MEMORANDUM

TO: File S7-23-19, Procedural Requirements and Resubmission Thresholds under Exchange Act Rule 14a-8

FROM: S.P. Kothari, Chief Economist[1]

SUBJECT: Analysis of Data Provided by Broadridge Financial Solutions, Inc.

DATE: August 14, 2020

On November 5, 2019, the Commission voted to propose amendments to certain procedural requirements and the provision relating to resubmitted proposals under the shareholder-proposal rule, titled "Procedural Requirements and Resubmission Thresholds under Exchange Act Rule 14a-8" ("Proposing Release").[2] In the Proposing Release, the Commission noted that it or the staff may add studies, memoranda, or other substantive items to the comment file during the rulemaking. At the request of Chairman Clayton, I am submitting to the comment file a preliminary draft analysis prepared by my staff of the Division of Economic and Risk Analysis ("DERA") that is described below.

In July 2019, five years' worth of data from Broadridge Financial Solutions, Inc. ("Broadridge") related to shares held beneficially in street name was requested by Commission staff. I understand that, at the time, Broadridge was able to provide DERA staff with a subset of the data requested.[3]

When DERA staff receives a data set in the context of a rulemaking, we often will attempt to conduct preliminary analyses with the data in an effort to determine the data's limitations and the assumptions that may be necessary to inform our analysis. Consistent with that approach, DERA staff analyzed the data set provided by Broadridge in connection with the Commission's consideration of the proposed amendments to Rule 14a-8. Attached as Appendix A is a preliminary draft analysis conducted by DERA staff as of October 4, 2019, using this data.[4] This data set includes account-level security holding information at U.S. companies that held annual shareholder meetings during calendar years 2015-2017. The preliminary draft analysis in Appendix A reflects a proposed change of the current $2,000 / one-year ownership eligibility threshold to $3,000 / five-year, $15,000 / three-year, and $25,000 / one-year thresholds, which are different in amount and time from the tiered ownership eligibility thresholds that the Commission included in the Proposing Release.

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1 The Commission has expressed no view regarding the analysis, findings, or conclusions contained herein. Nor has the Commission approved or disapproved its content.

2 Release No. 34-87458 (Nov. 5, 2019) [84 FR 66458 (Dec. 4, 2019)].

3 At the time Broadridge provided the data subset, *i.e.*, August 2019, Broadridge declined to be identified as the source of the data. In June 2020, Broadridge agreed to be identified as the source of the data.

4 As per Broadridge, the data is based on a representative sampling of aggregated and anonymized data related to shares held beneficially in street name.

In October 2019, after reviewing the preliminary draft analysis, I concluded that the limitations of the data significantly narrowed its potential value in analyzing the impact of possible changes to the eligibility thresholds. Moreover, I did not believe the analysis was relevant to what I viewed as the economic question central to the proposal: whether amending the thresholds would result in fewer shareholder proposals being put to a vote. In November 2019, the Proposing Release referenced the data set and invited commenters to submit data to the comment file that could inform the rulemaking. The Proposing Release also noted certain limitations of the data.[5] Certain of the principal limitations of the data to DERA's draft analysis are outlined below.

First, the data includes only anonymized information about accounts that do not use Broadridge's online proxy voting product for institutional investors and financial advisers (i.e., ProxyEdge) and do not come from third-party vote agents (through Broadridge's Consolidated Data Feed). Staff is not able to confirm whether these accounts are limited to retail shareholding accounts.

Second, the data is account-level data and a single owner of one account (the shareholder) may hold the same stock in multiple accounts and a single account may be owned by multiple persons (all of whom collectively would be considered a shareholder). As a result, DERA staff are unable to determine retail shareholders' total stock ownership during the relevant period with the data with specificity. For example, if a single shareholder owned shares of a company in two or more separate brokerage accounts, those holdings would appear in the data set as being held by two separate accounts without any indication that the same person holds those shares.

