



May 9, 2020

Vanessa Countryman, Secretary  
Securities and Exchange Commission  
100 F Street, NE  
Washington, DC 20549-0609

**Procedural Requirements and Resubmission Thresholds under Exchange Act Rule 14a-8**

*File No:* S7-23-19

To: Ms. Countryman and Members of the Commission:

This is a supplement to our earlier filing to add some updated information. James McRitchie's blog post about Kenneth Steiner's shareholder resolutions is appended below, with permission.

Since the earliest days of the shareholder proposal system, almost 90 years ago, there have never been more than a handful of proponents. The value of the system is not determined by the number of proponents. It is determined, as it should be, by the market test, which is the level of support for the shareholder proposals, which comes, as the Commission knows, from a very diverse group of investors. If hedge funds and pension funds and foundations and mutual funds and index funds all agree that a shareholder proposal has merit, that is much more significant than the assessment of anyone who has not put capital at risk.

Only a small fraction of companies receive shareholder proposals. Only a far smaller fraction end us with more than one being put to a shareholder vote. A vital part of what makes our markets the most robust in the world is the credibility and liquidity that result from transparency *and* accountability to investors, in significant part through the shareholder proposal system. The Commission should be considering ways to expand the shareholder proposal rule, taking advantage of new technologies (for example, the Commission should prohibit the exclusion of shareholder supporting comments at virtual annual meetings, as happened at ATT this year).

That system is already reduced to near-extinction. The range of topics and the supporting statement are strictly limited, while corporate executives have unlimited access to corporate resources to respond for lawyers and proxy solicitors.

Even a 100 percent vote in favor is advisory only. Corporate executives are free to ignore the results, and they have and do, so any "expense" associated with shareholder proposals is entirely voluntary. The Commission has been unable to come up with a single example of an objectively "wrong" shareholder proposal result or any verified costs greater than the ones this proposed rule would impose.

The support for these changes comes from thin-skinned corporate insiders who do not like the uncomfortable realization once a year that their shareholders would like them to do better. But that is how capitalism works, and if they don't like it, they can take the company private at a fair price and deal with the 365-day uncomfortable realizations they will have that their shareholders insist they do better, with proposals that are not advisory only.

Sincerely,

*Nell Minow*

Nell Minow

Vice Chair

From James McRitchie's blog:

### Kenneth Steiner: Building on William Steiner's Record

<https://www.corpgov.net/2020/05/kenneth-steiner-continues-fathers-work/>

As the 2020 annual meeting and proxy season is set to begin this month it is worthwhile to take a look back at what has transpired in the past twelve months. This is particularly relevant as debate swirls around the issues of whether and/or what changes should be made regarding the rules regarding shareholder proposals and thresholds. The SEC, prompted by some in the corporate community, the business roundtable and chamber of commerce, etc, proposed making it much more difficult for small individual shareholders to submit corporate governance or other proposals under rule 14a-8. Arguments are being made that so called "gadflies" submit too many proposals, that such proposals are sometimes harmful to stockholder interests and they are costly

Of course no actual stockholders or legitimate institutions representing them have come out in favor of increasing the burden on proponents. In fact almost all large shareholder organizations, pension funds, labor unions, large activist investors, mutual funds, city and state retirement funds, religious organizations, social activists and the **Council of Institutional Investors** (representing over \$4T in assets) have clearly and unambiguously rejected the necessity of any such restrictive changes. The effort to retard shareholder activists is purely a power play by large corporations and boards of directors (along with some laissez faire so called think tanks that seemed to have forgotten to think at all) who seemingly want to go back to the bad old days when they had little or no accountability, could rule by fiat and rarely be challenged.

The argument that dealing with proposals is too costly or time consuming is laughable on its surface. Recent studies, common sense and practical real world experience have demonstrated the exact opposite. Dealing with responsible and mainstream stockholder proposals (the kind I submit) is part of directors general responsibility and can be done at de minimis cost. Conversely, removing entrenchment devices and enhancing shareholders rights have over the decades easily delivered hundreds of billions of dollars in value to the combined stock market wealth of the general public. These major corporate governance improvements have made changes in management and corporate control much more possible. Therefore, takeovers and large activist campaigns are much more likely to be successful, usually paying existing shareholders a large premium.

