



## Request for Comment – File Number S7-23-19

### Procedural Requirements and Resubmission Thresholds under Exchange Act Rule 14a-8

**Submission on behalf of the Local Authority Pension Fund Forum (LAPFF).** The Forum represents over 80 of the local government pension schemes from across the United Kingdom, with combined assets under management of over £300 billion. LAPFF's mission is to protect the long-term investment interests of beneficiaries by promoting the highest standards of corporate governance and corporate responsibility amongst investee companies.

#### Part A- Eligibility Requirements

1. We are proposing to amend Rule 14a-8(b) to establish new ownership requirements for establishing an investor's eligibility to submit a shareholder proposal to be included in a company's proxy statement. Should we amend Rule 14a-8(b) as proposed? **Due to the deficient methodology used in devising this consultation – namely in heavily favouring company interests over those of shareholders and other stakeholders – it is not clear that this rule needs to be amended at all, let alone as proposed. In respect of the proposed rules, while implementing one might appear prima facie to be fair, taken in combination and in context, they will indirectly discriminate against smaller shareholders.**
2. The proposed amendments seek to strike a balance between maintaining an avenue of communication for shareholders, including long-term shareholders, while also recognizing the costs incurred by companies and their shareholders in addressing shareholder proposals. Are there other considerations we should take into account? **This consultation does not reflect a proper cost-benefit analysis. It frames resolutions as purely costs, when the 'early warning' benefits and basis for engagement these resolutions provide is not acknowledged at all. Therefore, before assessing an appropriate balance of communication, we would expect that these elements be considered in any cost-benefit analysis.**
3. Should we adopt a tiered approach, providing multiple eligibility options, as proposed? Are there other approaches that would be preferable instead? **Again, this approach will shut out small retail shareowners, which seems to be the objective of the consultation. While the desire to favour long-term shareholders is appreciated, the various thresholds seem arbitrary and excessively restrictive.**
4. How is a sufficient economic stake or investment interest best demonstrated? Is it by a combination of amount invested and length of time held, as proposed, or should another approach to eligibility be used? **As the Business Roundtable expressed in 2019 and BlackRock reiterated at the beginning of 2020, neither businesses nor wider society view the role of business as just to make profits and produce dividends. Other stakeholders affected by business operations also have, not only an economic stake, but a social and environmental stake in companies, whether or not they invest in them. Therefore, rather than restricting the subset of stakeholders eligible to file resolutions, this eligible group should increase, possibly on a basis**



other than a traditional view of economic stake or investment interest. Our view is that if the SEC consultation process is flawed, any attempt to amend the current rules is flawed and should be left alone.

5. Are the proposed dollar amounts and holding periods that we propose for each of the three tiers appropriate? Are there other dollar amounts and/or holding periods that would better balance shareholders' ability to submit proposals and the related costs? Should any dollar amounts be indexed for inflation or stock-market performance? **See the response to question four above.**

6. We are proposing to maintain the \$2,000 ownership level, but increase the corresponding holding period to three years. Should we also increase the \$2,000 threshold? If so, what would be an appropriate increase? For example, should we adjust for inflation (e.g., \$3,000) or otherwise establish a higher amount? **See the response to question three above. In our experience, the existing thresholds are already sufficiently challenging and prohibitive for shareholders when they are seeking to file a serious resolution. It is hard to see that investors would be minded to file frivolous resolutions under the existing framework.**

7. Are there potential drawbacks with the tiered approach? If so, what are they? **Small shareholders, who should have equal voting rights, will be discriminated against in being able to file.**

8. Instead of adopting a tiered approach, should we simply increase the \$2,000/one-year requirement? If so, what would be an appropriate threshold? **We consider the existing threshold to be sufficient.**

9. Should the current 1 percent test be eliminated, as proposed? Should the 1 percent threshold instead be replaced with a different percentage threshold? Are there ways in which retaining a percentage-based test would be useful in conjunction with the proposed tiered thresholds? **We consider the existing framework to be sufficient.**

