BAILLIE GIFFORD

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3 February 2020 Ref: S7-23-19

Dear Chairman Clayton,

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

Baillie Gifford welcomes the opportunity to respond to the public consultation on the proposed amendments to the procedural requirements and resubmission thresholds under Exchange Act Rule 14a-8. Baillie Gifford is an investment manager with a long-only, active approach to investment. Based in Edinburgh, Scotland, we are one of the UK's oldest independent fund management firms, having been founded in 1908. We are, we believe, unique for a company of our size in being an independent partnership with no outside shareholders and unlimited liability to our clients, for whom we invest US$290 bn as at the end of December 2019. We conduct regular engagements with our holdings on governance and sustainability issues with the aim of being constructive shareholders and good stewards of our clients' capital.

Whilst, to date, we have rarely submitted proposals to company meetings, preferring to build long-term relationships and engage with our holdings, we vote on all shareholder-submitted resolutions and have comments and concerns in relation to certain of the proposed amendments. Our key comment is that we believe that the right to submit shareholder proposals is an important mechanism to hold companies to account. This is particularly important for smaller shareholders who often have no practical opportunity to engage, as companies will often not respond in detail to written correspondence and small investors are not invited to join quarterly calls.

Filing thresholds for shareholder proposals

We are in favour of a tiered approach to eligibility for the submission of proposals under Rule 14a-8(b) as we believe that this approach would encourage long-termism. However, we do not agree with the proposal to disallow aggregation to meet minimum ownership thresholds. Indeed, the introduction of thresholds would make it vital for the protection of smaller shareholders that the ability to aggregate holdings is retained.
To understand how the concept of continuous ownership would work in practice, it would be useful if the Commission could indicate whether it intends that the practice of stock lending

would be deemed to interrupt the period of continuous ownership. We note that it was clarified in relation to proxy access that this practice was deemed compatible with long term ownership.

We note that one of the intentions of the proposed amendments is claimed to be to encourage engagement between shareholders and companies. We support this and agree that this is a legitimate and desirable aim. However, the effect of the proposed amendments as currently drafted is to curtail the rights of shareholders without any corresponding requirements on companies. We believe that rather than the proposed statement of availability, a statement of engagement should be submitted with any shareholder proposal. This would detail whether the shareholder has attempted to engage with a company on the proposal and the outcome of this attempt. This would be more effective than the proposed statement of availability, which does not necessarily encourage companies or shareholders to meaningfully participate in engagement efforts as the outcomes of any post-submission engagement would not be public. The statement of engagement would allow other shareholders to assess the attitude of the proponent and the company to the issue and to engagement generally.

Resubmission thresholds

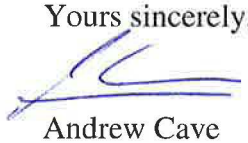
A challenge to Rule 14a-8(i)(12) on resubmission thresholds is that the proposed rule continues to fail to address the situation where circumstances have changed since the last submission, for example a corporate scandal or significant financial market event, justifying resubmission of a proposal dealing with substantially the same subject matter as a proposal previously submitted within the relevant timeframes.

While we understand the rationale in principle for excluding proposals for which support has substantially declined under the proposed 'Momentum Requirement', we do not agree that it would ever be appropriate to exclude proposals which still have at least 25% shareholder support. If the Momentum Requirement were to be enacted, the proposed 10% decline in support is an unacceptably low bar for exclusion. Such a decline in the percentage of votes could reflect factors other than a decline in support, such as a small amount of shareholder turnover. Setting the level at 25% decline would be more reasonable and would be more likely to reflect a genuine decline in support.

We note generally that these proposed amendments focus on levels of support for proposals rather than quality of proposals. To improve the quality of proposals, and therefore save both companies and the Commission time in considering whether it is appropriate to exclude them, clear guidance on the grounds for exclusion listed on page 7 of the consultation would be welcome.

Thank you again for providing the opportunity to contribute to the proposed amendments to the procedural requirements and resubmission thresholds.

Yours sincerely,



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