



**International Bancshares
Corporation**

January 23, 2020

Via email to rule-comments@sec.gov (Subject: File Number S7-23-19)

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

Re: RIN 3235-AM49, File Number S7-23-19, Request for Comment on Proposed Rule Regarding Procedural Requirements and Resubmission Thresholds under Exchange Act Rule 14a-8

Dear Secretary Countryman:

The following comments are submitted to the Securities and Exchange Commission (“SEC”) on behalf of International Bancshares Corporation (“IBC”), a publicly traded multi-bank financial holding company headquartered in Laredo, Texas. IBC holds five subsidiary banks serving Texas and Oklahoma with approximately \$12 billion in total consolidated assets. We appreciate the opportunity to provide input on the SEC’s proposed rule regarding amendments to exemptions from the proxy rules for proxy voting advice, as set forth in Release Number 34-87458.

The SEC’s proposed efforts to appropriately balance the interests of shareholders who seek to use the company’s proxy statement to advance their own proposals with the interests of the company and other shareholders who bear the burdens associated with the inclusion of such proposals is both practical and warranted. Shareholders enact company decisions by voting their shares at shareholder meetings. However, the proxy solicitation process, rather than the shareholder meeting itself, has become the forum for shareholder deliberation since most shareholders do not attend public company shareholder meetings in person but, instead, vote their shares by the use of proxies that are solicited before the shareholder meeting takes place. Rule 14a-8 requires companies that are subject to the federal proxy rules to include shareholder proposals in their own proxy statements to shareholders, subject to certain procedural and substantive requirements. These shareholder proposals included in the company’s proxy statement are susceptible to misuse and can be extremely costly and command the time and attention of company officials and other shareholders.¹ Furthermore, the threshold requirements, enacted to

¹ See Notice of Proposal to Amend Proxy Rules, Release No. 34-4114 (July 6, 1948) [13 FR 3973 (Jul. 14, 1948)], at 3974 (“1948 Proposing Release”). See Notice of Proposed Amendments to Proxy Rules, Release No. 34-4950 (Oct. 9, 1953) [18 FR 6646 (Oct. 20, 1953)], at 6647. See Amendments to Rule 14a-8 Under the Securities Exchange Act of 1934 Relating to Proposals by Security Holders, Release No. 34-20091 (Aug. 16, 1983) [48 FR 38218 (Aug. 23, 1983)], at 38221 (“1983 Adopting Release”). See 1982 Proposing Release, at 47427. See letters in response to the Proxy Process Roundtable from Blackrock, Inc. dated November 16, 2018; Society for Corporate Governance dated November 9, 2018. See letter in response to the Proxy Process Roundtable from Exxon Mobil Corporation dated July 26, 2019. See letter

strike the balance between a shareholder's ability to use the company's proxy statement to command the attention of other shareholders to consider and vote upon a potential beneficial proposal and the overuse or wasted resources generated from shareholder proposals that do not have a sufficient economic stake or investment interest in the company, have not been reviewed since 1998. Consequently, the SEC's proposed changes relating to the submission of shareholder proposals and ability of the company to exclude resubmitted proposals on the company's proxy statement appropriately balances the costs and benefits of the shareholder proposal process by updating the required minimum thresholds of company ownership or proposal support.

