Ceres Accelerator
for Sustainable Capital Markets

September 12, 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,

We write to express strong support for the proposed changes to the Commission's Rule 14a-8 ("Rule 14a-8" or the "Shareholder Proposal Rule") in Exchange Act Release No. 95267 (the "Release"), "Substantial Implementation, Duplication, and Resubmission of Shareholder Proposals Under Exchange Act Rule 14a-8" (the "Proposed Rule").

Ceres is a sustainability nonprofit organization working with influential investors and companies to build leadership and drive solutions throughout the economy. Through powerful networks and advocacy, we tackle the world's biggest sustainability challenges, including climate change, water scarcity and pollution, and inequitable workplaces.

The Ceres Investor Network on Climate Risk and Sustainability ("INCRS") is composed of more than 220 members collectively managing over $60 trillion in assets under management. Ceres provides expertise and support for engagements by INCRS members on topics spanning the climate crisis, energy, and sustainability reporting.[1] In the 2022 proxy season, 110 companies settled shareholder proposals by making climate-related commitments, such as setting or strengthening emissions reduction targets, reporting on climate lobbying, and providing disclosure on capital expenditures.[2] Last month, with 54 signatories representing $9.8 trillion in assets under management, Ceres launched the Valuing Water Finance Initiative to better protect water systems by engaging 72 of the largest corporate water users and polluters.[3] Ceres is also a founding partner organization of Climate Action 100+, which aims to ensure the world's largest corporate greenhouse gas emitters take necessary action on climate change.

[1] See https://www.ceres.org/networks/ceres-investor-network. For a list of engagements by INCRS members, see https://engagements.ceres.org/.
[2] https://www.ceres.org/news-center/press-releases/record-number-negotiated-agreements-between-investors-and-companies-2022
[3] See https://www.ceres.org/water/valuing-water-finance-initiative

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The Commission should adopt the Proposed Rule because the changes would:

- promote more robust communication, both between shareholder proponents and companies and among shareholders;
- increase predictability and consistency in the no-action process, reducing the burden on the Commission's Staff and giving proponents greater certainty about the excludability of their proposals;
- facilitate private ordering; and
- enable shareholders to propose and refine value-enhancing reforms, which are especially critical as threats become more urgent and, in the case of climate change, irreversible.

Governance and Sustainability Reforms and the Shareholder Proposal Process

Rule 14a-8 is a vital tool for shareholders because it is a cost-effective way to press companies to take action on sustainability challenges. Even in engagements that take place without a proposal filing, the possibility of a filing operates in the background to motivate productive dialogue. Rule 14a-8 aggregates investor preferences through the proxy voting process, allowing shareholders as a group to communicate with the board and management.[4] The Commission has highlighted the importance of this communication function in rule making releases.[5] Votes on shareholder proposals communicate shareholder views not only to the recipient companies but also to other companies whose shareholders could sponsor or support similar proposals. Rule 14a-8 enables private ordering as an alternative to regulation.

Shareholder proposals have spurred the majority of reforms that are now considered environmental, social, and governance ("ESG") best practices. Many of these reforms have been shown to enhance firm performance and reduce company-specific and systemic risks. For example, a substantial academic literature concludes that governance arrangements insulating the board from shareholder influence, such as classified boards and cause-only removal, are associated with poorer firm performance and lower value[6]; the lower prevalence of these kinds of arrangements is attributable in large part to shareholder proposals.[7] Likewise, studies have found

[4] See, e.g., J. Robert Brown, "Corporate Governance, Shareholder Proposals, and Engagement Between Managers and Owners," 94 Denver L. Rev. Forum 299, 302 (2017) ("Proposals provide companies with unique insight into the collective views of shareholders. Moreover, with repeat submissions, support for proposals can be assessed over time, allowing managers to better understand the evolution in shareholder attitudes.")

