



February 03, 2020

Ms. Vanessa Countryman
Secretary
Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549-1090

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

Dear Ms. Countryman:

The Principles for Responsible Investment (“the PRI”) welcomes the opportunity to submit this letter in response to the SEC’s recently proposed “Procedural Requirements and Resubmission Thresholds Under Exchange Act Rule 14a-8” (“Proposed Rule”).

The PRI is the world’s leading initiative on responsible investment. It works to understand the investment implications of environmental, social and governance (ESG) factors and to support its international network of 2,800 investor signatories in incorporating these factors into their investment and ownership decisions. Launched in New York in 2006, the PRI’s signatories manage over \$90 trillion in AUM.¹ The US is the PRI’s largest market, with over 500 signatories investing over \$45 trillion in AUM.²

The PRI’s signatories believe integrating ESG factors has become a necessary part of investment, as it is critical for the promotion of long-term shareholder value. In the context of market volatility, climate change and regulatory intervention, ESG factors offer an expanded set of tools to address unmet investment industry needs in accordance with investors’ fiduciary duties.

SUMMARY

The PRI’s diverse signatory base believes it is critical for corporate management to be accountable to those who provide them capital: their shareholders. Signatories commit to a set of six Principles, the second of which states that they “will be active owners and incorporate ESG issues into our ownership policies and practices.”³ While they employ a variety of active ownership strategies,

¹ As of October 01, 2019.

² As of October 01, 2019.

³ Principles for Responsible Investment (PRI), *What are the Principles of Responsible Investment?* available at: <https://www.unpri.org/pri/an-introduction-to-responsible-investment/what-are-the-principles-for-responsible-investment>.

signatories share the view that the shareholder resolution process has been critical to active ownership — and the basic functioning of the investment intermediation chain.

The PRI believes, as explained in this letter, that the basis for the SEC’s Proposed Rule is substantially at odds with empirical evidence — and that the rule would significantly impede the accountability of management to their shareholders. Although the PRI believes the rule as a whole is unnecessary, this letter focuses on the changes to the resubmission thresholds and so-called “momentum” requirements, which would have the most harmful effect on its signatories’ ability to bring and sustain resolutions. **Accordingly, the PRI recommends that:**

- The proposed changes to the resubmission thresholds be removed, particularly the Proposed Rule’s momentum requirement.
- Should there be a future rulemaking, the SEC should carefully consider this data and substantially revise its economic analysis, in particular considering the implications of the Proposed Rule on the ability of investors to hold management accountable.

This comment letter is organized as follows.

In Section I, the PRI presents the results of an original economic analysis (relying on publicly available data) of shareholder resolutions⁴ that appeared on proxy filings from 2006 through 2018, which is summarized below (**pages 3-9**):

1. Under the Proposed Rule, hundreds of resubmitted shareholder resolutions would now fail to make the ballot (“excluded”), and hundreds of *successful* resolutions would also be excluded.
 - 399 resubmitted proposals would be excluded under the Proposed Rule, including 172 environmental and social proposals.
 - 181 proposals that received a 20% vote, 87 proposals that received a 30% vote, and 22 proposals that received a 40% vote would be excluded.
2. Shareholder resolutions see substantial variance in support over time, undercutting a key premise of the Proposed Rule.
 - 244 resubmitted proposals gain 10 percentage points or more on resubmission.
 - 66 resubmitted proposals gain 20 percentage points or more on resubmission.
3. The Proposed Rule is unnecessary, as resolutions with lower vote percentages are already being taken off the ballot, which the SEC fails to consider.
 - Proposals that earned 10% of the vote had around a 75% chance of not appearing on the ballot again.

⁴ A shareholder resolution or proposal is a recommendation or requirement that the company and/or its board of directors take action, which shareholder’s present at a meeting of the company’s shareholders. 17 C.F.R. § 240.14a-8.

4. The Proposed Rule would alter US corporate governance by substantially locking out smaller and mid-sized investors from influencing outcomes of votes, increasingly requiring them to persuade larger investors for resolutions to succeed.
 - 227 excluded proposals under the Proposed Rule are one large asset manager away from a 20% vote; 162 excluded proposals are one large asset manager away from 30% vote; 80 excluded proposals are one large asset manager away from a 40% vote.

In Section II, the PRI explains how the Proposed Rule's stated benefits are dwarfed by the costs to investors in reduced monitoring of management (**pages 9-10**):

1. The Proposed Rule's analysis of costs overestimates the costs to companies of engaging with shareholder resolutions and fails to provide evidence that those costs are significant.
2. The Proposed Rule underestimates the benefits to investors of increased monitoring of management and fails to consider that such monitoring often enhances long-term value.