Third, the frequency at which account shareholding information appears in the data does not allow for a determination of account holder eligibility to submit a shareholder proposal under the current or proposed eligibility thresholds, which are based on continuous holding periods. In particular, shareholdings for each account are recorded on the record date prior to an annual meeting. This permits DERA staff to determine whether a given shareholding meets ownership thresholds only on a record date, but does not permit staff to verify whether that shareholding was continuously held by the account for the requisite period of time required by the current rule.[6]

Fourth, while this data provides some information about account position size, it does not allow DERA staff to identify those shareholders that have submitted or are likely to submit shareholder proposals. A study cited in the Proposing Release showed that 78% of all proposals submitted by individuals to S&P 1500 companies between 2013 and 2014 were submitted by only five

5 Proposing Release, note 245.

6 To meet ownership thresholds, shares must be continuously held between a date a number of months prior to the date when a shareholder proposal is submitted (currently 12 months) through the annual meeting at which shareholders vote on shareholder proposals. For annual meetings, this time period generally begins earlier and ends later than the period between record dates.

individual proponents,[7] suggesting that proposals are concentrated among an extremely small set of shareholders. In addition, the ratio of shareholders who are both eligible and likely to submit shareholder proposals to the total number of shareholder accounts is extremely small. Therefore, econometrically, I do not believe it is reasonable to conclude that analyzing the amount of stock and duration of ownership for all retail shareholders would produce estimates that meaningfully reflect the impact of the proposed Commission action on the small pool of shareholders who submit proposals.

In summary, it was my view that the preliminary draft analysis was not relevant to the economic question central to the proposal and that the data had limitations that reduced its potential value to analyzing the proposal. Thus, I did not believe the analysis would reliably inform consideration of the proposal.

[7] Proposing Release, note 166.

Appendix A

To provide insight into the distribution of ownership across potential shareholder proponents, we analyze data on U.S. retail investors' ownership of U.S. public companies in 2017.[8] While we do not expect all retail shareholders to choose to submit shareholder proposals, we believe this analysis is informative about the extent to which retail shareholders are precluded from submitting shareholder proposals under the current eligibility thresholds. First, for each account-company pair, we check whether the account holdings meet ownership and duration thresholds under the current eligibility requirements.[9] We estimate that approximately 78.57 of 144.57 million (54%) account-company pairs

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[8] This data covers 6,820 U.S. companies that held shareholder meetings between January 6, 2015 and December 31, 2017 and includes share holdings for a total of 28,476,865 unique retail accounts. During calendar year 2017, the most recent year for which this data is available to us, 5,392 companies held shareholder meetings. The average (median) number of retail accounts per company during 2017 was 27,825 (3,580). The average (median) number of companies held in each retail account during 2017 was 7 (3). The number of retail accounts is an approximation of the number of retail investors because each retail investor can hold multiple accounts and multiple retail investors can hold a single account.

The set of retail investors represents a subset of potential proponents of shareholder proposals because some shareholder proposals are submitted by institutional investors. Because we do not have information that would allow us to identify owners of the accounts, we cannot restrict our analysis solely to those accounts for which owners submitted shareholder proposals.

Because some companies in our sample held more than one shareholder meeting during 2017, we use information about retail account ownership from the last meeting in 2017. We use stock price information from CRSP to compute the value of ownership of each account. We are able to collect stock price information from CRSP for 4,190 (78%) companies that held shareholder meetings during 2017 and 21,722,300 (98%) accounts.

[9] We classify a particular account as being eligible to submit a shareholder proposal to a particular company if the value of the share ownership of the account in that company exceeds $2,000 and if the account has held at least $2,000 in the value of shares for at least one year. We make an assumption that shares are held in an account continuously between shareholder meetings. In particular, if we observe that an account held 100 shares in a company on January 1st, 2016 and 100 shares on January 1st, 2017, we assume that these shares were held continuously for the entirety of 2016. Because of this assumption, our analysis may overestimate the number of account-company pairs for which the eligibility requirements are satisfied because a shareholder may not have held the shares continuously between shareholder meetings. On the other hand, our analysis may underestimate the number of accounts that continuously held shares in cases where the company did not hold a shareholder meeting in 2016 or 2015 or where the time between meetings in 2017 and 2016 was lower than a year.

