PULTE INSTITUTE
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Via email to rule-comments@sec.gov

January 31, 2020

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

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

Dear Ms. Countryman:

I welcome the opportunity to provide this comment letter on the "Proposed Rule on Procedural Requirements and Resubmission Thresholds under Exchange Act Rule 14a-8," File Number S7-23-19 (hereinafter "Proposed Rule").

As a shareholder who cares about the long-term value of my investments and the private sector's environmental and human rights footprint alike, I am deeply concerned about the inevitable adverse impacts that the Proposed Rule would inflict on my portfolio and society writ large. This Rule will significantly curtail the flow of shareholder proposals that provide meaningful value to company, investor, and communities by insulating corporate executives from accountability. Rather than prioritizing sustainable long-term growth, the Proposed Rule will incentivize the pursuit of short-term profits that stand to benefit a small minority of corporate executives. Anyone with a pension fund or who cares to safeguard the value of their long-term investments will ultimately bear the brunt of these Rule changes. The SEC is bound to ensure that any proposed changes are "necessary or appropriate in the public interest or for the protection of investors" 15 U.S.C. § 78n(a)(1); the Proposed Rule's impact would do just the reverse.

Financial Value of Shareholder Resolutions to Investors

The shareholder proposal process has become one of the most proven methods that investors rely upon to guide companies to pursue sustainable growth strategies. Investors—whose interest the SEC was created to protect–have a multi-decade history of raising critical issues at publicly traded companies. Such topics have included the reduction of greenhouse gas (GHG) emissions, implementation of non-discrimination policies, promoting board diversity, and ensuring that executive compensation reflects the best interest of investors, not just high-level management. Strong environmental, social, and governance (ESG) policies that generate from the shareholder resolution process are positively correlated with financial growth.[1]

[1] Forbes, *Socially Responsible Investing: Earn Better Returns from Good Companies*, Aug. 2017, https://www.forbes.com/sites/moneyshow/2017/08/16/socially-responsible-investing-earn-better-returns-from-good-companies/#7f943513623d.

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The value to investors of engaging in the resolution process and owning companies that engage in ESG dialogue is beyond dispute. Research from the OECD Secretariat and Columbia University reveals that:

- Publicly traded companies that adopt shareholder ESG proposals experience an almost 2% increase in risk-adjusted returns;
- Companies that manage and measure responsible business activities outperform peers in total shareholder return in 7 out of 10 years, by a significant margin (3.3-7.7%);
- Companies with strong sustainability performance outperform competitors by 5% annually; and
- Negative ESG events led to a .65-.76% drop in stock value on the date of the event.[2]

This holds particularly true with climate-related resolutions. Quantitative research published by Harvard Business School establishes that "firms that voluntarily disclose climate change risks following environmental shareholder activism do achieve a higher valuation….valuation increases by 4.8-4.9 percent."[3] A nearly 5% increase in corporate valuation represents a significant sum to investors in Rhode Island and throughout the country, and restricting proponents' ability to push for these disclosures is dangerous for the long-term health of their investments.

Not only do resolutions boost corporate returns, but they help companies look at concerns before these concerns become crises that otherwise could erode shareholder value, increase reputational risk, and cause irreparable harm to communities.

High Cost of Alternative Forms of Corporate Engagement

By raising submission and resubmission thresholds, restricting access to annual general meetings (AGMs), and forcing beneficial owners to schedule dialogues with companies, this Rule will also render it challenging, if not impossible, for small investors to ensure that critical issues are addressed by corporate management. Indeed, the SEC's release on the proposed rule estimates that the proposed rule changes will slash resolutions by 37%.[4] Research published in Standard & Poor's Global Market Intelligence reveals that of the 2,019 ESG proposals that went to a vote over the past ten years, nearly one-third would be blocked by the re-filing threshold.

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[2] OECD Secretariat and Columbia University School of International and Public Affairs, *Quantifying the Costs, Benefits, and Risks of Due Diligence for Responsible Business Conduct*, June 2016, https://mneguidelines.oecd.org/Quantifying-the-Cost-Benefits-Risks-of-Due-Diligence-for-RBC.pdf

[3] C. Flammer, M. Toffel, & K. Viswanathan, *Shareholder Activism and Firms' Voluntary Disclosure of Climate Change Risk*, Harvard Business School, 2019, https://www.hbs.edu/faculty/Publication%20Files/20-049_bdbc1055-5d70-4300-b412-e2b00cf92ff6.pdf

[4] The SEC estimates that the impact from the proposed Eligibility Requirement alone could eliminate as much as 56% of proposals. Rulemaking proposal on shareholder proposals, 84 Fed. Reg. at 66510, table regarding Paperwork Reduction Act includes calculations for anticipated reduced proposal submissions, pages 162-165.