[5] See Exchange Act Release No. 39093 (1997) ("The shareholder proposal rule provides an avenue for communication between shareholders and companies, and among shareholders themselves."); Exchange Act 19135 (1982) ("Since its adoption in 1942, the security holder proposal rule has undergone a number of revisions, generally directed at better defining and refining the bases for exclusion of such proposals from the proxy statement and assuring the goal of security holder communication.").

[6] See, e.g., Paul Gompers et al., "Corporate Governance and Equity Prices," Quant. J. Econ., 118(1), 107-155 (Feb. 2003) (https://papers.ssrn.com/sol3/papers.cfm?abstract_id=278920); Martijn Cremers & Allen Ferrell, "Thirty Years of Shareholder Rights and Firm Valuation" (2013) (https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1413133); Olubunmi Faleye, "Classified Boards, Firm Value, and Managerial Entrenchment," 83 J. F. Econ. 501 (2007) (https://papers.ssrn.com/sol3/papers.cfm?abstract_id=877216); Lucian Bebchuk et al., "What Matters in Corporate Governance," Rev. Fin. Stud., Vol. 22, No. 2, 783-827 (Feb. 2009) (https://papers.ssrn.com/sol3/papers.cfm?abstract_id=593423).

[7] Brown, supra note 4, at 310-311.

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a link between diversity on the board and upper management, which has increased as a result of shareholder proposals, and better financial performance.[8]

More generally, poorer ESG performance has been shown to correlate with risks, including stock price volatility and bankruptcy.[9] Disclosure enhancements achieved through shareholder proposals enable shareholders to understand companies' strategies and risks, which can enable more accurate valuations. Ceres has supported and tracked efforts to use shareholder proposals to elicit disclosure by companies of risks related to climate change, which affect specific companies as well as other portfolio companies and asset classes.

Research shows that engagements, which shareholder proposals can promote, are associated with improved financial outcomes, at least when they prompt corporate action. One study of corporate social responsibility engagements by a large institutional investor from 1999 to 2009 at U.S. public companies found that successful engagements were followed by positive abnormal returns.[10] A similar study by the same authors found increased profitability following successful engagements coordinated by the Principles for Responsible Investment between 2007 and 2017, while unsuccessful engagements were associated with no such increases.[11] In another study, which used a private data set provided by a large fund manager, researchers concluded that the manager's outperformance of benchmarks was due primarily to engagements rather than security selection.[12]

Over time, the distribution of shareholder proposal topics has shifted. In the early decades, proponents focused on straightforward governance reforms like takeover defenses and board independence. More recently, however, proponents are taking up complex topics like climate change, racial justice, corporate political spending and lobbying, and human rights, through the proposal process. Proposals on these subjects—some of the most pressing of our time—are more likely to elicit no-action challenges; after all, a board is either classified or it's not, but a proposal seeking comprehensive political spending disclosure could generate debate over the niceties of substantial implementation. Ensuring that the standards used in deciding such challenges focus on the substance of proposals, and the specific requested actions in particular, would bolster the Shareholder Proposal Rule's effectiveness in catalyzing value-enhancing ESG reforms.

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[8] Credit Suisse, "Does Gender Diversity Improve Performance?" Jul. 31, 2012 (https://www.credit-suisse.com/us/en/about-us/research/research-institute/news-and-videos/articles/news-and-expertise/2012/07/en/does-gender-diversity-improve-performance.html); Vivian Hunt, Dennis Layton & Sara Prince, "Diversity Matters," McKinsey & Company, Feb. 2, 2015 (http://www.diversitas.co.nz/Portals/25/Docs/Diversity%20Matters.pdf); see also Guido Giese, "Foundations of ESG Investing: How ESG Affects Equity Valuation, Risk, and Performance," J. Portfolio Mgmt., at 4-5 (July 2019) (https://www.msci.com/documents/10199/03d6faef-2394-44e9-a119-4ca130909226) (finding that high ESG-rated companies paid higher dividends, earned more profits, and had fewer "idiosyncratic risk incidents" involving large stock price drops).

