Trust Enrollment Committee
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ONEIDA

February 3, 2020

Hon. Jay Clayton
Chairman
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549

Re:

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

S7-22-19 Amendments to Exemptions from the Proxy Rules for Proxy Voting Advice

Dear Chairman Clayton,

We strongly oppose the rules proposed by the Securities and Exchange Commission (SEC) on November 5th, 2019, which will severely limit the rights of shareholders to engage with corporations using the shareholder resolution process over issues with a distinct impact on long-term value, and the democratic structure of publicly traded companies.

The Oneida Trust Enrollment Committee is an elected body of 9 enrolled members of the Oneida Nation, a federally recognized sovereign indigenous nation whose reservation is located in Wisconsin. One of our primary responsibilities to the Oneida Nation is to administer the investments of the Oneida Nation's trust funds and endowment funds; of the various accounts we collectively manage over $200 million worth of assets. As long-term institutional investors with limited resources, we have engaged many companies over several decades on critical environmental, social, and governance (ESG) issues that are particularly impactful to other indigenous communities both foreign and domestic. We believe that the proposed rules are unnecessary and will undermine a corporate engagement process that has been of great value to both companies, investors, and stakeholder communities.

The proposed increase in ownership thresholds will make it difficult for smaller investors to voice important concerns and raise issues of risk to the companies they own. The current ownership threshold of $2,000 ensures that a diversity of voices is heard, not just the biggest players. Small investors have contributed a multitude of now commonplace best practices. According to data compiled by the Sustainable Investments Institute, 187 resolutions on social and environmental topics came to a vote at US companies in the spring of 2019. Many of these were filed by investors with relatively small stakes consistent with the existing filing thresholds.

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The proposals received an average of 25.6 % support (about the same as the average of 25.4% for resolutions of this kind in 2018, and 21.4% in 2017). These numbers demonstrate that proposals of interest to a large portion of a company's shareholder base can and do originate with smaller individual and institutional investors.[1] For example, in 2017 the Oneida Trust Enrollment Committee co-filed a shareholder resolution to AT&T resolving annual disclosure of their lobbying policies. At the time, the Oneida Trust Enrollment Committee held approximately $8,000 worth of AT&T securities. The resolution received 35.47% of votes in favor.

Furthermore, a proposal to prohibit smaller investors from combining their holdings with other like-minded investors to meet potential increased filing thresholds is counter-intuitive to the democratic structure of publicly traded companies. When a shareholder votes at an annual general meeting regardless of the topic, the weight of a vote is based entirely on the amount of ownership, not on the number of people voting. Therefore, if the collective votes of various smaller investors outweigh the amount of the single few larger investors, then the collective vote passes. Similarly, it stands to reason that such a concept should apply for filing resolutions. If a group of investors wish to co-file a resolution, and their collective amount of ownership meets the threshold, then the group of investors have just as much right to file a shareholder resolution as a single investor who meets the threshold individually. Prohibiting smaller investors from combining their shares to create a larger voice actively stifles the voice of their shares. When the system is designed for the shares to be the voice, these proposed prohibition are thus stifling the voice within companies.

The proposed increase in resubmission thresholds threatens to unnecessarily exclude important proposals that gain traction over time and will ultimately stifle key reforms. There are many examples through the years of resolutions that initially received low votes but went on to receive significant support or have led to productive engagement. The issue of declassified boards is just one example – in 1987 proposals on this issue received under 10% support; in 2012 - 81%, and it is now considered to be best practice. Other examples include resolutions with oil and gas companies on the risks of climate change that often received below 5% of shareholder support when first introduced beginning in 1998, but which now receive substantial, and even majority shareholder votes, and have been adapted by numerous companies. Resolutions highlighting human rights risks in global supply chains initially received low votes at companies, but as a result of engagement prompted by the proposals, sector leaders have adopted human rights policies and supplier codes of conduct that help minimize legal, reputational, and financial risks. Clearly these and other votes on critical matters signify that investors appreciate the value of the issues being raised in these resolutions. It can take

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[1]Si2 'FACT SHEET: Shareholder Proposal Trends', *Sustainable Investments Institute*, Oct.17, 2019, https://siinstitute.org/special_report.cgi?id=80

some time for shareholders to get up to speed on emerging issues. The proposed changes could prevent significant topics from even being raised and considered, to the detriment of all stakeholders.

A rule prohibiting asset managers to engage companies on behalf of the asset owners further limits the amount of voices in corporate engagement, and thus limits the democracy of publicly traded companies. Just as an American citizen has the right to appoint legal representation in the United States Judicial System, we believe investors have the right to appoint financial representation. The Oneida Trust Enrollment Committee are institutional investors. As institutional investors, our responsibilities extend beyond that of a fiduciary. We have day-to-day obligations to the community we serve. Our investment resources and human resources are limited; however, we also recognize that as shareholders we recognize additional responsibilities to a company's profit longevity and the company's impact to all their stakeholders. We rely on our asset managers to provide this proper due diligence. When we request our asset manager to engage our company on our behalf, it is because there is concern the company's operations conflict with our values and their operations will hurt overall investment performance.

The current 14a-8 rule has worked well for decades, and there is no need to revise it. For decades, the shareholder proposal process has served to benefit issuers and proponents alike as an effective, efficient and valuable tool for corporate management and boards to gain a better understanding of shareholder priorities and concerns. The proposed rule changes will effectively stifle the rights of shareholders (who are owners of the company); and thus, making companies far less accountable to shareholders, stakeholders, and the public at large.

Trade associations like the Business Roundtable, the U.S. Chamber of Commerce, and the National Association of Manufacturers have lobbied rigorously for the proposed changes by exaggerating the cost of the process to companies, and by misleadingly painting shareholders raising ESG issues as "activists" imposing a "social agenda" who are "uninterested in shareholder value." This misinformation feeds a political agenda by the trade associations to limit the ability of shareholders to engage with the companies that they own. We engage as shareholders on ESG risks precisely because we are concerned about the long-term health of the companies in which we are invested. ESG risks are true risks that have material impacts to a company's performance.

These risks have long been disregarded but are becoming increasingly measurable. Energy Transfer Partners and the Dakota Access Pipeline protests is a prime example of the risks our corporate engagement attempts to eliminate. Because Energy Transfer Partners did not consider the social governance risks of the Dakota Access Pipeline's placement near the Standing Rock Sioux Tribe's reservation boundaries, the following protests cost the Energy

Transfer Partners and their stakeholders an estimated $10 billion[2]. Many of the companies that we engage understand that this engagement enables them to deter reputational, legal, and financial risks, and build value. The filing of shareholders resolutions by investors big and small is a crucial part of the engagement process.

The SEC's mission statement has three parts: 1. Protect investors; 2. Maintain fair, orderly, and efficient markets, and 3. Facilitate capital formation.[3]. Proposed rule changes that increase minimum thresholds to file shareholders resolution, prohibiting collaboration amongst investors, and prohibiting representation does not protect investors' rights. For the above reasons, we strongly urge the SEC to reconsider the proposed rule changes.

On behalf of the Oneida Trust Enrollment Committee

Keith Doxtator,

Oneida Trust Enrollment Director

2. Fredericks, C., Meaney, M., Pelosi, N., & Finn, K. (2018). Social Cost and Material Loss: The Dakota Access Pipeline. *SSRN Electronic Journal*. doi: 10.2139/ssrn.3287216

3. The Role of the SEC. (n.d.). Retrieved from https://www.investor.gov/introduction-investing/basics/role-sec