In addition, our analysis may underestimate the number of accounts eligible to submit a proposal in a given company because shareholders are allowed to aggregate share ownership for the purpose of submitting a proposal under the current requirements. In summary, our methodology classifies all observations with ownership value lower than $2,000 and observations where previous year's ownership value was less than $2,000 as not eligible to submit a shareholder proposal in 2017.

would not satisfy the eligibility requirements to submit a shareholder proposal under the current thresholds.[10] In a subset of S&P 500 companies, 48.54 of 102.91 million (47%) of all account-company pairs would not satisfy the eligibility requirements.[11]

Next, in order to understand the extent to which shareholders are currently precluded from submitting shareholder proposals across U.S. companies, we look at the distribution of the proportion of retail accounts that do not meet the eligibility thresholds across companies (see Table 1 below).[12] We estimate that in approximately 87% of all companies and 99% of S&P 500 companies, at least 5% of accounts meet the eligibility criteria for submitting proposals under the current thresholds.[13] Furthermore, in approximately 56% of all companies and 94% of S&P 500 companies, at least a quarter of retail accounts meet the eligibility criteria for submitting proposals under the current thresholds.

[10] Of the total number of account-company pairs that do not meet the current eligibility requirements, 46.61 million (32.24% of all accounts) held less than $2,000 and the remaining 31.96 million (22.11% of all accounts) held more than $2,000, but for less than one year. The number of account-company pairs not eligible to submit a shareholder proposal under the current requirements corresponds to 17,178,882 unique accounts that are currently not eligible to submit a shareholder proposal to at least one company in which they own shares.

[11] Of the total number of S&P 500 account-company pairs that do not meet the current eligibility requirements, 25.55 million (24.83% of all accounts and 52.64% of all accounts that do not meet current eligibility requirements) held less than $2,000 and the remaining 22.99 million (22.34 % of all accounts and 47.36% of all accounts that do not meet current eligibility requirements) held more than $2,000, but for less than one year. This number corresponds to 13,156,815 unique accounts that are currently not eligible to submit a shareholder proposal to at least one S&P 500 company in which they own shares.

[12] In particular, for each company that held a shareholder meeting in 2017, we compute the ratio of retail accounts that meet the eligibility thresholds to the total number of retail accounts that held shares in the company.

[13] We estimate that in 302 companies, 4 of which are S&P 500 companies, not a single account meets the eligibility requirements to submit a shareholder proposal.

Table 1: Fraction of eligible accounts across companies, 2017

	Number of Companies	% of Companies
All companies		
≥ 5% accounts eligible	3,623	87%
≥ 10% accounts eligible	3,366	81%
≥ 25% accounts eligible	2,330	56%
S&P 500 companies		
≥ 5% accounts eligible	475	99%
≥ 10% accounts eligible	474	98%
≥ 25% accounts eligible	452	94%

Source: *Proxy services provider*.

To estimate the number of potential (as opposed to actual) proponents that could be affected by the proposed amendments to the ownership thresholds, we analyze data on U.S. retail investors' ownership of public companies, which have held annual or special meetings during 2017.[14] Figure 1 (below) shows the distribution of account ownership for accounts-company pairs eligible to submit a shareholder proposal under the current eligibility thresholds.[15] We use Figure 1 to illustrate the differential impact of proposed amendments to eligibility requirements on accounts with varying ownership. Under proposed amendments, all account-company pairs with holdings between $2,000 and $3,000 (black bar in Figure 1) would be excluded from submitting a shareholder proposal. We estimate that this group includes 6.72 million (10%) account-company pairs.[16] On the other hand, all account

[14] See supra footnote 8 for information on the data source. As is discussed [above], this analysis provides an upper bound of the potentially affected retail investors because not all retail investors would choose to submit a shareholder proposal and thus would be affected by the proposed amendments to the ownership thresholds.

[15] See supra footnote 9 for information on how we classified accounts into ones meeting current eligibility requirements. All accounts used to generate Figure 1 held at least $2,000 in share value for at least one year. We plot continual one-year ownership on the x-axis of Figure 1. In particular, if we observe a particular account's ownership in a particular company be $5,000 in 1/2016 and $25,000 in 1/2017, we classify this account as having held $5,000 continually for one year. Similarly, an account is classified to have held $5,000 continually if we observe holding of $25,000 in 1/2016 and $5,000 in 1/2017. Note that we have cropped the x-axis at $50,000, but have included all accounts with ownership over $50,000 in statistics presented in the discussion.