[9] https://www.wlrk.com/docs/ESG_A_to_Z.pdf; https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2699610

[10] https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2154724

[11] https://www.unpri.org/download?ac=5545, at 14-15.

[12] https://www.researchgate.net/publication/227351566_Returns_to_Shareholder_Activism_Evidence_from_A_Clinical_Study_of_the_Hermes_UK_Focus_Fund

The Proposed Rule Would Fix Language and Interpretive Approaches That Impede the Shareholder Proposal Rule's Functioning

The Proposed Rule would amend three substantive bases for exclusion in the Shareholder Proposal Rule: substantial implementation (Rule 14a-8(i)(10)), substantial duplication (Rule 14a-8(i)(11)), and resubmission (Rule 14a-8(i)(12)). In each case, the proposed amendments would promote more robust communication, increase predictability and consistency in the no-action process, facilitate private ordering, and enable shareholders to suggest value-enhancing changes to companies' behavior, policies, and disclosure practices, which are especially critical as the stakes for people and the planet escalate and shareholders tackle more complex issues.

Substantial Implementation

Rule 14a-8(i)(10) allows a company to omit a proposal that has been "substantially implemented." The purpose of the exclusion is to "avoid the possibility of shareholders having to consider matters which have already been favorably acted upon by the management."[13] Although the Rule does not define substantial implementation, over time the Staff has relied on various formulations, analyzing whether a company's policies or disclosures "compare favorably" with the guidelines of the proposal and whether the company had "addressed a proposal's underlying concerns" or satisfied the proposal's "essential objectives."

These phrasings focus the Staff not on the specific action requested in a proposal but instead on more nebulous and subjective concepts. Because these subjective terms lack definition, it is unclear how a proposal's underlying concerns or essential objectives should be identified. Some companies have responded by characterizing objectives and concerns in self-serving ways: They downplay the specific requests made in resolved clauses and amplify assertions in the supporting statements in order to persuade the Staff that a proposal's essential objective or underlying concern is broad enough to encompass the steps the company has already taken. Having established a vague underlying concern, those companies then proffer reams of material, often unrelated to proposals' actual requests, to create an impression of implementation.

The no-action correspondence in Devon Energy Corp.[14] illustrates this process. The proposal submitted to Devon asked the company to report if and how it planned to reduce its total contribution to climate change and align its operations and investments with the Paris Climate Agreement's goal of limiting global temperature rise to well below 2 degrees Celsius. Devon characterized the proposal's "essential objective" as "obtain[ing] a report on the measures being taken to reduce Devon's total contribution to climate change and the resulting impact on Devon's operations and investments." Devon used that broader framing, which ignored the proposal's request for a discussion of Paris alignment, to argue that its reporting on environmental matters generally—which was also silent regarding its intention to align with Paris—substantially implemented the proposal. Despite the proponent's objection that existing disclosures were unresponsive to the proposal's actual requests, the Staff allowed Devon to exclude it.

[13] "Proposals by Security Holders," Exchange Act Release No. 12598 (July 7, 1976).
[14] Devon Energy Corp. (Apr. 1, 2020).

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The Staff's current approach also permits exclusion despite the fact that a key element of a proposal has not been implemented, even when the proponent explains why the missing element is crucial. In AutoZone,[15] the proposal asked that the board report on sustainability to shareholders "in consideration of the SASB Multiline and Specialty Retailers & Distributors standard, describing the company's policies, performance, and improvement targets related to material sustainability risks and opportunities." The draft sustainability report submitted by AutoZone in the no-action process \was not prepared using SASB's standard to assess materiality and did not include the additional metrics contemplated for material issues under the standard. The proponent explained that the SASB standard was referenced in the proposal because research had found that sustainability reports prepared without such guidance tended to cherry pick favorable metrics and pointed out that if the SASB standard had been followed for AutoZone's report, it would have disclosed additional information on labor practices and energy management, both of which raised concerns at the company. Despite AutoZone's failure to implement this crucial aspect, the Staff concurred with AutoZone that it had substantially implemented the proposal.

