Phil Gramm

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January 29, 2020

Ms. Vanessa Countryman
Secretary
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090
rule-comments@sec.gov

Subject: Release No. 34-87458
File No. S7-23-19
Procedural Requirements and Resubmission Thresholds under Exchange Act Rule14a-8

Dear Ms. Countryman:

I am Phil Gramm, an economist, former Chairman of the Senate Banking Committee, former Vice Chairman of UBS Investment Bank and I am now Vice Chairman of Lone Star Funds and a Visiting Scholar at the American Enterprise Institute. I am grateful for this opportunity to share my views on the Commission's proposed rulemaking regarding procedural requirements and resubmission thresholds, and corporate governance in general. The views expressed below are my personal opinions.

In my comments before the Securities and Exchange Commission, the Senate Banking Committee and in various opinion editorials in the Wall Street Journal, I have repeatedly stated that the present debate between the rights of shareholders versus the rights of stakeholders is the most important economic debate of our time because it goes to the fundamental question of private property, the gift of the Enlightenment and the foundation of our prosperity and freedom.

The question is does a worker's labor, savings and wealth belong to the worker or does it also belong to others who did not work, did not save, did not invest, and did not put up any stake? Does the fact that others may have an "interest" in how you use the product of your labor give them rights over that labor? If you build a business where stable government protected private property to help make it possible for you to succeed, does that mean that the business is not really yours? If it does, then your freedom which you can have because of stable government and the enforcement of the rule of law is not really yours either. In fact, under that logic, your life is not yours either. Is it possible that in America, ownership of wealth no longer confers the right to control, use and benefit from that wealth?

To the best of my recollection, at no time and in no place has mankind enjoyed sustained freedom or prosperity where the fundamental right of a person to keep the rewards for working and saving has been denied or severely compromised. This is as true for medieval Europe as it is for present day Venezuela. That this can be considered a fact, perhaps the most important fact of mankind's economic progress, flows from our universal experience since the beginning of the Enlightenment some three centuries ago. It is that subsequent freedom and prosperity that is at issue in these SEC regulations.

The Enlightenment liberated mind, soul and property, empowering people to think their own thoughts, worship their own gods and benefit from the fruits of their own labor and thrift. As labor and capital came to serve their owner, not the crown, the guild, the church or the village, medieval economies began to awaken from a thousand years of stagnation.

The Parliament in England stripped away the leaching influence of royal charters and initiated reforms that ultimately allowed businesses to incorporate by simply meeting preset capital requirements. Parliament further established in law the principle that business would be governed by the laws it passed, in a process of open deliberation, not by the corrosive influences and rampant cronyism that were pervasive in the medieval marketplace.

The Enlightenment recognized that the crown, guild, church and village had become rent seekers, leaching away the rewards for work, thrift and innovation and in the process reducing productive effort and progress. The Enlightenment principle that labor and capital were privately owned property and not communal assets subject to involuntary sharing, unleashed an explosion of knowledge and production, creating a never before equaled human flourishing that continues to this day.

Extraordinarily in America, the crown jewel and greatest beneficiary of the Enlightenment, political movements are afoot that seek to overturn the individual economic rights created in the Enlightenment and return to a medieval world of subjects and subjugation. Today we hear proposals to force businesses to again swear medieval fealty to "stakeholders" – the modern equivalent of crown, guild, church and village – "the general public…the workforce…the community…the environment…societal factors". These stakeholders would not have to "stake" any of their toil or treasure, but, as they did in the Dark Ages, they would claim communal rights to share the fruits that flow from the sweat of the worker's brow, the saver's thrift and the investor's venture.

Whereas the Enlightenment was based on the principle that people owned the fruits of their labor and thrift, America now faces a host of proposals to force the sharing of economic rewards that take us back to the medieval concept of communal property where the powerful few could extort part of the fruits of your labor and capital using the logic that if you own a business "you didn't build it".

Thankfully, many of these proposals to overturn the Enlightenment's concepts and benefits of economic freedom would at least employ its democratic process by seeking to change the law. This latest struggle for the survival of economic freedom and prosperity will be played out in elections during the next decade. But an even greater threat to the Enlightenment's economic foundations comes today from the surreptitious battle now being waged in stockholder meetings and corporate board rooms across the country. Today political activists are pressuring corporate America to adopt political, social and environmental policies that would subvert labor and capital in ways that have been rejected by State Legislatures, the Congress, and the Courts.

Past reforms by Congress, the SEC and the courts, designed to enhance shareholder rights, have unintentionally empowered special interest groups to subvert corporate governance, forcing corporations to deal with political and social problems they were never designed or empowered to deal with. The explosion of index funds, whose managers vote shares they do not own, has dramatically increased the danger posed by political activists not just to American corporate governance but to our prosperity and freedom as well.

