



February 3, 2020

VIA EMAIL

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

Re: File No. S7-23-19 Procedural Requirements and Submission Thresholds for Shareholder Proposals Under Exchange Act Rule 14a-8

Dear Madam Secretary:

On behalf of the Colorado Public Employees' Retirement Association (Colorado PERA, or PERA), thank you for the opportunity to file public comment regarding proposed amendments by the U.S. Securities and Exchange Commission (Commission, or SEC) concerning shareholder proposals. I hereby submit the following comments, which echo those in the relevant public record that oppose the proposed rulemaking, with additional context from PERA's own perspective and analysis.

Colorado PERA is the state's largest public pension plan, managing approximately \$50 billion in assets under obligation to enhance the retirement security of over 600,000 current and former public employees and their beneficiaries. In fulfillment of our fiduciary duty, we vote proxies on behalf of those beneficial owners of the shares we hold. Our own Proxy Voting Policy guides our votes for all proposals – whether they are brought to ballot by corporate management or shareholders.¹

We value the mechanisms currently in place and protected by SEC regulation, which allow individual and institutional shareholders to communicate their stance on corporate governance issues to peers and issuers through ballot proposal submission and resubmission, with the support of skilled agents. The ability to promote best practices at the highest level of companies in which we share ownership through ballot initiatives is an invaluable right of stock owners.

PERA is concerned that the SEC's recent proposals to amend Rule 14a-8 would undermine the value of shareholder rights; that the Commission has considered costs to issuers, but not benefits to investors, in its filing; and that the SEC is prioritizing such rulemaking that would limit investor recommendations over regulations aimed at protecting investor interests by supporting end-to-end vote confirmation mechanisms.

We respectfully urge the Commission to re-evaluate the proposed amendments, with due consideration to comments and data provided by shareholders, coalitions representing investor interests, and the

¹ https://www.copera.org/sites/default/files/documents/proxy_voting.pdf

Investor-as-Owner Subcommittee, which has submitted their own analysis and proposal to its oversight body, the SEC Investment Advisory Committee.

Regarding the Prospective Amendments to Rule 14a-8(b) Concerning Eligibility Requirements for Shareholder Proposal Submission

The proposed amendments to ownership thresholds are outlined in the Commission's filing:

Specifically, a shareholder would be eligible to submit a Rule 14a-8 proposal if the shareholder 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.*²

The amendments would also prohibit shareholders that do not meet the requirements from co-filing with other shareholders in order to meet the minimum ownership thresholds. Historically, shareholders have been able to file proposals under Rule 14a-8(b) on smaller thresholds for economic stake and holding periods. They have also been able to file holdings in aggregate with other share owners in order to meet eligibility requirements.

PERA believes that the current provisions in Rule 14a-8 adequately reflect the SEC's desire to match shareholders' economic interests and holding periods with the communication mechanisms in the shareholder proposal process. We do not see need for revisions to the shareholder proposal filing eligibility thresholds.

On the contrary, we fear that such amendments would limit the capacity for smaller and individual shareholders to participate in the proxy proposal process. In the filing, the Commission states it is aware that the revisions could disproportionately affect smaller shareholders. We believe the SEC should further evaluate the potential implications and unintended consequences of these amendments, which could include constraining investors' ability to diversify their portfolios, as well as stifling proposals that garner majority support.

Commissioner Lee, in her dissenting public statement, noted that, "Main Street investors would generally have to invest virtually their entire portfolio into one company (something we strongly discourage) to enjoy the same rights as Wall Street investors, or they would have to wait three years to catch up to them."³ Even while Colorado PERA would continue to have the opportunity to submit proposals under the revised ownership thresholds, we believe it is just as important for small investors to have this right to affect meaningful change in the companies they own.

By disqualifying smaller investors from eligibility to file shareholder proposals, the SEC's revisions would also suppress those proposals which have earned the most support by proxy vote. The Commission's quantitative analysis on page 89 of the filing states, "The percentage of proposals submitted by individuals that received majority support is statistically significantly higher than the percentage of proposals submitted by institutions that received majority support."⁴

² <https://www.sec.gov/rules/proposed/2019/34-87458.pdf>

³ <https://www.sec.gov/news/public-statement/statement-lee-2019-11-05-shareholder-rights>

⁴ <https://www.sec.gov/rules/proposed/2019/34-87458.pdf>

It is confounding to us that the SEC's own statistical analysis demonstrates the value of proposals brought to ballot by individual shareholders, yet its revisions would effectively silence individual shareholders in the proposal submission process. An investor who has committed capital into a company has a vested interest in its success, and the value of any proposals submitted should be based upon the content, not the size or holding period of the underlying investment. We recommend the Commission re-evaluate relevant data and the potential consequences of its proposals to all investors.