The Proposed Rule would allow exclusion on substantial implementation grounds only if the company has "already implemented the essential elements of the proposal." This approach would benefit shareholders and the shareholder proposal process in several ways. First, its focus on the specific actions a proposal requests is more aligned than the current approach with the exclusion's purpose of avoiding shareholder votes regarding actions the company has already taken, without reverting to an exact implementation standard which could require inclusion in the proxy statement if a company deviated even slightly from the proposal. Second, because an element is more definite than a concern or objective, the Proposed Rule's approach would increase consistency and predictability, which helps both companies and proponents and may reduce the number of no-action requests made in reliance on the substantial implementation exclusion.

Requiring that the essential elements be implemented to support exclusion would enhance the communicative function of the Shareholder Proposal Rule by permitting shareholders to weigh in on whether the actions a company has already taken suffice. Allowing this kind of nuanced communication is particularly valuable when addressing the more complex issues on which Ceres' Investor Network members work, where details that might appear minor at first blush, like whether a company's net zero target includes scope 3 emissions, can have enormous real-world consequences.

Substantial Duplication

A proposal can be excluded if it "substantially duplicates" an earlier-received proposal that will be included in the company's proxy statement. Substantial duplication is not defined in the Rule, but the Commission explained when it formally adopted the duplication exclusion in 1976 that "[t]he purpose of the provision is to eliminate the possibility of shareholders having to consider two or more substantially identical proposals submitted to an issuer by proponents acting

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[15] AutoZone, Inc. (Oct. 9, 2019).

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independently of each other." Considering such "redundant" proposals, the Commission stated, would serve "no useful purpose."[16]

To decide whether a proposal substantially duplicates an earlier-received proposal, the Staff determines whether the proposals have the same "principal thrust or focus." As with the substantial implementation formulations relied on by the Staff, the principal thrust or focus assessment lends itself to companies reframing proposals' objectives in vague terms, which then support a finding of duplication. These distorted reframings ignore the proposals' specific requests in the resolved clause and overemphasize language in the supporting statement. The Release acknowledges this problem, stating that "delineating the principal thrust or focus too broadly or too narrowly can lead to under- or over-inclusion of shareholder proposals, respectively."

The determination in Exxon Mobil[17] exemplifies this problem. There, the Staff permitted exclusion on substantial duplication grounds of a proposal (the "Climate Lobbying Proposal") asking Exxon to report to shareholders on if and how its lobbying activities align with the Paris Climate Agreement's goal of limiting global temperature rise to well below 2 degrees Celsius, as well as how the company is addressing risks presented by misalignment, including any steps it takes to mitigate those risks. The earlier-received proposal (the "Lobbying Disclosure Proposal") requested semiannual disclosure of policies and procedures governing lobbying, the lobbying expenditures themselves (direct and indirect through trade associations and other organizations), and any amounts paid to groups that draft and promote model legislation.

Exxon Mobil urged that both proposals "seek information and disclosure about climate lobbying, with a focus on the Company's lobbying activities through trade associations that may or may not be in alignment with the Paris Climate Agreement." To support its characterization of the Lobbying Disclosure Proposal's principal thrust or focus, Exxon Mobil highlighted superficial similarities, such as the fact that both proposals requested a report, and pointed to a climate-related example from the supporting statement. The company also used vague language in its no-action request to make the proposals seem more similar, arguing that both "<u>are focused on</u> the Company's trade association affiliations and the lobbying activities of those trade associations." (emphasis added) Despite the proponent's objection that the proposals' actual requests did not overlap at all and that the Lobbying Disclosure Proposal's reference to climate lobbying served only to illustrate the kinds of reputational risk that necessitated disclosure, the Staff agreed with Exxon Mobil that the proposals "share a concern for seeking additional transparency from the Company about its lobbying activities and how these activities align with the Company's expressed policy positions, of which one is the Company's stated support of the Paris Climate Agreement."

