Everence Financial
1110 North Main Street
Post Office Box 483
Goshen, IN 46527
www.everence.com

Toll-free: (800) 348-7468
T: (574) 533-9511

Via email to rule-comments@sec.gov

September 11, 2022

Vanessa A. Countryman
Secretary
Securities and Exchange Commission
100 F Street NE
Washington, DC 20549-1090

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)

Dear Secretary Countryman,

On behalf of Praxis Mutual Funds and Everence Financial, I'm writing to express strong support for the proposed rule changes to three bases for exclusion in the Commission's Rule 14a-8 ("Rule 14a-8" or the "Rule") proposed in Exchange Act Release No. 95267 (the "Release"), "Substantial Implementation, Duplication, and Resubmission of Shareholder Proposals Under Exchange Act Rule 14a-8" (the "Proposed Changes").

Praxis is the mutual fund family of Everence Financial, a faith-based financial services firm with more than $5 billion of assets under management. We serve tens of thousands of shareholders who desire to integrate their values into their investments and seeking to support real-world change while planning for their financial future.

As part of our commitment to being a values-driven change agent, Praxis has filed and co-filed numerous shareholder proposals over the past two decades on topics ranging from climate change to paid sick leave. We have found that shareholder proposals are often the catalyst for opening conversation between shareholders and company management. These discussions lead to far-reaching benefits for the climate, communities and the companies themselves.

We urge the Commission to adopt the Proposed Changes because they would:

- Increase the quality of communication between shareholders and boards/management and among shareholders;
- Reflect the dynamic nature of the shareholder proposal process by allowing proponents to refine proposal strategies over time;
- Enable shareholders to vote on different approaches to address critical issues;
- Better enable shareholders to address systemic, portfolio-wide risks with companies; and
- Make the no-action process more predictable and more efficient.

Background

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For decades, the shareholder proposal process has served as a cost-effective way for corporate management and boards to gain a better understanding of shareholder priorities and concerns, particularly those of shareholders concerned about the long-term value of the companies that they own. Engagement by shareholders has served as a crucial "early warning system" for companies to identify emerging risks, and there are hundreds of examples of companies changing their policies and practices in light of productive engagement with shareowners.

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 some companies will enter dialogue without a proposal being filed, the possibility of a proposal provides strong motivation for companies to engage with shareholders.

Most of the environmental, social and governance ("ESG") practices that shareholders value originated in the shareholder proposal process and substantial evidence supports the positive effect of superior ESG performance on firm value and corporate performance. For example, a 2018 Bank of America study "found that firms with a better ESG record than their peers produced higher three-year returns, were more likely to become high-quality stocks, were less likely to have large price declines, and were less likely to go bankrupt.[1] Deutsche Asset & Wealth Management and researchers from the University of Hamburg found that 62.6% of meta-analyses surveyed showed a positive relationship between ESG and corporate financial performance.[2]

The shareholder proposal process offers an opportunity for proponents to highlight emerging risks and present outside perspectives. Goldman Sachs has acknowledged that resolutions can add value by flagging such matters, stating that "shareholder resolutions can offer additional insight into emerging material risks and externalities for issuers."[3] Shareholder proposals may also lead to disclosure improvements. Shareholders 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.

<u>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</u>

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.

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[1] Robert G. Eccles & Svetlana Klimenko, "The Investor Revolution," *Harvard Business Review*, May-June 2019 (https://hbr.org/2019/05/the-investor-revolution)

[2] Gunnar Friede et al., "ESG and Corporate Financial Performance: Mapping the Landscape," p.7 (Dec. 2015) (https://institutional.dws.com/content/_media/K15090_Academic_Insights_UK_EMEA_RZ_Online_151201_Final_(2).pdf)

[3] Derek Bingham et al., "Shareholder Engagement in the Age of Transparency" (Goldman Sachs Equity Research) (June 12, 2019) (https://www.eticanews.it/wp-content/uploads/2019/06/Shareholder-engagement-in-the-age-of-transparency-1.pdf)

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Substantial Implementation

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’s[4] 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 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.

Substantial Duplication

A proposal can be excluded in reliance on Rule 14a-8(i)(11) if it “substantially duplicates” an earlier-received proposal that will be included in the company’s proxy statement. The Commission explained that “[t]he purpose of the provision is to eliminate the possibility of shareholders having to consider two

[4] The Wendy’s Company (Apr. 10, 2019).