10. Should we instead use only a percentage-based test? If so, at what percentage level? Are there practical difficulties associated with a percentage-based test such as calculation difficulties that we should take into consideration? **A percentage-based test could be appropriate, but only on condition that shareholders are allowed to pool resources. The proposed requirement for each shareholder to hold the requisite percentage or dollar amount is ludicrous.**

11. Should we prohibit the aggregation of holdings to meet the thresholds, as proposed? Would allowing aggregation of holdings be consistent with a shareholder having a sufficient economic stake or investment interest in the company to justify the costs associated with shareholder proposals? **See the response to questions four and ten above.**

12. If we were to allow shareholders to aggregate their holdings to meet the thresholds, should there be a limit on the number of shareholders that could aggregate their shares for purposes of satisfying the proposed ownership requirements? If so, what should the limit be? For example, should the number of shareholders that are permitted to aggregate be limited to five so as to reduce the administrative burden on companies associated with processing co-filed submissions? **There should be no limit to the number of shareholders who could aggregate their shares to satisfy the proposed ownership requirement. On the contrary, the greater the number who join together, the greater the indication a company has that an issue is of interest or concern**



to its shareholders. Surely, this notification is helpful as an early warning of potential issues arising. Whatever the costs of dealing with a shareholder resolution in this situation, they will be dwarfed by costs resulting from a company's failure to deal with them as early as possible.

13. Should we require shareholder-proponents to designate a lead filer when co-filing or co-sponsoring a proposal? Would doing so facilitate engagement and reduce administrative burdens on companies and co-filers? If we required shareholder-proponents to designate a lead filer, should we require that the lead filer be authorized to negotiate the withdrawal of the proposal on behalf of the other co-filers? Would such a requirement encourage shareholders to file their own proposals rather than co-file? Would the number of shareholder proposal submissions increase as a result? Designation of a lead filer tends to happen in any case, and co-filers need leeway to engage with companies in their own interests, so a formal requirement for a lead filer would not be in shareholder interests and would limit the shareholder perspectives a company would receive, thus reducing their information flow and potentially compromising their ability to identify important issues of concern.

14. What other avenues can or do shareholders use to communicate with companies besides the Rule 14a-8 process? Has the availability and effectiveness of these other channels changed over time? Unfortunately, one of the main means of communication used in other markets – namely, engagement meetings – is routinely shut down by US companies. This consultation has completely misrepresented the engagement relationship between US companies and investors in suggesting that investors are not willing to engage. In fact, in our experience, the exact opposite is true. We are aware that some US investors have had better success in setting engagement meetings with US companies, but as foreign investors with large stakes in many US companies, we have found most US companies to be not only unhelpful when we approach them for meetings, but outright obstructive. Investor relations or legal counsel representatives are sometimes fielded, but they are less able to present board-led strategy than board-level representatives. We have a strong preference for dialogue and mutual respect fostered through engagement meetings rather than filing shareholder resolutions as the first point of engagement. However, we have not found this approach workable in the US market where filing a resolution is a method to get company representatives to agree to meet. Therefore, rather than tinkering with Rule 14a-8 in a way that further restricts shareholder-company engagement, we would prefer to see a rule that encourages a culture of engagement between companies and shareholders, as is the case in the UK, European and Australian markets.

15. Unlike other issuers, open-end investment companies generally do not hold shareholder meetings each year. As a result, several years may pass between the submission of a shareholder proposal and the next shareholder meeting. In these cases, the submission may no longer reflect the interest of the proponent or may be in need of updating, or the shareholder may no longer own shares or may otherwise be unable to present the proposal at the meeting. Should any special provisions be considered, after some passage of time (e.g., two years, three years, five years, etc.), to require shareholders to reaffirm submission of shareholder proposals for open-end investment companies or, absent reaffirmation, for the proposals to expire? Again, this situation could easily be rectified if US company board directors, or at least the senior independent directors, were open to engagement with investors. If this were the case, investors could interact on a regular basis with companies of all types and ensure that the topics they raise with companies were accurate and up-to-date.