The current approach creates a strong incentive to file first and can lead to the exclusion of a proposal whose suggested solution is more appealing to shareholders than the one suggested in the included proposal. The example used in the Release illustrates this phenomenon. Two proposals submitted to Pfizer aimed at improving disclosure of the company's political spending and lobbying: The earlier-received one asked Pfizer to publish its political contributions and

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[16] Exchange Act Release No. 12999 (Nov. 22, 1976).
[17] Exxon Mobil Corp. (Mar. 13, 2020).

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lobbying expenditures in two national newspapers and nine newspapers in selected U.S. cities, while the later-received proposal requested an annual report on the company's process for identifying and prioritizing public policy advocacy activities. The Staff allowed exclusion of the later-received proposal as substantially duplicative.

The newspaper disclosure proposal received support from holders of only 3.8% of shares voted at the AGM,[18] far below the 23.5% average for other kinds of political contributions disclosure proposals[19] and the 21.4% average for more standard lobbying disclosure proposals on which shareholders voted that year.[20] It would be reasonable to conclude that shareholders viewed disclosure in newspapers as less useful than that made in a report that would likely be made available on the company's website and could become part of an archival record that would accumulate over time. Pfizer shareholders did not have the opportunity to express their views on these differing approaches; indeed, the low vote on the newspaper disclosure proposal might have erroneously communicated to Pfizer's board and management that the company's shareholders did not support increased political and lobbying disclosure by Pfizer. That turned out not to be the case: Holders of 44.9% of the shares voted supported a 2021 proposal requesting disclosure of Pfizer's political contributions.[21]

Subsequent events involving the previously mentioned Exxon Mobil proposals show how shareholders would benefit from the new substantial duplication standard contained in the Proposed Rule. Under that standard, the Lobbying Disclosure and Climate Lobbying Proposals would not likely be viewed as duplicative, given the different specific actions each requested. The year after the Exxon Mobil determination was issued, both proposals appeared on Exxon's proxy[22]—the company not having challenged on substantial duplication grounds—and received support from holders of 55.6% (Lobbying Disclosure Proposal) and 63.8% (Climate Lobbying Proposal) of shares voted for and against.[23] Shareholders clearly viewed the proposals as meaningfully different from one another, as evidenced by the variation in voting support, obviating any concerns about asking shareholders to vote on two substantially identical proposals or about shareholder confusion. As well, having both proposals on the proxy served the Shareholder Proposal Rule's communication function by giving shareholders the opportunity to vote on competing approaches to a problem and allowing them to express their collective view that while both proposals made sufficiently meritorious suggestions to garner majority support, the case for reporting on climate lobbying misalignment was stronger. Thus, it was not the case that "no useful purpose" would be served by permitting shareholders to vote on both proposals.

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[18] https://www.sec.gov/Archives/edgar/data/0000078003/000007800312000004/pf8k426v.htm. The newspaper disclosure proposal had achieved a nearly identical vote at Pfizer the year before. (https://www.sec.gov/Archives/edgar/data/0000078003/000007800311000004/pf8k428v.htm)

[19] This figure was arrived at by averaging the votes reported in the 2012 Georgeson Annual Corporate Governance review in the "Report on Political Contributions" category, after removing the nine votes that were erroneously included in this category because the proposals requested either a shareholder vote or prohibition on political contributions. (The ACGR maintains separate categories for proposals requesting such a vote or prohibition.)

[20] This figure was arrived at by averaging the votes reported in the 2012 Georgeson Annual Corporate Governance review in the "Report on Lobbying" category.