In Section III, the PRI outlines other implications of the Proposed Rule for corporate governance (**pages 10-13**):

1. The SEC has historically used shareholder resolutions as an important measure of investor interest that has led to the development of landmark transparency rules and corporate reforms. As a result, under the Proposed Rule, the SEC and issuers alike will lose an important means of gauging investor interest.
2. Shareholder resolutions have yielded a tremendous amount of important information and action at companies. Increasing the shareholder resolution thresholds would be a major blow to ESG integration and long-term value at US companies.

I. THE PRI'S ORIGINAL ECONOMIC ANALYSIS ON THE EFFECTS OF THE PROPOSED RULE

1. Under the Proposed Rule, Hundreds of Resubmitted Shareholder Resolutions Would Now Be Excluded

The SEC's proposed changes to the 14a-8 thresholds would:

- Raise the current resubmission thresholds of 3%, 6% and 10% for matters voted on once, twice or three or more times in the last five years, respectively, with thresholds of 5%, 15% and 25%, respectively; and
- Add a new provision that would allow for exclusion of a proposal that has been previously voted on three or more times in the last five years, notwithstanding having received at least 25% of the votes cast on its most recent submission, if the proposal (i) received less than

50% of the votes cast and (ii) experienced a decline in shareholder support of 10% or more (“momentum” rule) compared to the immediately preceding vote.⁵

In order to understand the effects of these changes on its signatories, who often bring shareholder resolutions at US companies, the PRI analyzed all proposals that appeared on proxy filings from 2006 through 2018. Of 6,145 unique proposals, 1,579 were resubmitted at least once. Under the Proposed Rule, a significant number of those resubmitted resolutions would be excluded by the new resubmission thresholds and momentum requirements⁶:

- 399 resubmitted resolutions would be excluded under the Proposed Rule.

Examples of these excluded resolutions include:

- A proposal at General Electric to require an independent Board Chairman. This proposal would have been excluded after 2016 and 2017 for failing to reach 25%:

Year	Vote %
2012	22.4
2013	24.4
2016	23.3
2017	24.3
2018	41.2

- A proposal at PACCAR, Inc. to require a majority vote for the election of directors. This proposal would have been excluded after 2009 due to the proposed momentum rule:

Year	Vote %
2006	32.1
2007	41.2
2008	40.1
2009	32.7
2010	44.4
2011	44.3

Of all resubmitted *environmental or social* resolutions put to a vote within the preceding three years, 172 resolutions would be excluded under the Proposed Rule. Examples of these resolutions include:

- A proposal at Wyeth Corporation to require a report on political contributions. This proposal would be excluded after 2008 due to the proposed momentum rule:

Year	Vote %
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⁵ Proposed Rule at 179.

⁶ Includes resolutions put to a vote within the preceding three years. See Proposed Rule at 9 (raising thresholds for resolutions “if the matter was voted on at least once in the last three years . . .”).

2005	8.0
2006	29.0
2007	32.3
2008	27.4
2009	34.3

- A proposal at Charles Schwab to prepare an employment diversity report. This proposal would be excluded after 2016 for failing to reach 25%:

Year	Vote %
2014	20.3
2015	21.1
2016	24.3
2017	25.9
2018	35.8

- A proposal at Tyson Foods to require a report on water pollution prevention measures. Although this proposal saw improvement over time, under the Proposed Rule it would be excluded after 2015 for not reaching 15%, and after 2016 for not reaching 25%:

Year	Vote %
2010	10.0
2015	11.1
2016	12.1
2018	15.8

2. Under the Proposed Rule, Hundreds of *Successful* Resolutions Would Now Be Excluded

Part of the stated rationale for the Proposed Rule is that unpopular proposals may be less likely to gain support over time, imposing certain costs on management and the broader shareholder base. As the Proposed Rule states in response to reviewing comments from the SEC's 2018 Proxy Roundtable:

[We] are concerned that the current resubmission thresholds may allow proposals that have not received widespread support from a company's shareholders to be resubmitted — in some cases year after year — with little or no indication that support for the proposal will meaningfully increase or that the proposal ultimately will obtain majority support.

However, the PRI's analysis finds that a sizeable number of proposals that received substantial support among shareholders would now be excluded:

- 181 resolutions that received a 20% vote would be excluded.

- 87 resolutions that received a 30% vote would be excluded.
- 22 resolutions that received a 40% vote would be excluded.
- 6 proposals that received a 50% vote would be excluded.