16. Does the Rule 14a-8 process work well? Should the Commission staff continue to review proposals companies wish to exclude? Should the Commission instead review these proposals? Is there a different structure that might serve the interests of companies and shareholders better? Are states better suited to establish a framework governing the submission and consideration of shareholder proposals? **Yes, the Commission – as a body of the state – should review these proposals both to ensure that their assessment is fair to companies and investors, but also to ensure there is a fair outcome in the public interest. This role should not be played by private actors. See the response to question four above.**

### **Part B – Proposals Submitted on Behalf of Shareholders**

17. We are proposing to amend Rule 14a-8's eligibility requirements to require certain additional information when a shareholder uses a representative to act on its behalf in the shareholder-proposal process. Should we amend the rule as proposed? **This proposal raises all kinds of contract law issues and interference by a third party in the intended relationship of the contracting parties. It will also create an increased administrative burden on asset owners, who already have the right to question and/or drop representatives who do not carry out their wishes.**

18. Are the informational requirements we are proposing appropriate? Should we require any additional information or action? If so, what additional information or action should we require? For example, should there be a notarization requirement? How would these measures affect the burden on shareholders? **See the response to question seventeen above.**

19. Is any of the proposed information unnecessary to demonstrate the existence of a principal-agent relationship and/or the shareholder-proponent's role in the shareholder-proposal process? If so, what information is unnecessary? **We would question why a contract between the shareholder and his or her representative would not be sufficient. There is a danger of undermining the principles of contract law here.**

20. Are there legal implications outside of the federal securities laws that we should be aware of or consider in allowing a principal-agent relationship in the context of the shareholder-proposal rule? **See the response to question nineteen above.**

21. As part of the shareholder-proposal submission process, representatives generally deliver to companies the shareholder's evidence of ownership for purposes of satisfying the requirements of Rule 14a-8(b). Where the shareholder's shares are held in street name, this evidence comes in the form of a broker letter from the shareholder's broker. Since a broker letter from the shareholder's broker generally cannot be obtained without the shareholder's authorization, does the fact that the representative is able to provide this documentation sufficiently demonstrate the principal-agent relationship and/or the shareholder's role in the shareholder-proposal process? Is the answer different if the representative is the shareholder's investment adviser that owes a fiduciary duty to the shareholder? **See the response to question nineteen above.**



## Part C – The Role of the Shareholder Proposal Process in Shareholder Engagement

22. We are proposing to amend Rule 14a-8(b) to add a shareholder engagement component to the current eligibility criteria that would require a statement from the shareholder-proponent that he or she is able to meet with the company in person or via teleconference no less than 10 calendar days, nor more than 30 calendar days, after submission of the shareholder proposal. Should we adopt the amendment as proposed? Could the shareholder engagement component be unduly burdensome or subject to abuse rather than facilitating engagement between the shareholder-proponent and the registrant? If so, how could we address such undue burden or abuse? **As stated above, in our experience, the consultation completely mis-frames the engagement problem with US companies. Please see the response to question fourteen above.**

23. We are also proposing to require that the shareholder-proponent include contact information as well as business days and specific times that he or she is available to discuss the proposal with the company. Should we adopt this amendment as proposed? Should we specify any additional requirements for the contact information or availability? For example, should we require a telephone number or email address to be included? Should we require a minimum number of days or hours that the shareholder-proponent be available? Contact information for shareholder proponents seems reasonable, but should be matched by similar contact information for company officials dealing with the submission of shareholder proposals. **Any requirement should not excessively restrict shareholders' ability to maintain a flexible schedule and must allow for scheduling changes.**

