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**The Pension Boards**

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Date: 1/29/2020

**MEMORANDUM**

*Via Electronic Submission*

To: The Honorable Jay Clayton  
Chairman  
Securities and Exchange Commission  
100 F Street NE  
Washington, DC 20549

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

**Re: Comments on Proposed Amendments to Exemptions from the Proxy Rules for Proxy Voting Advice (File No.: S7-22-19) and Proposed Amendments to Procedural Requirements and Resubmission Thresholds Under Exchange Act Rule 14a-8 (File No: S7-23-19)**

Dear Chairman Clayton and Secretary Countryman:

The Pension Board – United Church of Christ, Inc. (PBUCC) submits the following comments in response to the Securities and Exchange Commission's proposed rulemakings published in the federal register on December 4, 2019 (84 FR 66518 and 84 FR 66458).

My name is Richard E. Walters and I am the General Counsel and Director of Corporate Social Responsibility for PBUCC. We administer and hold in trust 3.5 Billion dollars in assets for the retirement plan for clergy and lay church workers of the United Church of Christ. We are concerned about the SEC making it harder to engage the publicly traded companies we own and to engage directly with the companies whose shares we hold in light of the proposed rules. We engage not only on issues important to the values of our faith such as environmental integrity and human rights, but also with respect to legitimate business concerns over the value of our holdings, business decisions affecting profits and loss of value and other business related concerns that all shareholders care about in the prudent management of retirement funds.

The founding purpose of the Securities and Exchange Commission is to protect investors, yet the SEC's proposed rules will curtail the rights of investors, especially smaller investors, to raise issues of concern about business practices at the companies they own. Shareholder resolutions are a powerful way to encourage corporate responsibility and discourage practices that are unsustainable, unethical, and increase a company's exposure to legal and reputational risk and decrease value for shareholders.

The first proposed rule not only dramatically increases the amount of shares investors must hold to file resolutions at their companies, it significantly increases the vote thresholds necessary for refiling, and creates numerous steps that make it more difficult for others to file resolutions on their behalf. The second proposed rule suppresses the voices of

independent proxy advisory firms that make informed participation possible for small shareholders. The proposed rules are prejudicial and unnecessary, and we urge the SEC to withdraw them.

These proposed rules insert obstacles between investors and the companies they own that constitute an undue interference in prudent management of assets affecting the interests of retirees who have been saving their hard-earned resources for a lifetime. The current administration has demonstrated its concern about undue interference in legitimate business interests, particularly of investors and yet the SEC seeks to interfere and overregulate in contradiction to that very principle. It appears that the SEC wants to protect companies but hinder the shareholders who capitalize those same companies in ways unproductive to free enterprise.

### **The Proposed Rules Undermine the Rights of Shareholders**

The current threshold to file a shareholder proposal was intentionally set at a level of \$2,000, allowing institutional and individual shareholders alike to engage with the governing bodies of a corporation. The proposed rule raises the ownership requirements from \$2,000 up to \$25,000 for investors who have owned company shares for one year – a 1200% increase. The newly proposed amounts place proposals out of reach for most mainstream investors. Many Main Street investors with diversified portfolios will never own \$25,000 worth of one company's stock or even the lesser amount of \$15,000 when shares have been held for two years. The requirement that a shareholder retain a stock for 3 years before the filing amount falls to \$2,000 in shares creates additional difficulties associated with ensuring that particular stocks are held in portfolios over time without interfering with normal diversification activities.

These proposed requirements are discriminatory to small investors without justification. Proposals from small shareholders, both individually and in the aggregate, have resulted in significant corporate advancements in gender parity, racial diversity, transparency, labor practices, environmental policies, climate change, and legitimate business reasons regarding the analysis of value, policies and profitability.

### **The Proposed Rules Improperly Impinge on Shareholder Rights to Be Represented by Agents**

The proposed amendments create burdensome and unequal requirements on shareholders who wish to be represented by agents. As an example, the proposed rules would mandate that shareholders who had a proposal filed by their manager or other an agent must personally make themselves available to the company for dialogue, in person or by phone, within a certain limited period of time. This infringes on investors' rights to select an agent to represent their interests, and is unnecessary to "protect" shareholders, as those agents are bound by a fiduciary duty to their clients. The rules would also prevent an agent from representing more than one shareholder at a given company. Average shareholders with valid concerns about their company's actions who do not have expertise in the complicated filing and no-action process established by the SEC, should be able to be represented by an agent under the same rules as other filers. It is a baseless interference in the representational process to burden and limit their representation, especially with no clear benefit other than, apparently, to limit or prevent the efficient representation of shareholders.

Being represented by agents is a standard mechanism in our society. From realtors to lawyers, individuals, companies, and institutions are often represented by those with experience in a complicated arena. The SEC fails to justify its inappropriate interference in this agency relationship.

Similarly, proxy advisory firms help individuals and institutional investors by providing independent, efficient, and cost-effective research services to inform their proxy voting decisions. This is particularly crucial where fiduciary responsibilities exist. The proposed amendments will slow this process, create additional costs and burdens to the proxy firms and therefore to their clients, and will unfairly allow companies to interfere in the provision of information to shareholders. Companies have ample opportunity to share their opinions and justifications with their shareholders.

### **There Are No Demonstrable Problems with the Existing Rules**

The existing rules work. The number of shareholder proposals have not increased over the years while the majority of issues that have been raised by shareholder proposals have consistently proven to be timely and important in reducing risk to companies and increasing value to shareholders. The SEC's proposed rules have not demonstrated a sufficient

need that would justify impinging on important shareholder rights. Because the proposed rules are arbitrary and capricious and detrimental to the rights of shareholders, we urge the SEC to withdraw the proposed rules.

Sincerely,

A handwritten signature in blue ink, appearing to read "R. Walters", with a large, stylized initial "R" that loops back.

Richard E. Walters