The SEC's rationale for these amendments is as follows:

As the Commission has previously recognized, the ownership threshold and holding period in Rule 14a-8(b) aim to strike an appropriate balance such that a shareholder has some meaningful "economic stake or investment interest" in a company before the shareholder may draw upon company resources to require the inclusion of a proposal in the company's proxy statement, and before the shareholder may use the company's proxy statement to command the attention of other shareholders to consider and vote upon the proposal...We believe the proposed tiered thresholds would appropriately balance shareholders' ability to submit proposals with the attendant burdens.⁵

The "attendant burdens" described in the filing seem to refer to operational and filing costs to issuers associated with the inclusion of shareholder proposals in their proxy statements. It is important to bear in mind that costs incurred by a public company are, in effect, passed on to shareholders. Any costs that affect the profitability of a company may ultimately affect shareholder value. For example, companies incurring excess costs may be unable to pay dividends. While shareholders share in the cost burdens to the companies, they still find the process of filing shareholder proposals to be ultimately beneficial to their interests. This fact should not be overlooked by the Commission.

Indeed, the Commission should turn its attention to the benefits of shareholder proposals in assessing the relative impact of associated costs. As companies and their investors utilize the shareholder proposal process, their mutual understanding of long-term value drivers are likely to be better aligned. With increased alignment of interests should come improved corporate governance. With improved corporate governance should come enhanced profitability. And thus, the alignment of interests between companies and investors should be reinforced through the mutual benefit of profitable outcomes.

As interests are aligned and reinforced, there should be less cause for shareholder proposals. PERA believes this is the reason for the observed reduction in the number of shareholder proposals in recent years. As the SEC describes on pages 70-71 in its filing, the number of proposals submitted by shareholder-proponents to Russell 3000 companies have decreased from over 1,100 in 2008 to about 830 in 2018.⁶ As highlighted by the Investor-as-Owner Subcommittee of the SEC Investment Advisory Committee, additional data on pages 70-90 of the filing "show that shareholder proposals have been gaining higher votes over time, which coupled with a decline in the number of proposals voted, is consistent with an increase in the value of proposals over time."⁷

⁵ *Id.*

⁶ *Id.*

⁷ <https://www.sec.gov/spotlight/investor-advisory-committee-2012/iac-recommendation-proxy-advisors-shareholder-proposals.pdf>

PERA agrees with the Subcommittee’s evaluation of the reduction in shareholder proposals as indicative of stronger and definitively aimed ballot issues. As investors hone their interests and proposals to affect material change, it would follow they would need fewer submissions for efficacy.

Regarding the Prospective Amendments to Rule 14a-8(c) on One Proposal Per Meeting

The Commission proposes amendments to the one-person rule such that it narrows the application from “each shareholder” to “each person”. The effect of this change is described in the filing:

Under the proposed rule, a shareholder-proponent may not submit one proposal in its own name and simultaneously serve as a representative to submit a different proposal on another shareholder’s behalf for consideration at the same meeting.⁸

The SEC’s rationale for this change is as follows:

We believe this amendment to the rule text would more consistently apply the one-proposal limit to shareholders and representatives of shareholders.⁹

The proposal states that the intention is not to limit investors’ use of skilled professionals who may advise them on matters concerning shareholders. However, PERA foresees that this amendment could have the unintended consequence of inhibiting shareholders from seeking professional assistance in the filing and engagement process. This may be especially true if investors view other amendments to the shareholder proposal function to also be aimed at discouraging their use of the process.

In answer to the Commission’s questions regarding the necessity of, and potential alternatives to, this amendment, PERA sees no need for the Commission to consider this or other limits to the amount of proposals any person may submit per meeting or in aggregate annually. The current mechanism fosters appropriate communications between shareholders and companies, and the volume of proposals should not be regulated at this time.

Regarding Proposed Amendments to Rule 14a-8(i)(12) on Resubmission Thresholds for Shareholder Proposals

The SEC’s proposed amendments to Rule 14a-8(i)(12) would:

...replace the current resubmission thresholds of 3, 6, and 10 percent with new thresholds of 5, 15, and 25 percent, respectively, and add an additional provision to the rule that would allow companies to exclude proposals that have been submitted three or more times in the preceding five years if they received more than 25 percent, but less than 50 percent, of the vote and support declined by more than 10% the last time substantially the same subject matter was voted on compared to the immediately preceding vote.¹⁰

⁸ <https://www.sec.gov/rules/proposed/2019/34-87458.pdf>

⁹ *Id.*

¹⁰ *Id.*

This amendment addresses the perceived “lack of momentum” of some issues brought repeatedly to ballot by shareholder proponents, and the SEC’s rationale is as follows:

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... 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.¹¹

The environments in which companies operate are dynamic. As markets, consumer preferences, technologies, and geopolitical factors change, companies must adapt in order to maintain their relevance and profitability. Although continuous, change is not always quick; effects of circumstantial and organizational changes are often wholly viewed only in hindsight. As best practices evolve from past experience, corporations and their investors have opportunity to reassess and redesign means of value generation.