An example of these excluded resolutions includes:

- A proposal at Anadarko Petroleum Corporation to Amend EEO Policy to Prohibit Discrimination based on Sexual Orientation and Gender Identity. This proposal would have been removed after 2011 due to the proposed momentum rule:

Year	Vote %
2008	9.7
2009	38.0
2010	39.3
2011	33.6
2012	43.2

In the above analysis, the PRI defines “success” with various metrics (20%, 30%, 40%, and 50% votes). This is contrary to the SEC, which sets the very high bar of 50% as the sole measure of success, a standard to our knowledge that has no legal import, as shareholder resolutions are precatory. The SEC’s 50% marker also makes the impact of the rule seem smaller than it actually is, because fewer resolutions reach 50% than resolutions than less-than-majority votes. The PRI includes multiple metrics because shareholder proponents often begin to engage in negotiations with management at vote percentages well below 50%.

3. Shareholder Resolutions See Substantial Variance in Support Over Time, Undercutting a Key Premise of the Proposed Rule

In explaining its rationale for the Proposed Rule, the SEC speculates that resolutions that do not see an increase in support upon resubmission are unlikely to be successful later:

If a proposal fails to generate meaningful support on its first submission, and is unable to generate significantly increased support upon resubmission, it is doubtful that the proposal will earn the support of a majority of shareholders in the near term or without a significant change in circumstances.

Shareholder resolutions in fact see substantial *variations* in support over their lifetime. While resubmitted proposals on average receive 0.0% improvement in support and 51% of resolutions gain vote share between resubmissions, these averages mask significant heterogeneity:

- 244 resubmitted resolutions gain 10 percentage points or more on resubmission.
- 66 resubmitted resolutions gain 20 percentage points or more on resubmission.
- Proposals that obtain over 50% vote (other than on their first time submitted) average 6.6 percentage points gained from the previous year.

In other words, resolutions that were successful on their second-or-later try tend to experience notable gains in support over time. The Proposed Rule inhibits these natural dynamics of resolutions by limiting proposals that do not gain strong early support – or those that do gain strong early support but experience a small dip under the “momentum rule.” As a result, under the Proposed Rule, many resolutions would be excluded that would have eventually gained support. The corollary is also true under the PRI’s analysis: many proposals lose support on resubmission. As discussed below this letter, a powerful mechanism already exists in the market for removing proposals that receive less support: self-removal.

This is not a particularly surprising result. As the PRI has previously noted to the SEC, investors incorporate their views on shareholder resolutions over time; support in year 1 is not determinative of support in years 2 or 3.⁷ This is in contrast to the SEC’s stated rationale for its rule that resolutions that do not generate support in their early stages may be less likely to see gains over their life cycles.

4. The Proposed Rule Is Unnecessary, as Resolutions with Lower Vote Percentages are Already Being Taken Off the Ballot, Which the SEC Fails to Consider

The SEC explains the need for its regulatory intervention as updating thresholds that are no longer sorting popular proposals from less popular ones:

Nevertheless, we are concerned that thresholds of 3, 6, and 10% may not demonstrate sufficient shareholder support to warrant resubmission, or adequately distinguish between proposals that ultimately are more likely to obtain majority support upon resubmission and those that are not. [. . .]

Consequently, we are concerned that the current thresholds may not be functioning effectively to alleviate companies and their shareholders of the obligation to consider, and spend resources on, matters that have previously been voted on and rejected by shareholders without sufficient indication that a proposal will gain traction among the broader shareholder base in the near future.⁸

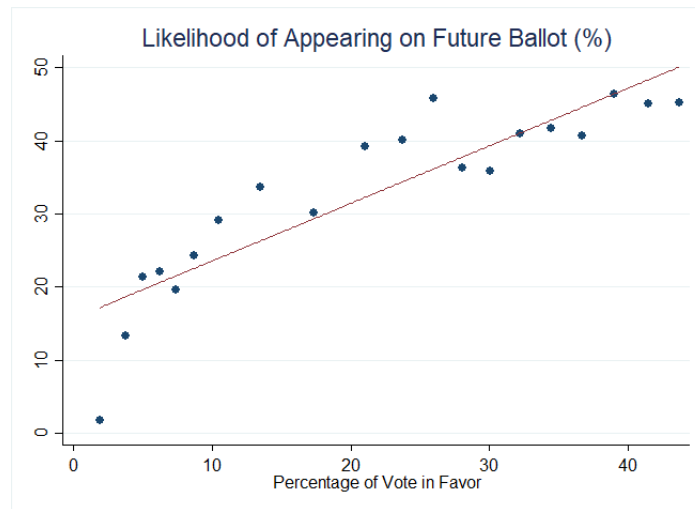
In fact, the PRI finds that the existing thresholds allow the “market” for shareholder resolutions to self-sort. Without the Proposed Rule in effect, proposals that received lower vote percentages tend to be removed from the ballot on their own. The graph below shows proposals from prior to 2018 that had less than 50% of the vote, demonstrating:

- Resolutions that performed well were very likely to appear on the ballot again, while those that performed less well were highly likely to be removed from the ballot. Proposals that earned around 10% of the vote had around a 75% chance of not appearing on the ballot again.