I. Response to Rule 14a-8(b) – Eligibility Requirements

Generally speaking, IBC believes that updating the amount of securities owned and the length of time held, in determining a shareholder's eligibility to submit a shareholder proposal, more accurately ensures that the shareholder proposal process is only available to such shareholders who hold a meaningful economic stake or investment interest in the company. Under the proposed changes to Rule 14a-8, a shareholder will have three opportunities to satisfy the ownership requirement to be eligible to obtain access to the shareholder proposal process for inclusion of a shareholder proposal in a company's proxy materials. To be eligible to submit a Rule 14a-8 proposal, a shareholder must continuously hold (i) \$2,000 of the company's securities entitled to vote on the proposal for at least three years; (ii) \$15,000 of the company's securities entitled to vote on the proposal for at least two years; or (iii) \$25,000 of the company's securities entitled to vote on the proposal for at least one year. The proposed rule would not allow shareholders to aggregate their securities with other shareholders to meet the applicable minimum ownership thresholds to submit a Rule 14a-8 proposal. IBC believes that allowing the aggregation of securities by shareholders to meet a threshold requirement would undermine the goal of ensuring that every shareholder who wishes to use a company's proxy statement to advance a proposal has a sufficient economic stake or investment interest in the company. Moreover, IBC believes the tiered approach under the proposed revision sufficiently provides multiple options for shareholders to demonstrate that they have a meaningful economic ownership stake in the company through a combination of the amount of securities owned and length of time such securities are held. The current \$2,000 threshold for shares held is left intact, but in light of the small investment amount required under this ownership tier, IBC agrees with the SEC that a longer holding period is reasonable to demonstrate that such shareholders have sufficient investment interests in the company to justify requiring the company to include such shareholder's proposal in its proxy statement. The proposed amendment makes certain shareholder proposals are legitimate concerns of invested shareholders interested in engaging with the company by requiring longer ownership duration or a greater stake in the company.

in response to the Proxy Process Roundtable from the American Securities Association dated June 7, 2019 (citing H.R. REP NO. 115-904, at 2 (2018)). The cumulative rate of inflation between May 1998 and August 2019 is 157.6%. See *Consumer Price Index (CPI) Inflation Calculator*, U.S. DEP'T OF LABOR, BUREAU OF LABOR STATISTICS (last visited Oct. 31, 2019), <https://data.bls.gov/cgi-bin/cpicalc.pl?cost1=11%2C600.00&year1=201011&year2=201906>. The average costs to companies were \$37,000 and \$50,000, respectively. See *Amendments To Rules On Shareholder Proposals*, Release No. 34-40018 (May 21, 1998) [63 FR 29106 (May 28, 1998)] ("1998 Adopting Release").

II. Response to Proposals Submitted on Behalf of Shareholders

IBC supports the amendment to the eligibility requirements of Rule 14a-8 to require shareholders that use a representative to submit a proposal for inclusion in a company's proxy statement to provide documentation attesting that the shareholder supports the proposal and authorizes the representative to submit the proposal on the shareholder's behalf. The proposed amendment would require documentation that (i) identifies the company to which the proposal is directed; (ii) identifies the annual or special meeting for which the proposal is submitted; (iii) identifies the shareholder-proponent and the designated representative; (iv) includes the shareholder's statement authorizing the designated representative to submit the proposal and/or otherwise act on the shareholder's behalf; (v) identifies the specific proposal to be submitted; (vi) includes the shareholder's statement supporting the proposal; and (vii) is signed and dated by the shareholder. IBC believes this required documentation when a proposal is submitted by a representative on behalf of a shareholder makes clear that the representative has been so authorized. Additionally, IBC believes that a shareholder's affirmative statement that it supports the proposal would help to confirm that the interest being advanced by the proposal is the shareholder's own and not that of an ineligible representative. Specifically, IBC believes that this proposed change will limit shareholder proposals under Rule 14a-8 from individuals and entities that may not qualify to submit proposals at a particular company in their own name, but have arrangements to serve as a representative to submit a proposal on behalf of individuals or entities that have held a sufficient number of shares for the requisite period. More importantly, IBC agrees that the proposed change will help confirm that a shareholder has a genuine and meaningful interest in a proposal, rather than some incidental benefit afforded to such shareholder by affording a representative an opportunity to push unwanted proposals. Lastly, IBC believes that the reduction on the administrative burden placed on companies to confirm the principal-agent relationship by requiring such additional disclosure will vastly outweigh the marginal burden placed on shareholders to disclose its principal-agent relationship related to a shareholder proposal.