The Commission’s proposed amendments to resubmission thresholds would limit those opportunities by reducing the number and frequency of proposal resubmissions, ignoring the fact that many ideas take time to accumulate support and widespread normalization. For example, proposals on environmental issues have taken years to gain shareholder support. As mentioned in the SEC’s filing, shareholder support for climate-change proposals has increased seven-fold over 18 years from 1999-2017.¹²

In PERA’s own proxy voting record, we see how shareholder proposals that on the surface may appear to be blanket resubmissions are actually redesigned to the extent they win our support over time as circumstances and objectives changed. Between 2013 and 2014, PERA’s support of shareholder proposals on environmental issues was as low as 5%, which is attributable to the vast majority of those proposals having language that PERA deemed to be too prescriptive or cumbersome for companies to effectively implement at the time.

We witnessed an uptick in the quality of shareholder proposals on environmental concerns around 2015, as proponents began pursuing better disclosures and proper oversight of company-specific risks. For that year, our support of shareholder proposals regarding environmental impacts rose four-fold to an average of 20% of our votes cast for such proposals. Throughout 2019, PERA supported an average of 37% of shareholder proposals on environmental issues.

Likewise, as shareholder proposals on social issues have become more narrowly focused and additive to company (and thus stock owner) value, we have seen PERA’s support of related proposals more than double from 16% in 2013 to 34% in 2019. As shareholder proponents and companies each adapt to changes in the business landscape, we expect PERA will continue to support proposals that would allow investors to better assess risks, such as through enhanced disclosures on climate impacts, in line with our Proxy Voting Policy.

¹¹ *Id.*

¹² *Id.*

It is important to note that while PERA's support for shareholder proposals on environmental and social issues has increased over time, our level of support has varied based on the quality and merits of each proposal. We believe PERA's focus on the integrity, rather than quantity or frequency, of shareholder proposal resubmissions should be shared by the Commission in its consideration of amendments to Rule 14a-8.

The revision addressing a perceived lack of momentum in year over year shareholder support for resubmitted proposals does not adequately account for the expected variation in proposal language and business climate that would impact the outcomes of ballot proposals. Again, as companies and shareholders adapt to changes they face, we would expect proposals to be supported with varying levels of interest. If support wanes from one proposal to the next resubmission, that is not a clear indication of an infinite lack of interest in the issue, and proposed rulemaking should not assume so. Rather, fluctuations in support can be seen as indicative of other considerations investors and companies are prioritizing given the issuer's position at that time.

The Commission's proposed resubmission thresholds, and the amendment to allow exclusion of shareholder resubmissions where they have previously lacked support, are counterproductive to fostering the exchange of carefully considered (and reconsidered) proposals between shareholders, other investors, and corporate management. PERA encourages the SEC to revisit their revisions, bearing in mind that positive reforms which are additive to shareholder value may come incrementally over time, after reflection on what has and hasn't worked in previous proposals. The past does not always predict the future, and the Commission should uphold regulation that allows companies and shareholders to nimbly adapt to new challenges.

Regarding the Modernization of the Proxy System

In the filing, and in preceding guidance issued, the Commission has expressed the need to "update" or "modernize" the mechanisms in place for proxy proposals. While we agree that periodic updates to regulations are necessary to maintain relevance and enforceability, PERA does not share views with the Commission's 2018 Roundtable on the Proxy Process that the appropriate place to update regulation is with shareholder proposal submission thresholds.¹³

We echo recommendations made by the SEC Investor Advisory Committee's Investor-as-Owner Subcommittee that the Commission "take up end-to-end vote confirmations, reconciliations, and universal proxies before spending more time on [shareholder proposal actions]", and that "the basic plumbing for determining board elections is at the heart of the corporate governance system, and getting a reliable vote count on a timely basis affects all shareholders."¹⁴

We believe the efforts to achieve modernity would be most effectively directed at the infrastructure level. The technological systems to file and vote proposals is sufficient and constantly evolving to meet investor needs, and do not need regulatory interjection to meet modern demands for functionality. The same cannot be said for the processes to tabulate proxy votes.

¹³ <https://www.sec.gov/news/press-release/2019-232>

¹⁴ <https://www.sec.gov/spotlight/investor-advisory-committee-2012/iac-recommendation-proxy-advisors-shareholder-proposals.pdf>

PERA voted more than 60,000 proposals for more than 6,000 meetings in 2019. Even with such substantial volume, we do not view our responsibility to vote proxy proposals –whether from companies or shareholders - to be overly burdensome in its current process. We do, however, take issue with the uncertainty surrounding the delivery and counting of all those votes we cast.

We urge the Commission to first and foremost devote its thoughtful consideration and skill to addressing proxy-plumbing issues to ensure that shareholders' votes are accurately delivered and counted. In the meantime, we ask the SEC to reconsider the implications and unintended consequences of its proposed revisions to Rule 14a-8, keeping investor interests at the forefront.

Thank you for considering public comment in your reflection of these amendments. We appreciate the Commission's devotion of time and consideration to Colorado PERA's perspective as an institutional shareholder.

Sincerely,

A handwritten signature in black ink, appearing to read "Ron Baker". The signature is fluid and cursive, with a large, sweeping initial "R" that extends above the line of the text.

Ron Baker
Executive Director
Colorado Public Employees' Retirement Association