



LORING, WOLCOTT & COOLIDGE

Trusted Relationships for Generations



September 12, 2022

Ms. Vanessa Countryman, Secretary  
Securities and Exchange Commission  
100 F Street NE  
Washington, DC 20549-0609

File Number S7-20-22

Dear Ms. Countryman:

The Sustainability Group is part of Loring, Wolcott & Coolidge, a Boston-based multifamily office that traces its roots back to the 1800s and manages approximately \$9 billion in assets.<sup>1</sup> As long-term investors, we focus on high-quality public equities with the intention of maintaining positions for years, if not decades. For over 35 years, we have included environmental, social, and governance (“ESG”) factors in our investment process and actively vote shares based on rigorous Proxy Voting Guidelines.<sup>2</sup> Today we write to express our strong support of the proposed rulemaking on Substantial Implementation, Duplication, and Resubmission of Shareholder Proposals Under Exchange Act Rule 14a-8.

We believe that the shareholder proposal process provides value to companies and investors alike. For companies, the process can provide an important mechanism for gathering feedback from unaffiliated shareholders; for investors, it provides one of the few formal channels of communication with executive leadership and other shareholders of the company, and a way to express concern for important corporate issues. In this vein, we dedicate significant resources to studying and voting proxies and directly engaging with corporations. On the rare occasion, when our engagement efforts do not result in meaningful dialogue, we file shareholder proposals.

We believe that the amendments to Rule 14a-8 – clarifying the standards for exclusion under the “substantial implementation,” “duplication” and the “resubmission” bases – provide much needed precision, making the proposal process more efficient, objective, and predictable for all parties.

- **Substantial implementation:** We believe that excluding a proposal based on a determination by the Staff of the SEC’s Division of Corporation Finance (the “Staff”) that a company has implemented the “essential purpose” of a proposal requires far too much subjectivity and has led to the exclusion of proposals when the company had not implemented significant, core elements of the proposal itself. Codifying the exclusion standard to state that a proposal will be considered substantially implemented if “the company has already implemented the *essential elements* (emphasis ours) of the proposal,” will remove much of the subjectivity of the determination process. This change would give proponents more certainty in the planning and drafting stage. By encouraging proponents to make the essential elements of a proposal clear, the change would also simplify proxy voting decisions for investors. Additionally, the clarity offered by the proposed changes would likely streamline companies’ decisions to pursue no action relief. In summation, the centrality of defining and addressing the *essential elements* of a proposal will clarify expectations for proponents, investors, companies and Staff of both the SEC’s Division of Corporation Finance and Division of Investment Management, reducing the costs and increasing the efficiency of the entire process.
- **Duplication:** Currently, Rule 14a-8(i)(11) provides for exclusion if a proposal “substantially duplicates another proposal previously submitted to the company by another proponent that will be included in the

<sup>1</sup> As of 6/30/2022.

<sup>2</sup> Our full guidelines can be found here: <https://sustainabilitygroup.com/wp-content/uploads/2022/01/LWC-PROXY-VOTING-GUIDELINES.pdf>



company's proxy materials for the same meeting." This too requires far too much subjectivity in the determination process. Historically, proposals sharing the same "principal thrust" or "principal focus" have been excluded, even when they differ in terms of approach. The amendment offers significant clarity by stating that a proposal previously submitted will only block another proposal on the current year's proxy if it "addresses the same subject matter and seeks the same objective by the same means." We believe this change will afford proponents the opportunity to make clearer requests of companies without becoming prescriptive. Further, the inclusion of multiple proposals addressing the same subject matter by different means will allow investors to consider the optimal means for addressing the topic at hand. Such an outcome enhances the available choices for investors and provides more nuanced information for companies.

While we acknowledge the concern that this change could result in similar proposals appearing on a ballot, we strongly recommend against establishing a maximum number of proposals on a particular topic. Such a restriction would once again allow for too much subjectivity in the process, and could have the unintended consequence of proponents rushing to be the first to file. We believe that the Commission could include guidelines in the release encouraging companies to immediately notify proponents when multiple proposals are seen as duplicative, allowing the proponents the opportunity to discuss overlap and to orchestrate withdrawal of unnecessary proposals that might not add meaningfully to the proxy deliberations.

- **Resubmission:** Under the 2020 amendments to 14a-8(i)(12), 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. By adding similar rigor to the language around resubmission, the proposed amendments accommodate changing conditions relevant to companies and investors. This would allow proponents the opportunity to modify proposals with a refined understanding of the issue and of fellow shareholders' concerns.

We welcome the proposed amendments and strongly believe that they will greatly improve the shareholder proposal process by making it more predictable, more rigorous, and more efficient for shareholder proponents, investors, companies, and the Staff of the SEC's Division of Corporation Finance. It is our hope that the SEC moves quickly to finalize them.

Sincerely,

**W. Andrew Mims**  
Trustee and Partner

**Larisa Ruoff**  
Director of Shareholder Advocacy