24. Would companies be more likely to engage with shareholders if the proposed amendment was adopted? Are there other ways to encourage such engagement that we should consider? Are there potential negative consequences of encouraging such engagement between individual shareholders and a company, or are there other potential negative consequences of this proposal? **Again, the problem in our experience is not a lack of willingness by shareholders to engage with US companies, but the opposite. If there were a provision requiring companies to engage with significant shareholders or a group of shareholders that collectively reach a one percent ownership threshold, or something of that nature, that would better reflect the current engagement deficit.**

25. As proposed, a shareholder would have to provide a statement that he or she is able to meet with the company in person or via teleconference no less than 10 calendar days, nor more than 30 calendar days, after submission of the shareholder proposal. Is this timeframe appropriate? If not, what would be an appropriate timeframe? **Please see the response to question 23.**

26. If the shareholder uses a representative, should we also require that the representative provide a similar statement as to his or her ability to meet to discuss the proposal with the company? **This seems needlessly bureaucratic.**

27. Should companies be required to represent that they are able to meet with shareholder-proponents? **Yes, please see the responses to questions fourteen and 23 above.**

28. What are ways that companies engage with shareholders outside of the shareholder-proposal process? **In our experience with US companies, they either do not respond to letters requesting meetings, or they respond with evasive notes that decline meeting invitations. Therefore, in the**



current US context, the only viable method for investors to get companies' attention so far has been through filing shareholder resolutions.

## Part D – One Proposal Limit

29. We are proposing to amend Rule 14a-8(c) to explicitly state, "Each person may submit no more than one proposal, directly or indirectly, to a company for a particular shareholders' meeting. A person may not rely on the securities holdings of another person for the purpose of meeting the eligibility requirements and submitting multiple proposals for a particular shareholders' meeting." Should we amend the rule as proposed? **No, please see the response to questions two, twelve, and fourteen above. This approach would restrict the information flow to companies that they could use as an early warning system and as a means of identifying social and environmental issues material to their operational and financial performance.**

30. Would the proposed amendment have unintended consequences on shareholders' use of representatives or other types of advisers, such as lawyers or investment advisers, and, if so, what are those consequences? **No comment.**

31. Alternatively, should we amend Rule 14a-8 to explicitly state that a proposal must be submitted by a natural-person shareholder who meets the eligibility requirements and not by a representative? If so, should we clarify that although a shareholder may hire someone to draft the proposal and advise on the process, the shareholder must be the one to submit the proposal? **No, such a requirement would place an undue administrative burden on the shareholder. If there is a contract in place, that should be sufficient to allow the representative to file the resolution on behalf of the shareholder. Otherwise, as mentioned in the response to questions seventeen and nineteen above, there are implications for undermining the use of contract law.**

32. Alternatively, should we require the shareholder-proponent to disclose to the company how many proposals it has submitted in the past to that company? For example, should we require disclosure of the number of proposals the shareholder has submitted directly, through a representative, or as a representative to the company in the last five years? Should companies be required to disclose this information in the proxy statement? Would this information be material to other shareholders when considering how to vote on the proposal? **No, this requirement would be excessively burdensome for shareholders, and if there were an adequate engagement arrangement, both parties would be apprised of this information anyway.**

33. If adopted, would the proposed informational requirements discussed in Section II.B alleviate the concerns addressed in this section such that the proposed amendments to Rule 14a-8(c) would be unnecessary? **See the response to question 32 above.**

34. In lieu of, or in addition to, limiting the number of proposals a shareholder would be able to submit directly or as a representative for other shareholders, should we adopt a total limit on the number of proposals allowed to be submitted per company per meeting? If so, what numerical limit would be appropriate, and how should such a limit be imposed? **No, there should be no limit. As mentioned above, the current holdings and dollar amount thresholds are sufficient to ensure that shareholders do not file frivolous resolutions. Under such proposed amendments it may be possible for a company to favour one submission above others. This would necessarily be discriminatory.**



