receiving proposals demonstrating the partner meets the required share ownership under SEC regulations.

The Release states, without support, that “there may be a question whether the shareholder [that submits through a representative] has a genuine and meaningful interest in the proposal, or whether the proposal is instead primarily of interest to the representative, with only an acquiescent interest by the shareholder.”¹⁸ In our role as representative of our partners, the Commission could not be more inaccurate in that statement. Our partners actively participate in the development of annual plans for engagement and filing proposals, and rely on the expertise, staffing and resources of Mercy Investments to implement their plans and represent them both in dialogue with companies and at annual shareholder meetings. We report to them on multiple occasions annually on the dialogues with companies on their issues and concerns and the outcome of their filed proposals. To date, no company receiving a proposal where Mercy Investments represents more than one filer has ever voiced a concern to us that we represent more than one shareholder nor questioned the “genuine and meaningful interest” of the shareholders who filed the proposal. Further, having shared representation streamlines scheduling and holding dialogues. Finally, we believe that limiting a representative to one proposal at a company infringes on the shareholder-representative relationship, which is governed by state agency law, and unduly infringes on investors to select the best representative to handle their interests. The additional significant effect of this proposal by the Commission is to unduly and without justification infringe on shareholder’s rights to file proposals of their choosing at companies held in their portfolios.

Proponent Obligation to Discuss Proposal

The Proposed Amendments would require a shareholder submitting a proposal to state that it is available to meet with the company in person or by phone no less than 10 nor more than 30 days after the submission date to discuss the proposal and to provide specific dates and times for such discussions. The Commission’s ostensible purpose for this requirement is to encourage engagement.¹⁹ We do not believe that promoting engagement is an issue that the Commission should regulate, and indeed, engagement frequently occurs now without SEC regulation. If the Commission does issue regulations governing discussion between filers and proponents, it should ensure that similar requirements (time and participation requirements to include board members) be imposed on companies as well.

¹⁸ Release 34-87458, at 30.

¹⁹ Release 34-87458, at 33.

Proxy Advisory Services

Mercy Investments seriously undertakes its responsibility to vote proxies on the companies in its investment portfolio. In proxy year 2019, Mercy Investments voted 2,158 meetings and on 26,745 ballot items on those proxies. From its inception, Mercy Investments has voted all of its proxies annually as a responsible shareholder in the companies held in our portfolio. We feel voting proxies is a part of our duty as shareholders and as the Commission states in its introduction is a “key component of corporate governance.”²⁰

As a small-size institutional investor, to do informed voting on that significant number of companies and ballot items, Mercy Investments retains a proxy advisory firm to assist us. Mercy Investments does not cede voting decisions to our proxy advisory firm. Rather, annually, we approve our own proxy voting guidelines and the proxy advisory firm is charged with implementing them. While we rely on their independent analysis and advice to ensure votes are cast in a manner aligned to our voting guidelines, we regularly audit our voting to ensure our votes have been cast as required by our proxy voting guidelines; we have found the voting by the firm to be consistent with our guidelines. In addition, at any time, we can review, question, or change the ballots cast.

The proposal would require that proxy advisory firms allow companies to review and provide feedback on proxy voting advice being issued by the firm on company proxy items. This would greatly impede the ability of investors to receive independent advice and information in a timely manner to make informed decisions on proxy votes such as director elections, Say on Pay ballot items, and shareholder proposals. It also requires proxy advisory firms to include a link to an issuer’s position paper if the issuer disagrees with the proxy advisory firm’s conclusions. This dramatically curbs the ability of an investor to obtain independent analysis and advice on a complex mix of ballot items each year. As the proposed rules state, “...it is vital that proxy voting advice be based on the most accurate information reasonably available...”²¹ We agree with this statement, but are significantly concerned that the Commission’s proposal would undermine the independence and accuracy of information available to investors, which the Commission is charged with protecting. In addition, the fact that the proposed rule does not give shareholder proposal proponents the same right of review provides an unfair advantage to company management to the detriment of shareholders.

Conclusion

The current shareholder proposal filing rules and proxy advisory rules have worked well for decades, and there is no need to revise them. Aggressive lobbying by trade associations representing companies painted all shareholders raising ESG issues as “activists” imposing a “social agenda” who are “uninterested in shareholder value.” We believe the comments being shared by investors with the Commission, including those of Mercy Investments, clearly

²⁰ Amendments to Exemptions from the Proxy Rules for Proxy Voting Advice, 34-87457, <https://www.sec.gov/rules/proposed/2019/34-87457.pdf>, (the “Release 34-87457”), p. 6.

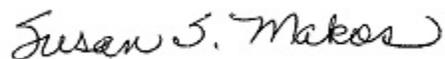
²¹ Release 34-87457, p. 10.

demonstrate our interest in the long-term value of the companies we hold in our portfolio. We engage as shareholders on ESG risks precisely because we are concerned about the long-term health of the companies in which we are invested, as we rely on our investments to financially support the Sisters of Mercy and their sponsored organizations into the future. 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 resolutions is a fundamental tenet of shareholder rights that should be protected, whether those investors are large or small, and it is a crucial part of the investor-company engagement process.

We appreciate this opportunity to provide our views to the Commission on these important matters. We strongly encourage the SEC to reject these proposals in their entirety and continue using existing rules regarding procedural requirements, resubmissions, and proxy rules.

Please feel free to contact me with any questions.

Respectfully Submitted:



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