⁷ Principles for Responsible Investment, Comment on Rule S7-23-19 (Dec. 12, 2019) available at: <https://www.sec.gov/comments/s7-23-19/s72319-6535900-200526.pdf>.

⁸ Proposed Rule at 49.

- In total, every 10 percentage points of additional support makes a proposal 6.9 percentage points more likely to stay on the ballot.⁹



The SEC’s stated rationale for the Proposed Rule is that the existing thresholds do not “adequately distinguish between proposals that ultimately are more likely to obtain majority support upon resubmission and those that are not.”¹⁰ But proposals that obtain lower vote percentages are already less likely to reappear in subsequent years under the status quo. In other words: the market is already self-sorting such proposals without the SEC’s proposed regulatory intervention.

5. The Proposed Rule Would Alter US Corporate Governance, Locking Out Smaller and Mid-Sized Investors from Swaying Outcomes on Resolutions

Shareholder resolutions have generally always been filed by investors with smaller holdings as opposed to the largest asset managers.¹¹ Under the Proposed Rule, however, the largest investors would increasingly become necessary for a given resolution’s ability to succeed – making it far less likely that smaller investors could influence the outcome of a given resolution. The PRI finds that hundreds of resolutions that would be excluded under the Proposed Rule would now need the support of a single large asset manager (defined below as the companies’ largest single blockholder) to survive:

- 227 resolutions that would be excluded under the Proposed Rule are just one large asset manager away from a 20% vote.

⁹ t-stat 18.90.

¹⁰ Proposed Rule at 49.

¹¹ See Vanguard Investment Stewardship Commentary, *What We Do. How We Do It. Why It Matters*. (April 2019) (“We don’t [n]ominate directors or seek board seats, submit shareholder proposals . . .”) available at: <https://about.vanguard.com/investment-stewardship/perspectives-and-commentary/what-how-why.pdf>; see also BlackRock, *The Investment Stewardship Ecosystem* (July 24, 2018) (“BlackRock has never initiated a shareholder proposal on any company’s proxy statement . . .”) available at: <https://corpgov.law.harvard.edu/2018/07/24/the-investment-stewardship-ecosystem/>.

- 162 resolutions that would be excluded are just one large asset manager away from a 30% vote.
- 80 resolutions that would be excluded are just one large asset manager away from a 40% vote.
- 25 resolutions that would be excluded are one large asset manager away from a 50% vote.
- 180 resolutions (50.5%) of the 356 excluded resolutions for which we have institutional ownership data are within one large asset manager away not being excluded.¹²

More than ever, a proponent would now have to convince large institutional investors of a resolution's merits for it to have a chance of being sustained. While large investors have made important strides in ESG integration and stewardship, the Proposed Rule will have major implications for US corporate governance that the SEC appears not to have considered. Accordingly, the SEC should carefully weigh the implications of the rule for smaller and medium-sized investors' ability to hold corporate management accountable.

II. THE RULE'S STATED BENEFITS ARE DWARFED BY THE COSTS TO SHAREHOLDERS IN REDUCED MANAGEMENT ACCOUNTABILITY

The SEC has long recognized "that a rule's potential benefits and costs should be considered in making a reasoned determination that adopting a rule is in the public interest."¹³ However, the Proposed Rule takes a one-sided and narrow approach to its cost-benefit analysis. The PRI finds that the loss of benefits under the Proposed Rule – by reducing the accountability of management to shareholders – dwarf the stated cost savings.

First, the proposal's analysis of the costs of shareholder proposals relies on estimating costs to management of *mere engagement* with shareholders. The costs to management listed are as follows: "(i) review the proposal and address issues raised in the proposal; (ii) engage in discussions with the proponent(s); (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 a notice with the Commission; and (vi) prepare a rebuttal to the submission."¹⁴

Most of these are costs of persuasion and analysis: they are only costly if the shareholders disagree with the management's position. If the Proposed Rule targets unpopular proposals, the cost savings are likely to be even lower than described. Furthermore, since the Proposed Rule also targets resubmissions – for which the review, discussions, communications, and rebuttals have substantially already been performed previously – then the estimate is likely an overestimate of the costs to companies of the Proposed Rule.