35. As an alternative or in addition to limiting the number of proposals a shareholder would be able to submit directly or as a representative for other shareholders, should we adopt a limit on the aggregate number of shareholder proposals a person could submit in a particular calendar year to all companies? If so, what would be an appropriate limit, and how would such a limit be imposed? **Please see the response to question 34.**

36. Should we require companies to disclose how many proposals were withdrawn and therefore not included in the proxy statement, and how many were excluded pursuant to a no-action request? **No, this requirement would be an excessive burden and would not serve any apparent purpose.**

### **Part E – Resubmissions**

37. Should we maintain the current approach of three tiers of resubmission thresholds but increase the thresholds to 5, 15, and 25 percent, as proposed? Would alternative thresholds such as 5, 10, and 15 percent, or 10, 25, and 50 percent, be preferable? If so, what should the thresholds be? Should we instead adopt the thresholds that were proposed by the Commission in the 1997 Proposing Release (i.e., 6, 15, and 30 percent)? Do the proposed resubmission thresholds better distinguish those proposals that are on a path to meaningful shareholder support from those that are not? **As mentioned, in our experience, the current thresholds are sufficiently restrictive to prevent frivolous resolutions from being filed.**

38. Alternatively, should we remove resubmission thresholds for the first two submissions and, instead, allow for exclusion if a matter fails to receive majority support by the third submission within a certain number of years? Under such an approach, what would be an appropriate lookback period and how long should the cooling-off period be (e.g., three years, five years, or some other period of time)? Please see the response to question 37. **No cooling off period is necessary as the existing thresholds are a sufficient deterrent to re-filing and will ensure that no frivolous resolutions get through.**

39. What are the estimated costs companies incur as a result of receiving resubmitted proposals? Are the costs different for resubmitted proposals than for initial submissions? In particular, which specific costs incurred (e.g., printing costs, staff time, fees paid to external parties such as legal advisors or proxy solicitors, management time, board time, etc.) may differ between resubmitted proposals and initial submissions? **Again, this is not a proper framing of the cost-benefit analysis for companies in relation to shareholder resolutions.**

40. Is there a voting threshold that, if not achieved initially, a proposal is unlikely to surpass in subsequent years? Conversely, is there a voting threshold that, if achieved, a proposal is unlikely to fall below in subsequent years? **As mentioned, in our experience, the current thresholds are sufficiently restrictive to prevent frivolous resolutions from being filed.**

41. Should we shorten or lengthen the relevant five-year and three-year lookback periods? If so, what should the lookback periods be? **They are fine as is, as there is already a disincentive for shareholders to re-file if they are making no progress over time.**

42. Should the vote-counting methodology under Rule 14a-8(i)(12) be revised? For example, should shares held by insiders be excluded from the voting calculation, or should broker non-



votes and/or abstentions count as votes “against”? Should there be a different vote-counting methodology for companies with dual-class voting structures? If so, what should that methodology be? **Our view is that dual-class and multi-class share structures should not exist in the first place, so to deal with this issue our recommendation would be to at least create a disincentive for dual-class and multi-class ownership structures, if not to ban them outright.**

43. Would the proposed changes in resubmission thresholds meaningfully affect the ability of shareholders to pursue initiatives for which support may build gradually over time? Do legal or logistical impediments to shareholder communications affect the ability of shareholders to otherwise pursue such longer horizon initiatives? If so, how? Are there ways to mitigate any potential adverse effects of the proposed resubmission thresholds while limiting costs to companies and shareholders? **Yes, the proposed changes in resubmission thresholds would meaningfully affect the ability of shareholders to build support for their resolutions and initiatives over time. We find the current submission and re-submission levels quite stringent already, so any additional requirements and demands on our resources would be excessively burdensome. Legally, the framing of acting in concert is a particular impediment to building coalitions and support among shareholders over time. It would be helpful to have explicit clarification that this concept does not exclude shareholders from banding together on environmental, social and governance issues. Logistically, it is very difficult as overseas investors to attend US Annual Meetings, as we frequently do in the UK and Europe. We find this forum a useful place for communicating with companies in building relationships to both support and challenge company strategy and activities.**