History has clearly demonstrated that it was the small group of shareholder activists who brought about so many of the most meaningful, clearly positive changes in corporate governance over the last thirty years. The small shareholders are typically referred to as "gadflies," seemingly to diminish their stature by using a word

that compares them to flies who bite larger animals and flit about. But the dictionary definition of a gadfly is more accurate here: " a person who provokes others into action by criticism."

This is exactly the type of person investors and society needs. In addition to criticism, a truly beneficial gadfly uses the tools at their disposal to create change by acting as a progressive catalyst. By enlisting the opportunities available in a system of corporate democracy, the shareholder proponent gives fellow equity owners a chance to send a clear signal to boards of directors and management that improvements are necessary. The popularity of this tactic is demonstrated by the results: high votes on many precatory proposals; institutional investor support; the frequent positive recommendations of proxy advisory firms and most importantly.... frequent management adoption of the ideas enumerated within a relatively short period of time.

One of the leading shareholder activists is Kenneth Steiner. As a private investor he has been submitting proposals on a regular basis for over 25 years. He estimates that he has submitted an average of at least thirty proposals a year and therefore several hundred in his long career. Along with his late father William Steiner, John Chevedden, Jim McRitchie and a few others these shareholder proponents have submitted a meaningful amount of what are the purely substantive and mainstream proposals over recent years. Their accomplishments are unequivocal and obvious on the basis of clear evidence. The entire system of corporate governance is completely different than it was 20 years ago.

As mentioned in the comments on **William Steiner's accomplishments**, we can see that most large companies across the country have adopted nearly all of the recommended best practices and bylaws proponents fought for all along. Companies would not have made these reforms on their own. Writing resolutions, getting them placed on the proxy statement; the high percentage of votes received; subsequent pressure on boards to implement them by institutional investors; and the threat of withheld votes for directors if the results were ignored brought about the changes that have occurred. These include: reducing entrenchment devices like staggered boards and poison pills; reducing conflicts of interest on the boards and accounting firms; the reduction of egregious pay packages and golden parachutes; a say on pay and a reduction in excessive perks and privileges.

### Recent Campaigns of Kenneth Steiner

Just in the last year (2019 into early 2020) Kenneth Steiner has achieved the following results or successes via his shareholder resolutions at the following companies:

- Bank of New York: 2019 proposal for written consent achieved 51 percent vote; company was triggered to put forward enhanced written consent proposal which was approved by shareholders.
- PepsiCo: right to call special meeting proposal was accepted by company and board put forward its own similar proposal which was approved in 2019. My simple majority vote proposal was accepted by the company and then subsequently put on proxy as management proposal and approved in 2019. Another proven success for small shareholder rights!

- Zynga: in response to my proposal to elect directors by majority vote the company did away with plurality voting in uncontested elections going forward.
- Applied Materials: company adopted my proposal for written consent after large vote in 2019. Subsequently submitted as management proposal in 2020.
- BB&T Financial: in 2018 the company adopted two of my previously submitted proposals: for a simple majority vote requirement and also adopted the right to call special meetings.
- Triumph Group: in 2019 the company agreed to adopt proxy access in response to my shareholder proposal.
- AT&T: in 2019 the company adopted an independent chairman policy after pressure from a large shareholder activist. My 2019 proposal on the same topic received an astounding 40.5 percent vote. With the company having significantly under-performed the broad market over both the short and long term, while the CEO continues to rake in a preposterous amount of compensation, this shows a clear dissatisfaction with the board. With tens of billions of stock value lost over this period by the incumbent board and management this situation clearly demonstrates the very high cost of horrible corporate governance and the necessity of meaningful shareholder proposals.
- Leidos: simple majority vote proposal won 92% in 2019.
- Greenhill: elect directors by majority vote proposal won 79% in 2019.
- Exxon Mobil: right to call special meeting proposal won 42% in 2019... this was the highest percentage achieved among all ten shareholder proposals at the annual meeting, proving that a quality mainstream serious proposal will win significant support. I do not submit proposals on esoteric topics or put forward what would be controversial matters that could disadvantage the companies in any way. My proposals are generally popular and get high percentage votes because large investors understand they are meant to improve the quality of governance and therefore the long term value of the company.
- Becton Dickinson: special meeting proposal won 40%.
- Oracle: independent chairman proposal won 35%..... since 34% of shares are held by insiders this means that the majority of outside shareholders supported the proposal.
- Cowen: adopted proxy access following submission and acceptance of my proposal.
- Nuance: independent chairman proposal won a whopping 43% at Jan 2020 annual meeting.
- IBM: my independent chairman proposal won a very high 40% vote in 2019 and has been resubmitted for 2020. Proposals at this company are necessary because it is a chronic underperformer. Yet, the CEO who has presided over this disaster continues to receive pay packages of up to 20 million dollars per year. When it was announced that the CEO was retiring from the company the stock went up six points that day in response and added several billions to the market cap. This would seem to prove once and for all that merely one act of good governance or positive change adds more monetary value to the public than the cost of dealing with all the proposals ever submitted to all the companies in America over the last thirty years.
- General Electric: similarly my regularly submitted independent chairman proposal won a substantial 36% in 2019 and has been resubmitted for 2020. The previous boards and management of this company had presided over the loss of over a hundred billion dollars of stock market capitalization, the loss of tens of thousands of jobs and serious accounting issues. Once one of the finest companies in the country GE is now trading at nearly a twenty year low and was even kicked out of the Dow Jones industrial average. The boards and former CEO's received hundreds of millions in combined compensation while the company was decimated. This again proves that the real cost of companies dealing with shareholder proposals is not a negative but a massive positive. The real cost is ignoring the principles of the submitted proposals and therefore continuing the malfunctioning board and management practices that have cost so many people their jobs, huge amounts of their investments, pension plans and life savings.