¹² That is, if the number of shares of their largest institutional blockholder voted in favor of the resolution.

¹³ Securities & Exchange Commission, Staff of the Rulewriting Divisions and Offices, *Current Guidance on Economic Analysis in SEC Rulemakings*, at 1 (March 16, 2012).

¹⁴ Proposed Rule at 116.

Second, the Proposed Rule does not adequately consider the costs of reduced shareholder monitoring of management due to the rule making it more difficult to sustain shareholder resolutions. Although the Proposed Rule discusses costs to proponents, it lacks any attempt to estimate the benefits of the increased monitoring of management and the value-enhancing potential of certain shareholder proposals, stating: “Our economic analysis does not speak to whether any particular shareholder proposal or type of proposals are value enhancing, whether the proposed amendments would exclude value enhancing proposals, or whether the proposed amendments would have a disproportionate effect on proposals that are more or less value enhancing.”¹⁵

As a wide body of corporate governance literature has noted, shareholders’ disciplining of management can be positive for long-term value. A 2012 paper published in the *Journal of Finance*, for example, estimates the passage of a *single* governance proposal causes a positive 2.8% cumulative abnormal return.¹⁶ Similarly, a 2015 paper in *Management Science* finds that implementing a corporate social responsibility shareholder resolution leads to an increase in value by about 1.77%.¹⁷ In contrast, the Proposed Rule estimates \$8.9 million per year in cost savings for Russell 3000 companies.¹⁸ Accordingly, these cost-savings are undoubtedly dwarfed by the value-enhancing nature of shareholder resolutions that would henceforth be excluded by the Proposed Rule.

III. OTHER IMPLICATIONS OF THE PROPOSED RULE FOR CORPORATE GOVERNANCE

1. The SEC and Issuers Alike will Lose an Important Measure of Investor Interest that has Historically Led to Landmark Reforms

Corporate transparency is the hallmark of US securities markets — and has been since the creation of the SEC. Indeed, the drafters of the federal securities laws, as well as the modern Supreme Court, have observed that by producing information about how executives are leading companies, corporate disclosure promotes the accountability of those executives to their shareholders.¹⁹ The development

¹⁵ Proposed Rule at 112.

¹⁶ See Vicente Cuñat, Mireia Gine, & Maria Guadalupe, *The Vote Is Cast: The Effect of Corporate Governance on Shareholder Value*, 67 J. Fin. 1943 (2012) available at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1555961.

¹⁷ The study finds that “a CSR proposal that passes by a narrow margin of votes yields an abnormal return of 0.92% compared to a CSR proposal that fails marginally.” After rescaling the estimated coefficient by the probability of implementing the proposal, the author finds that CSR proposals have a 52% probability of being implemented, which leads to an increase in shareholder value by about 1.77%. See Carol Flammer, *Does Corporate Social Responsibility Lead to Superior Financial Performance? A Regression Discontinuity Approach*, *Management Science*, Vol. 61 No. 11 (2015) available at: https://www.researchgate.net/publication/256034233_Does_Corporate_Social_Responsibility_Lead_to_Superior_Financial_Performance_A_Regression_Discontinuity_Approach.

¹⁸ Proposed Rule at 140.

¹⁹ See Securities & Exchange Commission, *Shareholder Communications, Shareholder Participation in the Corporate Electoral Process and Corporate Governance*, Exchange Act Release No. 15,384 (Dec. 6, 1978) (“The legislative history of the federal securities laws reflects a recognition that disclosure, by providing corporate owners with meaningful information about the way in which their corporations are managed, may promote the

of the SEC's disclosure regime, however, has often occurred in response to interest from investors, including through shareholder resolutions. For example:

- In 1978, while considering a proposal to require disclosure related to social issues, the SEC examined investor interest by way of shareholder resolutions in this area. Although it concluded that no rules were required in this area, the SEC noted "that certain social shareholder pro-posals that appear to have social implications have received an average of from 2 to 3% of the vote in recent years and that corporations have apparently not received a significant number of social inquiries from their shareholders."
- In 1992, the SEC enacted rules on disclosure on executive compensation including a requirement to add detailed quantitative information about manager pay. The SEC noted that investors had expressed considerable interest in executive compensation, as the proposed rules cited shareholder resolutions on executive pay at nine companies, with the SEC proposing a rule on disclosure after shareholder vote results of just 5.6%.²⁰
- In 2009, the SEC updated its rules to require disclosure on board oversight of risk taking. The SEC observed that the financial crisis had caused "investors [to] increasingly . . . express[] the desire for additional information that would enhance their ability to make informed voting and investment decisions," and issued new rules on disclosure on directors' oversight of risk taking.²¹
- The SEC's 2011 implementation of "Say on Pay" and executive compensation disclosure rules under the Dodd-Frank Act was preceded by several years of shareholder resolutions asking issuers to establish a compensation vote for their executives, prompting other companies to follow suit and helping to convince legislators and regulators to adopt the policy.²²

