

3 February 2020

Vanessa A. Countryman
Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

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

Dear Ms. Countryman:

CFA Institute¹ appreciates the opportunity to add our comments to the Securities and Exchange Commission's ("SEC" or the "Commission") on its request for comment for its proposed rule, *Procedural Requirements and Resubmission Thresholds under Exchange Act Rule 14a-8* (the ("Proposal"). CFA Institute represents the views of those investment professionals who are its members before standard setters, regulatory authorities, and legislative bodies worldwide about issues affecting the practice of financial analysis and investment management, education and licensing requirements for investment professionals, and on issues affecting the efficiency, integrity and accountability of global financial markets.

Executive Summary

We welcome the opportunity to update various thresholds for resubmission of previously considered proxy initiatives, as the Commission has not reviewed these thresholds in more than 20 years. While we welcome the review, we also caution the Commission against limiting shareowners'² access to this important governance tool. Many of the most important and substantive governance changes in recent years have come about through shareowner proposal campaigns that took years to gain acceptance, many from a low base of support in the early years of voting on these matters.

The proposed amendments to the procedural requirements would do the following:

¹ CFA Institute is a global, not-for-profit professional association of nearly 178,500 investment analysts, advisers, portfolio managers, and other investment professionals in 165 countries, of whom more than 171,000 hold the Chartered Financial Analyst® (CFA®) designation. The CFA Institute membership also includes 158 member societies in 73 countries and territories.

² CFA Institute uses the term, "shareowners," to refer to the beneficial owners of the securities.

- replace the current ownership requirements with a tiered approach that would provide three options for demonstrating an ownership stake through a combination of amount of securities owned and length of time held;
- require certain documentation when a proposal is submitted on behalf of a shareowner proponent;
- require shareowner-proponents to state when they would be able to meet with the company in person or via teleconference to engage on the proposal; and
- provide that a person may submit no more than one proposal, directly or indirectly, for the same shareowners' meeting.

The proposed amendments to the resubmission thresholds would:

- raise the current resubmission thresholds to 5, 15, and 25 percent, from 3, 6, and 10 percent, respectively; and
- add a new provision to allow companies to exclude proposals under certain circumstances when shareowner support for the matter has declined.

Eligibility Requirements

At the time the shareowner-proposal rule was adopted, a shareowner proponent's eligibility to submit a proposal was not conditioned on owning a minimum amount of a company's securities or holding the securities for a specified period of time. In 1983, the Commission amended the rule to require shareowner-proponents to own "at least 1% or \$1,000 in market value of securities entitled to be voted at the meeting" and to "have held such securities for at least one year". In 1998, the Commission raised the \$1,000 threshold to \$2,000.

Under this Proposal, the shareowner-proposal process would remain available to a wide range of shareowners, including those with smaller investments. However, it would require those with smaller holdings to hold their shares for a longer period of time.

The Proposal also would make a shareowner eligible to submit a Rule 14a-8 proposal for inclusion in a company's proxy materials if the shareowner satisfies one of three ownership requirements, each of which is designed to demonstrate the shareowner-proponent has an economic stake or investment interest in the company to which the proposal is submitted.

Specifically, a shareowner would be eligible to submit a Rule 14a-8 proposal if the shareowner has continuously held at least:

- \$2,000 of the company's securities entitled to vote on the proposal for at least three years;
- \$15,000 of the company's securities entitled to vote on the proposal for at least two years; or
- \$25,000 of the company's securities entitled to vote on the proposal for at least one year.

The SEC also proposes to eliminate the current 1 percent ownership threshold, which historically has not been utilized.

View of CFA Institute

CFA Institute agrees that the elimination of the current 1 percent ownership threshold makes sense as it has historically not been utilized.

However, we believe the proposed thresholds discussed above, particularly those regarding different ownership thresholds based on years of ownership, will have a materially negative effect on retail investor involvement and rights when it comes to raising their corporate governance concerns. These thresholds will be meaningless to many institutional owners who will likely surpass these thresholds by large margins. By comparison, individual investors rarely invest in companies with the intention of filing shareowner proposals but do so only if they see something at a company they feel needs to be addressed. These individual investors will likely hold less than \$25,000 in a company and should not be discouraged from sharing their input based on their ownership in a company.

We are fine with the threshold being increased more in line with inflation, which according to the SEC's own analysis, would be just over \$3,000.

Proposals Submitted on Behalf of Shareholders

The Commission is proposing to amend the eligibility requirements of Rule 14a-8 to require shareowners that use a representative to submit a proposal for inclusion in a company's proxy statement to provide documentation attesting that the shareowner supports the proposal and authorizes the representative to submit the proposal on the shareowner's behalf.

Specifically, the proposed rule would require documentation that:

- Identifies the company to which the proposal is directed;
- Identifies the annual or special meeting for which the proposal is submitted;
- Identifies the shareowner-proponent and the designated representative;
- Includes the shareowner's statement authorizing the designated representative to submit the proposal and/or otherwise act on the shareowner's behalf;
- Identifies the specific proposal to be submitted;
- Includes the shareowner's statement supporting the proposal; and
- Is signed and dated by the shareowner.

View of CFA Institute

CFA Institute does not object to the Commission's amending the eligibility requirements of Rule 14a-8 to require shareowners that use a representative to submit a proposal for inclusion in a company's proxy statement to provide increased documentation. We do not believe the above-mentioned disclosures are overly onerous and are a reasonable request made by the Commission to ensure that shareowner proposals are supported by the parties whose names are on the proposals.