44. When considering whether proposals deal with substantially the same subject matter, the staff has focused on whether the proposals share the same “substantive concerns” rather than the “specific language or actions proposed to deal with those concerns.” Should we consider adopting this standard, or its application? Should we consider changing this standard, or its application? For example, should we adopt a “substantially the same proposal” standard? **It might be helpful to allow resolutions with the same ‘substantive concerns’ and to exclude only those overlapping on ‘specific language or actions proposed to deal with those concerns.’ This framing would allow different approaches to the same or a similar issue to be voiced and provided as options for shareholders to support. It might also expedite finding an appropriate solution and might help to preclude the filing of further shareholder resolutions on the issue. In addition the SEC should consider shareholders being permitted to composite similarly worded or themed resolutions at individual company meetings.**

45. Should we adopt the Momentum Requirement, as proposed? If so, should we adopt this requirement instead of, rather than in addition to, the proposed resubmission thresholds? Would this requirement be difficult to apply in practice? **As mentioned, in our experience, the current thresholds are sufficiently restrictive to prevent frivolous resolutions from being filed, so no Momentum Requirement is needed.**

46. As proposed, a proposal that receives a majority of the votes cast at the time of the most recent shareholder vote would not be subject to the Momentum Requirement. Is there a voting threshold below a majority of the votes cast that demonstrates a sufficient level of shareholder interest in the matter to warrant resubmission regardless of whether future proposals addressing substantially the same subject matter gain additional shareholder support? If so, what is an



appropriate threshold? **Our view is that a level of support in the three to ten percent range would be sufficient to warrant the filing of future resolutions.**

47. As proposed, a proposal that receives a majority of the votes cast at the time of the most recent vote would not be excludable under the Momentum Requirement. Should this exception to the Momentum Requirement be limited to the most recent shareholder vote, or should it apply to a different lookback period such as three years or five years? **As mentioned the current lookback periods are fine since there is already a disincentive for shareholders to re-file if they are making no progress over time.**

48. Should the Momentum Requirement apply to all resubmitted proposals, not just those that have been resubmitted three or more times? For example, assuming adoption of the proposed resubmission thresholds, should a proposal be excludable if proposals addressing substantially the same subject matter received 19 percent on the first submission and 16 percent on the second submission, even though 16 percent exceeds the relevant proposed threshold of 15 percent for a second submission? **A Momentum Requirement is not helpful. The test should be if there is a base level of support – say three percent – for the filing of a resolution at any time, regardless of whether it received more or less support in the past. We see radically different investment environments from year to year, even month to month sometimes, so the proposals should be taken on their merit and in context rather than on the basis of comparisons with former filings. Also, there is a sufficient natural disincentive for shareholders to keep filing resolutions if those resolutions lose support over time.**

49. Does a 10 percent decline in the percentage of votes cast demonstrate a sufficiently significant decline in shareholder interest to warrant a cooling-off period for any proposal receiving less than majority support? Would a different percentage—such as 20, 30, or 50 percent—or an alternative threshold, be more appropriate? **See the response to question 48.**

50. Should the cooling-off period for proposals that fail the Momentum Requirement be shorter than the cooling-off period for proposals that fail to satisfy the existing resubmission thresholds? If so, what would be an appropriate cooling-off period? **See the response to question 48.**

51. Are there other mechanisms we should consider that would demonstrate that a proposal has lost momentum? For example, should there be a separate basis for exclusion if the level of support has not increased by more than 10 percent in the last two votes in the previous five years? Or, should there be a separate basis for exclusion if the level of support does not reach 50 percent within 10 years of first being proposed? If so, what would be an appropriate cooling-off period? **See the response to question 48.**