The SEC's Proposed Rule would cut off discussion of issues of interest to shareholders, and as a result risks depriving the Commission — as well as companies — of information that has traditionally led to critical new transparency and corporate accountability. Accordingly, the SEC and issuers alike will lose an important source of data on investor interest, which over time will almost certainly result in less disclosure and meaningful reforms in corporate America.

2. Shareholder Resolutions Have Been Critical for ESG Integration and Long-Term Value

accountability of corporate managers."); see also *Citizens United vs. FEC*, 558 U.S. 310 (2010) (noting "[s]hareholder objections raised through the procedures of corporate democracy").

²⁰ Securities & Exchange Commission, Executive Compensation Disclosure, Exchange Act Release No. 33-6940 (1992) (executive compensation disclosure resolutions had support of 5.6% of shareholders).

²¹ Securities & Exchange Commission, Proxy Disclosure Enhancements, Exch. Act Release No. 33-9089 (2009).

²² See Keith L. Johnson and Daniel Summerfield, *Shareholder Say on Pay - 10 Points of Confusion*, Harvard Law School Forum on Corporate Governance, at 1 (2008) ("[r]esolutions asking companies to adopt Say on Pay have been supported by 42-43% of shareholders over both of the last two proxy seasons") available at: <https://corpgov.law.harvard.edu/wp-content/uploads/2008/11/say-on-pay-ten-points.pdf>.

As of 2018, over a quarter of the \$46.6 trillion in total US assets under professional management are committed to these strategies — and growing.²³ While there are a number of explanations for the rise of ESG investment in the United States, one of the major reasons PRI signatories cite is their ability under the SEC’s regulatory framework to hold managers accountable to their shareholders. This has often been done through the shareholder resolution process, which provides a clear, rules-based pathway for investors to bring issues to management and the shareholder base’s attention.

In hundreds of cases over the years, investors have come to important agreements with management. Some highlights include:

Environmental

- An analysis of data on climate-related shareholder proposals filed with US companies between 2009-2017 found that 35% of resolutions led to commitments by the company in question.²⁴

Social

- A shareholder resolution at Walgreens in 2019 requesting a report on governance measures related to opioids received 61% support.²⁵ A similar proposal also won majority support at Rite Aid Corporation in 2018.²⁶
- Mallinckrodt, a drug manufacturer that has received shareholder proposals in relation to the opioid crisis, recommended shareholders vote for a lobbying disclosure proposal, requesting a detailed report of lobbying activities at the local, state and federal level.²⁷

Governance

- In 2005, around 50% of S&P 500 companies had a classified corporate board structure, which declined to less than 20% by 2013, in great part due to shareholder resolutions calling for annual director elections.²⁸

²³ See Meg Voorhes, *U.S. Sustainable, Responsible, and Impact Investing Trends*, Investments and Wealth Institute, United States Sustainable Investment Forum (Jan. 2019) at 1 (“The total U.S.-domiciled assets under management using SRI strategies grew from \$8.7 trillion at the start of 2016 to \$12.0 trillion at the start of 2018, nearly a 40% increase”) available at: https://www.ussif.org/files/Article/IWM19JanFeb_US_SRI Trends2018.pdf.

²⁴ Ceres, *The Role of Investors in Supporting Better Corporate Performance*, at 4 (2019), available at: https://www.ceres.org/sites/default/files/reports/2019-04/Investor_Influence_report.pdf.

²⁵ Bruce Japsen, Forbes.com, *Opioid Suit Loom Over a Walgreens-AmerisourceBergen Deal* (May 21, 2019), available at: <https://www.forbes.com/sites/brucejapsen/2019/05/21/opioid-cases-loom-over-a-walgreens-amerisourcebergen-deal/#23b95c1377e6>.

²⁶ See RiteAid Corp., Proxy Statement Pursuant to Section 14(a), Stockholder Proposal on Governance Measures Related to Opioids (Sept. 27, 2018) available at: https://www.sec.gov/Archives/edgar/data/84129/000104746918006450/a2236772zdef14a.htm#di40601_proposal_no.6_stockholder_prop03317.

