CLEAN YIELD
ASSET MANAGEMENT

September 12, 2022

Via rule-comments@sec.gov

Ms. Vanessa A. Countryman, Secretary
Securities & Exchange Commission
100 F Street, NE
Washington, DC 20549

File Number S7-20-22

Dear Ms. Countryman:

Clean Yield Asset Management is an investment firm based in Norwich, VT that specializes in sustainable and values-aligned investing. We are active owners with a history of engaging companies on a range of issues, with a particular focus on equity and inclusion, corporate political transparency and alignment, and climate change. We file several shareholder proposals each year on behalf of our clients and also vote proxies on their behalf. We are writing in support of the proposed rulemaking on Substantial Implementation, Duplication, and Resubmission of Shareholder Proposals Under Exchange Act Rule 14a-8.

We welcome the proposed amendments to Rule 14a-8, the shareholder proposal rule, which would clarify when a proposal can be excluded as substantially implemented by the issuer, because its subject matter duplicates another proposal submitted for the current year, or because it is a resubmission of a subject matter voted on in a prior year.

As a filer of shareholder proposals, see benefits to these changes for proponents, issuers, and voting shareholders. It is our view that the proposed amendments around substantial implementation would encourage shareholder proponents to be more focused in asserting the essential elements or purpose of their proposals. This should result in increased clarity for issuers and shareholders as to the purpose of a proposal and will also lead to more efficient engagement between proponents and issuers. It may also reduce the gray area that currently exists around substantial implementation which could lead to fewer no action challenges on these grounds and result in less costs for issuers and proponents and less time for staff. The proposed changes around duplicate proposals would help relieve the stress that proponents may feel to file early in order to get ahead of another proposal with a similar resolved clause and an entirely different objective. Increasingly we find ourselves feeling pressured to file proposals earlier to avoid being beat by other filers. This time pressure limits our ability to engage with companies before filing (we prefer to engage before filing) and rushes our proposal writing time. This proposed change could lead to more effective engagements, possibly fewer proposals being filed, and stronger proposals when they are filed.

The existing rules have placed the SEC staff in the untenable position of making highly subjective determinations under these rules, which has been accompanied by a costly increase in the number and length of no action requests raising these issues. The existing rules have also led to the exclusion of numerous proposals, the consideration of which would have been of clear benefit to companies and their investors.

The proposed technical changes are a significant improvement, because they will largely take the SEC out of the business of subjectively deciding to exclude proposals even though they might provide an important and meaningful opportunity for voting shareholders to deliberate on the topics of the proposals. They are of substantial benefit to proponents, investors who vote their proxies, and to issuers.

Substantial implementation

The proposal to revise criteria for substantial implementation, Rule 14a-8(i)(12), states that a proposal will be considered substantially implemented if "the company has already implemented the essential elements of the proposal." Under the existing rule, companies do not necessarily assert that they have implemented the elements of the proposal in their no action requests. Instead, they engage in a subjective exercise of characterizing (and often mischaracterizing) the essential purpose of the proposal and then assert that existing company actions fulfill such purposes.

As a filer of shareholder proposals, we appreciate that the proposed amendments would encourage shareholder proponents more focused in asserting the essential elements or purpose of their proposals. We believe that this will result in increase clarity for issuers and shareholders as to the purpose of a proposal and will also lead to more efficient engagement between proponents and issuers. It may also reduce the gray area that currently exists around substantial implementation with could lead to fewer no action challenges on these grounds which would result in less costs for issuers and proponents and less time for staff.

As a filer of shareholder proposals, it is our view that the current rules make it challenging for us to know whether our proposal will withstand a substantial implementation challenge, as we are unable to forecast the issuer and staff's subjective assessment of essential purpose, and even when we assert in our no action responses what the essential purpose of the proposal is, the staff has been free to adopt the company's looser interpretation of the purpose. This process has always seemed inappropriate. Even where proposals asked for specific criteria or responses on a topic like climate change (e.g. answering specific questions), issuers have, for instance, claimed that the company's existing reporting meets the essential purpose by informing investors on its general *approach to climate change*, despite failing to address the specific elements requested by the proposal.