## **Final Responses**

1. Are there any entities affected by the proposed rule amendments that are not discussed in the economic analysis? In which ways are those entities affected by the proposed amendments? Please provide an estimate of the number of any additional affected entities. **Affected stakeholders are not discussed at all in the economic analysis and yet experience significant economic impacts – both positive and negative – from company activities. Shareholders have also been largely ignored in the analysis and should be considered more prominently.**



2. Are there any costs or benefits of the proposed rule amendments that are not discussed in the economic analysis? If so, please describe the types of costs and benefits and provide a dollar estimate of these costs and benefits. [Please see the response to question two in the main consultation response.](#)

3. What would be the effects of the proposed rule amendments, including any effects on efficiency, competition, and capital formation? Would the proposed rule amendments be beneficial or detrimental to proponents, companies, and the companies' shareholders, and why in each case? [Please see the response to question two in the main consultation response.](#)

4. What is the dollar cost for companies to engage with proponents, process, and manage a shareholder proposal (including up to or after a vote on the proposal)? In particular, what is the dollar cost for companies to: (i) review the proposal and address issues raised in the proposal; (ii) engage in discussion with the proponent; (iii) print and distribute proxy materials and tabulate votes on the proposal; (iv) communicate with proxy advisory firms and shareholders (e.g., proxy solicitation costs); (v) if they intend to exclude the proposal, file with the Commission a notice that they intend to exclude the proposal; and (vi) prepare a rebuttal to the proposal? Do these costs vary with the issue raised in the proposal? Do these costs vary with the type of shareholder-proponent (i.e., institutional versus retail investor)? Are these costs different for first-time submissions relative to resubmissions? Do these costs vary with the number of resubmissions? Do these costs vary with the number of proposals received by the company? Do these costs vary with company size? Do these costs differ in cases in which a no-action request is prepared and in other cases, such as where a proposal's exclusion is challenged in court? Do managers have discretion with respect to these costs? [Please see the response to question two in the main consultation response.](#)

5. In response to a questionnaire the Commission made available in 1997, some respondents indicated that costs associated with determining whether to include or exclude a shareholder proposal averaged approximately \$37,000 (which figure may have included estimates for considering multiple proposals). The Commission also sought information about the average printing cost and 67 respondent companies reported that the average cost was approximately \$50,000. How do these costs compare with costs today? Has "notice and access" or other technological advancements had an effect on the costs associated with disseminating proxy materials? If so, what are those effects? [Please see the response to question two in the main consultation response.](#)

6. What are the differences in cost incurred by companies with respect to proposals for which a no-action request is prepared and submitted to the staff and those for which a no-action request is not prepared? What are the specific costs incurred? [Please see the response to question two in the main consultation response.](#)

7. In general, how do costs differ for proposals that are submitted during shareholder meetings and not presented in the proxy and those that are presented in the proxy? [Please see the response to question two in the main consultation response.](#)

8. What are the costs, if any, associated with shareholders' consideration and voting on a shareholder proposal? Do these costs differ depending on the shareholder proposal topic? Do these costs differ depending on whether the shareholder proposal is a first-time submission or a



resubmission? Costs associated with filing shareholder resolutions include the dollar costs to file and the resource costs of networking, drafting, communicating, educating and voting on the resolutions. All such costs associated with these activities are purely negligible. Benefits include working with other shareholders to hone in on expectations of companies and how to maximise their financial performance and investment potential, reputational benefits, sustainable long-term performance, and mitigation of legal risks and costs.

