

July 28, 2020

The Honorable Jay Clayton  
Chairman  
U.S. Securities and Exchange Commission  
100 F Street, N.E.  
Washington, D.C. 20549-1090

Re: Proposed Amendments to Rule 14a-8 under the Securities and Exchange Act of 1934

I am writing today to comment on proposed amendments to 17 C.F.R. Section 240.14a-8 (Rule 14a-8) under the Securities and Exchange Act of 1934.<sup>1</sup> The Securities and Exchange Commission (“Commission”) proposes to amend certain procedural requirements and resubmission provisions under the shareholder proposal rule, which facilitates engagement between the shareholders and the companies they own. This is an important and timely proposal, which effectively modernizes Rule 14a-8 to reflect significant changes in the level and ease of engagement between companies and their shareholders. It also recognizes and addresses flaws under the current rules that allow shareholders to shift the cost of soliciting proxies for their proposal to the companies. After careful consideration of the proposal, I submit this letter in support of the amendments to Rule 14a-8.

#### **Rule 14a-8(b) – Eligibility Requirements**

Under the current rules, in order to qualify to submit a proposal, a shareholder must own only \$2000 in market value or 1 percent (whichever is less) of a company’s outstanding stock for at least one year. The ownership threshold and holding period are designed to ensure that a shareholder has a meaningful investment interest in a company before company resources are expended to include a proposal in the company’s proxy statement. The Commission stated that the current ownership threshold has been in place since 1998 and should be revised to account for increased price in shares and changes in inflation level.<sup>2</sup> The proposed amendment would establish 3 ownership tiers. The first tier would require shareholders owning \$2000 of a company’s outstanding stock to hold the securities for at least three years to be eligible to submit a proposal. The two additional proposed tiers would be thresholds of \$15,000 for at least two years and \$25,000 for at least one year.

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<sup>1</sup> Procedural Requirements and Resubmission Thresholds under the Exchange Act Rule 14a-8, 84 FR 66458 (December 4, 2019).

<sup>2</sup> Id. at 66461.

For tier 1, I believe the longer holding period correctly gives small shareholders the opportunity to submit proposals after demonstrating a long-term economic interest in the company. Tier 2 (\$15,000/2 years), and Tier 3 (\$25,000/1 year) would provide two additional eligibility options based on differences in the amount of securities held and length of time held. The additional tiers would allow shareholders with larger ownership interests and shorter holding periods to demonstrate an economic stake in the company. The proposed 3-tier approach logically takes into account the extent to which a shareholder has a sufficiently vested interest in the company that would justify inclusion of a shareholder's proposal in its proxy materials. I agree with this approach and believe that it strikes the right balance between shareholders' interest and the interests of companies and other shareholders who bear the cost associated with including shareholders proposals in the company's proxy statement.

### **One-Proposal Limit Rule**

Current Rule 14a-8(c) provides that each shareholder may submit no more than one proposal to a company for a particular shareholders' meeting. This rule is designed to prevent undue influence on a company by one shareholder at the expense of other shareholders, as well as the potential reduced effectiveness of the proxy statement as a result of material matters being obscured. The proposed amendment would close a loophole that allows single shareholder-proponents to use representatives to bypass the one-proposal limit. Specifically, Rule 14a-8(c) would be amended to apply the one-proposal limit rule to "each person" rather than "each shareholder" who submits a proposal. Under the proposed amendment, a shareholder-proponent would not be able to submit one proposal in its own name while simultaneously submitting a different proposal on another shareholder's behalf for consideration at the same meeting. Consistent with the intent of Rule 14a-8, the Commission's proposal expressly applies the one-proposal limit to shareholders submitting proposals as representatives on behalf of other shareholders.

I believe the proposed amendment to apply the one-proposal rule to "each person" rather than "each shareholder" is reasonable. It effectively addresses the submission of multiple proposals by shareholders personally and as representatives, thus reducing the undue influence of individual shareholders, as well as the risk to the effectiveness of the proxy statement. Moreover, I do not believe that eliminating the ability of one investor to rely on the securities holdings of another shareholder impedes shareholder engagement. The proposal effectively targets a known loophole in the current rule to prevent undue influence of single investors.

### **Resubmission Thresholds**

Proposed amendments to Rule 14a-8(i)(12) would address concerns that the current resubmission thresholds may allow proposals to be resubmitted that have not received broad support from a company's shareholders. The Commission's proposal addresses its concerns that the current resubmission thresholds of 3, 6 and 10 percent are not high enough levels to demonstrate sufficient shareholder support to warrant resubmission. Specifically, the Commission observed that the vast majority of proposals are eligible for resubmission but less than 9 percent of those proposals pass in a subsequent vote.<sup>3</sup> Companies unfairly bear the costs associated with repeated

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<sup>3</sup> Id. at 66471.

submission and consideration of these proposals and their inclusion in proxy statements. I strongly agree with the Commission's view that companies should not be required to bear the costs associated with proposals unlikely to ever reflect the interests of a majority of shareholders.

To address this concern, the Commission is proposing to amend Rule 14a-8(i)(12) to increase the current thresholds to 5, 15 and 25 percent. I agree with the proposed amendment and believe that proposals that have not achieved these levels of support over the enumerated timelines have been adequately tested. In addition, as the Commission asserts, the proposed resubmission thresholds would reduce the costs associated with repeated reconsideration and inclusion of these proposals in the proxy statement. Moreover, I do not believe that the proposal will impede shareholder advocacy on material issues.

Mechanisms for investor engagement have grown exponentially. Companies have provided convenient methods for investors to attend and vote at shareholder meetings, including virtual meetings and electronic voting. I do not agree with special interest groups' assertions that the proposed rule would deny small investors the opportunity to submit proposals for a vote by company shareholders. To the contrary, I believe the proposal fairly balances the rights of all shareholders, improves the effectiveness of the proxy voting process and ensures that companies and shareholders do not bear the unreasonable cost of repeated shareholder submissions that have little to no chance of succeeding, as demonstrated by multiple failed attempts. In addition, the Commission's analysis indicates that any increase in the number of excludable proposals potentially on the path toward meaningful shareholder support would be small.<sup>4</sup>

#### **Conclusion**

The SEC's proposal to modernize Rule 14a-8 to address evolution of the proxy process and companies' approaches to investor outreach is based on a thorough analysis of facts and data drawn from historical references, extensive public comment, roundtable discussion and Congressional hearing. I believe the rule amendments, as proposed, will ensure a fair, orderly and efficient proxy voting process through robust and meaningful shareholder engagement. The proposed amendments are carefully crafted to conform to today's shareholders and capital markets. In addition, the proposed rules ensure the shareholders' ability to easily participate in corporate governance without undue burden and costs on companies. I urge the Commission to adopt the proposed amendments to Exchange Act Rule 14a-8.

Sincerely,



Kevin Cramer  
United States Senator

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<sup>4</sup> *Id* at 66472.