²⁷ Roll Call, *Opioid Maker Mallinckrodt to support lobbying disclosure* (April 3, 2019) available at: <https://www.rollcall.com/news/congress/opioid-maker-mallinckrodt-support-lobbying-disclosure>.

²⁸ Abigail Pickering Bomba, Steven Epstein, Arthur Fleischer Jr., Peter S. Golden, Philip Richter, David N. Shine, John E. Sorkin and Gail Weinstein, Fried Frank Harris Shriver & Jacobson LLP, *A New Approach To Classified Corporate Boards*, at 4 (April 14, 2014) available at: <https://www.friedfrank.com/siteFiles/Publications/A%20New%20Approach%20To%20Classified%20Corporate%20Boards1.pdf>; Lucian Bebchuk et. al, *Towards the Declassification of S&P 500 Boards*, Harvard Business Law Review, Vol. 3, No. 1, at.157-84 (2013) available at: https://www.hblr.org/wp-content/uploads/sites/18/2013/08/HLB101_crop.pdf.

- Since 2015, investors have asked companies to make the right of investors to nominate directors on the company's proxy ballot a market standard. Just six US companies had proxy access as of 2014, with more than 540 offering it as of 2018, including 60% of the S&P 500.²⁹ Thirty-five companies, including IBM and Humana, have taken steps to enact proxy access bylaws "with terms substantially similar to those requested by the shareowner proposal."³⁰

Significant evidence supports the long-term economic value of ESG integration. A meta-study by Deutsche Asset & Wealth Management and the University of Hamburg, found "62.6% of studies revealed a positive correlation between ESG investing and financial performance," nearly 30% had neutral performance and 8% under performed.³¹ A CFA Institute survey found ESG momentum strategy outperformed the MSCI World Index by 16.8% and the MSCI US Index by 18.8%.³²

Accordingly, by making it more difficult to bring and sustain shareholder resolutions, the Proposed Rule will be damaging for long-term value creation from these critical investment and stewardship strategies.

CONCLUSION

One of the majority Commissioners noted when approving the Proposed Rule that other forms of shareholder engagement have increasingly come to the fore through changes in technology.³³ Indeed, other means of shareholder engagement do exist, but the shareholder resolution process is unique because it requires a vote. That is, though precatory, shareholder resolutions promote corporate accountability in a way that other forms of engagement cannot.

²⁹ New York City Pension Funds Shareowner Initiatives Postseason Report (2017) available at: https://comptroller.nyc.gov/wp-content/uploads/documents/2017_Shareowner_Initiatives_Postseason_Report.pdf; New York City Pension Funds Shareowner Initiatives Postseason Report (2018) available at: https://comptroller.nyc.gov/wp-content/uploads/documents/2018_Shareowner_Initiatives_Postseason_Report.pdf.

³⁰ New York City Pension Funds Shareowner Initiatives Postseason Report (2018) available at: https://comptroller.nyc.gov/wp-content/uploads/documents/2018_Shareowner_Initiatives_Postseason_Report.pdf.

³¹ See Deutsche Asset & Wealth Management, the University of Hamburg, and PRI, *ESG & Corporate Financial Performance: Mapping the global landscape* (Dec. 2015) available at: [https://institutional.dws.com/content/media/K15090_Academic_Insights_UK_EMEA_RZ_Online_151201_Final_\(2\).pdf](https://institutional.dws.com/content/media/K15090_Academic_Insights_UK_EMEA_RZ_Online_151201_Final_(2).pdf).

³² See The PRI, *Financial performance of ESG integration* (Feb. 20, 2018) available at: <https://www.unpri.org/investor-tools/financial-performance-of-esg-integration-in-us-investing/2738.article> (including results from the CFA Institute survey).

³³ See Securities & Exchange Commission, *Statement at the Open Meeting: Procedural Requirements and Resubmission Thresholds Under Exchange Act Rule 14a-8*, Commissioner Elad Roisman (Nov. 5, 2019) ("the internet and social media have allowed shareholders cheap and easily-accessible ways to get messages across to management, directors, and even other shareholders, proving to be incredibly powerful tools for influencing change even in the largest corporations") (citing Donna Fuscaldo, *Forbes.com, Say Gives Retail Investors A Voice And Tesla Listens* (Feb. 19, 2019)).

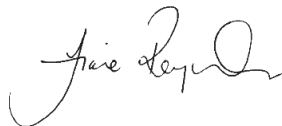
The PRI's letter finds that the basis for the SEC's Proposed Rule is substantially at odds with empirical evidence — and would significantly impede investors' ability to hold management accountable going forward. Accordingly, the PRI recommends that:

- The proposed changes to the resubmission thresholds be removed, particularly the Proposed Rule's momentum requirement.
- Should there be a future rulemaking, the SEC should carefully consider the PRI's analysis in this letter and substantially revise its economic analysis, taking into account, above all, the significant implications of the Proposed Rule for the ability to hold management accountable to their shareholders.