III. Response to the Role of the Shareholder-Proposal Process in Shareholder Engagement

IBC believes the proposed amendment to Rule 14a-8(b) to add a shareholder engagement component requiring a statement from each shareholder-proponent that he or she is able to meet with the company in person or via teleconference no less than 10 calendar days, nor more than 30 calendar days, after submission of the shareholder proposal will encourage greater dialogue between shareholders and companies in the shareholder proposal process and may lead to more efficient and less costly resolutions of these points of interest. Additionally, the shareholder will be required to include contact information as well as business days and specific times that he or she is available to discuss the proposal with the company. Often dialogue and compromise between shareholders and managers can accomplish shareholder goals or alleviate shareholder concerns without the burden or costs associated with including shareholder proposals in a company's proxy statement. It is documented that shareholder proposals are at times used as the sole method of engaging with companies despite a company's willingness to discuss, and possibly

resolve, the matter with the shareholder.² IBC believes that the proposed changes will often extinguish the burden and costs a company and other shareholders would face with a proxy vote that can be avoided with meaningful engagement and discussion.

IV. Response to the One-Proposal Limit

IBC supports the SEC's proposed rule change to Rule 14a-8(c) to apply the one-proposal rule to each person rather than each shareholder who submits a proposal. Further, IBC concurs with the SEC that the one-proposal limit should apply equally to representatives who submit proposals on behalf of shareholders they represent. Moreover, IBC believes that the submission of multiple proposals by a single shareholder-proponent constitutes an unreasonable exercise of the right to submit proposals at the expense of other shareholders and obscures the other, more material, matters in the proxy statement of issuers. This abuse undermines the purpose of the one-proposal limit rule and reduces the effectiveness of proxy statements. IBC finds that the proposed rule adequately solves this problem, because under the proposed rule, a shareholder-proponent may not submit one proposal in its own name and simultaneously serve as a representative to submit a different proposal on another shareholder's behalf for consideration at the same meeting. Similarly, a representative is not permitted to submit more than one proposal to be considered at the same meeting, even if the representative would be submitting each proposal on behalf of different shareholders. IBC finds that the proposed amendment strikes an ideal balance of affording a shareholder the opportunity to submit his or her proposal alongside management's in the company's proxy statement (subject to meeting the requirements to submit shareholder proposals) while limiting the number of proposals an individual will be able to submit directly or as a representative for other shareholders. IBC believes this proposal will save companies and shareholders valuable time and resources to focus on the most important issues.

V. Response to Rule 14a-8(i)(12)

IBC endorses the SEC's proposed amendments to (i) raise the levels of support that a proposal must receive to be resubmitted at future shareholder meetings and (ii) add a new provision that allows for exclusion of certain resubmitted proposals that have experienced declining shareholder support.

(i) Proposed Resubmission Thresholds

Currently, Rule 14a-8(i)(12) provides a basis for exclusion of a proposal if the proposal addresses substantially the same subject matter as a proposal or proposals previously included in the company's proxy materials within the preceding five years if the most recent vote occurred within the preceding three years and the proposal received less than 3%, 6%, or 10% of the votes cast if voted on once, twice, or three or more times, respectively. The SEC's purpose for excluding certain shareholder proposals is to relieve

² See Transcript of the Roundtable on the Proxy Process (Nov. 15, 2018) ("Roundtable Transcript"), available at <https://www.sec.gov/files/proxy-round-table-transcript-111518.pdf>, comments of Michael Garland, Assistant Comptroller, Corporate Governance and Responsible Investment, Office of the Comptroller, New York City.