[16] Numbers in parentheses throughout this analysis represent fractions of the total number of account-company pairs eligible in the baseline.

company pairs with holdings over $25,000 (white bars in Figure 1) would continue to be eligible to submit a shareholder proposal under the proposed amendments. We estimate that this group includes 14.83 million (22%) account-company pairs. The remaining account-company pairs (grey bars in Figure 1), ones that have held between $3,000 and $25,000 for one year, may or may not be excluded from submitting a shareholder proposal under the proposed amendments, depending on their ownership duration. We estimate that the majority of account-company pairs fall within this group – 44.46 million (67.36%). Furthermore, we estimate that among accounts that have held between $3,000 and $25,000 for one year, 17.96 (27%) have had continual ownership for at least two years.[17]

We use these estimates to construct minimum and maximum bounds on the potential effect of proposed amendments. In particular, in order to estimate the minimum effect, we assume that all accounts that have held between $3,000 and $25,000 for at least two years would continue to be eligible under the proposed amendments.[18] Therefore, at the minimum, 26.50 million (40.15%) additional account-company pairs would be excluded under the proposed amendments.[19] In order to estimate the maximum effect, we assume that all accounts that have held between $3,000 and $25,000 would no longer be eligible under the proposed amendments. [20]

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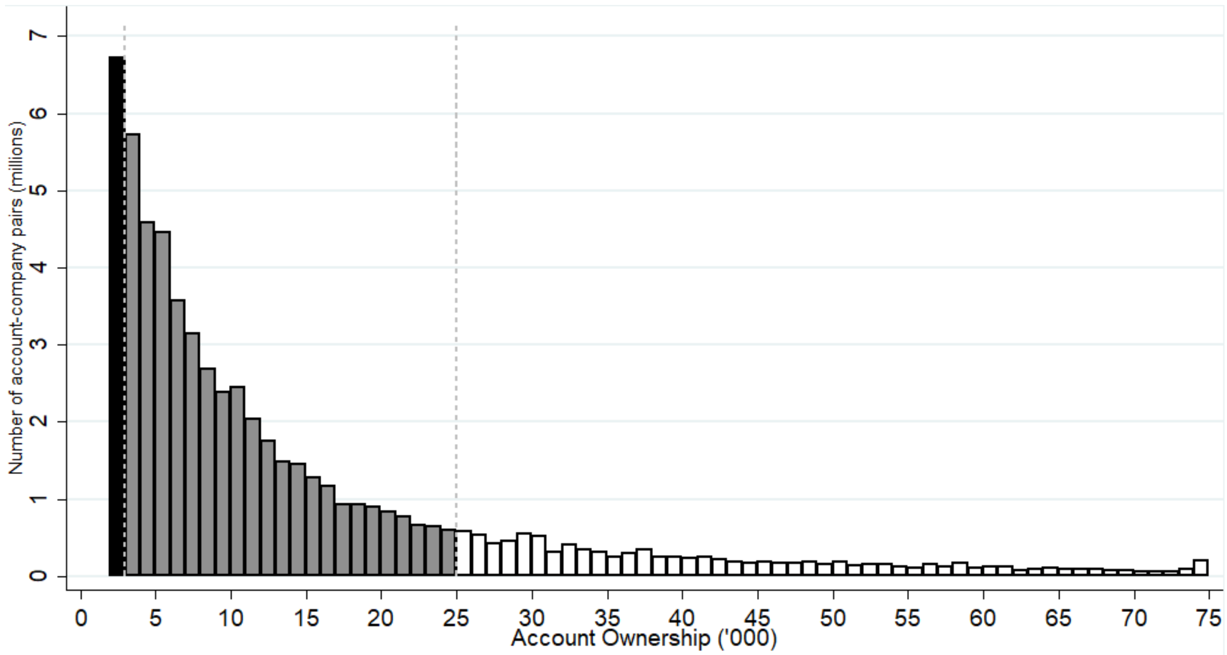
[17] Due to data limitations, we are unable to estimate ownership duration over two years.