All these examples show that shareholder proposals are absolutely necessary. The real cost to companies, employees, shareholders and stakeholders is when management incompetence and board negligence combine to bring about an unacceptably enormous destruction of value. Activist shareholders must continue to have the right to use the currently available tools available via corporate democracy to instigate positive change.

Other recent notable votes include:

- Cisco: independent chair proposal won 28% at December 2019 annual meeting.
- Walgreens: independent chair proposal won 38% at December 2019 annual meeting. This was a huge level of support considering that insiders own 17% of the stock. This means approximately 46% of outside holders supported this proposal at a company that has demonstrated terrible recent stock market performance.
- Citigroup: the company in December 2019 accepted my proposal to decrease the threshold for special meetings and will change it from 20% to 15% in 2020.
- Dean Foods: proposal for eliminating supermajority voting provisions won 79%.
- AIG: special meeting proposal won 47%.
- Korn Ferry: special meeting proposal won 43%.
- Norton Lifelock: independent chairman proposal won 40%. This was the 39th vote of proxy season 2019 in which a proposal submitted by small shareholders won between 40 and 50 percent.

In addition over twenty proposals submitted by the small shareholder group won over 50 percent. This is an incredible feat for a small group of stockholders. Indeed this high level of support is indicative of massive institutional support and shows there is an absolute necessity of maintaining the foundations of corporate democracy. Any attempt to stymie these constructive, productive and popular ideas would be an insult to the public and an economic disaster.

## Small Shareholders Have Important Role

It is abundantly clear from the above long list of tangible success from just one small shareholder that the participation of Kenneth Steiner and others is an overwhelmingly positive factor in the corporate governance arena. It clearly evidences that the new attempts to “reform” the process would be extremely harmful to shareholder interests and are clearly an attempt to stifle dissent and constructive change. While several large shareholders, mutual funds, pension funds and large activists are important, most have never filed a shareholder proposal. It is clear that participation of small shareholders have also contributed substantially to corporate democracy, good governance and economic progress.

Small shareholders do this at great cost to their valuable time at their own expense. No stockholders of any substance in the country have raised any objections to their activities. The only complaints and pleas for relief have come from self interested corporations, entrenched management, the crony capitalist lobbying organizations (who it seems really believe in socialism when it comes to taking government bailouts) and privately funded propaganda fueled such organizations. These self-interested groups seem to believe that a few highly compensated executives and directors should have free reign to do whatever they want and grab whatever they want, therefore, dominating the economy and society without any consequences.

The recent attempt to limit shareholder activism has raised important questions and issues. But the overwhelming evidence is clear. This effort to shrink our corporate democracy, take away our rights and disembowel the rules and regulations is a clear abomination. The arguments for limitation are factually bogus,

easily disproven and rife with pathetic and ridiculously alarmist propaganda that gets easily disproven with minimal facts, common sense and any sincere objective attempt to look at the evidence. The truth is out there for anyone to see and conclude upon. The overwhelming majority of stockholders have indeed seen it and are in favour of enhancing shareholders rights, rather than reducing them

In my opinion the SEC must carefully reconsider whether hindering sincere, serious and pragmatic shareholder resolutions is really necessary. Or will it simply make it a sham to call our system a democracy? Will we be an aristocracy of only the rich and powerful or will shareholders—the true owners of the companies—maintain their full and deserved rights?