company management of the necessity of including proposals which have been previously submitted to security holders without evoking any substantial security holder interest therein.³ The SEC established these thresholds in 1985 and has not reviewed the thresholds since 1998.⁴ IBC supports the proposed amendment to increase the resubmission threshold exclusion of a proposal if the proposal addresses substantially the same subject matter as a proposal or proposals previously included in the company's proxy materials within the preceding five calendar years if the most recent vote occurred within the preceding three calendar years and the proposal received less than 5%, 15%, or 25% of the votes cast if voted on once, twice or three or more times, respectively, because continuously resubmitting unpopular proposals distracts shareholders and their fiduciaries from potentially more important matters by requiring them to spend additional time and resources reconsidering issues that have already been rejected by a majority of shareholders. Research shows that companies incur significant expense as a result of receiving shareholder proposals, including resubmitted proposals, that are unlikely to win majority support.⁵ The cost in terms of corporate resources spent to deal with resubmitted proposals is significant since resubmitted shareholder proposals often take a disproportionate amount of time compared to annual management proposals.⁶ More importantly, resubmitted proposals divert management time and resources, and all shareholders bear the costs associated with resubmitted shareholder proposals.⁷ IBC agrees with the SEC that the proposed increase of the resubmission threshold will relieve company management of the necessity of including proposals that have been previously submitted to security holders without reducing any substantial security holder interest. The new limits are justified because if a proposal fails to generate meaningful support on its first submission, and is unable to generate significantly increased support upon resubmission, it is doubtful that the proposal will earn the support of a majority of shareholders in the near term or without a significant change in circumstances. A shareholder proposal may be resubmitted thereafter, but a cool-off period is subsequently warranted to help ensure that the inclusion of such proposals do not result in unjustified burdens on companies and shareholders.

³ See Adoption of Amendments to Proxy Rules, Release No. 34-4185 (Nov. 5, 1948) [13 FR 6678 (Nov. 13, 1948)].

⁴ See Proposals of Security Holders, Release No. 34-22625 (Nov. 14, 1985) [50 FR 48180 (Nov. 22, 1985)]. See *United Church Bd. for World Ministries v. SEC*, 617 F. Supp. 837, 839 (D.D.C. 1985).

⁵ See Jonas Kron, Trillium Asset Management & Brandon Rees, AFL-CIO Office of Investment and co-chair CII Shareholder Advocacy Committee, *Frequently Asked Questions about Shareholder Proposals*, COUNCIL OF INSTITUTIONAL INVESTORS (last visited Oct. 30, 2019), available at [https://www.cii.org/files/10_10_Shareholder_Proposal_FAQ\(2\).pdf](https://www.cii.org/files/10_10_Shareholder_Proposal_FAQ(2).pdf).

⁶ See letter in response to the Proxy Process Roundtable from Investment Company Institute dated March 15, 2019. See letter in response to the Proxy Process Roundtable from Business Roundtable dated June 3, 2019.

⁷ See letter in response to the Proxy Process Roundtable from National Association of Manufacturers dated October 30, 2018. See letter in response to the Proxy Process Roundtable from Society for Corporate Governance dated November 9, 2018.

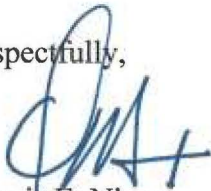
(ii) Momentum Requirement for Proposals Addressing Substantially the Same Subject Matter as Those Previously Voted on Three or More Times in the Preceding Five Calendar Years

IBC supports the SEC's proposal to amend Rule 14a-8(i)(12) to allow companies to exclude proposals dealing with substantially the same subject matter as proposals previously voted on by shareholders three or more times in the preceding five calendar years that would not otherwise be excludable under the 25 percent threshold if (i) the most recently voted on proposal received less than a majority of the votes cast and (ii) support declined by 10 percent or more compared to the immediately preceding shareholder vote on the matter. The proposal would apply only to matters that have been previously voted on three or more times in the preceding five years, which provides shareholders ample time to generate interest and advocate for such a proposal. The appeal of this proposal is that it relieves management and shareholders from having to repeatedly consider, and bear the costs related to, matters for which shareholder interest has declined.

IBC commends the SEC for addressing the concerns surrounding proposed changes to certain procedural requirements relating to the submission of shareholder proposals and changes to the provision regarding the ability to exclude resubmitted proposals. The proposed rule advances the SEC's continued efforts to ensure strong markets and sound governance. Such reform will promote greater confidence in the investment process.

Thank you for this opportunity to share our views.

Respectfully,

A handwritten signature in blue ink, appearing to read 'DENIXON', is written over the word 'Respectfully,'.

Dennis E. Nixon
President