Providing Independent Inspectors of Election Since 1992

Re: S7 - 23 - 19 **February 3, 2020**

Dear ladies and gentlemen of the SEC:

I wish to offer comments on the shareholder proposal and re-proposal recommendations outlined in the above Release that I hope will be useful ones, with apologies in advance for my sometimes blunt language.

By way of background, I have been a participant in the proxy distribution, voting and tabulation processes for 50+ years - first as a transfer agency employee, and later as the business manager of what was once the country's largest transfer agent and proxy tabulating agent; then, since 1992, as the Managing Partner of CT Hagberg LLC, where I, and roughly 49 other team members, currently serve as Independent Inspectors of Election at nearly 500 shareholder meetings each year. Also, since 1992, I have managed my own retirement plans, where I do my best to follow the voting issues - and to faithfully vote my own plan shares in roughly70 stocks each year.

(1) The SEC's ponderously long, dense and maddeningly-meandering release breaks the first rule of business in a big way: *"If it ain't broke, don't try to fix it!"*

The *facts* of the matter indicate to real-world observers that the current shareholder proposal system is not only working reasonably well, but, of late, has been working to *very noticeably reduce*, rather than to increase the number of shareholder proposals that companies would otherwise have to deal with….exactly as desired:

- **Through June of 2019, 69% of the governance proposals initially submitted went to a vote (191 of the original 275) - down eight percentage points, vs. 77% that made it to a vote in 2018 - with 11% of them withdrawn by proponents after negotiations with the subject companies and 18% excluded via the no-action process.**

- **Half of all "social" proposals (137) went to a vote in 2019 - up from 40% in 2018 -but still, only *half* of the 274 proposals originally submitted, as companies and shareholder proponents continue to reach mutual agreements to address the issues raised without a shareholder vote.**

- **Only 26 of the 100 environmental proposals *originally submitted* made it to a vote. Overall, 40% of the total E&S proposals that were *officially submitted* were eliminated; 28% subsequently withdrawn and 12% via the no-action process.**

- **We also saw two of the most active individual proponents decide to join with *As You Sow* this year, to utilize their resources more efficiently, and we expect to see more moves like this - which will undoubtedly lead to fewer, but much better targeted proposals…and ultimately, to more "settlements"… and thus, almost certainly, to fewer shareholder proposals up for a vote with every passing year than there would otherwise be.**

- **In 2019 we saw two "newer proposals" - regarding the so-called "Palestine Principles" - and proposals from the "Burn More Coal" group - disappear from the scene *entirely*, following six or eight "outings" over the past three years that failed to gain traction with voters.**

(2) The release *grossly exaggerates* the actual expenses in connection with responding to and tabulating votes on shareholder proposals, in the light of my own real-world experience…although it does seem certain that overall expenses are often "piled unduly high" by over-agitated corporate staffers, and now by SEC staffers too…who, very clearly, are spending *way too much time and money* on matters they now complain are immaterial nuisance issues!

It should be noted at the outset that the expense of drafting responses to proposals is almost-entirely under the control of publicly traded companies themselves.

Most important to note, however, with respect to the re-submission thresholds, the incremental expenses of re-running the same proposals - with essentially the same responses in subsequent years - are close to *zero.*

The incremental cost of *tabulating* an *added proposal of any kind* - thanks to the high degree of automation employed - with virtually all votes either being automatically scanned, or entered by the voters themselves - is also *literally zero*!

(3) Almost certainly, however, the costs of responding to shareholder proposals are often being piled *extra high* in many cases - by the use of outside lawyers, "proxy-

advisors" and PR firms - whose tender but expensive ministrations could easily be dispensed with entirely - simply by allowing shareholder proposals that pass a sniff-test as to their reasonableness and relevance to run in the proxy statement with a bare minimum of corporate commentary…Or - to simply run them *regardless* - with the briefest of statements as to their lack of reasonableness and relevance…as a few enlightened companies actually do, to good effect!

(4) The multi-tiered thresholds proposed for submitting proposals are needless and *useless* complications: expensive to administer and a total waste of time and money to even *consider*: They are totally arbitrary - and have no rational economic justification that I can see…except, that is, to make it much more difficult for would-be proponents.

(5) The proposals for *re-submitting proposals* are also totally arbitrary - lacking any rational economic justification…except, that is, to shut-down small shareholder proponents.

(6) Much more important to note, however, the resubmission thresholds are *way too high* when one considers how long so many proposals that have now been widely adopted languished for so many years before catching on:

The addition of women directors was first raised as an issue at Shareholder Meetings by "small shareholders" Wilma Soss, and the Gilbert brothers - over 50 years ago…and it has only gained real traction over the past five years.

Currently, "plurality voting" for directors - where small shareholders were incensed, for over 50 years, that they could only "withhold" votes from given directors rather than vote NO, and where a director could be seated with a single vote in favor - is being rapidly replaced, at long last, by majority voting standards.

So-called staggered boards are also being rapidly replaced - a movement that was also started by "small shareholders" who were angered by "entrenched directors" - who could readily turn away offers that would cost them *their* jobs, but which might well be the best way to maximize value to shareholders at large - although, sad to note, many companies that have super-majority provisions to revoke the "stagger system" currently find it mathematically impossible to do so.

Calls for provisions to let shareholders nominate directors were first made by "small shareholders" over 50 years ago too - and are only now being implemented, in quite a major way, we'd note - in many cases without an argument - or a vote.

All of these proposals would have been shut down in three years or less with the proposed new re-submission thresholds.

(7) The proposal that would prevent small shareholders from banding together to meet the SEC's potentially higher ownership thresholds flies in the face, not just of fairness, and of a proper respect for the role of shareholders as *owners* - but of common sense: It would be hard to argue that, from a mathematical perspective, a proposal from two shareholders is not *twice as important* as the same one from a lone proponent.

(8) Amazingly, the release fails to address what I perceive to be the biggest abuse of the current proxy proposal system, by continuing to countenance shareholder proposals "by proxy." While yes, shareholder proponents should be allowed to have their proposals *introduced* at shareholder meetings by "proxies" - only actual share owners - and not their relatives, business associates or friends - should be allowed to *make* a "shareholder proposal."

(9) There is also huge *farce* that is being perpetuated in the proposed rules that needs to be noted here too: The fact that any proponents that are shut-down by higher thresholds can simply move on to another public company under the current and proposed rules…which is precisely what they have been doing since the 1940s!

(10 My most important takeaway, however, from a "common sense perspective," is to note yet another tried and true old-saw: *"Beware of what you wish for."* I *guarantee* that higher hurdles, if enacted, will result in institutional investors casting way more Yes-Votes for shareholder proposals than they otherwise would - simply to give proponents a decent shot at a three-year trial-run in the polls.

So all the sound and fury is likely to end up signifying….nothing…except, perhaps, for treating small shareholders as nuisances, and worse, as nonentities.

While I personally think that a modest increase in the ownership threshold is warranted - say to a $5,000 investment held for one year - I think that most of this discussion should be put aside in favor or much more important proxy-system issues, as both the Council of Institutional Investors and the SEC's own advisory panel have suggested: The need for proper reconciliations to eliminate over-votes, and to be certain that all the votes of actual owners and voters are tabulated and reported correctly.

Respectfully submitted,

Carl T. Hagberg, Managing Partner, CT Hagberg LLC