Thank you for the opportunity to share our views. For further conversation and follow up, please feel free to contact our policy team:

- Will Martindale, Director of Policy and Research: will.martindale@unpri.org
- Colleen Orr, US Policy Analyst: colleen.orr@unpri.org

Yours sincerely,



Fiona Reynolds
Chief Executive Officer
Principles for Responsible Investment

cc. The Honorable Jay Clayton, Chairman
The Honorable Robert J. Jackson, Jr., Commissioner
The Honorable Hester M. Peirce, Commissioner
The Honorable Elad L. Roisman, Commissioner
The Honorable Allison H. Lee, Commissioner

APPENDIX

Data Sources

Proposals are from 2003-2018 from ISS Voting Analytics. We kept only proposals with Sponsor “Shareholder.” We removed proposals where meeting type is “Proxy Contest” or where the Agenda General Description includes the phrase “(Opposition Slate)”.

Our analysis included all shareholder proposals that were voted on by shareholders, excluding those relating to proxy contests.

Data on institutional investors comes from Thomson Reuters S34.

Methodology

We hand-corrected Agenda General Descriptions, Item Descriptions, and Proponent Names to streamline them, then hand-coded proposals into proposal categories (Environmental, Social, Governance) using framework in Brav, Cain & Zytznick (2019).

We categorized a proposal as a resubmission if it is: (i) at the same firm, (ii) at a subsequent meeting, (iii) with the same Agenda General Description, and (iv) with the same Item Description. Hand-correct Item Descriptions in ambiguous cases. Assign a unique proposal ID to all proposals plus resubmissions.

We calculated percentage of votes in favor as $(\text{Votes For}) / (\text{Votes For} + \text{Votes Against}) * 100$.

We categorized a proposal as the final appearance on the ballot if it is (i) prior to 2018 and (ii) no subsequent resubmission of the proposal has been made.

For the purposes of determining resolutions that would be “excluded” (or failed to make the ballot) under the Proposed Rule, since a resolution can only be considered to be excluded if it has been voted on in the past three years and our data runs from 2003-2018, we excluded the first three years and look only at 2006-2018 to ensure we can assess whether a proposal has been voted on in the past three years. We started by marking a proposal if it is in its second year and has below 5%, in its third year and has below 15%, or in its fourth year or above and is below 25%. We also marked proposals that are in their fourth year or above and saw a 10% decline in percentage of votes in favor over the two preceding votes (under the “momentum” rule), so long as it has had three votes in the preceding five years. Finally, we unmarked any proposal whose most recent vote was not within three years.

For proposals in 2006 and 2007, we may be slightly under-estimating proposals excluded under the new rule, since we only observe prior submissions from 2003 onward and therefore may be undercounting the number of votes in the preceding five years.

To evaluate the potential impact of institutional investors under the Proposed Rule, for each firm, we use its largest institutional owner (from the 13F nearest to the meeting date and within three years).

Comparability to SEC's Analysis

The SEC's economic analysis is generally focused on submitted proposals, whereas our analysis is focused on proposals actually on corporate ballots. Accordingly, our numbers may not generally be comparable, but they are quite consistent with each other regardless (for example, we have similar ratios of Environmental, Social, and Governance proposals).

We count 882 unique proposal groups resubmitted between 2011 and 2018, very similar to the 864 reported in the SEC proposal on page 52.

Proposals in our sample average 31.9% support from 2004 to 2018, very similar to the 33.4% reported by the SEC on page 84. The SEC reports 42.1%, 21.9%, and 17.4% for G, E, and S proposals, respectively, very similar to our 39.7%, 19.1%, and 17.5%.

Starting on page 101, the SEC reports numbers related to resubmission for proposals from 2011 to 2018. They have 3,620 proposals that went to a vote from 2011 to 2018, fairly similar to our 3,965. The SEC has 60% of proposals as first submissions, 19% as second submissions, and 21% as third or higher, very similar to our 62.6%, 19.0%, and 18.3%, respectively.

On pages 130-132, the SEC reports that it finds an additional 269 proposals (212 from the resubmission threshold, and 57 from the Momentum Requirement) being excludable from 2011 onward, which they report is 19% of the total resubmitted proposals in the time frame. This is fairly similar to what we find, which is 253 excluded proposals from 2011 onward, which is 18.9% of resubmitted proposals in this timeframe.