



September 8, 2022

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

Re: “Substantial Implementation, Duplication, and Resubmission of Shareholder Proposals Under Exchange Act Rule 14a-8,” Exchange Act Release No. 95267 (File No. S7-20-22)

Ms. Countryman:

The Committee on Mission Responsibility Through Investment (MRTI) of the Presbyterian Church (U.S.A.) (PCUSA) submits this comment in support of File No. S7-20-22: Substantial Implementation, Duplication, and Resubmission of Shareholder Proposals Under Exchange Act Rule 14a-8 (the “Proposed Rule”). We are deeply grateful for the Commission and SEC Staff’s substantive work leading to this Proposed Rule that will better enable shareholders to address systemic, portfolio-wide risks with companies.

The Presbyterian Church U.S.A. (PCUSA) is a mainline protestant denomination with 1.1 million members in all fifty states and Puerto Rico. The General Assembly, the highest governing body of the PCUSA, sets policy and creates implementation structures on behalf of the church. The General Assembly of the PCUSA established MRTI in 1971 to implement the church’s policies with respect to the investments held through church-related agencies, including the Board of Pensions and the Presbyterian Foundation, with combined portfolios of \$14.3 billion. MRTI conducts shareholder engagement on behalf of the Board of Pensions and the Presbyterian Foundation.

The PCUSA is a founding member of the Interfaith Center of Corporate Responsibility (ICCR), a 50-year-old coalition of more than 300 faith- and values-based institutional investors representing over \$4 trillion in assets under management who engage with hundreds of corporations on their environmental and social impacts. ICCR members have been engaging for decades with companies on the risks posed by climate change and therefore deeply understand the value of comparable, consistent, and reliable climate-related information.

MRTI takes its responsibility to bring forward shareholder proposals seriously and has been putting forth proposals for decades. The shareholder proposal process has served as a cost-effective way for corporate management and boards to gain a better understanding of our priorities and concerns. Our work along with other investors through ICCR has served as a crucial “early warning system” for companies to identify emerging risks. The history of ICCR demonstrates literally hundreds of examples of companies changing their policies and practices in light of productive engagement with shareholders.



Rule 14a-8 plays an important role in public company corporate governance. By providing an inexpensive way for shareholders to communicate with boards and management as well as each other about issues of concern, Rule 14a-8 mitigates some of the difficulties shareholders face in acting collectively. Although PCUSA has entered dialogue with dozens of companies without a proposal being filed, we also have dozens of examples where companies have ignored requests for dialogue until we did file a shareholder proposal.

The shareholder proposal process gives shareholders like the PCUSA an opportunity to identify emerging risks and present outside perspectives with companies, and we look to companies' voluntary disclosures to supplement the disclosures required by the Commission; this information can allow shareholders to assess risks facing a company more accurately.

The Proposed Changes Would Return the Staff's Focus to the Specific Actions Requested by a Proposal and Allow Proponents to Refine Approaches to Issues

Three substantive bases for exclusion in the Rule--substantial implementation, substantial duplication, and resubmission—would be amended by the Proposed Changes. These changes would remedy overbroad Staff approaches that have resulted in inappropriate exclusion of proposals and adopt standards that are more consistent with the dynamic nature of the shareholder proposal process.

For example, Rule 14a-8(i)(10) allows a company to omit a proposal that has been “substantially implemented.” The lack of a definition for substantial implementation has led the Staff to formulate various phrasings to guide its evaluation of no-action requests that rely on this exclusion. The Staff has looked to whether a company’s policies or disclosures “compare favorably” with the guidelines of the proposal as well as whether the company had “addressed a proposal’s underlying concerns” or satisfied the proposal’s “essential objectives.”

This language tends to pull the Staff’s focus away from the specific action requested in a proposal and to give companies latitude to redefine the proposal. Companies often cherry-pick language from the supporting statement to broaden the proposal’s concern or objective to show that the company’s actions substantially implemented the proposal, even if they did not satisfy the requests made in the resolved clause.

The Staff’s approach can lead to exclusion where the company has not implemented one or more key elements of a proposal, despite the proponent’s explanation about why the missing element is important. The correspondence in Wendy’s¹ provides an example of this process. The proposal asked the company to report on its processes for identifying potential and actual human rights risks of its operations and supply chain, including several specific items. Wendy’s argued that its Supplier Code of Conduct, Code of Business Ethics and proxy statement substantially implemented the proposal. The proponent pointed out that none of Wendy’s disclosures described a process for

¹ The Wendy’s Company (Apr. 10, 2019).



identifying potential human rights violations—only actual violations were covered—and included only about half the information relating to actual violations. The proponent explained that identification of potential violations was crucial to prevention efforts.

The Proposed Changes would provide that a proposal can be omitted only if the company has “already implemented the essential elements of the proposal.” Looking to the essential elements ensures that a company won’t be able to exclude a proposal when a key specific request has not been implemented, as occurred in Wendy’s. Identifying a proposal’s essential elements is more straightforward than discerning its underlying concerns, which would increase predictability for both proponents and companies. The shift could also make the no-action process more efficient: A company that has not implemented a proposal’s specific requests might refrain from seeking no-action relief rather than trying to frame the proposal’s concern in a way that encompasses steps the company has already taken. Finally, by allowing shareholders to express a view on the adequacy of a company’s efforts to date, the new substantial implementation standard would bolster communication.

The Proposed Changes would improve the shareholder proposal process by boosting communication between shareholders and the board and management (as well as among shareholders), facilitating consideration of competing approaches to an issue and permitting refinement and experimentation over time. The Proposed Changes would also have the benefit of creating standards that are easier for the Staff to administer, which would increase predictability and could reduce the burden on the Staff.

We appreciate the opportunity to express our views on this important matter. I can be reached at [REDACTED] if you have questions or need additional information.

Sincerely,

A handwritten signature in blue ink, appearing to read "Rob Fohr".

Rob Fohr
Director of Faith-Based Investing and Corporate Engagement
Presbyterian Church U.S.A.
Cc: Rev. Kerri Allen, Chair, Committee on Mission Responsibility Through Investment of the
Presbyterian Church U.S.A.