

September 9, 2022

Vanessa A. Countryman
Secretary
Securities & Exchange Commission
100 F Street NE
Washington, DC 20549-1090
Via Electronic Delivery: Rule-Comments@sec.gov

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

Dear Ms. Countryman:

The Nathan Cummings Foundation is an endowed institution with approximately \$450 million of investments. As an institutional investor, the Foundation believes that the way in which a company approaches environmental, social, and governance (ESG) issues has important implications for long-term shareholder value. We began filing shareholder resolutions in 2003 and have since filed more than 250 resolutions across a range of critical ESG issues.

We write in support of the proposed rule related to the substantial implementation, duplication, and resubmission of shareholder proposals.

We believe that the modified language related to the substantial implementation exclusion would improve the crafting of shareholder resolutions, encouraging a focus on which essential elements have not yet been implemented by a company. This clarity would aid companies in understanding what modifications in policy, practice, or transparency are being requested. This increased clarity in communication would likely reduce the need for no-action requests, bringing cost savings for all involved (proponents, companies, and the Securities & Exchange Commission).

We also strongly support proposed changes that would mean that substantial duplication would only apply when a resolution “addresses the same subject matter and seeks the same objective by the same means.” Basing substantial duplication on only the subject matter of the proposal leads to exclusions of proposals with dramatically different objectives. We do not, however, support adoption of a numerical limit on the number of resolutions which address a specific topic area. Certain topic areas, such as human capital management, are complex, with multiple components relevant to investors.

Finally, we would like to note our support for the proposed change focused on duplicative filings in resubmissions. Focusing on the objective sought rather than simply the general topic of the proposal will give investors an opportunity to raise valid concerns about topics like racial equity and board diversity even when earlier proposals with similar titles and requests have failed to garner significant investor support. For instance, only 3.96% of votes cast at AT&T’s annual meeting in 2022 supported a civil rights and non-discrimination audit proposal submitted by the National Center for Public Policy Research (NCPFR). We believe that this is not because AT&T investors are unconcerned about the company’s

impact on civil rights and racial equity, but because investors rightly recognized that the aim of the NCPPR proposal appeared to be to call into question corporate racial equity, diversity, and inclusion programs. For instance, after moving the proposal at AT&T's annual meeting, the Free Enterprise Project's Program Coordinator noted that, "Through its emphasis on surface-level characteristics over merit, AT&T's so-called 'diversity, equality, and inclusion' efforts demonstrate the opposite of antidiscrimination measures...Like so many other woke corporations, AT&T should stop playing politics and instead focus on its business as a telecommunications company."¹ As such, we believe that investors at AT&T and other companies receiving proposals whose aim is to question the existence of diversity, equity, and inclusion programs should not be precluded from the opportunity to vote on a proposal calling on these same companies to conduct civil rights or racial equity audits with the intention of surfacing and addressing companies' disparate impacts on vulnerable communities and people of color. It's worth noting that the latter type of proposal routinely receives the support of more than 25 percent of shares voted. Racial equity audit proposals offer just one example of how failing to focus on the objective sought rather than just the general topic of the proposal can result in decisions that deprive investors of the ability to vote on proposals with a similar focus but a diametrically different objective.

We would like to reiterate our support for the proposed amendments. We very much see the rule making as providing greater certainty and transparency in the no-action process and enhancing the ability of shareholders to express diverse objectives and various ways to achieve those objectives through the shareholder proposal process.

Thank you for the opportunity to comment.

Sincerely,



Laura Campos

Director, Corporate & Political Accountability

¹ <https://nationalcenter.org/ncppr/2022/05/19/shareholder-proposal-questions-atts-commitment-to-equality/>