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or more substantially identical proposals submitted to an issuer by proponents acting independently of each other," which would serve "no useful purpose."[5]

The Staff has traditionally evaluated duplication claims by deciding whether the proposals have the same "principal thrust or focus." This standard incentivizes companies to characterize proposals' objectives broadly in order to show overlap. Political contributions and lobbying disclosure proposals provide an example of this tendency. For many years, proponents have filed proposals seeking disclosure of companies' political contributions, including those made indirectly through trade associations. Political contributions involve candidates, parties, and committees, and are not used for lobbying or other kinds of public policy advocacy. Proponents then began filing proposals asking companies to disclose their direct and indirect lobbying activities and expenditures. Companies sought no-action relief, claiming substantial duplication. In Exxon Mobil,[6] the company successfully argued that a political contributions disclosure proposal substantially duplicated one on lobbying because they had a shared thrust or focus of "spending in the political arena," despite the proponent's evidence that regulators, institutional investors, proxy advisors, and others treated political spending and lobbying as distinct activities. Proponents finally began inserting disclaimers along the lines of "This proposal does not encompass lobbying spending" in a political contributions proposal.[7]

The Proposed Changes would allow exclusion on substantial duplication grounds if the proposals address the same subject matter and seek the same objective by the same means. By allowing shareholders to vote on two proposals on the same topic at the same meeting, the Proposed Changes would strengthen shareholder communication with boards and management and avoid the situation presented by the Pfizer proposal cited in the Release, where a weaker solution to the problem of political spending and lobbying disclosure made it onto the proxy statement. In some cases, voting on different proposals could help shareholders clarify their views. The new standard would also do away with the race to file first, which would improve the shareholder proposal process. When a proponent files far in advance of the submission deadline—which is itself already far in advance of the annual meeting—the proposal may lack the most current information. A very early filing may also quash the possibility of a pre-filing dialogue and, potentially, settlement.

Resubmission

Rule 14a-8(i)(12) allows a company to omit a proposal that addresses "substantially the same subject matter" as a proposal that has been voted on in the last five years and failed to reach the applicable resubmission threshold. The Rule defines neither "substantially the same" nor "subject matter." The resubmission exclusion is intended to "to relieve the management of the necessity of including proposals which have been previously submitted to security holders without evoking any substantial security holder interest therein."[8]

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[5] Exchange Act Release No. 12999 (Nov. 22, 1976).

[6] Exxon Mobil Corp. (Mar. 9, 2017); see also WellPoint, Inc. (Feb. 20, 2013); AT&T Inc. (Mar. 1, 2012), JPMorgan Chase & Co. (Feb. 24, 2012); Johnson & Johnson (Feb. 23, 2012); Occidental Petroleum Corp. (Feb. 25, 2011); Union Pacific (Feb. 1, 2012, recon. denied Mar. 30, 2012).

[7] See, e.g., ExxonMobil Corp. (Apr. 2, 2019) (Unitarian Universalist Association).

[8] Notice of Proposal to Amend Proxy Rules, Exchange Act Release No. 4114 (July 6, 1948)

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The current approach discourages experimentation and is inconsistent with the way proponents work to address issues at companies. A proponent typically identifies a problem and formulates a potential approach to it for inclusion in a proposal. Through the proxy voting process and any solicitation efforts, the proponent learns whether the approach has traction. Dialogue with the company might provide information about unintended consequences or other reasons the proposal might be difficult to implement. If the proposal receives a low enough vote that the resubmission threshold is not reached, the proponent might return with a different formulation, perhaps one that reflects these inputs. That second proposal, however, would likely be deemed to address substantially the same subject matter as the first one, which would support exclusion under the resubmission exclusion. In this way, the communication process the Rule is supposed to serve is short-circuited. Limiting exclusion to situations where a proposal "addresses the same subject matter and seeks the same objective by the same means" as one that did not achieve the resubmission threshold would give shareholders the opportunity to find an approach that can obtain significant shareholder support.

Conclusion

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 believe Rule 14a-8, amended as proposed, provides for the continuation of strong, effective, and efficient company-shareholder engagement on issues of critical concern to both companies and their stakeholders.

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.

Thank you for considering these comments.

Sincerely,

Mark A. Regier

Mark Regier
Vice President of Stewardship Investing
Praxis Mutual Funds and Everence Financial