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September 7, 2022

Vanessa A. Countryman
Secretary, Securities and Exchange Commission
100 F Street N.E.
Washington, D.C., 20549-1090

Re: File Number S7-20-22, Substantial Implementation, Duplication, and Resubmission of Shareholder Proposals Under Exchange Act Rule 14a-8

Dear Secretary Countryman:

I write as Trustee of the New York State Common Retirement Fund, which is one of the largest public pension funds in the United States, with $272.1 billion in assets as of March 31, 2022. The Fund holds and invests the assets of the New York State and Local Retirement System on behalf of more than one million members and beneficiaries and pays over $1 billion per month in benefits. I write in response to the Securities and Exchange Commission's Proposed Rule amending Exchange Act Rule 14a-8 (Proposed Rule or Rule).

As Trustee of the Fund, I take seriously my duty to invest for the long-term benefit of our beneficiaries. Consequently, through my Bureau of Corporate Governance, I have engaged in dialogue with many of our portfolio companies to encourage them to implement robust corporate governance practices and sustainable business strategies that foster long-term financial success. As a long-term owner that invests in all sectors of the economy, the Fund works to promote sound environmental, social and governance (ESG) practices at the public companies in its portfolio through active ownership.

Filing shareholder proposals is a powerful engagement tool that provides an opportunity to get important issues on the agenda and bring them to the attention of a company's board, management, and other investors. When filing a shareholder proposal, the Fund seeks a productive dialogue with company management. This includes discussing the proposal with company management, providing the company with the opportunity to highlight its work on the given issue, and permit the company to address the Fund's concerns.

In the 2022 proxy season, the Fund filed 43 shareholder proposals, resulting in 31 agreements with companies to implement the proposals, and two majority votes. As voting the Fund's proxies at shareholder meetings is part of my fiduciary responsibility, the Fund also votes on a significant number of proposals brought forth by other shareholders (606 in 2022).

As I have said in prior comments to the Commission, I believe that the Rule 14a-8 process is fundamentally positive and shareholder-proponents and companies alike have found a certain

level of predictability and orderliness.[1] This is especially true as a large body of interpretive decisions have developed over decades as the SEC staff has provided guidance on a case-by-case basis and in a more general fashion through its staff legal bulletins. I support the proposed amendments to clarify how the Substantial Implementation and Duplication exclusions should be interpreted.

Substantial Implementation (Rule 14a-8(i)(10))
I welcome the Commission's proposal to shift the focus of its substantial implementation inquiry to whether the "essential elements" of the proposal have been implemented.

The shift toward analyzing whether the *elements* of the shareholder's request have been implemented will provide for more robust debate among shareholders. Shareholders will be able to ask whether a company's actions have gone far enough, rather than just asking whether a company has discussed a topic at all. For example, under the existing rule, if a company adopted greenhouse gas emissions targets several years ago, company management may argue that a new proposal asking the board to consider setting a net-zero target has been substantially implemented. In this way, the existing rule tends to limit discussion and forward movement on issues, leading to stagnation and stasis instead of dynamic discussion.

The Proposed Rule, on the other hand, would allow shareholders to discuss whether management's approach is the right one. In the vast majority of cases, shareholders prefer to stick with management's approach to a particular issue. But the underlying purpose of Rule 14a-8 is that shareholders can raise issues to the attention of directors and management; this process shouldn't be a one-time-only process.

Duplication and Resubmission (Rule 14a-8(i)(11) and Rule 14a8(i)(12))
I support the Commission's proposed approach to evaluate whether a shareholder proposal duplicates another in a more objective fashion. The existing rule gives hardly any guidance to companies and shareholders about what it means for two proposals to duplicate each other which has caused considerable confusion. By focusing on the means by which a proposal seeks to achieve its ends, there will be little room for confusion about whether a proposal duplicates another.

Economic Analysis
I believe any costs associated with including additional proposals on proxies varies by parties but are nonetheless outweighed by the significant benefit of empowering all shareholders to directly address critical issues facing their companies.

A majority of shareholder proposals involve requests or topics that have previously been considered by investors, and many institutional investors—including the Fund—have adopted voting guidelines associated with those issues. Therefore, the costs associated with voting those ballot items are extremely low for such investors,

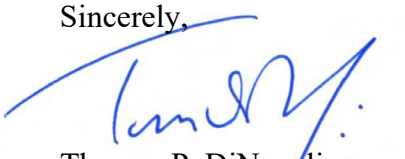
Because corporate governance reforms can bring substantial value to shareholders, I urge the Commission to consider how shareholder proposals can be value-enhancing. We believe corporate governance reforms bring significant value to shareholders and various academic studies have suggested that corporate governance reforms can bring economic value to firms.

[1] https://www.sec.gov/comments/s7-23-19/s72319-6744029-207892.pdf

One measure that can be used for determining the value of corporate governance reforms is the value placed on those reforms in derivative lawsuits. For example, in 2020, I announced a settlement in a derivative case on behalf of Wynn Resorts for which I served as co-lead plaintiff. The value of the corporate governance reforms achieved, as affirmed by the Court, was valued at $49 million.[2] This included majority elections for board members, an independent chair, a commitment to board diversity, and a succession plan—all of which are common topics of shareholder reforms. It is clear from this that shareholder proposals can bring millions of dollars in value to companies that choose to adopt the reforms, ultimately increasing shareholder value.

I appreciate the opportunity to submit comments on this important matter. I trust the Commission to conduct the necessary analysis and review of these comments and others that have been submitted and adopts the Proposed Rule. On behalf of the more than one million members, retirees, and beneficiaries of the System for whom the Fund invests, thank you for your attention to these comments.

Sincerely,



Thomas P. DiNapoli
State Comptroller

[2] https://www.osc.state.ny.us/press/releases/2019/11/investors-reach-settlement-wynn-resorts