The new proposed approach of asking whether the company has addressed the essential elements of the proposal is a sound approach. It would eliminate most of the subjectivity of the substantial implementation rule and encourage proponents to clearly articulate essential elements in drafting their proposals. As a proponent, we expect that we can draft proposals more clearly using this guidance, and in having clearer expectations, we can avoid guesswork and more efficiently draft proposals that will provide clarity for all of the parties as well as shareholders voting on the proposal.

In addition, the proposed substantial implementation rule change will be beneficial to our firm and others that undertake proxy voting on behalf of their clients. By encouraging proponents to make the essential elements of a proposal clear, the clarity of proposals will be improved and it will make our job in determining how to vote on a proposal also more clear-cut.

Duplication

The rulemaking proposal states that a proposal previously submitted will only block another proposal on the current year's proxy under Rule 14a-8(i)(11) if it "addresses the same subject

matter and seeks the same objective by the same means." This is a meritorious change to the existing rule, which currently uses the subjective test of whether a previously submitted proposal "substantially duplicates another proposal previously submitted to the company by another proponent that will be included in the company's proxy materials for the same meeting."

The proposed rule would rectify a long-standing defect in the shareholder proposal rule by enabling investors to vote on a diversity of approaches to an issue, providing meaningful options for shareholder consideration.

We strongly recommend against establishing a maximum number of proposals on a particular topic. This would have an unintended consequence of maintaining the race to be first in line - the "previously submitted proposal," something that does not support careful crafting of proposals and allowing success or failure in engagement to determine whether or not a proposal will be necessary.

Proponents have little interest in multiplying the number of duplicative proposals appearing on the proxy statement. Rather than imposing a subjective duplication rule on investors, we believe a better procedural approach to this issue is for the Commission to encourage companies to immediately notify proponents if there are multiple proposals that the issuer views as duplicative, and to allow the proponents to discuss the overlap and to orchestrate withdrawal of unnecessary proposals that might not add meaningfully to the proxy deliberations.

As with the substantial implementation rule change, the duplication rule change will also benefit investors who vote their proxies by allowing proposals that address a subject matter with different means. This allows investors to consider what they view as the optimal approach to the topic, possibly supporting some proposals and not others.

Resubmission

The 2020 amendments to the shareholder proposal sharply elevated the voting thresholds for resubmission of a proposal that previously was voted on. With the new thresholds of 5% vote the first year, 15% vote the second year and 25% vote the third year in order to resubmit proposals, there is a substantial prospect of thwarting productive engagement and deliberation by proponents, issuers and voting investors on topics that are of clear relevance to a given company. The proposed approach allows investors to revisit a topic by a different means, because the proposed rule would only lead to the exclusion of a proposal if the subsequently submitted proposal "addresses the same subject matter and seeks the same objective by the same means." The proposed rule provides an appropriate opportunity for proponents to fine tune their approach to a topic to win greater voting support.

Improving the architecture of proponent and voting investor decision-making

Together, these proposed changes to the rules represent important relief to investors, making the operation of the rule much clearer, reducing the opportunity for debate over subjective issues, and securing the opportunity for proponents to provide meaningful proposals and options for voting investors.

These proposed changes will have the effect of:

• Improving the architecture of decision-making for proponents by making it easier to know how to draft a proposal that will survive the no action process, and reducing the incentives to file early to prevent conflicting proposals from blocking a proponent's initiative;

• Supporting the rights and responsibilities of investment fiduciaries, including pension funds, to assess and manage risk in their portfolios, including long-term risks associated with issues raised in shareholder proposals;

• Providing greater choice and flexibility to voting investors in possible approaches to addressing critical issues facing their companies;

•Allowing investors to address the portfolio-wide risks posed by issuer activities associated with systemic issues and externalities;

• Providing recourse for investors concerned with potentially misleading statements or commitments by corporations. Shareholder proposals often provide the least costly and most efficient means of confirming whether a company's net zero by 2050 or diversity commitments are backed by actions and metrics, and therefore provide critical information to the market;

• Reducing costs of the no action process and increasing efficiency for proponents and issuers alike, including the amount of SEC staff deliberative time on the three exclusions.

We urge you to adopt the rule changes as proposed.

Sincerely,

Molly Betournay
Clean Yield Asset Management
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