[21] https://www.sec.gov/ix?doc=/Archives/edgar/data/0000078003/000007800321000059/pfe-20210422.htm

[22] See https://www.sec.gov/Archives/edgar/data/0000034088/000119312521082140/d94159ddefc14a.htm

[23] https://www.sec.gov/ix?doc=/Archives/edgar/data/0000034088/000003408821000031/xom-20210526.htm

Eliminating the race to file first would improve the shareholder proposal process. When a proposal is submitted far in advance of the deadline, it is more likely to contain assertions that become outdated. For example, a proposal may not reflect actions the company took after the proposal was filed, or it may refer to litigation or an enforcement proceeding that is subsequently settled or dismissed. Such inaccuracies could then generate a no-action request based on violation of the Commission's prohibition on false or misleading statements or, in the absence of such a request, mislead shareholders voting on the proposal. Removing the incentive to file as early as possible could also increase the likelihood of a value-enhancing settlement. Some companies decline to engage in substantive negotiations with a proponent between the proposal filing date and the resolution of the no-action process, and removing pressure to file early therefore can give companies and proponents more time for dialogue.

We note that the proposed new substantial duplication standard will likely lead to more "anti-ESG" proposals being included alongside proposals on the same subject. In some cases, anti-ESG proposals suggest actions that are congruent with their supporting statements and their proponents' solicitations, and their inclusion can provide shareholders with additional voting options. At other times, however, an anti-ESG proposal's resolved clause is identical (or nearly so) to that of another proposal submitted to that company, but the supporting statement undermines or calls into question the wisdom of the action(s) requested in the resolved clause.[24] In such cases, we believe it would be appropriate for the Staff to consider the two proposals as having different "objectives" within the meaning of the new standard, despite having the same or very similar resolved clauses. (Putting aside substantial duplication considerations, we believe that supporting statements that undercut their proposals' resolved clauses are materially misleading to shareholders.)

Finally, some anti-ESG proponents actively campaign against their own proposals,[25]apparently in an effort to ensure that they don't achieve enough voting support to be resubmitted. For example, the National Center for Public Policy Research ("NCPPR") bragged that its submission of a political spending disclosure proposal at Eli Lilly in 2019 was intended to preempt other potential filers that have filed such proposals; the difference, however, is that NCPPR exhorted shareholders at the Eli Lilly shareholder meeting, "[d]on't vote for our proposal. We don't want you to."[26] This gamesmanship is an abuse of the shareholder proposal process. It also materially misleads shareholders, who are entitled to rely on the support they reasonably infer from the proponent's sponsorship of the proposal. We urge the Staff to consider penalizing a proponent—for example, barring future proposal submissions for some period of time—for this kind of abusive conduct.

Resubmission

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[24] E.g., https://www.sec.gov/Archives/edgar/data/0000200406/000020040622000026/a2022jnjproxy.htm#i83f3697d6bbd4caca49658fb304e273a_268

[25] See, e.g., https://nationalcenter.org/ncppr/2019/05/06/free-enterprise-project-blocks-leftist-efforts-to-defund-pro-business-associations/; https://www.youtube.com/watch?v=p_FrN38rQp8

[26] nationalcenter.org/wp-content/uploads/2019/05/Eli-Lilly-2019-Shareholder-Meeting-Statement.pdf

The Shareholder Proposal Rule allows exclusion of 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. No definition of "substantially the same" or "subject matter" is provided in the Shareholder Proposal Rule.

The 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."[27] In 1983, the language changed from "same proposal" to a proposal on "substantially the same subject matter" to address situations where proponents changed a word or two of a proposal to defeat the resubmission requirement.

The "substantially the same subject matter" standard interferes with the communication the Shareholder Proposal Rule is intended to promote. The shareholder proposal process is dynamic: A proponent suggests a solution to a problem and receives feedback from other shareholders about the proposal through the proxy voting process. If a proposal receives tepid support, the proponent can seek to understand whether shareholders disagreed about the existence of a problem or believed that the suggested solution was not useful. In the latter situation, the proponent might obtain feedback as to more helpful solutions and suggest one in a follow-up proposal. The vote on that second proposal would provide even more information to the proponent. The breadth of the current standard interferes with this process by thwarting proponents' efforts to identify solutions that can obtain broad shareholder support following an initial lackluster showing.