9. How likely is it that market practices would change in response to the proposed rule amendments? What type of market practices that are not discussed in the economic analysis would change in response to the proposed rule amendments? For example, would larger shareholders become more likely to submit proposals in cases where smaller shareholders would no longer be eligible to submit proposals on their own? Are there frictions associated with this type of reallocation? To what extent would these changes in market practice or other effects mitigate the potential effects of the proposed amendments? **We believe that the rule changes would lead everyone – large and small shareholders – to file significantly fewer resolutions.**

10. To what extent would the proposed amendments affect incentives for shareholders to engage with companies prior to and/or following the submission of a shareholder proposal? What are the costs to shareholders and companies associated with such engagement? To what extent would the proposed amendments affect the outcome of such engagement? Would the requirement that the proponent provide a statement that he or she is willing to meet with the company after submission of the shareholder proposal promote more frequent resolution of the proposals outside the voting process? What would be the cost savings, if any, to proponents and companies associated with such resolutions? Do answers to the above questions differ when considering individual or institutional shareholder-proponents? **As above, the problem is not shareholders failing to engage with companies, but the other way round.**

11. Relatedly, would the proposed amendments affect shareholder engagement outside of the shareholder-proposal process? Would the possible reduction in the number of shareholder proposals allow company resources to be directed towards alternative engagement efforts? What are the costs associated with alternative types of shareholder engagement to companies and shareholders? **As above, the problem is not shareholders failing to engage with companies, but the other way round.**

12. What are the opportunity costs to companies and shareholders of shareholder proposal submissions? Please provide a dollar estimate per proposal for these opportunity costs. Do these opportunity costs vary with the type of proposal, the type of proponent, or the type of company? Please provide an estimate of the hours the board of directors and management spend to review and process each shareholder proposal. **This varies for shareholders by company, resolution and topic. In addition, some of the benefits, such as reputational impacts, are difficult to quantify and are dependent on how responsive the company is to shareholder and stakeholder engagement.**

13. Is the distribution of the dollar value and the duration of firm-specific holdings different for institutional and individual investors? Are there distributional differences when comparing the subsets of individual and institutional shareholders likely to submit shareholder proposals? Please provide any relevant data or summary statistics of the holdings of retail and institutional investors recently and over time. **The current rules are prohibitive for institutional shareholders so any increased stringency would severely disadvantage individual shareholders.**



14. Does the majority of shareholders that submit a proposal through a representative already provide the documentation that would be mandated by the proposed rule amendments? To the extent that the practices of certain proponents are not consistent with the proposed amendments, would the costs to proponents to provide this additional documentation be minimal? Are there any costs and benefits of providing the additional disclosures that we haven't identified in the economic analysis? If so, please provide a dollar estimate for these costs and benefits. Would the proposed amendments related to proposals submitted by a representative have any effect on efficiency, competition, or capital formation? **As above, while this proposal is fine in principle, it raises all kinds of contract law issues and interference of a third party in the intended relationship of the contracting parties. It will also create an increased administrative burden on asset owners, who already have the right to question and/or drop representatives who do not carry out their wishes.**

15. What is the relation, if any, between the level and duration of proponent's ownership and the likelihood of submitting shareholder proposals? What is the relationship, if any, between the level and duration of proponents' ownership and the likelihood of submitting shareholder proposals that are more likely to garner majority support and be implemented by management? Do answers to the above questions vary based on the shareholder type or proposal topic? **Yes, they vary, but by definition, if proponents own a significant number of shares in companies, their resolutions will garner more support. That is why increasing the thresholds for filing and support will so hugely benefit (while still increasing challenges for) large shareholders.**

16. What are the concerns, if any, associated with drawing inferences about the effects of the proposed amendments from analysis of data on proponents' ownership from proxy statements and proof-of-ownership letters? **It is hard to determine the true level of support for the resolutions based on these two sources.**

17. To what extent are there additional costs to companies and shareholders associated with applying a three-tiered ownership threshold instead of a single-tier threshold in determining a shareholder's eligibility to submit shareholder proposals? **There are additional networking and administrative requirements.**

18. We have observed instances of shareholder proposals going to a vote despite being eligible for exclusion under Rule 14a-8. What are the costs and benefits to companies of including such proposals in the proxy statement? To what extent may these practices change if proposed amendments are adopted? **No comment.**