Today index funds hold 17.2% of all U.S. shares and are the largest shareholder in 40% of all U.S. companies. Their future growth seems guaranteed by the tremendous price advantage gained by simply buying a slice of various equity indices rather than incurring the cost of analyzing each investment. But such efficiency is not free. An index fund's profitability is not significantly affected by the performance of any given company in the index since their primary competitors sell the same indices. Therefore index funds and their proxy advisers have neither the knowledge nor the aligned interest to make informed judgements on business-specific questions that arise in the stockholder meetings of the companies in which they control an ever-increasing share of stockholder votes.

When index funds vote their investor's shares on broad social and political issues, the problem is not just the lack of aligned interest and knowledge, the problem is that index funds have a glaring conflict of interest. On those high profile issues, the profitability of the scale-driven index fund business will be affected largely by how the public perceives the vote the fund cast and how that vote affects the marketing of the firm. The index funds financial interest, therefore, can and often will conflict with the investor's interest.

Before his death, the great Jack Bogle, founder of Vanguard, urged legislation to explicitly impose a fiduciary duty on funds "to vote solely in the interest of the fund's shareholder". Anybody voting somebody else's shares or advising on how to vote those shares should be bound by strict fiduciary responsibility. But even enhanced fiduciary responsibility won't solve the inherent conflict of interest that index funds face in voting investor shares on high profile social and political issues that have a potential impact on the marketability of the fund. On those issues maybe it is time for the SEC to require that index funds poll their investors and vote their shares only as specifically directed. We cannot allow the economic interest of index funds to effectively convert "private purpose" C corporations into "public benefit" B corporations which the investors in general index funds didn't invest in.

History teaches us that if we want to be prosperous and free, within the Rule of Law, we must let private interest create wealth and reap the rewards of its creation. Only after wealth has been created should we debate the cost and benefits of taxing and redistributing it.

To restore the fiduciary protections that have been undermined over time by court rulings and regulatory actions and thereby ensure that every American has their money - no matter how meagre - work for them, their families and their future, the SEC must act.

The Securities and Exchange Commission has already implemented two important reforms by reversing the guidance it offered in its 2004 Egan-Jones letter and its subsequent ruling on behalf of Institutional Shareholder Services, which allows investment managers to use proxy advisers to escape responsibility for conflicts of interest. The SEC also rejected the application of the 1988 DOL "Avon" letters mandating that investment managers must vote their fund's proxies upon SEC regulated funds.

Yet more needs to be done. **All** actions of investment managers and proxy advisers should be subject to fiduciary standards. By clarifying that proxy voting advice constitutes "solicitation" and therefore has a fiduciary duty, the SEC has restored this vital protection. With this responsibility clearly and unambiguously re-imposed, activists and proxy advisers should be held to the same liability standard as everyone else for false and misleading statements.

The SEC proposal would accomplish this by requiring full disclosure of material conflicts of interest, accuracy in proxy advice and full opportunity to review and provide feedback on such advice. It is inconceivable that any fiduciary can fulfill their responsibilities without accurate facts that are reviewable and corrected prior to any votes. Without such review and corrections, any and all "robo-voting" should be suspended or the fiduciary protection of investors will remain seriously impaired.

The SEC has also proposed raising the ownership requirement for offering resolutions, and setting a higher threshold for reoffering resolutions that previously have been rejected. These changes should be adopted as it will curb the politicizing of corporate boardrooms and restore to corporate leaders some of their most valued but limited commodity: time.

As there can be no proper fulfillment of the fiduciary responsibility without a clear focus on the impact on firm profitability, the SEC should attempt to insulate corporations and therefore corporate boards from political issues, especially in the environmental, social and governance proposals. Corporations and boards have neither the power, expertise or design to resolve what are clearly public policy issues. Business can no more solve the issues of governing than government can solve the issues of business. It was this specific separation of functions of government and private enterprise that was the most important accomplishment of the Enlightenment, and we muddle those lines at our own great peril.

The combined effect of all these SEC actions - to ensure full applicability of the fiduciary standard, to mandate complete disclosure of conflicts of interest, to ensure the greatest degree of accuracy in vote recommendations, and to curtail the corrosive effect of politicizing corporate governance - will constitute an important step to restore the historical protections afforded private wealth. All parties involved in managing private wealth, including proxy advisors, will now have their duties aligned with the goals of shareholders to maximize investor return, which is as it should be.

In this, we should never forget that 72% of all domestically owned stocks are owned by pension plans, 401(k)s, IRAs or insurance companies as reserves to pay annuities or survivor benefits. This vast wealth that some would pirate for their own use is the lifetime of savings and investment of millions of Americans. Money cannot serve two masters and these proposals will help ensure that money continues to serve its rightful owner. This principle has been the secret to the world's prosperity and freedom for over three centuries.

Thank you for affording me the opportunity to comment on these important actions by the SEC.

Yours respectfully,

Phil Gramm

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