[18] This would actually be the case if the following two conditions are true: 1) all of the account-company pairs that have held between $3,000 and $15,000 that we observe have held for at least 2 years, have actually held between $3,000 and $15,000 for at least 5 years; and 2) all of the account-company pairs that have held between $15,000 and $25,000 that we observe have held for at least 2 years, have actually held for at least 3 years.

[19] 44.46 million - 17.96 million = 25.50 million.

[20] This would actually be the case if no account-company pair with holdings $3,000-$15,000 has continuously held these shares for 5 years and no account-company pair with holdings $15,000-$25,000 has continuously held shares for 3 years.

Figure 1: Distribution of eligible account/company pairs by account ownership, 2017



Source: Proxy services provider

Using the bounds described above, we estimate that the total number of account-company pairs would be newly excludable under the proposed amendments is between 33.22 million (50.33%) – 51.18 million (77.55%).[21] Using the same methodology in a subset of S&P 500 companies, we estimate that the total number of account-company pairs newly excludable under the proposed amendments is between 27.23 million (50.08%) – 41.53 million (76.38%).

Next, we analyze the effects of proposed amendments at the company level by looking at the distribution of the proportion of retail accounts within a company that would meet the eligibility requirements under the proposed amendments (see Table 2 below). We estimate that in 22%-55% of all companies (an increase in 9%-42% from the baseline) and 2%-15% of S&P 500 companies (an increase in 1%-14% from the baseline), less than 5% of accounts would be eligible to submit a shareholder proposal under the proposed amendments. In addition, we estimate that in 82%-99% of all companies (an

[21] Minimum bound: 6.72 million + 26.50 million = 33.22 million. Maximum bound: 6.72 million + 44.46 million = 51.18 million.

increase in 38%-55% from the baseline) and 59%-99% of S&P 500 companies (an increase in 52%-93% from the baseline), less than a quarter of accounts would be eligible to submit a shareholder proposal under the proposed amendments.

Table 2: Fraction of eligible accounts across companies under proposed amendments, 2

	Minimum Effect		Maximum Effect	
	Number of companies	**Change from baseline**	**Number of companies**	**Change from baseline**
All companies				
≤ 5% accounts eligible	937 (22%)	386 (9%)	2,297 (55%)	1,746 (42%)
≤ 10% accounts eligible	1,613 (39%)	805 (19%)	3,312 (79%)	2,504 (60%)
≤ 25% accounts eligible	3,419 (82%)	1,575 (38%)	4,130 (99%)	2,286 (55%)
S&P 500 companies				
≤ 5% accounts eligible	11 (2%)	4 (1%)	74 (15%)	67 (14%)
≤ 10% accounts eligible	29 (6%)	21 (4%)	259 (54%)	251 (52%)
≤ 25% accounts eligible	282 (59%)	252 (52%)	479 (99%)	449 (93%)

Source: *Proxy services provider*.

The results of the analysis of the ownership data for U.S. retail investors should be interpreted with caution for the following reasons: (i) our statistics are based on retail holdings and they exclude holdings by institutional investors;[22] (ii) we lack data on shareholders' ownership duration in excess of two years; (iii) the overall distribution of ownership of retail accounts may be different from the distribution of ownership for a subset of shareholders who are likely to submit shareholder proposals; and (iv) the U.S. retail ownership data is account-level data, and we assume that each account corresponds to one retail investor, but in fact each retail investor can hold multiple accounts and multiple retail investors can hold a single account.

[22] Institutional investors with investment discretion over $100 million or more in Section 13(f) securities must file quarterly reports on Schedule 13F that report their holdings. However, investors may omit holdings of fewer than 10,000 shares and less than $200,000 aggregate fair market value from these reports (see U.S. Securities and Exchange Commission, Division of Investment Management, Frequently Asked Questions About Form 13F, available at https://www.sec.gov/divisions/investment/13ffaq.htm, accessed on August 16, 2019). Hence, Schedule 13F data are of limited use for the purpose of our analysis.