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VIA EMAIL: RULE-COMMENTS@SEC.GOV

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

Re: Release No. 34-95267; IC-34647; File No. S7-20-22

Dear Secretary Countryman:

The International Brotherhood of Teamsters is pleased to submit the following comments on the proposed amendments to SEC Rule 14a-8, which would revise the exclusions relating to a company's ability to exclude a shareholder proposal on the grounds that the proposal has been substantially implemented, is a duplicate of another proposal, or has failed to receive enough support in prior years to allow resubmission to shareholders.

The Teamsters hold shares in a number of publicly traded companies and submit shareholder proposals to portfolio companies on corporate governance issues. In addition, Teamster-affiliated pension and benefit funds have more than $100 billion invested in the capital markets.

In brief, the Teamsters agree with the Commission's assessment of the importance of shareholder proposals as a way of promoting communication between a company's management and board and the company's shareholders. In addition, shareholder proposals provide a low-cost mechanism by which management and the board can obtain the views of its entire shareholder base.

The proposed rule would make important clarifications in three of the exclusions that allow a company to omit a proposal from its proxy materials: Rule 14a-8(i)(10), which allows the omission of a proposal that has been "substantially implemented"; Rule 14a-8(i)(11), which allows the omission of a proposal that duplicates a previously submitted proposal that the company plans to print; and, Rule 14a-8(i)(12), which allows the omission of proposals that failed to obtain specified levels of support in votes at prior shareholder meetings. We believe that adoption of the proposed amendments could make the current shareholder proposal process operate more smoothly.

Rule 14a-8(i)(10): The "substantially implemented" exclusion

This exclusion allows a company to omit a proposal from its proxy materials if the proposal has been "substantially implemented by the issuer." This exclusion has been interpreted to ask whether a company's existing policies "compare favorably" with the specifics in the proposal, or and whether the "underlying concerns" of a proposal have been met. As the Release notes, this can lead to a fact-intensive inquiry, with the company citing a number of actions that have already been taken on the topic, while the proponent cites a checklist of items that have not been implemented.

The proposed rule change seeks to provide greater clarity by asking if "the company has already implemented the essential elements of the proposal." This "essential elements" formulation is a refinement and clarification of the "compares favorably" and "underlying concerns" benchmarks discussed in the preceding paragraph. As the Release explains, the focus will be on the "essential elements" of a proposal, focusing on the degree of specificity of the proposal and of its stated primary objectives.

The Release also provides helpful examples of what would be permitted under this amendment, *for example,* allowing a proposal to eliminate the cap on the number of shareholders who can nominate a board candidate through the proxy access process. While such guidance is helpful, additional guidance would be welcome on other scenarios, *for example*, a proposal to change a company's stated goal or threshold on a topic from one numeric standard to another, *for example,* to increase the number of proxy access nominating shareholders from, say, 20 to 50.

Rule 14a-8(i)(11): The "substantially duplicates" exclusion

Under this exclusion a company may omit a proposal that "substantially duplicates another proposal" that was received earlier in the proxy season and that the company plans to include in its proxy materials. What is "substantial duplication"? The current interpretation asks whether the two proposals share the same "principal thrust" or "principal focus," and in practice, this approach can involve the same sort of close factual analysis that is used when interpreting the "substantially implemented" exclusion. In addition, the first-in requirement can create incentives to file early in an attempt to pre-empt re-filing by the original proponent.

The Release proposes a new standard under which a second-in proposal could be omitted if the proposal "addresses the same subject matter and seeks the same objectives by the same means." We support this language, which would build on the present "principal thrust" and "principal focus" standard by clarifying that the proper focus is on whether the two proposals have the "same objectives."

We support this proposal and the "same objectives" benchmark. The Teamsters have encountered situations where, in re-submitting a proposal, we are told that our proposal is ineligible because another shareholder has submitted a proposal with the same "resolved" clause, but the supporting statement may encourage a vote *against* the proposal or corporate action that is contrary to our proposal. In these situations, the "objectives" of the competing

proposal are antagonistic, even if the language of the "resolved" clauses may be identical. The proposed rule change would put an end to such gamesmanship.

Apart from that, we have a separate recommendation. We start with the question: Why do multiple shareholders submit the same (or substantially the same) proposal to a given company? The answer often is that the proposal and the proposal's language survived the no-action process in a previous year, notwithstanding objections under Rule 14a-8's substantive exclusions, such as "ordinary business" or "impossible to implement." Assuming that the proposal raises concerns felt by other shareholders, it should be no surprise that other multiple shareholders will want to submit the same proposal to other companies.

When a company receives duplicate proposals, it should be easy enough for a corporate secretary to telephone the second proponent, explain the situation and provide the name of the first proponent and the text of the resolution. If the two proponents speak, and if the first proponent decides to proceed, the second proponent may decide that withdrawal is the only option. On the other hand, if the proponents speak, the first-in proponent may opt to withdraw in favor of the second proponent and notify the company to that effect, thus paving the way for the second proponent's proposal to be printed and voted.

Whatever the outcome, the fact remains that in situations where there is clear duplication, it is often possible to resolve the situation without the company making a no-action request the first line of attack.

We note that in 2020 the Commission revised Rule 14a-8 to require a proponent to advise a company of the proponent's availability to discuss a proposal. However, there is no comparable requirement that a company must actually reach out to the proponent, and many companies do not bother to pick up the phone. Thus, if the Commission should finalize this rule change, we recommend that the Commission urge companies that receive duplicate proposals to communicate with the second proponent and provide the name of the first proponent and the text of the first-in proposal. This one change could reduce, if not eliminate, no-action requests on "duplicate proposal" grounds.[1]

Rule 14a-8(i)(12): The "resubmission thresholds" exclusion.

This exclusion permits the omission of proposals that address "substantially the same subject matter" as a proposal or proposals that had been voted at the company in a prior year or years but did not achieve the specified level of "yes" votes. At present this exclusion is applied by focusing on whether a proposal presents the same "substantive concerns" as earlier proposals, a process that can generate the same sort of fact-intensive inquires discussed above in connection with those exemptions.

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[1] There should be no serious objection to disclosing the identify of the first proponent to the second proponent at this stage. The two proponents likely share the same objective and may be willing to work with one another. Moreover, when the first proponent files a proposal, that is an implicit acknowledgement that the first proponent's name, address and holdings will either be made public under Rule 14a-8(*l*)(1) or will be available upon request of a shareholder.

The Release proposes to change the current "same subject matter" standard to focus on whether a proposal "addresses the same subject matter and seeks the same objective by the same means." We support this change, which would bring this resubmission exclusion in line with the duplication proposal discussed above.

Thank you for your consideration of these comments.

Sincerely,

Sean O'Brien
General President

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