Proposed Engagement Component

The Commission is proposing to amend Rule 14a-8(b) to add a shareowner engagement component to the current eligibility criteria. Specifically, the amendment would require a statement from each shareowner-proponent that he or she is able to meet with company representatives in person or via teleconference no less than 10 calendar days and nor more than

30 calendar days, after submission of the proposal. The shareowner would be required to include contact information as well as business days and specific times that he or she is available to discuss the proposal with the company.

The past decade has seen a significant increase in the amount of engagement between issuers and investors, largely to the benefit of both parties. This increased engagement and relationship-building between issuers and their investors helps to keep both sides better informed which builds trust and understanding between both parties.

View of CFA Institute

CFA Institute does not object to the Proposal to amend the eligibility requirements of Rule 14a-8 to encourage engagement. The proposed amendments to the rule are reasonable and do not place an undue burden on shareowners who wish to file shareowner proposals.

One Proposal Limit

Rule 14a-8(c) provides that each shareowner “may submit no more than one proposal to a company” for a particular shareowners’ meeting. As the Commission explained when it adopted this restriction in 1976, the submission of multiple proposals by a single shareowner-proponent “constitute[s] an unreasonable exercise of the right to submit proposals at the expense of other shareowners.” Furthermore, doing so may “tend to obscure other material matters in the proxy statement of issuers, thereby reducing the effectiveness of such documents.”

The Commission is proposing an amendment to Rule 14a-8(c) to apply the one-proposal rule to “each person” rather than “each shareowner” who submits a proposal. The amended rule would state, “Each person may submit no more than one proposal, directly or indirectly, to a company for a particular [shareowners’] 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 [shareowners’] meeting.”

Also, under the Proposal, a shareowner-proponent may not submit one proposal in its own name and simultaneously serve as a representative to submit a different proposal on another shareowner’s behalf for consideration at the same meeting. Similarly, a representative would not be permitted to submit more than one proposal to be considered at the same meeting, even if the representative would be submitting each proposal on behalf of different shareowners. The Commission believes that a shareowner submitting one proposal personally and additional proposals as a representative for consideration at the same meeting or submitting multiple proposals as a representative at the same meeting, would constitute an unreasonable exercise of the right to submit proposals at the expense of other shareowners and also may tend to obscure other material matters in the proxy statement. The SEC believes this amendment to the rule text would more consistently apply the one-proposal limit to shareowners and representatives of shareowners.

View of CFA Institute

CFA Institute does not agree that there should be a limitation on the number of proposals a shareowner may submit. The SEC should not make shareowners choose which among different investor rights issues is most important to them and therefore qualified as a legitimate 14(a)8 topic of discourse as a capacity constraint on the proxy/shareowner rights process. We therefore

do not support the proposed amendment to strengthen the rule around only allowing one proposal per person.

Resubmission Thresholds

Finally, the Commission is proposing to revise Rule 14a-8(i)(12) to apply new thresholds of 5, 15, and 25 percent, respectively, to replace the current resubmission thresholds of 3, 6, and 10 percent, respectively. The Commission also proposes to add an additional provision to the rule to allow companies to exclude proposals that have been submitted three or more times in the preceding five years if they have received more than 25 percent, but less than 50 percent, of the vote and support in the most recent vote on the same subject matter had declined by more than 10% when compared with the immediately preceding vote. The SEC believes these amendments would allow shareowner proposals to receive due consideration without imposing on companies and their shareowners the burden of having to repeatedly consider matters on which they have already indicated a lack of interest, or where interest has waned.

View of CFA Institute

CFA Institute disagrees with the new resubmission thresholds in the proposed revisions to Rule 14a-8(i)(12). We believe the current resubmission thresholds work well as they allow a consensus to evolve on an issue over time. Issues such as say-on-pay and majority-voting for directors that are seen as best practice in corporate governance worldwide, would not have had the time to build the consensus that they ultimately achieved at some companies under the new proposed thresholds. By making the thresholds too high, the SEC is proposing a resubmission regime that does not allow for the natural consensus that tends to build on governance and ESG issues over time. Such an overly onerous resubmission regime would ultimately harm the overall corporate governance of US listed companies when future governance reforms that are considered best practice internationally, die on the vine for US companies because the Commission resubmission thresholds are too stringent.

We are also concerned that these resubmission thresholds become even more onerous at controlled companies or companies with large insider holdings. The proposed resubmission thresholds of 15 percent in year two and 25 percent in year three become exceedingly difficult at controlled companies and over time would result in further entrenchment of poor-performing management teams.

Conclusion

CFA Institute welcomes the Commission's attempt to revisit and update the procedural requirements for shareowners submitting shareowner resolutions. We believe some of the proposed changes designed to clarify who is submitting a proposal and to foster engagement are encouraging. However, we do not support the proposed standards for raising the level of ownership for submitting shareowner proposals or the resubmission thresholds as they are proposed by the Commission. In the case of the level of ownership required to submit proposals, a more modest change is called for. As far as resubmission thresholds, we feel the current system serves investors well and believe the proposed

changes could unnecessarily quash incipient governance improvements that shareowners desire.

Should you have any questions about our positions, please do not hesitate to contact James Allen, CFA [REDACTED] or Matt Orsagh at [REDACTED].

Sincerely,

/s/ Jim Allen

/s/ Matt Orsagh

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