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Resolutions that proposed rule would block

Topic	Total resolutions voted	Resolutions that failed proposed 5%, 15% and 25% thresholds	Percentage of failed resolutions per topic
Social	**1,199**	**378**	**32%**
Political activity	711	183	26%
Human rights	188	78	41%
Workplace diversity	98	28	29%
Health	35	24	69%
Decent work	93	24	26%
Animal welfare	31	23	74%
Ethical finance	21	10	48%
Media	22	8	36%
Environmental	**520**	**145**	**28%**
Climate change	343	73	21%
Industrial agriculture	79	41	52%
Environmental management	98	31	32%
Governance	**300**	**91**	**30%**
Board diversity, expertise, topic oversight	124	57	46%
Sustainability oversight and management	176	34	19%
Grand total	**2,019**	**614**	**30%**

Chart applies hypothetical scenario in which proposed rule was finalized in 2009 and applied starting in 2010.
Covers resolutions voted on from the beginning of 2010 through Nov. 18, 2019.
Not all governance-related resolutions included.
Includes resolutions that would fail under proposed momentum requirement.
Includes resolutions that would have failed under existing threshold requirements.
Source: Sustainable Investments Institute

Source: Esther Whieldon, "SEC proposed rule would have blocked 614 ESG resolutions since 2010, data shows", S&P Global Market Intelligence, January 6, 2020.

These changes risk trillions of dollars for investors. By stripping shareholders of the ability to guide corporate operations through the proposal process, companies and their shareholders not only lose the potential financial *benefits* that accrue as a result of the improved policies, but forces investors to deploy significantly more costly means of engaging with the company. This includes litigation, pressing for regulatory change, and submitting books and records requests.[5] In choking off shareholders' ability to file resolutions, the SEC must weigh these alternative costs.

Indeed, the costs of litigation loom large: a 2008 eLawForum study estimates that litigation cost Fortune 500 companies a staggering $210 billion, which equals one-third of companies' after-tax profits.[6] This figure includes the cost of paying attorneys fees, liability payments made to plaintiffs, and other associated drains. Removing the relatively inexpensive resolution process will sharply increase the volume of litigation almost as a matter of course – and investors will foot the bill.

Loss to Investors, Companies, and Public Welfare

[5] Investor Rights Forum, Action Altert: SEC Rulemaking – How to Take Action, https://www.investorrightsforum.com/new-blog-1
[6] John B. Henry, *Fortune 500: The Total Cost of Litigation Estimated At One-Third of Profits*, eLawForum.

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Investors, businesses, and the general public will lose as a result: first, the Rule harms investors by silencing their critical voice in the boardroom, removing a key lever that can ensure executives pursue strategies that focus on sustainable long-term growth rather than short-term profits. This undermines shareholder value.

Second, companies will likewise suffer under this new regime. Dialogues sparked by shareholder resolutions routinely lead to the adoption of improved ESG standards. As catalogued above, robust ESG performance, in turn, strongly correlates with improved returns. Any executives that truly prioritize a company's long-term value should be ardent proponents of shareholder rights to file resolutions.

Third, the general public will be harmed by a reduction in resolutions. Without the commitments forged by shareholder proposals and the ensuing investor-company dialogues, we will no longer benefit from the cleaner air that results from greenhouse gas (GHG) emission resolutions; the improved labor rights that human rights due diligence proposals pursue; or the expanded access to life-saving medicines that pharmaceutical industry resolutions achieve.

It bears emphasis that investors have not sought these changes. Rather, corporate trade associations and a small minority of issuers are advocating for these changes; this is despite the fact that on average, only 13% of Russell 3000 companies received a shareholder proposal in any one year between 2004 and 2017. In other words, the average Russell 3000 company can expect to receive a proposal once every 7.7 years. Thus, we are concerned that the SEC's purported concern for costs to companies would more appropriately be construed as concern for costs to the executives of a small subset of powerful companies that receive multiple shareholder resolutions – presumably because they are reluctant to adopt responsible ESG policies that burnish long-term financial returns rather than short-term gains.
Rule 14a-8 is working for investors.

The revisions put forward are unacceptable and will have repercussions that extend well beyond any potential procedural gains that the Proposed Rule may generate for those seated in higher corporate rungs. The SEC should embrace its mandate to protect investors, and foster their ability to ensure companies are pursuing sustainable long-term growth, rather than creating a regime hampered by convoluted rules and prohibitively high thresholds.

Thank you for your consideration of these comments.

Sincerely,

Raymond Offenheiser
William J. Pulte Director and Keough School Associate Professor of the Practice
Pulte Institute for Global Development
Keough School of Global Affairs, University of Notre Dame

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