



VIA EMAIL: rule-comments@sec.gov

February 03, 2020

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

Dear Madam Secretary:

RE: FILE NOS. S7-23-19

British Columbia Investment Management Corporation (BCI) is an investment manager with over CAD \$150 billion in assets under management, and one of the largest institutional investors in Canada. Our investment activities help finance the pensions of approximately 500,000 people in our Canadian province, including university and college instructors, teachers, health care workers, firefighters, police officers, municipal and other public sector workers. On behalf of these pension beneficiaries, we provide long term capital to companies around the world that we believe will deliver strong and stable financial returns.

BCI welcomes the opportunity to provide feedback to the Securities and Exchange Commission ("Commission") on amendments to the Procedural Requirements and Resubmission Thresholds Under Exchange Act Rule 14a-8 ("the Amendments"). We feel strongly that shareholder rights will be diminished if the Amendments are implemented. While specific comments on the Amendments being contemplated are provided below, we would generally argue that the SEC has failed to adequately outline the need for these amendments. The section entitled 'Need for Proposed Amendments' simply refers to the fact that things have changed since the rules were originally introduced and does not actually provide facts or evidence that substantiates any assertion that the shareholder proposal process in the United States is subject to abuse. Furthermore, by suggesting that investors are able to utilize social media as a form of shareholder engagement, the Commission is disregarding the role that shareholder proposals play in facilitating communication between a company and its shareholders in a direct and accurate manner on a specific topic; and does little to convince us that these rules need changing.

It would seem that the more important barometer of abuse, would be the number of shareholder proposals actually filed. Based on our proxy voting activity over the last four voting seasons, BCI has been voting a decreasing number of proposals each year. In 2016, BCI voted on 466 shareholder

proposals compared to about 340 proposals in 2019. This decreasing trend is not indicative of a widespread problem that warrants the degradation of shareholders rights or the burdensome regulation that is being proposed.

As a Canadian institutional investor, filing a shareholder proposal is not a tactic we often use. However, BCI supported over 80% of all U.S. shareholder proposals voted on in 2019 illustrating that for the most part, the proposals are addressing material issues that are relevant to the long-term financial health of a company, and communicating reasonable requests and/or remedies.

Eligibility Requirements

In the absence of a clear pattern of abuse, BCI does not see the need to increase the ownership requirements for filing a shareholder proposal or to prohibit the aggregation of share holdings by more than one co-filer, as proposed. The validity of a shareholder proposal is not determined by the size of a shareholder's investment in a company and these amendments would serve to disenfranchise smaller shareholders that require an avenue for communication with the board and management. These shareholders do not have the benefits we do as institutional investors that provide access to management, such as investor roadshows or investor days. The process should be preserved to provide that channel of communication.

It is worth noting that using backward-looking holding periods simply indicates past activity and creates no obligation for shareholders going forward – which is when a shareholder proposal could impact the company if it were to be adopted. Therefore, we do not see the higher thresholds and tiering proposed as being useful for demonstrating a 'sufficient economic stake'.

Proposals Submitted on Behalf of Shareholders

Most amendments in this section, we would see as rather benign. It seems reasonable for investors to provide adequate documentation when filing a shareholder proposal along with evidence that a shareholder representative is empowered to act on behalf of the shareholder. There are legitimate reasons to use a designated representative and the Amendments do not hinder this in our view.

Role of the Shareholder Proposal Process in Shareholder Engagement

BCI agrees that shareholder proposals should not be the only form of engagement between management/board and shareholders. However, the particular amendment being proposed relates only to availability of the shareholder and as we can attest, companies are not always responsive even to large institutional investors like ourselves. In all cases where we have used our right to file a shareholder proposal, it is only after repeated attempts to engage in constructive dialogue that have not yielded a response.

BCI is concerned that the Amendments are written in a way that micro-manages what should be a relationship between investor and a company. Simply indicating availability to meet does not equal

constructive engagement and has the potential to waste even more resources for both proponents and companies by introducing a box-ticking exercise.

One Proposal Limit

BCI is not convinced that a problem exists with multiple shareholder proposals being filed by the same organization at a single company. Our experience voting thousands of proxies each year indicates that even where multiple proposals are on the ballot at some of the larger U.S. companies, they are filed by different proponents. Using the Ceres public database¹ which tracks sustainability-related proposals filed in the U.S., we can see that most companies are not receiving multiple proposals from the same organization. At a minimum, this might be an issue for only a handful of very large U.S. companies and does not warrant a policy response.

Resubmissions

On the matter of resubmission thresholds, BCI would like to point out that there are nuances to this process that are rather important. The first being that using only the end vote result is not fully reflective of the broad support an issue might have across all investors. While we do not support about 15% of shareholder proposals in the U.S., we are often sympathetic to the broad issue being raised by the proponent but simply disagree with the specific request or how it is worded. We would suggest that even if many asset managers are not supporting shareholder proposals, they may in fact, still be discussing the issue with companies in private.

BCI sees the proposed resubmission thresholds as too high. We would view 5% in the first year to be a reasonable threshold but the escalation to 15% and 25% as too extreme. A reasonable increase might be 5, 7 and 10% over a three year period. However, we would reiterate that we are observing the number of shareholder proposals that we vote on actually decrease, so wonder if changes are necessary at all.

BCI does strongly object to the Momentum Requirement. Under this proposed amendment, proposals may be rejected simply for a slight decrease in support while still having high levels of support from the broad shareholder base. The cost to implement this would far outweigh any benefits that are unclear given that shareholder proposals are non-binding even when they receive a majority level of support.

Conclusion

Based on the data that we see and our experience with the shareholder proposal process in the U.S., BCI does not see the need for the Amendments. We would conclude with an overall observation that we do not enjoy the same access to members of the board at U.S. companies compared to other markets. In Canada for example, we have regular conversations with board directors about governance issues and rarely need to file shareholder proposals for that reason. This is quite the opposite in the U.S. where access to the Board is severely restricted and does not aid in fostering constructive dialogue and building trust with those who we elect every year to be good stewards and oversee management on our behalf.

¹ Ceres shareholder resolutions database can be found here <https://www.ceres.org/shareholder-resolutions-database>.

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Feel free to contact Jennifer Coulson, Vice President, ESG at [REDACTED] if you require additional information or clarity on any of the above comments.

Sincerely,



Umar Malik
A/Executive Vice President & Global Head
Public Markets

cc Jennifer Coulson, VP, ESG