Capitalism is the greatest economic system ever developed. It has brought more cumulative riches than socialism or communism by far. But for this great system to survive going forward it must be fair, equitable and responsive to the legitimate needs of shareholders large and small; and stakeholders large and small. That is the prime motivation of my participation and activism. Admittedly getting all this exactly right is difficult and there are no perfect solutions or answers. We do not want or need a revolution or an overthrow of the system which would be both incredibly disruptive and economically destructive. What the corporate capitalist system needs is to be improved upon. It can and should be proactively changed in a pragmatic positive way and therefore preserved in an improved fashion for this and most importantly future generations.

Being a good citizen in a democracy means being aware, being active and participating in a cause for the benefit of the country. That is my motivation for being an active shareholder, for filing stockholder proposals and for seeking better corporate governance. I will continue to file proposals as best I can in the future and I have a full roster of resolutions on the ballot coming up in the following few months. I truly hope that going forward more shareholders will do the same. I also hope that it will become easier, not harder, for interested stockholders to become involved in a meaningful way in our corporate democracy. Our entire system of corporate governance, capitalism and social cohesion are at stake. The present difficult circumstances will hopefully not generate apathy and disengagement but a new paradigm of good and active citizenship. In the area of corporate governance we need to work hard to ensure that the massive progress of the past thirty years is preserved and maintained. I will continue in this effort and hope many others will join in the fight!

## 2020 Proposals by Kenneth Steiner

- Independent chairman (separate CEO and chairman) : IBM, AT&T, Truist Financial, Baxter, General Electric, Colgate Palmolive, PPL, Allstate, JP Morgan, Southwest Airlines, Lincoln National
- Shareholder Right to call special meeting: ExxonMobil, Arconic, International Paper, Southwestern Energy, Interpublic Group, Keycorp, PepsiCo, AIG, Xerox, Triumph Group, DuPont corporation
- Right to act by written consent: Nasdaq Corp, Alcoa, American Express, Bank of America, CVS corporation, Merck, Pfizer, Mosaic Corp
- Annual election of directors and eliminate staggered board system: European Equity ( EEA) closed end fund, New York Community Bank, Bloomin' Brands

- Recapitalization proposal to eliminate multiple classes of shares of stock with separate voting rights: Fitbit, Telephone and Data Systems
- Director majority vote standard rather than plurality vote standard: AMC Networks, Ultralife corporation
- Initiate or enhance proxy access: Greenhill Corp, Leidos Corp, Vector Group, Cowen Inc.

This is clearly a grand list of mainstream corporate governance proposals. I expect they will win large support from public shareholders and help improve corporate governance and democracy in the United States!

The independent chair proposal is continually receiving larger and larger votes at companies every year on average. This demonstrates that allowing the reintroduction of proposals that may fail to win a majority in any given year remains important. While proposals that fail miserably can be subject to a higher threshold there remains no valid reason to restrict the ability of concerned stockholders to resubmit a proposal that received a significant vote in prior years. It often takes several years for proposals or ideas to reach a majority, or become mainstream and popular. The original effort small shareholders put forward to get a say on pay vote or proxy access has proven this to be overwhelmingly true. Small shareholders were clearly ahead of the curve and correct on the need for both.

As this post was being written I was notified by AT&T that my independent chair proposal received significant support at the annual meeting April 24 2020. The assistant corporate secretary has sent a message that even though it did not receive a strict majority (it received a huge 40 percent vote), the board of directors has decided that it clearly reflects the views of a significant percentage of shareholders and that, subsequent to the upcoming current CEO and chairman's retirement, the board will implement the suggestion in the proposal and name an independent chair.

This incredible accomplishment only happened because a small shareholder, Kenneth Steiner, has taken the initiative year after year at the company and continued to press for positive change. Had the new minimum stockholding requirements suggested by the Business Roundtable and SEC been in effect, the proponent would never have been able to submit the resolution. This meaningful progress would not have occurred. I give the board of AT&T credit for listening and reconsidering their policy after the vote. This great news from AT&T is yet another victory for small shareholders! I expect and hope there will be many more such wins in the coming weeks and months.