For example, in Apple,[28] the Staff allowed exclusion of a proposal asking the board to report to shareholders on Apple's process for identifying and analyzing potential and actual human rights risks in its own operations and supply chain (the "Disclosure Proposal"), finding that it substantially duplicated a proposal asking Apple to establish a board committee on human rights to review the company's policies and their impact on human rights (the "Board Committee Proposal"). Apple argued that the two proposals' shared subject matter was the vague "human rights and how the Company manages human rights concerns within its supply chain." The proponent pointed out many differences between the proposals:

> [T]he Board Committee Proposal sought the establishment of a new board committee to review human rights policies, while the [Disclosure] Proposal takes no position on whether human rights policies need to be reviewed or who would be the appropriate person or entity to conduct such a review. . . . As well, the Proposal asks for reporting not on impacts themselves, but on the process Apple uses to identify impacts or risks and how that information is incorporated into company decision making. . . . [Thus,] the Board Committee Proposal focuses on the substance of the impacts themselves, while the [Disclosure] Proposal operates at the level of process.

The exclusion of the Disclosure Proposal at Apple frustrated shareholders' ability to innovate. The Disclosure Proposal proponent could reasonably have concluded that the low vote on the Board Committee Proposal reflected shareholder disagreement with the notion that a special new board committee was necessary to manage Apple's human rights risks, rather than a belief that

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[27] Notice of Proposal to Amend Proxy Rules, Exchange Act Release No. 4114 (July 6, 1948)
[28] Apple, Inc. (Dec. 4, 2014).

those risks did not exist or were already well managed. That conclusion is consistent with the low votes garnered by human rights board committee proposals, which averaged 4.9% support (out of votes cast) in 2014.[29] The proponent of the Disclosure Proposal could also have reasonably believed that shareholders would look more favorably on a proposal that sought information regarding Apple's process for identifying and analyzing human rights risks, given that such proposals obtained average support from holders of 31.9% of votes cast in 2014.[30] The Apple determination delayed consideration of the Disclosure Proposal option for a full year with no compelling justification.

The new standard in the Proposed Rule, which allows omission only when a proposal substantially duplicates a proposal that failed to achieve the resubmission threshold, would allow a proponent to refine its approach over time and make it possible for a different proponent to suggest varying measures to address a problem. The Disclosure Proposal at Apple would likely have garnered much more support than the Board Committee Proposal, communicating to Apple that its management of human rights risk could be more effective. As noted in the Release, significant differences in voting results—like those between human rights board committee and human rights due diligence disclosure proposals discussed above—suggest that shareholders view many new approaches as addressing different subject matters. The new standard would likely lead to proponents in the INCRS returning with new approaches designed to obtain greater shareholder support, whereas now many proponents reluctantly abandon their efforts at a company once a proposal fails to meet the resubmission threshold.

Conclusion

The Commission should adopt the changes contained in the Proposed Rule to improve the shareholder proposal process. The proposed changes would enable shareholders to communicate with each other and with companies about a wider range of proposals, which could give shareholders the opportunity to choose between competing approaches and allow adjustment of a shareholder proposal strategy if an initial approach is unsuccessful. Shifting to more definite approaches would reduce subjectivity and increase consistency and predictability, which would reduce the Staff's burden during the busy no-action season and benefit proponents by potentially simplifying the drafting process. If there are questions, or if you would like further information, I can be reached at [redacted]

Thank you for your consideration of this request.

Respectfully,

[29] This figure was arrived at by averaging the votes for proposals in the "Board—Establish Human Rights Committee" category in Georgeson's Annual Corporate Governance Review. (See http://www.computershare-na.com/sharedweb/georgeson/acgr/acgr2014.pdf, at 28)

[30] This figure was arrived at by hand collecting voting results for all of the proposals listed in the category "Report on Human Rights Risk Assessment" in "Proxy Preview 2014" that went to a vote. (See https://static1.squarespace.com/static/59a706d4f5e2319b70240ef9/t/5a7f7a7b8165f5c70076aaf8/1518303880255/Proxy_Preview_2014.pdf, at 52)

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